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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274 and 276

[Amdt. No. 318]

Food Stamp Program; Food Stamp Issuance and Issuance Liability Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule—corrections and Reinstatement.

SUMMARY: This action amends Food Stamp Program regulations to make technical amendments to correct errors in spelling, regulatory references, and consistency in word choice that appeared in a final rule, published February 15, 1989, at 54 FR 6990, entitled Food Stamp Program; Food Stamp Issuance and Issuance Liability, a final rule published June 6, 1989, at 54 FR 24149, entitled Food Stamp Program; Disaster Assistance Act, Nondiscretionary Provisions of the Hunger Prevention Act, and Technical Corrections and an interim rule published June 7, 1989, at 54 FR 24518, entitled Food Stamp Program: Administrative Improvement and Simplification Provisions From the Hunger Prevention Act of 1988. The technical amendments for the February 15 final and June 7 interim rules affect the program areas of mail issuance loss and loss reporting level plans, newly-certified households which apply after the 15th day of the month, the maximum allowable period between issuances, validity periods for issuances made in authorization document and direct access systems, restrictions on replacement issuances made to households, expiration dates on identification cards, State agency liabilities, and use of coupons by eligible households. The technical amendments for the June 6 final rule affect the program area of the dependent care deduction. this action also reinstates provisions that were unintentionally removed from the Code of Federal Regulations as a result of the February 15 and June 6, 1989 final rules. The omitted provisions being reinstated affect the program areas of coupon use and redemption, use of household IDs, cash change in coupon transactions, and preparation of monthly reports by State agencies for handicapped households. The effect of this action will be to make the wording of the aforementioned provisions technically correct without changing the intended policies which were set forth in the final and interim rules containing these provisions, or to reinstate provisions, without change, which were erroneously removed.

EFFECTIVE DATE: This rule is effective retroactively to April 1, 1989 for corrections to the February 15 final and June 7, 1989 interim rules, and retroactively to October 1, 1988 for the June 6, 1989 final rule.

FOR FURTHER INFORMATION CONTACT: Marilyn Carpenter, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive—Room 904, Alexandria, Virginia 22302 telephone (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order No. 12291 and Secretary's Memorandum No. 1512–1. This action has been reviewed in relation to the requirements of Executive Order No. 12291 and Secretary's Memorandum No. 1512–1, and it has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "non-major."

Executive Order No. 12372. This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5. U.S.C. 601–608). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This final rule only corrects previous errors and omissions in two final rules and an interim rule. No new requirements are being placed on small businesses or organizations, and the corrections and reinstated provisions will not have a significant economic impact on local governments.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping burdens subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

This document makes technical amendments only and imposes no new requirements. Therefore, the Acting Administrator of the Food and Nutrition Service has determined in accordance with 5 U.S.C. 553 (b) and (d) that prior notice and comment are unnecessary and contrary to public interest, and that good cause exists for making this rule effective upon publication.

Amendments and Analysis

1. On February 15, 1989, the Department published in the **Federal Register** at 54 FR 6990 a final rule comprising a comprehensive revision of the Food Stamp Program's current issuance and State agency issuance liability rules. The primary intent of the rule was to reorganize the current rules, consolidating all of the issuance provisions throughout the rules into part 274, and relocating non-issuance related provisions from part 274 into other parts where they more logically belong.

Prior to publication of the February 15, 1989 final rule, the regulations contained provisions at 7 CFR 274.10 governing eligible food, meal services, the use and redemption of coupons to purchase meals, use of household ID cards, use of

coupon purchases by residents of certain institutions, use of coupons by homeless households, providing cash change in coupon purchases, and payment prior to delivery of food. The Department intended with the publication of the February 15 rule to retain these provisions, without change, and to place them in the reorganization of part 274 within § 274.10. However, through error, the provisions were omitted from the February 15 final rule which resulted in removal of the provisions from the Code of Federal Regulations. Consequently, the omitted provisions are hereby reinstated by amending 7 CFR 274.10 to revise the title of 7 CFR 274.10 and adding new paragraphs (d) through (j).

2. Also in the February 15, 1989 final rule were several typographical errors and word-choice inconsistencies which did not change the intended meaning of the item, but were, nevertheless, confusing. These errors and inconsistencies, found in the preamble, as well as the amendatory language and regulatory text, are as follows:

(a) On page 6991, under the Table of Redesignations, the reference to § 274.10(c) is incorrect. The correct reference is § 274.10(a)(4)(ii). The error is hereby corrected.

(b) On page 6994, the regulatory reference of § 274.3(d)(7) at the end of Item 11 is incorrect. The correct reference is § 274.3(e)(1). The error is hereby corrected.

(c) On page 7000, the regulatory reference of § 274.10(b)(3)(iii) at the end of Item 25 is incorrect. The correct reference is § 274.10(b)(7). The error is hereby corrected.

(d) On page 7001, the regulatory reference of § 276.2(b)(3) at the end of paragraphs two, three, and eight, of Item 29 is incorrect. The correct reference is § 276.2(b)(4). The errors are hereby corrected.

(e) On page 7003, the regulatory references of § 276.3(b)(3) and § 276.3(b)(3)(ii) in lines two and fourteen of § 272.2(d)(1)(viii) are incorrect. The correct references are § 276.2(b)(4) and § 276.2(b)(4)(ii), respectively. The errors are hereby corrected.

(f) On page 7005, the phrase, ". . . participating longer than two consecutive months.", should be added to the end of the second sentence in § 274.2(c)(1). This is to allow for those instances in which a period of more than 40 days may occur between the initial (combined) issuance and the first regular issuance for a household applying after the 15th of the month and processed under expedited service, provided that all verification is complete. If the State agency uses staggered issuance, the period between the combined issuance and the first regular issuance may be longer than 40 days. The omission is hereby corrected.

The 40-day provision, from section 1518 of the Food Security Act of 1985, is meant to be applied when a State agency changes the dates of mail issuance for a household anytime after the initial benefits (month of application) have been issued, i.e., an ongoing household. The aggregate allotment provision from section 203 of the Hunger Prevention Act of 1988 applies to newly-certified households processed under expedited service.

(g) On page 7006, in the third column, the term "original" in § 274.3(d)(4) is superfluous and should be removed from the text. All issuances are considered to be "original" unless actions or circumstances cause them to be designated by another title. By having the term "original" remain in the regulations, there is concern that the term will be interpreted to mean a new category of benefits, which is not the Department's intent. The text is hereby corrected.

(h) On page 7006, in § 274.3(e)(1), the phrase ". . . at least 30 days or . . ." is incorrect. The correct phrase is ". . . at least 20 days or . . .". This was a typographical error, and was stated correctly in Item 11 on page 6994 of the preamble to the February 15, 1989 rule. The error is hereby corrected.

(i) On page 7007, in § 274.4(b)(2)(ii), the word "final" in the first line is an erroneous addition to the text and should be removed from the text since there is no deadline for the receipt of a final report. This agrees with the preamble to the February 15, 1989 rule, on page 6995, in which our conclusion is that State agencies should be given the opportunity to correct errors found in their records. The text is hereby corrected.

(j) On page 7009, in § 274.6(b)(1), the phrase ". . . after the 25th of the month . . ." is incorrect. The correct phrase is ". . . after the 20th of the month . . .". This was a typographical error, and was stated correctly in Item 15 on page 6997 of the preamble. The error is hereby corrected.

(k) On page 7012, in § 274.7(f)(1), the first sentence after the paragraph title is corrected by adding a phrase which clarifies that unusable coupons distributed by the manufacturer to the State agency are to be destroyed within 30 days after the end of the month in which the unusable coupons are discovered, not received, by the State agency. Since State agencies may order coupons for the entire State, we believe that a State agency's accountability and coupon security should not be jeopardized by requiring an entire shipment to be opened at the time of receipt, since the coupons may not be prepared for issuance for as long as two months. The text is hereby corrected.

(l) On page 7014, § 274.10(a)(3), concerning the use of expiration dates on temporary IDs, could be misinterpreted as a result of the placement of the word "temporary" within the text. The paragraph is being corrected to more clearly state that expiration dates have to appear on all temporary ID cards, which includes ID cards for those households eligible to receive delivered meals for a specified period. The clarification is hereby made.

(m) On page 7014, in § 274.10(b)(4)(i), the spelling for the sixth word in line 9 is incorrect. The correct spelling is "member". The error is hereby corrected.

(n) On page 7017, in § 276.(b)(4)(ii), the regulatory references of (b)(3)(i) and (b)(3)(iii) in lines five and eight are incorrect. The correct references are (b)(4)(i) and (b)(4)(iii), respectively. The errors are hereby corrected.

3. On June 6, 1989, the Department published a final rule (54 FR 24149) which implemented, among other provisions, nondiscretionary provisions of Public Law 100–435, the Hunger Prevention Act of 1988. On page 24155 (third column) of that publication, amendatory statement number 10b. in § 273.21 is incorrect. The statement, as it appears, provides that 7 CFR 273.21(b)(1) is revised in its entirety. The statement should have reflected that 7 CFR 273.21(b)(3) is being redesignated as 7 CFR 293.21(c)(7) and only the remaining text after this redesignation is intended to be revised. Prior to publication of the June 6 final rule, the provision of § 273.21(b)(3) required that State agencies assist in completing and filing monthly report forms for households whose adult members are handicapped, non-English speaking, or otherwise lacking in reading and writing skills such that they were unable to complete and file the reports. It was never the Department's intent to change this requirement. The Department intended to retain the provision, but relocate it to 7 CFR 273.21(c)(7). This error is hereby corrected by revising amendatory statement number 10b. under § 273.21 to reflect the Department's intent.

Additionally, this action corrects an error in regulatory referencing that appeared on page 24155 of the June 6, 1989 publication. In paragraph 'd)(4) in the first column, the regulatory reference to § 273.20(d)(1)(i) is incorrect. Such a

paragraph does not exist. The correct reference is § 273.10(d)(1)(i). The error is hereby corrected.

4. On June 7, 1989, the Department published an interim rule (54 FR 24518) which implemented administrative improvement and simplification provisions of Public Law 100–435, the Hunger Prevention Act of 1988. On page 24530 (third column) of that publication, the first sentence in paragraph (b)(2) of § 274.2 is incorrect, in that it refers to households applying "during the last 15 days of the month . . .". The correct wording is "after the 15th day of the month . . .". The preamble to the June 7, 1989 rule refers to "after the fifteenth of the month . . ."; this is consistent with section 203(a)(3) of the Hunger Prevention Act which uses the term "after the 15th day of the month . . .". The comments received as a result of this error in the June 7, 1989 rule addresses the inconsistency of the wording in the public law, the preamble to the rule, and the regulatory language. This error is hereby corrected by revising the first sentence of the regulatory language under § 274.2(b)(2) to be consistent with the wording of the law.

5. *Implementation.* The provisions of this action do not change or alter procedures or policies under which State agencies are currently operating, and therefore do not require additional implementation efforts by the State agencies.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

Accordingly, 7 CFR parts 272, 273, 274 and 276 are amended as follows:

1. The authority citation for parts 272, 273, 274 and 276 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In rule document 89–13294, beginning on page 24149 in the issue of Tuesday, June 6, 1989, make the following corrections:

§ 273.9 [Corrected]

A. On page 24155, column one, in §273.9(d)(4), the reference to "§ 273.20(d)(1)(i)" is corrected to read "§ 273.10(d)(1)(i)".

§ 273.21 [Corrected]

B. On page 24155, column three, for § 273.21, amendatory statement number 10b. is corrected to read: "b. The introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2) are revised, paragraph (b)(3) is redesignated as paragraph (c)(7), and a new paragraph (b)(3) is added,".

3. In rule document 89–13295, beginning on page 24518 in the issue of Wednesday, June 7, 1989, make the following correction:

§ 274.2 [Corrected]

On page 24530, column three, in § 274.2, the first four lines in paragraph (b)(2) are corrected to read: "Households which apply for initial months benefits (as described in § 273.10(a)) after the 15th day of the month and which have completed the . . .".

4. In rule document 89–3245 beginning on page 6990 in the issue of Wednesday, February 15, 1989, make the following corrections:

A. On page 6991, column one, Table of Redesignations, the regulatory reference to "274.10(a)(4)(iii)" in the "New Section" column is corrected to read "274.10(a)(4)(ii)".

B. On page 6994, column one, the regulatory reference to "§ 274.3(d)(7)" at the end of Item 11 is corrected to read "§ 274.3(e)(1)".

C. On page 7000, column one, the regulatory reference to "§ 274.10(b)(3)(iii)" at the end of Item 25 is corrected to read "§ 274.10(b)(7)".

D. On page 7001, columns one and two, the three regulatory references to "§ 276.2(b)(3)" are corrected to read "§ 276.2(b)(4)".

§ 272.2 [Corrected]

E. On page 7003, column two, in § 272.2(d)(1)(viii), the regulatory references to "§ 276.2(b)(3)" and "§ 276.2(b)(3)(ii)" in lines two and fourteen are corrected to read "§ 276.2(b)(4)" and "§ 276.2(b)(4)(ii)", respectively.

§ 274.2 [Corrected]

F. On page 7005, column two, in § 274.2(c)(1), the second sentence is corrected to read: "In doing so, however, State agencies shall not allow more than 40 days to elapse between any two mail issuances provided to a household participating longer than two consecutive, complete months."

§ 274.3 [Corrected]

G. On page 7006, column three, in § 274.3(d)(4), line three is corrected by removing the word "original".

H. On page 7006, column three, in § 274.3(e)(1), the number "30" in line twenty-one is corrected to read "20".

§ 274.4 [Corrected]

I. On page 7007, column three, in § 274.4(b)(2)(ii), line one is corrected by removing the word "final".

§ 274.6 [Corrected]

J. On page 7009, column two, in § 274.6(b)(1), "25th" in line seven is corrected to read "20th".

§ 274.7 [Corrected]

K. On page 7012, column two, in § 274.7(f)(1), the first sentence of the paragraph is corrected to read: "(1) The State agency shall require coupon issuers, bulk storage points, and claims collection points to dispose of unusable coupons received from the manufacturer or received as payment for claims within 30 days after the close of the month in which unusable coupons shipped from the manufacturer are discovered, or are received from recipients as payment for claims."

§ 274.10 [Corrected]

L. On page 7014, column one, in § 274.10 paragraph (a)(3) is corrected to read: "(3) The State agency shall place an expiration date on all temporary ID cards, and on the regular ID cards issued to households certified for delivered meals for a specific period."

M. On page 7014, column three, in § 274.10(b)(4)(i), the word "member" in line nine is corrected to read "member".

§ 276.2 [Corrected]

N. On page 7017, column one, in § 276.2(b)(4)(ii), the regulatory references to "(b)(3)(i)" and "(b)(3)(iii)" in lines five and eight of the paragraph are corrected to read "(b)(4)(i)" and "(b)(4)(iii)", respectively.

5. In § 274.10, the heading of the section is revised and new paragraphs (d) through (j) are added. These provisions were unintentionally removed from the Code of Federal Regulations by a previous rulemaking (54 FR 6990, dated February 15, 1989) and are hereby reinstated. The revision and additions read as follows:

PART 274—ISSUANCE AND USE OF COUPONS

§ 274.10 Use of identification cards and redemption of coupons by eligible households.

* * * * *

(d) *Eligible food.* A household member should sign each coupon book issued to the household. The coupons may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with coupons. Uncanceled and unendorsed coupons of $1 denomination, returned as change by authorized retail food stores, may be presented as payment for eligible food. All other detached coupons may be accepted only if accompanied by the coupon book which bears the same serial number as the detached coupons. It is the right of the household or the authorized representative to detach the coupons from the book.

(e) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(f) *Residents of certain institutions.* (1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or a publicly operated community mental health center which is authorized by FNS to redeem the coupons through wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(2) Eligible residents of a group living arrangement may use coupons issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem coupons at wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(3) Residents of shelters for battered women and children as defined in s271.2 may use their coupons to purchase meals prepared especially for them at a shelter which is authorized by FNS in accordance with § 278.1 to redeem at wholesalers, or which redeems at retailers as the authorized representative of participating household in accordance with § 278.2(g).

(g) *Homeless food stamp households.* Homeless food stamp households may use their food stamp benefits to purchase prepared meals from authorized homeless meal providers.

(h) *Use of ID cards.* Upon request, the household or the authorized representative shall present the household's ID card to the retail food store or meal service when exchanging food coupons for eligible food.

(i) *Prior payment prohibition.* Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services. Neither shall coupons be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(j) *Cash change.* When change in an amount less than $1 is required in a coupon transaction, the household shall receive the change in cash not to exceed 99 cents. However, in the case of homeless food stamp households, neither cash change nor credit slips shall be returned for coupons used for the purchase of prepared meals from authorized homeless meal providers. Such meal providers may use uncancelled and unmarked $1 coupons which were previously accepted for meals served to food stamp recipients when change is required for $5 and $10 coupons.

Dated: December 7, 1989.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 89–29219 Filed 12–14–89; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 698]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 15 through December 21, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 698 [7 CFR Part 907] is effective for the period from December 15 through December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than

$500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988–89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988–89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989–90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988–89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989–90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** [54 FR 42966]. The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 12, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of nine to one with one abstention, that 2,000,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989–90 marketing policy. This recommended amount is the same as that estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 2,000,000 cartons, 1,960,000 are allotted for District 1, and 40,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on December 7, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,957,000 cartons compared with 1,979,000 cartons shipped during the week ending on December 8, 1988. Export shipments totaled 222,000 cartons compared with 156,000 cartons shipped during the week ending on December 8, 1988. Processing and other uses accounted for 437,000 cartons compared with 374,000 cartons shipped during the week ending on December 8, 1988.

Fresh domestic shipments to date this season total 8,689,000 cartons compared with 6,008,000 cartons shipped by this time last season. Export shipments total 1,181,000 cartons compared with 509,000 cartons shipped by this time last season. Processing and other use shipments total 2,136,000 cartons compared with 1,444,000 cartons shipped by this time last season.

For the week ending on December 7, 1989, regulated shipments of navel oranges to the fresh domestic market were 1,898,000 cartons on an adjusted allotment of 1,726,000 cartons which resulted in net overshipments of 172,000 cartons. Regulated shipments for the current week (December 8 through December 14) are estimated at 2,220,000 cartons on an adjusted allotment of 2,003,000 cartons. Thus, overshipments of 217,000 cartons could be carried over into the week ending on December 21, 1989.

The average f.o.b. shipping point price for the week ending on December 7, 1989, was $7.45 per carton based on a reported sales volume of 1,580,000

cartons compared with last week's average of $7.38 per carton on a reported sales volume of 1,342,000 cartons. The season average f.o.b. shipping point price to date is $8.23 per carton. The average f.o.b. shipping point price for the week ending on December 8, 1988, was $8.35 per carton; the season average f.o.b. shipping point price at this time last season was $9.34 per carton.

The Committee reports that overall demand for navel oranges continues to be very good. The quality of the fruit is also improving. The market is expected to remain good over the next few weeks as the Christmas market continues to develop. There is uncertainty, however, over the effects the weather may have on the East Coast market.

According to the National Agricultural Statistics Service, the 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 15 through December 21, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 12, 1989, and this action needs to be effective for the regulatory week which begins on December 15, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

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

2. Section 907.998 is added to read as follows:

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

§ 907.998 Navel Orange Regulation 698.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 15 through December 21, 1989, is established as follows:

(a) District 1: 1,960,00 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 40,000 cartons;
(d) District 4: unlimited cartons.

Dated: December 13, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–29366 Filed 12–14–89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 696]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 696 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period from December 17 through December 23, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 696 (7 CFR part 910) is effective for the period from December 17 through December 23, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona.

The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 12, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.996 is added to read as follows:

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

§ 910.996 Lemon Regulation 696.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 17, 1989, through December 23, 1989, is established at 300,000 cartons.

Dated: December 13, 1989.

Charles T. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-29362 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 89-021F]

RIN 0583-AB16

Imported Product; Withdrawal of Panama From the List of Countries Eligible for the Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On August 29, 1989, the Food Safety and Inspection Service (FSIS) published a proposed rule to withdraw the country of Panama from the list of countries eligible to have their products of cattle, sheep, swine, and goats imported into the United States under the Federal Meat Inspection Act (FMIA). The FMIA requires that, in order for a country to be eligible to export meat products to the United States, the meat inspection system of the country must assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations as applied to official establishments in the United States and their products. FSIS has determined that Panama has not certified that any plant met United States standards in 1988, that it has not conducted residue testing and therefore did not receive a residue certification in 1988, and that reliance cannot be placed upon the certifications required of Panamanian authorities under the FMIA. Because of the lack of current information and the failure of Panama to demonstrate its "equal to" status, the Administrator is withdrawing the country of Panama from the list of countries eligible for importation of their meat products into the United States.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6933.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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. There are currently no domestic importers of Panamanian meat products.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because there are currently no domestic importers of Panamanian meat products.

Background

On August 29, 1989, FSIS published in the **Federal Register** (54 FR 35665) a proposed rule to withdraw the country of Panama from the list of countries eligible to have their products of cattle, sheep, swine, and goats imported into the United States under the FMIA (21 U.S.C. 601 *et seq.*). Under the FMIA, the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat and meat food products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Administrator of FSIS has been delegated the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat are contained in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to export meat or meat products to the United States may become eligible to do so (9 CFR 327.2(a)(2)(iii)).

The Agriculture and Food Act of 1981 (Farm Bill) amended the FMIA to require that imported meat products meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. The Farm Bill directed the Secretary to enforce its provisions through random inspections of imported

product at port of entry for residues and species verification, and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses at the point of slaughter in accordance with methods approved by the Secretary.

The Food Security Act of 1985 (Farm Bill, Pub. L. 99–198) amended the FMIA by requiring that each foreign country from which meat is offered for importation into the United States obtain a certification issued by the Secretary stating that the country maintains a program using reliable analytical methods to ensure compliance with the United States standards for residues in such meat, and further provides that no meat articles shall be permitted entry into the United States from a country for which the Secretary has not issued such a certification.

Regulations implementing the 1981 Farm Bill requirements were published in the **Federal Register** on February 10, 1988 (48 FR 6091). All countries eligible to export product to the United States were notified of the 1985 Farm Bill changes by letter dated July 13, 1987.

To continue to export meat to the United States, a country must demonstrate that it maintains, among other things, a residue program that meets United States standards. FSIS collects information to verify that the United States standards are being met. This information includes: Annual residue testing results, the findings of FSIS technical experts from on-site reviews, and results of port-of-entry reinspections. In March 1987, FSIS notified Panama that it had not demonstrated continued proficiency in residue testing and further specified the information that must be provided before initiating any plans to certify product for export to the United States. The response from Panama indicated that no residue testing was done in 1987 and 1988.

Panama did not certify that any plants met United States standards in 1988, and therefore no on-site reviews of the inspection system in operation were made. On-site reviews of plants are normally confined to those certified to export to the United States. A portion of these reviews is devoted to obtaining information concerning random selection of residue samples at slaughter. In addition, residue testing laboratories are reviewed to determine if analytical methods meet United States standards. Since no plants were certified and no residue testing was being conducted, FSIS was not able to obtain current information. Therefore Panama did not receive a residue certification for 1988. This means that FSIS will not accept any plant certifications from Panama until it demonstrates that its residue program meets United States standards. Without certified plants, shipments of meat products to the United States cannot legally occur.

Although Panama had no plants certified, three consignments of meat product arrived at the port of New Orleans, Louisiana, in January, April and May, 1989, accompanied by a Panamanian meat inspection certificate stating that the meat was produced in certified plants and met United States standards. None of these consignments was accepted for entry. Following the January consignment, FSIS notified Panama that neither plant nor product certifications would be accepted until United States requirements were met. However, Panamanian officials have continued to certify product.

Section 327.4(a) (9 CFR 327.4(a)) requires that any fresh meat or fresh meat byproducts consigned to the United States from a foreign country be accompanied by a foreign meat inspection certificate (health certificate) certifying that the product therein described was derived from livestock which received ante-mortem and post-mortem veterinary inspections at the time of slaughter in certified plants.

Section 327.2(a)(4) (9 CFR 327.2(a)(4)) states that:

> * * * The listing of any foreign country under this section may be withdrawn whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all * * * requirements of the Act and the regulations * * * as applied to official establishments in the United States; or that reliance cannot be placed upon certificates required * * * from authorities of such foreign country; or * * * for lack of current information concerning the system of meat inspection being maintained by such foreign country * * *.

Therefore, the Administrator of FSIS has determined that, in the absence of certified plants, residue testing, and current information about the operation of Panama's meat inspection system, Panama's "equal to" status has not been demonstrated; and, moreover, that reliance cannot be placed upon certificates required under the regulations (9 CFR part 327) from the authorities of such foreign country.

Therefore, pursuant to § 327.2 of the Federal meat inspection regulations (9 CFR 327.2), FSIS is withdrawing Panama from the list of countries from which cattle, sheep, swine, and goat products may be imported into the United States.

Comments on The Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

Final Rule

List of Subjects in 9 CFR Part 327

Imported Products, Meat Inspection.

Accordingly, 9 CFR part 327 of the Federal Meat Inspection Regulations is amended as set forth below.

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

> **Authority:** 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

§ 327.2 [Amended]

2. Paragraph (b) of § 327.2 is amended by removing the following country from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States:

Panama.

Done at Washington, DC on: Nov. 24, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89–29275 Filed 12–14–89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0674]

RIN 7100–AB04

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a revised Regulation C (Home Mortgage Disclosure). The regulation implements amendments to the Home Mortgage Disclosure Act (HMDA), contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which are effective on January 1, 1990. The FIRREA amendments expand the coverage of HMDA to include mortgage lenders that are not affiliated with depository institutions or holding companies. They require covered institutions to report data regarding applications for mortgage and home improvement loans, in addition to data regarding loan originations and purchases. Most institutions will now also report the race, sex, and income of loan applicants.

The Board has adopted a loan/application register form for HMDA reporting on which institutions will record the required information for loan applications, loans actually made, and loans purchased.

The first set of reports in the new register format will be due in early 1991. The reports covering loan data for calendar year 1989, which are due on March 31, 1990, remain subject to the existing provisions of the regulation; institutions must use the current Form HMDA–1 or HMDA–2, as appropriate, for those reports.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: For information regarding the revisions to Regulation C and the reporting requirements, contact Thomas J. Noto or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–2412 or 202–452–3667. For the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544. For information regarding the Board's approval of the reporting form under the Paperwork Reduction Act *only*, contact Frederick J. Schroeder, Federal Reserve Board Clearing Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3829, or Gary Waxman, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, at 202–395–7340.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation currently requires depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporations that have over $10 million in assets and have offices in metropolitan statistical areas or primary metropolitan statistical areas, to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A disclosure statement covering the data on a calendar-year basis currently must be made available to the public and sent to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled. The Federal Financial Institutions Examination Council (FFIEC) produces tables showing aggregate lending patterns in each MSA and provides facsimiles of the individual institutions' reports to central data depositories.

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which was signed into law on August 9, 1989, made major revisions to HMDA. (FIRREA, Pub. L. No. 101–73, section 1211, 103 Stat. 183, 524–526 (1989).) First, the coverage of HMDA was expanded to include other mortgage lenders besides those affiliated with depository institutions or holding companies. Second, the FIRREA amendments require reporting of data regarding loan applications; currently, institutions report only data regarding loans originated or purchased. Third, the FIRREA amendments require most covered lenders to report the race, sex, and income of mortgage applicants and borrowers; depository institutions with assets under $30 million are exempt from this particular requirement. Fourth, the FIRREA amendments require that lenders identify the class of purchaser for mortgage loans that they sell. Finally, the amendments permit lenders to explain the basis for lending decisions to their supervisory agency. Proposed revisions to Regulation C to implement the FIRREA amendments were published for public comment on October 6, 1989 (54 FR 41255), and the Board is now adopting a final rule.

The new requirements apply beginning with calendar year 1990. They do not affect the reports covering loans made or purchased in calendar year 1989 which are due by March 31, 1990. The current provisions of Regulation C govern these reports; institutions should use Form HMDA–1 or HMDA–2 as appropriate. The FFIEC's *Guide to HMDA Reporting: Getting It Right!* (published in January 1989) provides guidance for preparing reports covering the 1989 data.

Register format. The revised Regulation C provides for a "register" form of reporting. Lenders will record data for each application (whether granted, denied, or withdrawn) that they receive, and will submit the registers to their supervisory agency at the close of the calendar year. Institutions will have to maintain detailed loan data, which is unavoidable given the FIRREA requirements. But since institutions will not have to cross-tabulate the data as is now the case, the register format should minimize the burden of the new reporting requirements.

The Board is publishing the entire text of the regulation for the public's convenience. However, the major changes (aside from the expanded coverage of lenders) relate to the data to be collected and the form in which the data will be reported, as prescribed in § 203.4 and in Appendix A. The revisions to the reporting form have been reviewed and approved under authority delegated to the Board by the Office of Management and Budget.

The format for data submission was developed by the Board in consultation with the other agencies responsible for enforcing HMDA—the Federal Deposit Insurance Corporation (FDIC), the Department of Housing and Urban Development (HUD), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Several of these agencies currently require the lenders subject to their jurisdiction to keep an application register of some sort. Steps are under way to eliminate duplicate requirements. Institutions will be advised of any changes by their respective supervisory agencies.

(2) Section-by-Section Summary

The changes to each section of the regulation are discussed below.

Section 203.1—Authority, Purpose, and Scope

Section 203.1(b)(1)(iii) reflects the purpose of the new reporting requirements—stated in the FIRREA amendments—of identifying possible discriminatory lending patterns. Sections 203.1 (c) and (d) address the coverage and scope of the regulation and the FFIEC's role in producing disclosure statements and other reports from data submitted by financial institutions.

Section 203.2—Definitions

Section 203.3 defines terms used in the regulation. Revisions are noted below.

Act. The definition of "act" in § 203.2(a) is unchanged.

Application. Under section 1211(c) of the FIRREA amendments, institutions are required to report data for "completed" loan applications, in addition to reporting data for loans originated or purchased. A definition of "application" has been added as § 203.2(b); succeeding provisions have been renumbered accordingly.

The Board originally proposed to define "application" in a way slightly different from the definition contained in Regulation B (Equal Credit Opportunity) (12 CFR 202.2(f)). A number of commenters suggested that the Board use the Regulation B definition since it is

familiar to lending institutions. Based on the comments and further analysis, the Board has defined "application" in keeping with the Regulation B definition. Thus, for purposes of HMDA coverage, an application results when an institution receives an oral or written request for a mortgage or home improvement loan that is made in accordance with procedures established by the financial institution.

The FIRREA amendments refer to "completed applications," and the legislative history suggests that an application would be deemed complete for purposes of reporting under HMDA even if the institution had not yet received reports or approvals by secondary market entities, government entities, or private mortgage insurers. Under Regulation B, such an application would not be considered complete for purposes of the timing rules and required notices. Given the manner in which the Board has implemented the reporting requirements in Regulation C, however, the concept of a "completed" application is not relevant. The revised Regulation C requires that institutions report loan originations in the year of origination and loan purchases in the year of purchase; this is the rule currently applicable. In the case of loans not granted, institutions will report the application for the year in which disposition takes place (approved, denied, withdrawn).

Section 202.9(c) of Regulation B provides that if additional information from the applicant is needed for a credit decision, the creditor shall send a written notice of incompleteness. That notice must specify the information to be provided and the date by which it must be received. No further action is required on the part of the creditor if the applicant fails to respond.

The Board solicited comment on whether, in cases involving the applicant's failure to respond, an application should be reported as withdrawn or whether a new category ("file closed for incompleteness") should be added. The commenters were divided in their views. Some indicated that an additional category might cause confusion. Others, however, suggested that the additional code would provide a more accurate representation of the disposition of the application. The Board has decided to provide a separate code in the interest of more accurate data.

Branch office. The definition of branch office has several implications. First, institutions that do not have a home or branch office in an MSA are totally exempt from HMDA. Second, institutions must identify the census tract for loans on property located in any MSA in which the institution has a home or branch office. Third, loan data must be made available to the public at one branch office (or at the home office) in each MSA where the institution has a home or branch office. Finally, the institution must post notices in branch offices located in MSAs to inform the public of the availability of the HMDA data.

Section 203.2(c)(1) retains, for depository institutions, the definition currently set forth in § 203.2(b)(1)(i) without substantive change. A branch office for banks, savings and loan associations, and credit unions is an office approved as a branch by a federal or state supervisory agency.

The definition of branch office is different for other mortgage lenders. Just last year, the Congress expanded HMDA coverage to institutions other than depository institutions, namely, to mortgage banking subsidiaries of bank and thrift holding companies and to savings and loan service corporations. The FIRREA amendments of 1989 have further expanded coverage to "other lending institutions." For all of these entities, designatged "mortgage lending institutions" in § 203.2(c)(2) of the revised regulation, a branch office refers to any physical location at which the institution takes applications from the public for home purchase or home improvement loans. Previously this definition appeared in § 203.2(b)(1)(ii).

For mortgage lending institutions, moreover, the definition of branch office extends beyond a physical presence. Under section 1211(f) of the FIRREA amendments, "other lending institutions" are deemed to have a branch office in any MSA where they receive applications for, originate, or purchase five or more home purchase or home improvement loans. Section 203.2(c)(2) incorporates this rule. This five-or-more-loan rule applies in determining, for purposes of coverage, whether an institution has an office within an MSA, and also whether an institution must itemize data by census tract within a given MSA.

Dwelling. In the current regulation, parenthetical material in the definitions of home purchase and home improvement loans indicates that the term "dwelling" includes condominiums, cooperatives, mobile homes, and manufactured homes. Section 203.2(d) adds a definition of "dwelling" that incorporates these references as well as the definition of "state" previously contained in § 203.2(i).

FHA, FmHA, and VA loans. The definition of these loans, previously contained in § 203.2(c), has been deleted from the regulatory text. The instructions for completing the register (Appendix A to the regulation) set forth the categories of loans that must be identified on the register.

Financial institution. Revised § 203.2(e) defines "financial institution" to include all institutions covered by the regulation: banks, savings and loan associations, credit unions, and other "mortgage lending institutions."

Under the current regulation, depository institutions such as banks and savings associations are covered by HMDA if they originate "federally related mortgage loans," as defined in § 203.2(d). An institution meets this test if it originates home purchase loans and the institution either (1) is federally insured or regulated or (2) writes home purchase loans that are federally insured or guaranteed or are to be sold to FNMA, GNMA, or FHLMC. The Board has consolidated the "federally related mortgage loan" criteria into the definition of "financial institution." The reference to GNMA has been removed, since GNMA no longer purchases mortgages. The Board solicited comment on whether coverage of depository institutions could be defined in terms of those that are federally insured and make home purchase loans. Based on further analysis, however, the Board believes that some institutions presently covered by the regulation would be exempted by this change, and has therefore not adopted it.

Section 1211(d) of the FIRREA amendments expanded the coverage of HMDA to include "other lending institutions." An "other lending institution" is defined in section 1211(e)(2) of the act as "any person engaged for profit in the business of mortgage lending." The regulation refers to these entities as "mortgage lending institutions" in § 203.2(e)(2). The regulatory definition also covers mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations, and the mortgage banking subsidiaries of depository institutions.

The Board believes that, by using the qualifying words "in the business of mortgage lending," the Congress evidenced an intent to exclude from coverage institutions that make a relatively small volume of mortgage loans. Accordingly, the Board has established an activity test in the regulation to determine whether a given lender is a "mortgage lending institution." Under this test, an entity is a "mortgage lending institution" if, in the preceding calendar year, 10 percent or more of its loan volume (measured in dollars) consisted of home purchase

loan originations. This threshold mirrors the rule currently used in § 203.2(e)(1)(ii) to define whether a holding company subsidiary is a "mortgage banking" subsidiary.

Under current § 203.2(e)(2), majority-owned subsidiaries of banks and savings associations are treated as part of their parent institution. Accordingly, the report submitted by the parent institution now includes data of the subsidiary; the data for loans made or purchased by the subsidiary are itemized by census tract only for MSAs where the parent has a home or branch office. In light of the definition of and treatment accorded to "other lending institution" in the FIRREA amendments (through the five-or-more-loan rule mentioned above, for example), the Board has changed the rules applicable to subsidiaries of depository institutions. A continuation of the current arrangement would only serve to magnify existing differences in reporting that are based on corporate structure alone. For example, a holding company subsidiary would itemize information by census tract for loans in MSAs where it took applications for, originated, or purchased five or more mortgage loans. Bank and thrift subsidiaries, on the other hand, would report itemized information only for MSAs in which the parent institution has a physical branch.

The Board believes that such markedly different results are inappropriate given the FIRREA amendments. Consequently, the revised regulation, under § 203.2(e)(2), treats mortgage lending subsidiaries of depository institutions as independent entities. As such, they will comply with HMDA in their own right if they meet the 10 percent threshold of that section.

Several commenters maintained that this treatment of subsidiaries would result in parent institutions not receiving credit for the lending activity of their subsidiaries. To avoid such a result, institutions are free to make available, with their disclosure statements, information that explains their relationship to other entities. In addition, the Board has revised the reporting form so that subsidiaries may note the identity of their parent institutions. Finally, the Board plans to explore, with the FFIEC, the possibility of preparing a consolidated disclosure statement that would reflect the activity of both entities.

Home improvement and home purchase loans. Institutions are required to report data regarding home improvement and home purchase loans. These terms are defined in § 203.2(f) and 203.2(g). With the added definition of "dwelling" in § 203.2(d), the parenthetical references to condominiums, cooperatives, and mobile and manufactured homes have been deleted.

Metropolitan statistical area. Institutions must specify the location of the property to which a loan relates if the property is located in a metropolitan statistical area (MSA) in which the institution has a home or a branch office. The definition of MSA in § 203.2(j) is unchanged.

State. The definition of "state," currently contained in § 203.2(i), is incorporated within the new definition of "dwelling."

Section 203.3—Exempt Institutions

Section 203.3(a) and (b) exclude from coverage institutions with under $10 million in assets, institutions that do not have offices in MSAs, and institutions that have been granted an exemption because they are subject to a similar state law.

A number of commenters raised questions regarding the proposed application of the $10 million asset test, derived from section 309 of HMDA. They observed that mortgage companies' assets tend to be low relative to the volume of loans that they originate. Moreover, applying the $10 million test directly to mortgage subsidiaries of depository institutions could exclude entites that are now covered by virtue of the relationship to their parent institution. If lending activities were concentrated in smaller subsidiaries, valuable loan data might not be reported. The same result could occur in the case of mortgage lenders with relatively low assets that are the subsidiaries of large non-bank companies. The Board believes that the Congress intended, in the FIRREA amendments, to cover a wide range of lenders in order to capture the fullest possible information regarding mortgage lending patterns. Applying the $10 million test to a mortgage company alone, notwithstanding its affiliation with a larger entity, could thwart this intent in many instances. The Board believes it appropriate, in these circumstances, that the assets of any parent institution be combined with those of the subsidiary for purposes of applying the $10 million test. Section 203.3(a) has been revised accordingly. Thus, a mortgage lending subsidiary of a bank, savings institution, holding company, or other corporation will be covered by the regulation so long as the assets of the subsidiary, combined with those of its parent, exceed $10 million.

Some commenters expressed concern about the proposed application of the $10 million test to the independent mortgage companies that will report to HUD. They suggested that doing so would exclude a large number of these companies from coverage. As indicated above, this concern is understandable. Because these entities have no parent institution, however, the asset test necessarily applies directly to them, and they are therefore exempt if their assets are under $10 million. The Board understands, however, that the bulk of mortgage lending by independent mortgage companies may be done by companies that exceed the $10 million threshold.

The $10 million test also applies directly to banks, savings institutions, and credit unions. Thus, for example, a bank with $10 million or less in assets is exempt notwithstanding its relationship to a holding company. The Board believes that the $10 million test reflects a decision by the Congress that the lending activity of financial institutions at this asset level is not high enough to warrant coverage by HMDA. The Board sees no intent, in the FIRREA amendments, to disturb this treatment.

Section 203.4—Compilation of loan data

Section 203.4 has been revised extensively. The FIRREA amendments require institutions to report data on all loan applications, and not just on originations and purchases of loans as is currently the case. The FIRREA amendments also call for the reporting of data on the race, sex, and income of applicants and borrowers, in addition to the geographic itemization of loans that is currently required. Given the expanded data collection, the Board has determined that to require cross-tabulation of data in the manner of the HMDA–1 and HMDA–2 forms would be both confusing and extremely burdensome for covered institutions. The Conference Report to the FIRREA amendments indicates that the Congress intended for the Board to have flexibility in establishing a report format that would enhance the utility of the data while minimizing, to the extent possible, the reporting burden for covered institutions. (H.R. Rep. No. 101–222, 101st Cong., 1st Sess. 459). Accordingly, the Board has provided in § 203.4 that institutions submit a register using the format set forth in Appendix A of the regulation. Under this arrangement, institutions will record data on an application-by-application basis and will submit the completed register at the end of the year to their supervisory agency for processing by the FFIEC. The FFIEC will produce individual disclosure statements for each reporting institution

(plus aggregate tables for each MSA) using the data from the registers.

Virtually all commenters that addressed the issue expressed support for this arrangement. They indicated that the register approach would be considerably easier and less costly for reporting institutions since they would not have to undertake the further step of preparing cross-tabulations of the data. Regulatory agencies indicated that the arrangement would enhance their ability to monitor compliance with fair lending and community reinvestment requirements.

The Board believes that the register approach offers these and other advantages and has adopted it in the final regulation. (The specific requirements for the register are discussed below in the section on Appendix A.)

A number of commenters urged the Board to encourage other regulatory agencies to review their requirements for loan registers in light of the revisions to Regulation C. These agencies are in the process of reviewing current requirements to determine the extent to which the HMDA register can replace their separate logs.

Section 203.4(a) requires, among other things, that institutions collect data on the race or national origin, sex, and income level of applicants for all home improvement and home purchase loans. Section 203.4(b)(1) tells how race or national origin and sex information is to be collected. The Board has prescribed a form and instructions for collecting these data in Appendix B to Regulation C. The language varies slightly from the form prescribed under Regulation B (Equal Credit Opportunity). Use of either form meets the requirements of Regulation C; creditors need not maintain a separate stock of forms.

The FIRREA requirement for reporting data on race or national origin, sex, and income does not apply to purchased loans. In addition, depository institutions with assets of $30 million or less are not required to report this information at all. However, § 203.4(b)(2) allows for optional reporting of these data in both instances. (Under the FIRREA amendments, mortgage lending institutions do not qualify for the $30 million exception; therefore, they must include data on race or national origin, sex, and income for all applications and loan originations, though not for purchased loans.)

Regulation B, § 202.5(d), generally prohibits lenders from requesting data about race or national origin and sex. There is an exception in § 202.5(b)(2): Lenders do not violate Regulation B by collecting this applicant information when required to do so by some other state or federal regulation. The proposed update to the official staff commentary to Regulation B contains a reference to the new HMDA requirement, to make clear that lenders may collect data about race or national origin and sex in mortgage and home improvement transactions without violating the ECOA (54 FR 50514, December 7, 1989). The commentary makes clear also that this exception applies even in the case of lenders whose asset size makes their reporting of such data optional.

Section 1211(b) of the FIRREA amendments permits institutions, at their option, to report reasons for their loan decisions. Several commenters urged the Board to require this information. In view of the statutory language, however, § 203.4(c) authorizes, but does not require, reporting of such data.

Section 203.4(d), which previously was designated § 203.4(c), relates to data that is not to be reported. Two changes have been made. First, the Board has eliminated the rule that mortgage banking subsidiaries of bank and savings and loan holding companies are not to report FHA loans. Data on FHA loans by these institutions was originally collected by HUD outside of Regulation C, whereas now HUD is a direct participant in the implementation of HMDA. Dropping the current provision will produce a uniform rule for reporting of these loans by all institutions covered by HMDA, avoiding confusion and also producing more complete data.

The exclusion for certain refinancings, currently set forth in § 203.4(c)(1)(iii), has been deleted. Refinancings of home purchase loans are to be reported even when they involve the original borrower and original lender. While refinancings between original parties may not technically result in new money being disbursed into the community, the Board believes that these transactions do provide an indication of an institution's willingness to meet credit needs. A separate code has been added to the register to indicate entries that involve a refinancing, and the reporting rules for refinancings have been clarified in the instructions to the register.

Section 203.5—Disclosure and Reporting

Section 203.5 sets the rules for making loan data available at offices of an institution and for reporting the data to supervisory agencies. The Board had proposed that institutions submit registers for a given calendar year by the following February 15. In response to the comments, the Board has extended this period to March 1. Some commenters asked that the March 31 reporting date be retained. The Board has opted not to do so in light of the need to ensure that data are processed and disclosure statements produced by the FFIEC in a timely fashion.

The Board believes that March 1 is reasonable given that minimal processing on the part of institutions is required. Institutions will have to assemble the registers from their different branches into one package, but there is no need to copy the data onto a master document. They also will not have to wait until year-end to prepare the HMDA submission; while there is still a requirement to geocode loans (and applications), there is no longer a need to cross-tabulate data loan and application information by census tract. Currently institutions must defer report preparation because of having to list data for all loans in a given census tract on a single line of the report.

Section 203.5(b) of the proposal would have required institutions to make disclosure statements available within 15 business days after receiving them from the FFIEC. A number of commenters suggested that it would be impossible to arrange for copying and distribution of the disclosure statements to multiple branch offices within that time frame. Others believed that institutions should have a reasonable opportunity to review the disclosure statements for accuracy before making them publicly available. Based on these comments, the Board has extended this period to 30 calendar days. Use of calendar days avoids differences of interpretation for counting business days.

Several commenters asked whether the disclosure statements must be made available in MSAs where they have no physical office but where they are deemed to have a branch office by virtue of the five-or-more-loan rule. Sections 203.5 (c) and (d) have been revised to make clear that the disclosure statements need only be made available in MSAs where the institution has a physical branch office.

Under the proposal, reporting institutions would not be required to make the actual registers available to the public. Some commenters supported this position, but others indicated that meaningful analyses could not be undertaken without the raw application and loan data. The Board has decided against requiring that the institutions make the registers public. The Board continues to believe that certain items on the register raise legitimate privacy concerns. But the Board plans to work

with member agencies of the FFIEC in exploring approaches by which the raw data could be made available in some form, at cost, to the public. (See the discussion below in the section "Disclosure statements and availability of data".)

Section 203.6—Enforcement

Section 203.6 sets forth rules relating to administrative enforcement and bona fide errors. The provisions of this section are essentially unchanged.

Appendix A—Form and Instructions for Loan/Application Register

Appendix A contains the loan/application register and instructions for its completion as well as a transmittal sheet to accompany the registers when they are submitted. The register form that is reproduced below has been reduced in size for printing in the Federal Register; the actual register forms, which are available from the supervisory agencies, are 8½ by 14 inches. Institutions must use the prescribed format but are not required to use the forms themselves. An institution may, for example, produce a computer printout of its register instead.

Due to the volume of data being submitted, the Board encourages covered institutions to develop computer programs that will enable them to submit the data in machine-readable format. Technical specifications and filing procedures will be made available through the supervisory agencies in the near future.

The following is a summary of the information that will be provided on the register and the number of characters to be allotted for each data item. The instructions contained in Appendix A provide guidance on the requirements for the register and answer more detailed questions.

Application or loan number. A unique number identifying the application or transaction. It can be any number of the institution's choosing. Based on the comments and consultation with HUD, the FHA case number will not be required. (25 characters)

Date application received. For applications, the date the application was received by the financial institution by month, day, and year. (8 characters)

Other application or loan information. Codes indicating the type of loan, the purpose of the loan, and whether the property is owner-occupied, plus the amount of the loan (or the amount applied for) in thousands of dollars. (1 character each for type, purpose, and occupancy status; 5 characters for amount)

Action taken and date. Codes indicating the type of action taken by the institution or, in some cases, by the applicant. In addition to loan purchase or loan origination, the institution will indicate whether a loan was approved but not accepted by the applicant (this code was added in response to the comments), was denied, or was withdrawn. In addition, a code was added for instances in which the application file is closed due to incompleteness following the sending of a written notice under § 202.9(c) of Regulation B. Also, the date the action occurred. (1 character for action taken; 8 characters for month, day, and year)

Location of the property. For loans written on property in MSAs where the institution has a home or branch office, the location of the property. (4 characters for MSA, 2 for state, 3 for county, and 7 for census tract including a decimal point, where needed)

Applicant characteristics. A code indicating the race and sex of the applicant and any co-applicant, and the income relied upon by the lender, in thousands of dollars. This section need not be completed (by any institution) for loan purchases; and it need not be completed by any bank, savings and loan, or credit union with $30 million or less in assets. (1 character each for race and sex of applicant and of co-applicant; 4 characters for income)

Type of purchaser. For loans that are sold, a code indicating the class of purchaser. (1 character)

Reason for denial. Up to three codes indicating the reasons for denial. This information is optional. (3 characters)

The Board requested comment on whether the number of reasons for denial should be expanded to be more specific. A number of commenters suggested that the reasons should correspond to the reasons listed on the model checklist for adverse action provided in Regulation B. The Board has kept the number of reasons to a minimum in order to allow up to three reasons to be indicated, and has provided a listing that "translates" the Regulation B reasons into the codes.

Appendix B—Form and Instructions for Data Collection on Race or National Origin and Sex

Appendix B of the current regulation lists the supervisory agencies to which covered institutions must submit their reports. In the revised regulations, this material has been incorporated into the instructions to the reporting form, in Appendix A. Independent mortgage lending institutions will submit their registers to HUD while subsidiaries of depository institutions or their holding companies will submit the registers to the OCC, FDIC, Federal Reserve, or OTS

Appendix B contains a form that can be used to collect data on race or national origin and sex, and instructions for its use. It is identical in substance to the form prescribed in Regulation B for data collection (related to applications for home purchase loans), except for the added reference to HMDA. Institutions may use the Regulation B and Regulation C forms interchangeably; they need not maintain a special stock of each.

(3) Disclosure Statements and Availability of Data

The FFIEC (with support from each of the federal regulators with HMDA responsibilities) aggregates the loan data received from all reporting institutions in each MSA. The FFIEC also produces tables for each MSA showing lending patterns according to demographic characteristics such as income level and age of housing stock. These tables, together with disclosure statements of the individual institutions, are sent to central data depositories in each MSA, where they are available to the public.

The FFIEC will generate disclosure statements from the register data submitted by institutions to show lending activity in each MSA for which the institution reports data. These statements (in the form of summary tables) will be provided to the institutions, which will in turn make them available to the public. The FFIEC expects that these statements will be provided to institutions by October following submission of the register data on March 1. This timetable is dictated by the large volume of data to be processed. The supervisory agencies and the FFIEC will take appropriate steps to ensure that both the individual disclosure statements and the aggregate tables become available to the public as early as possible.

In addition, the FFIEC will produce aggregate tables based on loan data from all covered institutions for each MSA, and make them available at the central data depositories.

Considerable comment was received on the proposed output that the FFIEC would produce from the data submitted. Because of the need to publish a final regulation as quickly as possible given the effective data of January 1, 1990, FFIEC consideration of issues related to the output tables has been deferred and will be taken up early next year. Among the issues that will be considered is whether the raw data compiled from the registers can be made available to the

public in some form once the FFIEC has completed processing the reports. The Board plans to search for ways of making the raw data available in a form that will not compromise the privacy of applicants and borrowers (perhaps by eliminating the application numbers and dates), and will work with member agencies of the FFIEC to explore possible options.

(4) Effective Dates

The revised regulation is effective on January 1, 1990. The Board believes that this effective date, which coincides with the effective data of the FIRREA amendments, is necessary to ensure that institutions are provided with the guidance necessary to comply with the new requirements.

The revised regulation applies to applications received, and loans originated or purchased, on or after January 1, 1990. Institutions will be required to report data for calendar year 1990 in the revised format by March 1, 1991. In the case of applications received before January 1, 1990, institutions need only report the data on race or national origin and sex if they have the information; they are not required to contact applicants again in order to obtain it.

The current requirements of Regulation C apply to reports of data for calendar year 1989; accordingly, institutions will use the existing forms HMDA–1 or HMDA–2, as appropriate, for the reports that are due on March 31, 1990.

(5) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction act of 1980, 44 U.S.C. chapter 35, and 5 CFR 1320.13, the revisions to Regulation C that relate to reporting requirements were approved under authority delegated to the Board by the Office of Management and Budget.

The following information relates only to the effect of the revised reporting requirements on institutions supervised by the Board. As indicated earlier, other types of institutions are also covered by the regulation.

Approval Under OMB Delegated Authority for the Following Information Collection

Report title: HMDA Loan/Application Register.
Agency form number: FR HMDA–LAR.
OMD docket number: 7100–0247.
Reporters: State member banks and mortgage banking subsidiaries of bank holding companies.
Reporters:

	Number of respond-ents	Frequency	Average hours per re-sponse
State member banks.	478	Annually	30
Mortgage banking subsidiaries.	723	Annually	160

Annual reporting hours: 130,020.

Small businesses are not affected.

General description of report.—This information collection is mandatory (12 U.S.C. 2801–2810, 12 CFR part 203). The report will collect information on applications for, and originations and purchases of, home purchase and home improvement loans. State member banks and mortgage banking subsidiaries of bank holding companies will be required to keep the HMDA Loan/Application Register as a running log throughout the calendar year and to send it to the Federal Reserve System by March 1 of the following calendar year.

(6) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a Regulatory Flexibility Analysis of the revisions to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3245.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

(7) Regulatory text

For the reasons set forth in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), 12 CFR part 203 is revised as follows:

PART 203—HOME MORTGAGE DISCLOSURE

Sec.

203.1 Authority, purpose, and scope
203.2 Definitions
203.3 Exempt institutions
203.4 Compilation of loan data
203.5 Disclosure and reporting
203.6 Enforcement
Appendix A—Form and instructions for loan/application register.
Appendix B—Form and instructions for data collection on race or national origin and sex.

Authority: 12 U.S.C. 2801–2810

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget under 44 USC 3501 *et seq.* and have been assigned OMB No. 7100–0247.

(b) *Purpose.* (1) This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to certain financial institutions, including banks, saving associations, credit unions, and other mortgage lending institutions, as defined in section 203.2(e). It requires an institution to report data to its supervisory agency about home purchase and home improvement loans it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

(d) *Loan aggregation and central data depositories.* Using the loan data made available by financial institutions, the Federal Financial Institutions Examination Council will prepare disclosure statements and will produce various reports for individual institutions for each metropolitan statistical area (MSA), showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. The disclosure statements and reports will be available to the public at central data depositories located in each MSA. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended.

(b) *Application* means an oral or written request for a home purchase or home improvement loan that is made in accordance with procedures established by a financial institution for the type of credit requested.

(c) *Branch office* means: (1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines;

(2) Any office of a mortgage lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchases or home improvement loans. A mortgage lending institution is also deemed to have a branch office in an MSA if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase or home improvement loans on property located in that MSA.

(d) *Dwelling* means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

(e) *Financial institution* means: (1) A bank, savings association, or credit union that originated in the preceding calendar year a home purchase loan (other than temporary financing such as a construction loan) secured by a first lien on a one-to-four family dwelling if:

(i) The institution is federally insured or regulated; or

(ii) The loan is insured, guaranteed, or supplemented by any federal agency; or

(iii) The institution intended to sell the loan to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) whose home purchase loan originations equaled or exceeded ten percent of its loan volume, measured in dollars, in the preceding calendar year.

(f) *Home improvement loan* means any loan that: (1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home improvement loan.

(g) *Home purchase loan* means any loan secured by and made for the purpose of purchasing a dwelling.

(h) *Metropolitan statistical area or MSA* means a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

§ 203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(1) The institution had neither a home office nor a branch office in an MSA; or

(2) In the case of a bank, savings association, or credit union, the institution's total assets were $10 million or less; or

(3) In the case of a for-profit mortgage lending institution (other than a bank, savings association, or credit union), the total assets of the institution combined with those of any parent corporation were $10 million or less.

(b) *Exemption based on state law.* (1) A state-chartered or state-licensed financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered or state-licensed financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall submit the data required by the state disclosure law to its state supervisory agency for purposes of aggregation.

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on asset size or location under paragraph (a) of this section shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.

(2) An institution losing an exemption that was based on state law under paragraph (b) of this section shall comply with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase loans (including refinancings) and home improvement loans for each calendar year. These data shall be presented on a register in the format prescribed in Appendix A and shall include the following items:

(1) A number for the loan or loan application, and the date the application was received.

(2) The type and purpose of the loan.

(3) The owner-occupancy status of the property to which the loan relates.

(4) The amount of the loan or application.

(5) The type of action taken, and the date.

(6) The location of the property to which the loan relates, by MSA, state, county, and census tract, if the institution has a home or a branch office in that MSA.

(7) The race or national origin and sex of the applicant or borrower, and the income relied upon in processing the loan application.

(8) The type of entity purchasing a loan that the institution originates or purchases and then sells within the same calendar year.

(b) *Collection of data on race or national origin, sex, and income.* (1) A financial institution shall collect data about the race or national origin and sex of the applicant or borrower as prescribed in Appendix B. If the applicant or borrower chooses not to provide the information, the lender shall note the data on the basis of visual observation or surname, to the extent possible.

(2) Race or national origin, sex, and income data may but need not be collected for:

(i) Loans purchased by the financial institution; or

(ii) Applications received or loans originated by a bank, savings association, or credit union with assets on the preceding December 31 of $30 million or less.

(c) *Optional data.* A financial institution may report the reasons it denied a loan application.

(d) *Excluded data.* A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of loans such as mortgage-participation certificates); or

(5) The purchase solely of the right to service loans.

§ 203.5 Disclosure and reporting.

(a) *Reporting requirements.* By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send two copies of its complete register to the agency office specified in Appendix A of this

regulation, and shall retain a copy for its records for a period of not less than two years.

(b) *Disclosure to the public.* A financial institution shall make its mortgage loan disclosure statement (to be prepared by the Federal Financial Institutions Examination Council) available to the public no later than 30 calendar days after the institution receives it from its supervisory agency. The financial institution shall make the statement available to the public for a period of five years.

(c) *Availability of disclosure statement.* A financial institution shall make the disclosure statement available at its home office. If it has a physical branch office in other MSAs, it shall also make a statement available in at least one branch office in each of those MSAs; the statement at a branch office need only contain data relating to property in the MSA where that branch office is located. An institution shall make the disclosure statement available for inspection and copying during the hours the office is normally open to the public for business. It may impose a reasonable charge for photocopying services.

(d) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statement in the lobbies of its home office and any physical branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the statement is available. At its option, an institution may include the location in its notice.

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act. Compliance is enforced by the agencies listed in Appendix A of this regulation.

(b) *Bona fide errors.* An error in compiling or recording loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

Appendix A—Form and Instructions for Loan/Application Register

Loan/Application Register Form

Public reporting burden for this collection of information is estimated to vary from 10 to 750 hours per response, with an average of 120 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Instructions to Lending Institutions

I. General

A. Who Must File a Report

1. Subject to some exceptions that are discussed below, banks, savings associations, credit unions, and other mortgage lending institutions must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 the institution:

a. Had assets of more than $10 million, and

b. Had a home or branch office in a "metropolitan statistical area" or a "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

Example: If on December 31, 1989, you had a home or a branch office in an MSA and your assets exceeded $10 million, you must complete a register that lists the home purchase and home improvement loans that you originate or purchase during calendar year 1990, and also lists applications that did not result in an origination.

2. You need not complete a register—even if the tests for asset size and location are met—if your institution is a bank, savings association, or credit union and it made *no* first-lien home purchase loans on one-to-four family dwellings in the preceding calendar year.

3. You need not complete a register—even if the tests for asset size and location are met—if your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union) and the home purchase loans that you originated in the preceding year came to less than 10 percent of your total loan volume, measured in dollars.

4. If you are a for-profit mortgage lender (other than a bank, savings association, or credit union) the asset test is based on the combined assets of your institution and any parent corporation.

5. If you are the subsidiary of a bank or savings association you must complete a separate register for your institution and submit it, directly or through your parent, to the agency that supervises your parent.

B. Institutions Exempted From HMDA

Institutions that are specifically exempted by the Federal Reserve Board from complying with federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. Format

1. You must use the format of this loan/application register, but you are not required to use the form itself. For example, you may produce a computer printout instead. The layout must conform exactly, however, to that of this register, including the order of columns, column headings, etc. Or you may submit the data in machine-readable form (see paragraph D.2. below).

2. The required data are to be entered in the register for each loan origination, each application acted upon during the calendar year, and each loan purchased. Your institution will have to decide on the procedure it wants to follow—whether to begin entering the required data when an application is received, or to enter the data when final action is taken (such as when a loan goes to closing or an application is denied). Keep in mind that an application is to be reported in the calendar year when final action is taken. Loan originations are to be reported in the year they go to closing; do not report applications for loans that have been approved but that have not yet gone to closing at year-end.

3. Your institution may use separate registers at different branches, or separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). But you must submit the registers to your supervisory agency *in one package*, with the prescribed transmittal sheet; and an officer of your institution must certify to the accuracy of the data.

4. Entries need *not* be grouped by MSA, or chronologically, or by census tract numbers, or in any other particular order. But make sure the application or loan numbers (discussed under paragraph II.C.1.a. below) are unique. If separate registers are being maintained in various branches, your institution could add a letter code to identify different branches, or assign series of numbers to each branch, to avoid duplicate numbers.

5. Number each page of your report, indicating the total number of pages (for example, "Page 1 of 24").

D. Submission of Report; Release of Disclosure Statements

1. You must submit the register to the office specified by your federal supervisory agency no later than March 1 following the calendear year for which the data are compiled. A list of the agencies appears at the end of these instructions.

2. Institutions are encouraged to submit data in machine-readable form. Contact your federal supervisory agency for information regarding electronic submission.

3. If you submit your register in hard copy, you must send two copies.

4. The FFIEC (Federal Financial Institutions Examination Council) will prepare a disclosure statement from the data that you submit. Your disclosure statement will be returned to you at the address that you indicate on the transmittal sheet. When you receive that disclosure statement you must make a copy available for inspection by the public within 30 calendar days. You must make it available at your home office and, if you have physical branch offices in other MSAs, at one branch office in each of those MSAs. (Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statement.)

II. Completion of Register

A. Data to be shown

1. Show the data on home purchase and home improvement loans that you originated (or that were originated in your name) and loans that you purchased during the calendar year covered by the report. Report these data even if the loans were subsequently sold. Include refinancings of home purchase loans.

2. For these same types of loans, show the data for applications that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report. Include applications that were received in the previous calendar year but not acted upon until the calendar year covered by the register.

B. Data to be excluded

Do not report the following loans or applications for loans:

1. Loans that, although secured by real estate, are made for purposes other than home purchase, home improvement, or refinancing (for example, do not report a loan secured by residential real property for purposes of financing college tuition, a vacation, or business operations);

2. Loans received in a fiduciary capacity (for example, by your trust department);

3. Loans on unimproved land;

4. Construction or bridge loans and other temporary financing;

5. The purchase of an interest in a pool of loans (such as mortgage-participation certificates); or

6. The purchase solely of the right to service loans.

C. Itemization of Data

Your loan/application register must include the following:

1. Application or loan information. a. *Application or loan number.* Enter an identifying number or code that can be used later to retrieve the loan or application file. It can be any number of your choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both. But make sure that all numbers are unique within your institution. If your register contains data for branch offices, for example, you could use codes to identify the loans or applications of particular branches, or could assign certain series of numbers to particular branches to avoid duplicate numbers.

b. *Date application received.* Enter the date the loan application was received by your institution by month, day, and year, using numerals (for example, 02/28/90). Or if your institution normally records the date shown on the application form, you may use that date. Enter "NA" for loans purchased by your institution.

c. *Type.* Indicate the type of loan (or loan application) by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA or FmHA loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans' Administration)
4—FmHA-insured (Farmers Home Administration)

d. *Purpose.* Indicate the purpose of the loan or application by entering the applicable code from the following:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Refinancing (home purchase, one-to-four family)
4—Multifamily dwelling (home purchase, home improvement, and refinancings)

e. *Explanation of purpose codes.* Code 1: Home purchase

i. This code applies to loans made, and to applications for loans, for the purpose of purchasing a residential dwelling for one to four families, if the loan is secured by a lien.

ii. At your option, you may use code 1 for loans that are made for home improvement purposes but are secured by a first lien, if you normally classify such first-lien loans as home purchase loans.

Code 2: Home improvement. i. Code 2 applies to loans and applications for loans that (1) the borrowers have said will be used for repairing, rehabilitating, or remodeling one-to-four family residential dwellings, and (2) are recorded on your books as home improvement loans.

ii. Report both secured and unsecured loans.

iii. At your option, you may record a home equity line of credit as a home improvement loan if the borrower or applicant indicates at the time of application or when the account is opened that some portion of the proceeds will be used for home improvement. (For such credit lines, under "Amount" in paragraph g. below, enter only that portion of the line which the borrower or applicant indicates will be for home improvement purposes.) Report only in the year the line is established.

Code 3: Refinancings. i. Use this code only for refinancings of home purchase loans on one-to-four family residential dwellings.

ii. Use this code whether or not you were the original creditor on the loan being refinanced, and whether or not the refinancing results in an increase in the outstanding principal.

iii. Report the full amount of a refinancing if more than 50 percent of the loan proceeds is for home purchase or home improvement. You may treat the amount that is equivalent to the unpaid principal of the original loan as being for home purchase.

Code 4: Multifamily dwelling. i. Use this code for loans and loan applications on dwellings for five or more families, including home purchase loans, refinancings, and loans for repairing, rehabilitation, and remodeling purposes.

ii. Do not use this code for loans on individual condominium or cooperative units; use codes 1, 2, or 3 for such loans, as applicable.

f. *Occupancy.* Use the applicable code to indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal dwelling.

1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

i. Use code 2 for loans on second homes or vacation homes, as well as on rental properties.

ii. Use code 2 only for nonoccupant loans or applications related to one-to-four family dwellings (including individual condominium or cooperative units).

iii. Use code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA in which your institution has neither a home nor a branch office.

iv. For purchased loans, you may assume that the property will be owner-occupied as a principal dwelling unless the loan documents or application contain information to the contrary.

g. *Amount.* Enter the amount of the loan or application. Round to the nearest thousand ($500 should be rounded up to $1,000). Show in terms of thousands; for example, a loan for $167,300 should be entered as 167.

i. For home purchase loans that you originate, "amount" means the original principal amount of the loan. For home purchase loans that you purchase, "amount" means the unpaid principal balance of the loan at the time of purchase.

ii. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the amount if that is how you record such loans on your books.

iii. For lines of credit secured by home equity, include only that portion of the line indicated by the applicant or borrower at the time the application is made or when the account is opened as being for the purpose of home improvement. Report only in the year the line is established.

iv. For a loan application that was denied or withdrawn, enter the amount applied for.

v. If you offered to lend less than the applicant applied for, enter the amount of the loan if the offer was accepted, enter the amount initially applied for.

2. Action taken. Indicate the type of action taken on the application or loan by using the following codes:

1—Loan originated
2—Application approved but not accepted by applicant
3—Application denied
4—Application withdrawn
5—File closed for incompleteness
6—Loan purchased by your institution

a. *Type of action taken.* Do not report any loan application still pending at the end of the calendar year. You will report that applicaton in your register for the year final action is taken.

i. Use code 2 where an application has been approved by you, but where the applicant fails to respond to your notification of approval or your commitment letter within the specified time.

ii. Use code 4 only when an application has been expressly withdrawn by the applicant.

iii. Use code 5 if you sent a written notice of incompleteness under § 202.9(c) of Regulation B (Equal Credit Opportunity) and if the applicant failed to respond to your request for additional information within the period of time specified in your notice.

b. *Date.* Enter the date by month, day, and year, using numerals (for example, 02/28/90).

i. For loans originated, enter the settlement or closing date.

ii. For applications denied, applications approved but not accepted by the applicant, and files closed for incompleteness, enter the

date that the action was taken by your institution or the date the notice was sent to the applicant.

iii. For applications withdrawn, enter the date that you received the applicant's express withdrawal; or you may enter the date shown on the notification from the applicant, in the case of a written withdrawal.

3. *Property location.* In these columns you will enter the applicable codes for the MSA, state, county, and census tract locations for the property to which a loan relates. (See paragraph e. below for treatment of loans on property outside the MSAs in which you have offices.)

a. *MSA.* For each loan or loan application, indicate the location of the property by the MSA number. Enter only the MSA number, not the MSA name. MSA boundaries are defined by the U.S. Office of Management and Budget; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting.

b. *State and county.* Use the two-digit numerical code for state and the three-digit numerical code for county available from your regional supervisory agency. Use only these established codes. Do not use the abbreviations used by the U.S. Postal Service.

c. *Census tract.* Indicate the census tract in which the property is located.

i. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph d. below).

ii. If the property is located in a county with a population of 30,000 or less in the 1980 census, enter "NA" or enter the census tract number. To determine population, use the Census Bureau's PC80–1–A population series even if the population has increased above 30,000 since 1980.

d. *Census tract number.* To determine the census tract number, consult the U.S. Census Bureau's census tract outline maps. You must use the maps from the Census Bureau's PHC80–2 series for the 1980 census, or equivalent 1980 census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. You will continue to use the maps in the 1980 series until you are advised differently by your supervisory agency, even if more current maps are available.

e. *Outside-MSA.* For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), you may either enter the code "NA" in the MSA, state, county, and census tract columns or enter the data. Keep in mind that if you are a for-profit mortgage lending institution (other than a bank, savings association, or credit union) and (1) you received five or more loan applications or (2) originated or purchased five or more home purchase or home improvement loans in an MSA in the preceding year, you *must complete* these columns because you are considered to have a branch office in that MSA, whether or not you have a physical office there.

4. *Race or national origin, sex, and income.* Appendix B of Regulation C contains instructions for the collection of data on race or national origin and sex, and also contains a sample form for data collection. You may also use the form that you use to obtain data on race or national origin and sex under § 202.13 of Regulation B.

a. *Applicability.* You must report this information concerning applicants for loans that you originate and applications that you receive.

i. You need not collect or report this information for loans purchased; if you choose not to, enter the appropriate code specified in the lists under paragraphs c., d., and e. below for "not applicable."

ii. If your institution is a bank, savings association, or credit union that had assets of $30 million or less on the preceding December 31, you may—but need not—collect and report these data. If you choose not to, enter the appropriate codes specified in the lists under paragraphs c., d., and e. below for "not applicable."

iii. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the appropriate code under paragraphs c., d., and e. below for "not applicable."

b. *Telephone and mail applications.* Any application forms mailed to all applicants must contain a collection form similar to that shown in Appendix B, and you must record the data on race or national origin and sex if the applicant provides it. If the applicant chooses not to provide the data, enter the applicable code number for "information not provided by applicant in mail or telephone application" under paragraphs c. and d. below.

c. *Race or national origin of borrower or applicant.*

Use the following codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form.

1—American Indian or Alaskan Native
2—Asian or Pacific Islander
3—Black
4—Hispanic
5—White
6—Other
7—Information not provided by applicant in mail or telephone application
8—Not applicable

d. *Sex of borrower or applicant.* Use the following codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable.

e. *Income.* Enter the income that your institution relied upon in making credit decision.

i. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in terms of thousands. For example, $35,550 should be reported as 36.

ii. For loans on multifamily dwellings, enter "NA."

iii. If no income is asked for or relied on in the credit decision (such as in "no income verification" type loans), enter "NA."

5. *Type of purchaser.* For loans originated or purchased and then sold within the same calendar year, enter the applicable code to indicate the secondary market entity:

0—Loan was not sold in calendar year covered by register
1—FNMA (Federal National Mortgage Association)
2—GNMA (Government National Mortgage Association)
3—FHLMC (Federal Home Loan Mortgage Corporation)
4—FmHA (Farmers Home Administration)
5—Commercial bank
6—Savings bank or savings association
7—Life insurance company
8—Affiliate institution
9—Other type of purchaser

a. If you originated or purchased a loan and did not sell the loan that same calendar year, enter code 0.

b. If you sell a loan in a succeeding year, you need not report the sale.

c. If you conditionally assign a loan to GNMA in connection with a mortgage-backed security transaction, use code 2.

d. Loans "swapped" for mortgage-backed securities are to be treated as sales; enter the type of entity receiving the loans that are swapped as the purchaser.

e. Use code 8 for loans sold in the same year to an institution affiliated with you, such as a subsidiary or a parent corporation.

6. *Reasons for denial.* You need not enter the reasons for the denial of an application. But if you wish to do so, you may indicate up to three reasons by using the following codes:

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

If your institution uses the model form for adverse action supplied in the appendix to Regulation B (Form C–1 in Appendix C, Sample Notification Form, which offers some 20 reasons for denial), the following list shows which codes to use.

a. *Use code 1 for:* Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. *Use code 2 for:* Temporary or irregular employment, and Length of employment

c. *Use code 3 for:* Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. *Use code 4 for:* Value or type of collateral not sufficient.

e. *Use code 6 for:* Unable to verify credit references, Unable to verify employment,

Unable to verify income, and Unable to verify residence.

f. *Use code 7 for:* Credit application incomplete.

g. *Use code 9 for:* Length of residence, Temporary residence, and Other.

III. Federal supervisory agencies

Send your loan/application register and direct any questions to the office of your federal supervisory agency specified below. If you are the subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution.

National banks and their subsidiaries. District office of the Office of the Comptroller of the Currency serving the district in which the national bank or subsidiary is located.

State member banks of the Federal Reserve System, their subsidiaries, and subsidiaries of bank holding companies. Federal Reserve Bank serving the district in which the state member bank or subsidiary is located.

Nonmember insured banks (except for federal savings banks) and their subsidiaries. Regional Director of the Federal Deposit Insurance Corporation for the region in which the bank or subsidiary is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC; federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies. To the District or other office specified by the Office of Thrift Supervision.

Credit unions. National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456.

Other depository institutions. Regional Director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

Other mortgage lending institutions. Assistant Secretary for Housing, HMDA Reporting—Room 9233, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

BILLING CODE 6210-01-M

Form FR HMDA-LAR
OMB No. 7100-0247. Approval expires December 31, 1992
Hours per response: 10-750 (120 average)
This report is required by law (12 USC 2801-2810 and 12 CFR 203)

LOAN/APPLICATION REGISTER

TRANSMITTAL SHEET

Control Number (agency use only)

|_|_|_|_|_|_|_|_|_|_|-|_|

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

The Loan/Application Register that is attached covers activity during 19____ and contains a total of ____ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

_____
Name

_____
Address

_____
City, State, ZIP

Enter the name and telephone number of a person who may be contacted if questions arise regarding your report:

_____ _____
Name Telephone Number

If your institution is a subsidiary of another institution or corporation, enter the name of your parent:

_____
Name

_____
Address

_____
City, State, ZIP

Enter the name and address of your supervisory agency:

_____
Name

_____
Address

_____
City, State, ZIP

An officer of your institution must complete the following section.

I certify to the accuracy of this report.

_____ _____ _____
Name of Officer Signature Date

LOAN/APPLICATION REGISTER Page ____ of ____

Form FR HMDA-LAR

Name of Reporting Institution

City and State

Control number (agency use only)

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant					Type of Purchaser of Loan	Reason(s) for Denial (Optional)
												Race or National Origin		Sex		Income in thousands		
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Occupancy	Amount in thousands	Type	Date (mm/dd/yy)	MSA Number	State Code	County Code	Census Tract	A	CA	A	CA			

LOAN/APPLICATION REGISTER

Use the following codes to complete the Loan/Application Register. The instructions explain the proper use of each code.

Application or Loan Information

Type:

1 -- Conventional (any loan other than FHA, VA or FmHA loans)
2 -- FHA-insured (Federal Housing Administration)
3 -- VA-guaranteed (Veterans Administration)
4 -- FmHA-insured (Farmers Home Administration)

Purpose:

1 -- Home purchase (one-to-four family)
2 -- Home improvement (one-to-four family)
3 -- Refinancing (home purchase, one-to-four family)
4 -- Multifamily dwelling (home purchase, home improvement, and refinancings)

Occupancy:

1 -- Owner-occupied as a principal dwelling
2 -- Not owner-occupied
3 -- Not applicable

Action Taken:

1 -- Loan originated
2 -- Application approved but not accepted by applicant
3 -- Application denied
4 -- Application withdrawn
5 -- File closed for incompleteness
6 -- Loan purchased by your institution

BILLING CODE 6210-01-C

Applicant Information

Race or National Origin:

1 -- American Indian or Alaskan Native
2 -- Asian or Pacific Islander
3 -- Black
4 -- Hispanic
5 -- White
6 -- Other
7 -- Information not provided by applicant in mail or telephone application
8 -- Not applicable

Sex:

1 -- Male
2 -- Female
3 -- Information not provided by applicant in mail or telephone application
4 -- Not applicable

Type of Purchaser

0 -- Loan was not sold in calender year covered by register
1 -- FNMA (Federal National Mortgage Association)
2 -- GNMA (Government National Mortgage Association)
3 -- FHLMC (Federal Home Loan Mortgage Corporation)
4 -- FmHA (Farmers Home Administration)
5 -- Commercial Bank
6 -- Savings Bank or Savings Association
7 -- Life Insurance Company
8 -- Affiliate institution
9 -- Other type of purchaser

Reasons for Denial

1 -- Debt-to-income ratio
2 -- Employment history
3 -- Credit history
4 -- Collateral
5 -- Insufficient cash (downpayment, closing costs)
6 -- Unverifiable information
7 -- Credit application incomplete
8 -- Mortgage insurance denied
9 -- Other

Appendix B—Form and instructions for data collection on race or national origin and sex

I. Instructions on collection of data on race or national origin and sex.

A. Format.

You may list questions regarding the race or national origin and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample form below for recommended language.)

B. Procedures.

1. You must ask for this information, but cannot require the applicant to provide it.

2. If the applicant chooses not to provide the information for an application taken in person, note this fact on the form and note the data, to the extent possible, on the basis of visual observation or surname.

3. Inform the applicant that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the data on the basis of visual observation or surname.

4. If an application is made entirely by telephone, you need not request this information. And you need not provide the data when you take an application by mail, if the applicant fails to answer these questions on the application form. You should indicate whether an application was received by mail or telephone, if it is not otherwise evident on the face of the application.

5. The "other" block is available only to the applicant who chooses to indicate some other appropriate category for race or national origin. If completing the form based on visual observation, do not use this category; use one of the other five categories.

II. Sample race or national origin and sex data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note race or national origin and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

APPLICANT:

☐ I do not wish to furnish this information

Race or National Origin:

☐ American Indian, Alaskan Native
☐ Asian, Pacific Islander
☐ Black
☐ Hispanic
☐ White
☐ Other (specify)_____

Sex:

☐ Female
☐ Male

CO-APPLICANT:

☐ I do not wish to furnish this information

Race or National Origin:

☐ American Indian, Alaskan Native
☐ Asian, Pacific Islander
☐ Black
☐ Hispanic
☐ White
☐ Other (specify)_____

Sex:

☐ Female
☐ Male

By order of the Board of Governors of the Federal Reserve System, December 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29240 Filed 12-12-89; 12:22 pm]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AA96

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule with request for comments.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") is amending part 327 of its regulations, 12 CFR part 327, entitled "Assessments," in response to the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The final rule continues the existing procedures for filing certified statements and making assessment payments for insured banks. For insured savings associations, the final rule prescribes new procedures for filing certified statements and making assessment payments.

DATES: Effective December 15, 1989. Written comments should be delivered not later than January 16, 1990.

ADDRESSES: Written comments may be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, DC, 20429.

FOR FURTHER INFORMATION CONTACT: William Farrell or Carole Edwards, Compliance Examination Unit, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, DC, 20429, (202) 898-6564 or 416-2073.

SUPPLEMENTARY INFORMATION:

A. In General

The Federal Deposit Insurance Act ("FDI Act"), as amended by the FIRREA, requires the FDIC to assess all insured depository institutions. The FDIC's assessment rules are set forth in part 327 of the Code of Federal Regulations. The main provisions of part 327 speak only of insured banks. The FDIC must update these provisions to reach insured savings associations ("thrifts").

Except in three minor respects,[1] the rules that apply to banks have not been changed. Banks will continue to prepare their own certified statements and compute their own assessments; they will continue to file the certified statements on the same dates; and they will continue to remit their payments by check.

Similarly, the new part 327 preserves the existing—but very different—procedures for assessing thrifts. The FDIC will continue to compute the amount of the assessment, and notify the thrift of the amount to be paid,[2] as the Federal Savings and Loan Insurance Corporation ("FSLIC") did in the past. Thrifts will continue to pay their assessments electronically through the Federal Home Loan Bank of Des Moines. The FDIC and the other two entities that assess thrifts—the Financing Corporation and the Resolution Funding Corporation—will allocate the proceeds of the assessments among themselves, once the proceeds are received by the Federal Home Loan Bank of Des Moines.

Although these two sets of procedures differ substantially from each other, the difference does not favor banks over thrifts nor thrifts over banks. Banks pay their assessments somewhat earlier than thrifts. But banks make their payments by paper check, and therefore enjoy some of the benefits of "float;" thrifts' payments clear immediately. Moreover, while banks must sustain the burden of computing their own assessments, many banks will regard this as an advantage rather than the reverse. The FDIC computes the amounts assessed to thrifts, but thrifts are required to pay the amounts so computed— unless they are able to review the computations, correct them if necessary, certify the results, and notify the FDIC of the corrections, all by the end of the first month of the current semiannual period.

In other respects, the final rule extends the existing provisions of part 327 to reach thrifts as well as banks. For example, it lets thrifts use experience factors in computing assessments; it describes in some detail (but does not alter) the mechanics of computing assessments; and it provides for the payment or charging of interest on overpaid or underpaid assessments.

[1] One change affects banks that are considering the use of experience factors. The other two affect banks which either belong to the Savings Association Insurance Fund ("SAIF") themselves, or that acquire a SAIF-member thrift pursuant to the section 5(d)(3) of the FDI Act (described below).

[2] The FDIC will provide notification to thrifts that file their quarterly call reports when they are due. Thrifts that file their call reports after the due date will not receive such notification.

B. Procedural Requirements

When an institution weighs the merits of buying a troubled or failing thrift, the purchaser must be able to determine the assessment costs it will incur as a result of taking over the thrift's deposits. The FDIC considers that it is imperative to maintain stability and orderliness in the process of transferring the business of such thrifts to stronger hands. It is therefore necessary to establish clear, well-defined procedures that set forth the computation and payment of assessments, and to codify these procedures in regulations. Moreover, to facilitate transactions currently contemplated or in negotiation, it is necessary to adopt these procedures immediately.

For these reasons, it is impracticable—and contrary both to public interest and to the intent of the FIRREA—to incur the delay that the ordinary process of notice and public comment would entail. The FDIC is therefore issuing this rule as a final rule without notice and public comment (pursuant to 5 U.S.C. 553(b)(3)(B)) or a delayed effective date (pursuant to *id.* 553(d)(3)). The FDIC will, however, consider any public comments received by January 16, 1990, in order to determine whether this final rule should be revised.

C. Provisions Affecting Banks

1. Banks That Belong to the SAIF

The FDIC recognizes that it is possible for a bank to belong to the Savings Association Insurance Fund ("SAIF") rather than to the Bank Insurance Fund ("BIF"). Such a bank will not, in the ordinary course, be one that is already engaged in the business of banking. Rather it will be a converted SAIF-member thrift (*e.g.*, a thrift that loses its status as a Qualified Thrift Lender), or a bank chartered for the express and limited purpose of acquiring the assets and liabilities of a SAIF-member thrift.

The possibility further remains open that such a bank (and possibly even a thrift) may not wish to maintain a demand deposit account in a Federal home loan bank. Part 327 contemplates that SAIF members will pay their assessments electronically. Accordingly, to provide for such banks (and thrifts, if any), part 327 says that SAIF-member institutions must either maintain a demand deposit account with a Federal home loan bank, or, at the institution's option, with a commercial bank that belongs to the Federal Reserve System, which account will be used for the purpose of making assessment payments.

2. Banks Participating in Section 5(d)(3) Transactions

Section 5(d)(3) of the FDI Act ("Section 5(d)(3)") speaks of transactions involving banks and thrifts that belong to the same holding company. This provision allows a BIF-member bank to acquire its sister thrift (under certain conditions).

After the bank has acquired the thrift, the bank's assessments are computed in a special and unusual manner. Each semiannual assessment has two components:

—*SAIF component.* The first component represents an assessment on the deposits that the bank acquires from the thrift, plus an artificial growth factor for such deposits.[3] The SAIF component is computed by determining the amount of the deposits acquired at the time of transfer, and then increasing that amount each semiannual period either by the bank's actual growth rate or by a factor of 7 percent per annum, whichever is larger. The amout so determined is assessed at the SAIF rate, not at the BIF rate. The proceeds are deposited into the SAIF.

—*BIF component.* The second component represents an assessment on its "ordinary" deposits—*i.e.*, its assessment base minus the SAIF component.[4] The BIF component is assessed at the ordinary BIF rate; the proceeds are deposited into the BIF.

The FIRREA specifies that the amount of the deposits "acquired by such bank" in connection with a Section 5(d)(3) transaction must be determined at the time of the transaction. The FDIC considers that the deposits that the bank "acquires" are those that the bank can expect to retain. When the transaction involves a healthy thrift, the retained deposit base will be the entire amount of the transferred deposits. When the transaction involves a thrift in conservatorship or receivership, however, the retained deposit base will be equal to 80 per cent of the thrift's nonbrokered deposits under $80,000.

In a transaction involving a healthy thrift, the holding company controls the thrift's business policies and the timing of the transaction. If the holding company wishes to retain the thrift's interest-sensitive deposits, it can transfer them to the bank, and incur the assessment costs prescribed under Section 5(d)(3). Alternatively, the holding company can delay the transaction until the deposits mature, at which time the thrift may decline to renew them, thereby reducing the bank's future assessments.

The case is quite different for a thrift in conservatorship or receivership. The conservator or receiver—not the bank's parent company—controls the thrift's business policies. The holding company may be willing to take over the thrift's business, making use of a transaction under Section 5(d)(3). But the holding company may reject the strategy of paying high rates to attract deposits. Nevertheless, the conservator or receiver—for reasons of administrative efficiency—may require the bank to accept all the thrift's deposits as a condition of the transfer. Under these conditions, a significant number of such deposits will vanish from the bank as soon as they mature.

The FDIC considers that it makes no sense to require the bank to continue to pay assessments on such "phantom" deposits. Moreover, such a requirement would impair the FDIC's ability to transfer the business of such thrifts to healthy enterprises, to the detriment of the communities they serve. The FDIC is therefore excluding such deposits from the category "deposits acquired by the bank," but only for thrifts that are in conservatorship or receivership.

One category of "phantom" deposit consists of brokered deposits.

Brokered deposits are generally sensitive to the interest rates paid on them, and are volatile. The acquiring bank will generally be unwilling to pay the rates that the thrift has been paying on such deposits. Accordingly, brokered deposits are almost certain to be withdrawn promptly.

The other category is a certain portion of the thrift's ordinary deposits. Some of these deposits represent funds placed for interest-rate purposes, just as brokered funds generally do. But depositors often have other reasons for taking their money out of the acquiring bank as well. The FDIC's experience shows that, on average, the acquiring bank will only be able to retain about 80 percent of the thrift's nonbrokered deposits under $80,000.

The FDIC particularly hopes to receive comment regarding this provision. Even if the provision is modified in response to comments, however, the FDIC will not recompute the "adjusted attributable deposit amount" for transactions consummated prior to the modification. Accordingly, banks that participate in such transactions can be sure that their estimate of future assessment costs will not be affected by later changes in part 327.

Finally, when these banks file their certified statements, they must identify the amount subject to assessment at the rate applicable to BIF deposits and the amount applicable to SAIF deposits, and the assessments to be paid on each amount.

3. Experience Factors

Some banks' accounting systems do not readily show the actual amounts of unposted debits and credits that are present on report dates. Part 327 allows banks to determine the amount of such debits and credits manually, over a two-year period, and then use the experience factors thus derived in computing their assessments.

In the past, banks computed their experience factors using data for the first day of the second month in each semiannual period. In addition, the deposit figures were based both on the general ledger deposits and on the adjusted deposits shown in the call report.

The final rule simplifies the computation of experience factors. Banks—and thrifts, should they use experience factors—will use data for the March and September reporting dates. Moreover, the deposit figures will only be based on general ledger deposits.

D. Provisions Affecting Thrifts

1. Reporting of Deposits

Section 7 of the FDI Act—as amended by the FIRREA—says that every insured depository institution must file certified statements with the FDIC twice each year. The certified statement is due by the end of the first month following each semiannual period—*i.e.*, by January 31 and July 31 of each year. This requirement is new for thrifts.

The certified statement presents the institution's average assessment base for the prior semiannual period. The average assessment base is derived from the institution's quarterly reports of condition ("call reports") for the two prior quarters, which are filed with the institution's primary Federal supervisor. Accordingly, the certified statement—and the semiannual assessment—are inextricably linked to the call reports.

Section 7 also prescribes the information to be reported in the call reports. Many thrift's data-collection procedures are not set up to provide all the required information, however. Instead they are designed to supply the information reported in the Thrift Financial Reports ("TFRs") that FSLIC-insured thrifts used to file on a quarterly basis prior to the passage of the FIRREA. The TFRs differed significantly

[3] These deposits include all liabilities that are "deposits" within the meaning of Section (3)(*l*) of the FDI Act. They are not limited to "deposits" as reported on Thrift Financial Reports or on modified call reports. See below.

[4] The SAIF component must always grow at 7 percent per annum or more, without regard for the actual fortunes of the acquiring bank. Accordingly, there may well be times when the SAIF component is increasing and the BIF component is decreasing.

from the call reports. For example, the TFR category "deposits" did not include all the liabilities that are "deposits" under the FDI Act.[5] Nor did the TFRs separate deposits into "demand deposits" and "time and savings deposits."

Thrifts will need to make changes in their data-collection procedures to prepare the call reports required under Section 7. The changes may require more than a few months to accomplish.

Acknowledging this difficulty, the Office of Thrift Supervision ("OTS") has allowed thrifts to file reports for the third and fourth quarters of 1989 that are, in form, the same as the old TFRs.[6] Thereafter, the OTS will allow thrifts to file modified call reports for some period, but these new modified call reports will contain more information than the old TFRs.[7]

The FDIC will follow the OTS' lead. The FDIC will accept certified statements prepared on the basis of information presented in modified call reports; and the FDIC will compute the assessments on that basis as well.

At the same time, however, the FDIC will not automatically accept the classification given to liabilities in the modified call reports. The assessment base includes all deposits—as defined in Section 3(*l*) of the FDI Act—that are reported in the modified call reports. Accordingly, the FDIC will compute each thrift's assessment base using all the information presented in such reports, regardless of whether the reports themselves classify a particular kind of liability as a "deposit" or otherwise.[8]

[5] For example, the TFRs classed "accrued interest payable" as "other liabilities," not as "deposits." In addition, thrifts holding funds as escrow agent in connection with certain mortgage-servicing arrangements could report those funds as "other liabilities." Both accrued interest payable and funds held as escrow agent have the status of "deposits" under the FDI Act, and are subject to assessment.

[6] The September and December TFRs have a separate line for reporting taxes and insurance collected on mortgage-servicing accounts. But they do not break out the principal of such accounts or the interest paid on them. Those amounts are subsumed in categories that may contain other nondepository liabilities as well.

[7] The modified call reports to be filed in 1990 will have a separate line for reporting the principal and interest of all funds that thrifts hold as escrow agent.

[8] When computing the assessment for the first semiannual period of 1990, the FDIC will include "accrued interest payable" and amounts relating to mortgage servicing arrangements in the assessment base. When computing the assessment for the second semiannual period of 1990, the FDIC will include "accrued interest payable" and all amounts relating to mortgage servicing arrangements in the assessment base—not just tax and insurance, but principle and interest as well.

Complete reporting, as currently required of BIF members, will be required of thrifts at a future date.

2. Form of Thrift Certified Statements

Each thrift is responsible for submitting its own certified statement in a timely manner. But to streamline the assessment process, the FDIC will use the call-report information on file at the OTS to prepare a preliminary statement for any thrift that has filed its call reports when they are due. The FDIC will send the preliminary statement to each thrift for review.

Each thrift that receives a preliminary statement should check the figures provided by the FDIC against its own records, and should change anything that it considers incorrect. The thrift may then sign the preliminary statement and return it to the FDIC. The signed statement constitutes the thrift's certified statement, which the thrift must return to the FDIC.

The FDIC-supplied statement is only provided as an accommodation to the thrifts, however. Each thrift remains obliged to prepare its own certified statement, without regard for whether the thrift has received a preliminary statement from the FDIC. Conversely, of course, each thrift retains the option of preparing its own certified statement independently of the preliminary statement if it prefers to do so.

3. Assessment Procedures

The final rule generally preserves the existing arrangements for collecting assessments from thrifts, but with some modifications that are necessary to accommodate the FDIC's assessment schedule.

Thrifts will be required to pay their semiannual assessments on the sixth business day of February and August, through the Federal Home Loan Bank of Des Moines.

As a rule, the FDIC will compute thrifts' assessments using the call-report data on file at the OTS. The FDIC will use quarterly call reports that the OTS has received by the end of January or July, whether or not filed timely. Thrifts must pay the amount that the FDIC has computed. If a thrift disagrees with the FDIC's computation, the issue will be resolved afterward.

A thrift that files its call reports on time—and therefore receives a preliminary statement—has a special advantage, however. The thrift has a chance to review the FDIC's computation and correct it. If the thrift amends the assessment figure shown on the preliminary statement, and notifies the FDIC of the amendment before 5 p.m., Eastern time, on the last business day of the first month,[9] the thrift may pay the amended amount rather than the amount computed by the FDIC.

Thrifts that have not filed their call reports by the end of January or July present a special problem. If such a thrift has filed its certified statement on time, the thrift must pay the amount it has reported at the same time and according to the same procedure as other thrifts; the FDIC will check its computation later on. If a thrift has failed to file a timely certified statement, it must pay its assessment when it does file such a statement, and is also subject to interest on the assessment.

A few thrifts have credits that exceeded the Transition Payment collected from them in September, 1989. When the FDIC provided for the Transition Payment, the FDIC contemplated that any such credits would be applied in equal parts to the semiannual assessments due in 1990. The amount of the credits has proven to be minimal, however. Accordingly, the final rule provides that the entire amount of these credits will be applied to the first assessment due in 1990.

Other Matters

Regulatory Flexibility Act Statement

The Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 & 604) are not applicable.

List of Subjects in 12 CFR Part 327

Assessments, Banks, banking, Bank deposit insurance, Financing Corporation, Savings associations, Savings and loan associations.

The Board of Directors of the Federal Deposit Insurance Corporation revises part 327 of title 12 of the *Code of Federal Regulations* as follows:

PART 327—ASSESSMENTS

Subpart A—In General

Sec.

327.1 Purpose and scope.
327.2 Certified statements.

[9] The thrift must actually deliver the information to the FDIC by that time, however, and the FDIC in turn must formally confirm the receipt in writing. A thrift may notify the FDIC by electronic communication (*e.g.*, fax), but the FDIC's confirmation must be more than the mere acknowledgement of the transmission. The FDIC must notify the thrift that the amended information has been formally received. It is not necessary for the thrift to receive the FDIC's confirmation for the confirmation to be effective.

Sec.

327.3 Payment of semiannual assessments.
327.4 Average assessment base.
327.5 Experience factors.
327.6 Payment of assessments by depository institutions whose insurance status has terminated.
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Subpart B—BIF Members

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Subpart D—Banks Participating in Section 5(d)(3) Transactions

327.31 Scope.
327.32 Computation and payment of assessment.
327.33 Form of certified statement.

Authority: 12 USC 1441, 1441b, 1817–19

Subpart A—In General

§ 327.1 Purpose and scope.

(a) *Scope.* This part 327 applies to any insured depository institution, including any insured branch of a foreign bank.

(b) *Purpose.* (1) Except as specified in paragraph (b)(2) of this section, this part 327 sets forth the rules for:

(i) The time and manner of filing certified statements by insured depository institutions;

(ii) The time and manner of payment of the semiannual assessments by such institutions; and

(iii) The payment of assessments by depository institutions whose insured status has terminated.

(2) Deductions from the assessment base of an insured branch of a foreign bank are stated in part 346 of this chapter.

§ 327.2 Certified statements.

(a) *Required.* Each insured depository institution shall file a certified statement during each semiannual period.

(b) *Form.* The certified statement to be filed by an insured depository institution shall be in the form appropriate for such institution as prescribed by the Corporation.

(c) *Time for filing*— (1) Dates. (i) *First-half statements.* Certified statements that are based on the deposits reported in the quarterly reports of condition filed as of March 31 and June 30 of any year must be filed on or before July 31 of such year.

(ii) *Second-half statements.* Certified statements that are based on the deposits reported in the quarterly reports of condition filed on September 30 and December 31 of any year must be filed on or before January 31 of the following year.

(2) *Timeliness.* Certified statements are deemed to be filed in a timely manner if they are postmarked on or before the last day of the month during which they are required to be filed.

§ 327.3 Payment of semiannual assessments.

(a) *Required*— (1) *In general.* Except as provided in paragraph (a)(2) of this section, each insured depository institution shall pay the amount of the semiannual assessment due for the current semiannual period, as shown on its certified statement for such period.

(2) *Newly insured institutions.* A newly insured institution shall not be required to pay an assessment for the semiannual period during which it becomes an insured institution.

(b) *Responsibility for computation.* Each insured depository institution shall be responsible for computing the amount of its own assessment.

(c) *Amount.* The semiannual assessment to be paid by each insured depository institution for the current semiannual period shall be computed by multiplying the institution's average assessment base for the prior semiannual period by one-half the annual assessment rate applicable to such institution.

§ 327.4 Average assessment base.

(a) *Computation of average assessment base.* The average assessment base of an insured depository institution for any semiannual period shall be determined as follows:

(1) *In general.* In the case of any institution other than a newly insured institution, the average assessment base shall be computed—

(i) By adding the institution's assessment base for the first date during such semiannual period on which the institution is required to file a quarterly report of condition and the institution's assessment base for the second date during such semiannual period on which the institution is required to file a quarterly report of condition; and

(ii) Dividing the sum so computed by two.

(2) *Newly insured institutions.* In the case of a newly insured institution, the average assessment base shall be the institution's assessment base for the last date within the semiannual period during which it became an insured institution on which it was required to file a quarterly report of condition.

(b) *Computation of assessment base.* The assessment base of an insured depository institution for any date on which the institution is required to file a quarterly report of condition shall be computed by:

(1) Adding—

(i) All demand deposits—

(A) That the institution reported as such in the quarterly report of condition for that date;

(B) That belong to subsidiaries of the institution and were eliminated in consolidation;

(C) That are held in any insured branches of the institution that are located in the territories and possessions of the United States;

(D) That represent any uninvested trust funds required to be separately stated in the quarterly report for that date;

(E) That represent any unposted credits to demand deposits, as determined in accordance with the provisions of paragraph (c)(1) of this section; and

(ii) All time and savings deposits, together with all interest accrued and unpaid thereon—

(A) That the institution reported as such in the quarterly report of condition for that date;

(B) That belong to subsidiaries of the institution and were eliminated in consolidation;

(C) That are held in any insured branches of the institution that are located in the territories and possessions of the United States;

(D) That represent any unposted credits to time and savings deposits, as determined in accordance with the provisions of paragraph (c)(1) of this section; then

(2) Subtracting, in the case of any institution that maintains such records as will readily permit verification of the correctness of its assessment base—

(i) Any unposted debits;

(ii) Any pass-through reserve balances;

(iii) 16⅔ percent of the amount computed by subtracting, from the amount specified in paragraph (b)(1)(i) of this section, the sum of:

(A) Unposted debits allocated to demand deposits pursuant to the provisions of paragraph (c)(2) of this section; plus

(B) Pass-through reserve balances representing demand deposits;

(iv) 1 percent of the amount computed by subtracting, from the amount specified in paragraph (b)(1)(ii) of this section, the sum of:

(A) Unposted debits allocated to time and savings deposits pursuant to the

provisions of paragraph (c)(2) of this section; plus

(B) Pass-through reserve balances representing time and savings deposits.

(c) *Methods of reporting unposted credits and unposted debits.*

(1) *Unposted credits.* Each insured depository institution shall report unposted credits in quarterly reports of condition for additon to the assessment base in the following manner:

(i) If the institution's records show the total actual amount of unposted credits segregated into demand deposits and time and savings deposits, the institution must report the segregated amounts for addition to demand deposits and time and savings deposits, respectively.

(ii) If the institution's records show the total actual amount of unposted credits but do not segregate the amount as stated in paragraph (c)(1)(i) of this section, and if the institution does not elect to segregate the credits on the basis of the experience factors, the institution must report the total actual amount of the unposted credits for addition to time and savings deposits.

(iii) If the institution's records show the total actual amount of the unposted credits but do not segregate the amount as stated in paragraph (c)(1)(i) of this section, and if the institution elects to segregate the credits on the basis of the experience factors, the institution must report the segregated amounts for addition to demand deposits and time and savings deposits.

(iv) If the institution's records do not show the total actual amount of unposted credits (either in total or in segregated amounts), the amount of the unposted credits must be determined by experience factor or factors and reported in a total unsegregated amount for addition to time and savings deposits or in segregated amounts for addition to demand deposits and time and savings deposits.

(2) *Unposted debits.* Unposted debits may be reported in the same manner as stated in paragraph (c)(1) of this section for deduction from the assessment base, except that unsegregated amounts may be reported for deduction only from demand deposits.

§ 327.5 Experience factors.

(a) *Procedure for obtaining approval to use an experience factor or factors—*(1) *Notice to Corporation—*(i) *In general.* If an insured depository institution intends to use an experience factor in computing the amounts of unposted credits for unposted debits, the institution shall state its intention in writing to the Corporation.

(ii) *Newly-insured institutions.* Any depository institution becoming an insured depository institution whose records do not show amounts of unposted credits and unposted debits and which proposes to report such items for assessment purposes by means of experience factors, shall so inform the Corporation within thirty (30) days after it becomes an insured depository institution.

(2) *Form.* Upon receipt of the notice, the Corporation will furnish the institution a form for submitting to the Corporation the computations used in determining the experience factors.

(3) *Interim factors.* If the experience factors are approved by the Corporation, the institution shall use the factors in reporting unposted credits or debits until new experience factors are established under this section or until the institution's accounting methods are changed to show actual amounts from day to day.

(b) *Reporting on basis of experience factor or factors.* (1) A depository institution using an experience factor or factors may use either—

(i) Separate factors for computing the additions or deductions to demand deposits and time and savings deposits; or

(ii) A single factor for computing additions to be made in total amount to time and savings deposits or for computing deductions to be made in total amount from demand deposits.

(2) When a single factor is used, the additions or deductions are required to be made to or from the type of deposit giving the lesser advantage to the depository institution in taking the 16⅔ percent deduction from demand deposits and the 1 percent deduction from time and savings deposits.

(c) *Computing and using experience factors.* In the case of an institution that uses an experience factor or factors—

(1) *Initial experience factor for unposted credits.* The reporting depository institution may use either of the following initial experience factors in reporting unposted credits for addition to the assessment base for two years:

(i) *Separate experience factors.* (A) The factor for each semiannual period for:

(*1*) Demand deposits shall be the percentage obtained by dividing the amount of unposted credits on the last business day of March or September which are allocable to demand deposits by the amount of total demand deposits shown on the books of the depository institution at the close of business on the same day; and

(*2*) Time and savings deposits shall be the percentage obtained by dividing the amount of unposted credits on the last business day of March or September which are allocable to time and savings deposits by the amount of total time and savings deposits shown on the books of the depository institution at the close of business on the same day.

(B) Until two years' experience has been obtained, the depository institution shall determine on the last business day of March or September of each year the total actual amount of unposted credits segregated into demand deposits and time and savings deposits.

(C) For assessment purposes, there shall be separately stated in each quarterly report of condition for addition to demand deposits the amount obtained by multiplying the amount to total demand deposits shown on the books of the depository institution at the close of business on the report date by the factor for demand deposits for such semiannual period, and for addition to time and savings deposits the amount obtained by multiplying the amount of total time and savings deposits shown on the books of the depository institution at the close of business on the report date by the factor for time and savings deposits for such semiannual period.

(ii) *A single experience factor.* (A) The factor for each semiannual period shall be the percentage obtained by dividing the amount of total unposted credits on the last business day of March or September by the total deposits shown on the books of the depository institution at the close of business on the same day.

(B) Until two years' experience has been obtained, the depository institution shall determine on the last business day of March or September of each year the total actual amount of all unposted credits.

(C) For assessment purposes, there shall be separately stated in each quarterly report of condition for addition to time and savings deposits for assessment purposes the amount obtained by multiplying the amount of total deposits shown on the bank's books at the close of business on the report date by the factor for such semiannual period.

(2) *Permanent experience factor for unposted credits.* When two years' experience has been obtained with respect to an experience factor developed under paragraph (c)(1) of this section, a permanent experience factor shall be computed and used for the ninth and subsequent quarterly reports of condition. This factor shall be the

percentage obtained by dividing the aggregate amount of the unposted credits by the aggregate amount of the deposits which were used in establishing each factor for the four preceding semiannual periods.

(3) *Initial and permanent experience factors for unposted debits.* The reporting depository institution may use the same procedure outlined in paragraphs (c)(1) and (c)(2) of this section for establishing an experience factor or factors in reporting unposted debits for deduction from the assessment base, except:

(i) The terms "deduction" and "debit" would be substituted for the terms "addition" and "credit"; and

(ii) In developing the single experience factor, if the amount of the deductions computed exceeds the amount of the demand deposits, the excess may be deducted from time and savings deposits.

(4) *Alternative methods.* When it is impracticable to segregate the amounts of unposted credits or debits outstanding in a "branch clearings" account or similar account or to segregate the unposted credits or debits into demand deposits and time and savings deposits in computing a factor or factors under paragraph (c) of this section, the depository institution may apply to the Corporation for permission to compute the amounts by other methods.

(d) *Mergers, consolidations, deposit assumptions, and conversions.* (1) In any merger or consolidation or deposit assumption transaction in which the continuing or resulting institution uses an experience factor or factors, the continuing or resulting institution, if it elects to continue to use such a factor or factors, shall use new experience factors based on the combined experience of the participating institutions for the two-year period prior to such transaction or may establish a new factor or factors in accordance with paragraph (c) of this section.

(2) A depository institution resulting from the conversion of an institution that uses an experience factor or factors shall, if it elects to continue to use such factor or factors, continue to use the experience factor or factors of the converted institution.

(e) *Changes in experience factors*—(1) *New experience factors.* A depository institution that uses an experience factor or factors may apply to the Corporation for permission to establish a new permanent factor or factors in the manner provided in paragraph (c) of this section. Until the new permanent factor or factors have been determined and approved in writing by the Corporation, the institution shall continue to use its existing factor or factors.

(2) *Corporation requiring new experience factors.* The Corporation at any time may require a depository institution that uses an experience factor or factors to establish a new factor or factors, and for this purpose may designate a day or days and a period or periods, other than those specified, for the determination of deposits and the total actual amounts of unposted credits or unposted debits, or both. After the new factor or factors have been computed by the institution or the Corporation and have been approved in writing by the Corporation, the institution shall use the new factor or factors for all subsequent quarterly reports of condition.

(3) *Notice to corporation of changes in accounting methods.* If a depository institution that uses an experience factor or factors changes its accounting procedures from those used when its experience factor or factors were established and this causes an increase or decrease in the amount of unposted credits or unposted debit, it shall promptly give written notice to the Corporation of the change.

§ 327.6 Payment of assessments by depository institutions whose insured status has terminated.

(a) *Terminations pursuant to deposit assumptions.* When the deposit liabilities of an insured depository institution are assumed by another insured depository institution—

(1) *Assessments on assumed deposits.* For assessment purposes, the assumed deposits shall be deposit liabilities of the assuming institution and shall cease to be deposit liabilities of the institution whose deposits are assumed.

(2) *Payment of assessments; certified statements*—(i) *Payment by institution whose deposits are assumed.* Except as provided in paragraph (a)(2)(ii) of this section, the insured depository institution whose deposits are assumed shall file a final certified statement and shall pay to the Corporation the normal assessment on the deposits. If the deposits of the terminating depository institution are assumed by a newly insured depository institution, the terminating depository institution is not required to file certified statements or pay any assessment upon the deposits assumed after the semiannual period in which the assumption occurs.

(ii) *Payment by assuming institution.* When the assuming depository institution agrees to file the certified statement which the terminating depository institution is required to file, the filing of the certified statement and the payment of the assessment on the deposits by the assuming depository institution shall satisfy the terminating depository institution's obligations in this regard if—

(A) The requisite notice of assumption, as provided in part 307 of this chapter, is given to the depositors of the terminating depository institution; and

(B) The certified statement is filed separately from that required to be filed by the assuming depository institution.

(b) *Other terminations.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution—

(1) *Payment of assessments; certified statements.* The terminating depository institution shall continue to file certified statements and pay assessments for the period its deposits are insured. Such terminating institution shall not be required to file further certified statements or to pay further assessments after the depository institution has paid in full its deposit liabilities and the assessment to the Corporation required to be paid for the semiannual period in which its deposit liabilities are paid in full, and after it, under applicable law, has ceased to have authority to transact a banking business and to have existence, except for the purpose of, and to the extent permitted by law for, winding up its affairs.

(2) *Payment of deposits; certification to Corporation.* When the deposit liabilities of the depository institution have been paid in full, the depository institution shall certify to the Corporation that the deposit liabilities have been paid in full and give the date of the final payment. When the depository institution has unclaimed deposits, the certification shall further state the amount of the unclaimed deposits and the disposition made of the funds to be held to meet the claims. For assessment purposes, the following will be considered as payment of the unclaimed deposits:

(i) The transfer of cash funds in an amount sufficient to pay the unclaimed and unpaid deposits to the public official authorized by law to receive the same; or

(ii) If no law provides for the transfer of funds to a public official, the transfer of cash funds or compensatory assets to an insured depository institution in an amount sufficient to pay the unclaimed and unpaid deposits in consideration for the assumption of the deposit obligations by the insured depository institution.

(3) *Notice to depositors.* (i) The terminating depository institution shall give sufficient advance notice of the intended transfer to the owners of the unclaimed deposits to enable the depositors to obtain their deposits prior to the transfer. The notice shall be mailed to each depositor and shall be published in a local newspaper of general circulation. The notice shall advise the depositors of the liquidation of the depository institution, request them to call for and accept payment of their deposits, and state the disposition to be made of their deposits if they fail to promptly claim the deposits.

(ii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (b)(2)(i) of this section, a certified copy of the public official's receipt issued for the funds shall be furnished to the Corporation.

(iii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (b)(2)(ii) of this section, an affidavit of the publication and of the mailing of the notice to the depositors, together with a copy of the notice and a certified copy of the contract of assumption, shall be furnished to the Corporation.

(4) *Notice to Corporation.* The terminating depository institution shall advise the Corporation of the date on which the authority or right of the depository institution to do a banking business has terminated and the method whereby the termination has been effected (*i.e.*, whether the termination has been effected by the surrender of the charter, the cancellation of its authority or license to do a banking business by the supervisory authority, or otherwise).

(c) *Resumption of insured status before insurance of deposits ceases.* If a depository institution whose insured status has been terminated is permitted by the Corporation to continue or resume its status as an insured depository institution before the insurance of its deposits has ceased, the institution will be deemed, for assessment purposes, to continue as an insured depository institution and must thereafter furnish certified statements and pay assessments as though its insured status had not been terminated. The procedure for applying for the continuance or resumption of insured status is set forth in § 303.5 of this chapter.

§ 327.7 Payment of interest on delinquent assessment payments and assessment overpayments.

(a) *Payment of interest*—(1) *Payment by institutions*—(i) *Required.* Each insured depository institution shall pay interest to the Corporation on any delinquent assessment payment.

(ii) *Delinquent payments.* An assessment payment will be considered delinquent if—

(A) In the case of an assessment to be paid by a bank, the assessment is postmarked after the time for payment specified in § 327.2;

(B) In the case of an assessment to be paid by a savings association, the assessment is paid—

(*1*) In the case of an institution specified in § 327.22(a) or (b)(1), after the sixth business day of the second month of the current semiannual period; or

(*2*) In the case of an institution specified in § 327.22(b)(2), after the last day of the first month of the current semiannual period;

including late payments caused by errors on the part of the depository institution in its certified statement, unless the delay has been caused by a depository institution's good faith reliance on a specific rule, regulation or approval issued by the Corporation.

(2) *Payment by Corporation.* The Corporation will pay interest to an insured depository institution for any overpayment of an assessment.

(b) *Interest rate.* The interest rate will be the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the Federal Register. The interest rate will be determined as follows:

(1) *Current year.* (i) For delinquent days occurring on or prior to March 31, the rate will be the TFRM rate that is published in the preceding December.

(ii) For delinquent days occurring from April 1 to June 30, inclusive, the rate will be the TFRM rate that is in effect for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, inclusive, the rate will be the TFRM rate that is in effect for the third quarter.

(iv) For delinquent days occurring from October 1 to December 31, inclusive, the rate will be the TFRM rate that is in effect for the fourth quarter.

(2) *Prior years.* The interest will be calculated quarterly and compounded annually at the rates applicable for each quarter as issued under the TFRM. For the initial year, the rate will be applied to the gross amount of the delinquent payment. For each additional year or portion thereof the rate will be applied to the net amount of the delinquent payment after it has been reduced by the assessment credit, if any, for the year.

§ 327.8 Definitions.

(a) *Unposted credits and debits*—(1) *Unposted credit.* The term "unposted credit" means any deposit received in any office of a depository institution for deposit in any other office of the depository institution located in any State of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Marianas Islands, or the Virgin Islands, except those which have been:

(i) Included in the total deposits in the quarterly report of condition; or

(ii) Offset in the quarterly report of condition by an equal amount of cash items in the institution's possession drawn on itself (on the same type of deposits as those offset) and not charged against deposit liabilities at the close of business on the date of the quarterly report of condition.

(2) *Unposted debit.* The term "unposted debit" means a cash item in the reporting institution's possession that is drawn on the institution and immediately chargeable, but not yet charged, against the institution's deposit liabilities at the close of business on the date of the quarterly report of condition. The following items are excluded:

(i) Cash items drawn on other depository institutions,

(ii) Overdrafts and nonsufficient fund (NSF) items,

(iii) Cash items returned unpaid to the last endorser for any reason, and

(iv) Drafts and warrants that are "payable at" or "payable through" the reporting institution for which there is no written authorization on file at the institution or State statute allowing the institution at its discretion to charge the items against the deposit accounts of the drawees.

(3) *Exclusion.* The above terms "unposted credit" and "unposted debit" do not include items which have been reflected in deposit accounts on the general ledger and in the quarterly report of condition, even though they have not been credited or debited to individual deposit accounts.

(b) *Deposits*—(1) *Deposit.* The term "deposit" has the meaning specified in section 3(*l*) of the Federal Deposit Insurance Act. In particular, the term "deposit" includes any liability—without regard for whether the liability is a liability of an insured bank or of an insured savings association—that is of a kind which, had the liability been a liability of an insured bank immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, would have constituted a deposit in such bank within the meaning of section 3(*l*) of the

Federal Deposit Insurance Act as such section 3(*l*) was then in effect.

(2) *Demand deposits.* The term "demand deposits" refers to deposits specified in § 329.1(b) of this chapter, except that any reference to "bank" in such section shall be deemed to refer to "depository institution".

(3) *Time and savings deposits.* The term "time and savings deposits" refers to any deposits other than demand deposits.

(4) *Exception.* (i) Deposits accumulated for the payment of personal loans, which represent actual loan payments received by the depository institution from borrowers and accumulated by the depository institution in hypothecated deposit accounts for payment of the loans at maturity, shall not be reported as deposits on the quarterly report of condition. The deposit amounts covered by the exception are to be deducted from the loan amounts for which these deposits have been accumulated and assigned or pledged to effectuate payment.

(ii) Time and savings deposits that are pledged as collateral to secure loans are not "deposits accumulated for the payment of personal loans" and are to be reported in the same manner as if they were not securing a loan.

(c) *Quarterly report of condition.* The term "quarterly report of condition" means a report required to be filed pursuant to section 7(a)(3) of the Federal Deposit Insurance Act.

(d) *Semiannual period*—(1) *In general.* The term "semiannual period" means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

(2) *Current semiannual period.* The term "current semiannual period" means, with respect to a certified statement or an assessment, the semiannual period within which such certified statement is required to be filed or such assessment is required to be paid.

(3) *Prior semiannual period.* The term "prior semiannual period" means, with respect to a certified statement or an assessment, the semiannual period immediately prior to the current semiannual period.

(e) *Newly insured institution.* The term "newly insured institution" means an institution that became an insured depository institution during the semiannual period immediately prior to the period for which the certified statement is required: *Provided,* That the term "newly insured institution" does not include any institution that became an insured depository institution as a result of the operation of section 4(a)(2) of the Federal Deposit Insurance Act.

(f) *BIF member.* The term "BIF member" means a depository institution that is a member of the Bank Insurance Fund.

(g) *SAIF member.* The term "SAIF member" means a depository institution that is a member of the Savings Association Insurance Fund.

Subpart B—BIF Members

§ 327.11 Scope.

Subpart B of this part applies to any BIF member other than a bank specified in § 327.31(a).

§ 327.12 Form of certified statement.

The certified statement to be filed by any BIF member shall be the statement prescribed in § 304.3(a) of this chapter.

§ 327.13 Payment of assessment.

(a) *Time of payment.* Each BIF member shall pay the assessment due for any semiannual period on or before the last day of the first month of such semiannual period.

(b) *Procedure for payment.* Each BIF member may pay such assessment by check or other draft drawn on such member or such member's account at another insured depository institution.

Subpart C—SAIF Members

§ 327.21 Scope.

Subpart C of this part applies to any SAIF member.

§ 327.22 Time for payment of assessment.

(a) *SAIF members filing quarterly reports of condition within the first month of the semiannual period. In the case of any SAIF member that has filed its quarterly reports of condition for the prior semiannual period on or before the last day of the first month of the current semiannual period*—

(1) *Computation of assessment.* The Corporation shall compute the amount of the assessment due from the SAIF member for the current semiannual period.

(2) *Payment of assessment*—(i) *In general.* On the sixth business day of the second month of the current semiannual period, the SAIF member shall pay the amount so computed by the Corporation according to the procedure prescribed by § 327.23.

(ii) *Exception.* If, in the case of a SAIF member that has received a certified statement form prepared by the Corporation for the current semiannual period, the president or other officer notifies the Corporation, before 5 p.m., Eastern time, of the last business day of the first month of the current semiannual period, of any amendment such SAIF member has made to the amount of the assessment due as computed by the Corporation, and if the Corporation confirms in writing the receipt of such notice, the SAIF member may pay the amended amount rather than the amount computed by the Corporation.

(b) *Other SAIF members.* In the case of any SAIF member that has not filed its quarterly reports of condition for the prior semiannual period on or before the last day of the first month of the current semiannual period—

(1) If—

(i) The SAIF member files a certified statement for the current period in a timely manner; and

(ii) The Corporation receives, before 5 p.m., Eastern time, of the last business day of the first month of the current semiannual period, notification from such SAIF member of the amount of the assessment due, and confirms in writing the receipt of such notice to such SAIF member;

the SAIF member may pay the amount of the assessment due for such semiannual period as shown on the SAIF member's certified statement according to the procedure prescribed by § 327.23.

(2) If the Corporation has not received, before 5 p.m., Eastern time, of the last business day of the first month of the current semiannual period, notification from such SAIF member of the amount of the assessment due, the SAIF member shall pay the amount of the assessment due as shown in its certified statement for such period upon filing the certified statement with the Corporation. The payment to be made under this paragraph (b)(2) shall be subject to interest from and including the first day of the second month of the current semiannual period through the date on which the payment is made.

(c) *Adjustments to payments.* (1) If a SAIF member believes that the amount of an assessment as computed by the Corporation differs from the amount the SAIF member properly owes, the SAIF member shall promptly notify the Corporation of the discrepancy.

(2) If the Corporation determines that the amount computed by the Corporation is improper, the amount of any overpayment on the part of the SAIF member shall be repaid to such SAIF member by check, with interest, and the amount of any underpayment on the part of the SAIF member shall be paid by such SAIF member by check, with interest if appropriate.

(d) *Certain credits*—(1) *Secondary Reserve offsets.* Notwithstanding any other provision of this part, a SAIF member may offset the amount described in section 7(m) (1) and (3) of the Federal Deposit Insurance Act against any assessment required to be paid pursuant to section 7(b) of such Act.

(2) *Carry-over credits.* If an institution that became an insured depository institution as the result of the operation of section 4(a)(2) of the Federal Deposit Insurance Act had credits during calendar year 1989 exceeding amounts assessed by the Corporation during 1989, such excess credits shall be applied to the assessment the institution is required to pay in the first semiannual period in calendar year 1990 up to the maximum amount of the assessment. Any remaining amount of any such excess credits shall be applied to the assessment the institution is required to pay in the second semiannual period in calendar year 1990.

§ 327.23 Manner of payment.

(a) *Payment through collection agent*— (1) *Use of collection agent.* The amounts required to be paid pursuant to § 327.22(a) or (b)(1) shall be paid through the Collection Agent.

(2) *"Collection Agent" defined.* "Collection Agent" means any person, corporation, governmental unit, or any other entity that has been authorized by the Corporation to act as its agent for collecting assessments.

(b) *Establishment of demand deposit accounts for assessment purposes.* Every SAIF member shall establish a demand deposit account at the Federal home loan bank of which it is a member, or at a commercial bank that is a member of the Federal Reserve System and is approved by the Corporation, for the purpose of paying the assessments required pursuant to this part, and shall authorize such Federal home loan bank or commercial bank to debit the account in the amount of any such assessment at the direction of the Corporation.

(c) *Deposit of funds for assessment payments.* Prior to the due date for each assessment payment, each SAIF member shall deposit sufficient funds in the demand deposit account established pursuant to paragraph (b) of this section in order that such account may be directly debited by the respective Federal home loan bank or correspondent bank for the amount of the assessment then due.

§ 327.24 Certified statements.

(a) *Standard form.* The certified statement to be filed by SAIF members shall be in the form prescribed by the Corporation.

(b) *Preliminary certified statement form*—(1) *Preparation by the FDIC.* (i) Preparation; transmission to SAIF member.—If a SAIF member has filed its quarterly reports of condition on or before the dates on which they are required to be filed, the Corporation, as an accommodation to the SAIF member, may prepare a preliminary certified statement form for the SAIF member showing the amount of the assessment to be paid by the SAIF member, and send it to the SAIF member.

(ii) *Contents.* The preliminary certified statement form shall show the data available to the Corporation regarding the information required to be shown in the SAIF member's certified statement.

(2) *Review by SAIF member.* The president of the SAIF member, or another officer designated by the SAIF member's board of directors or trustees, may review the information contained in the preliminary certified statement form.

(3) *Signature*—(i) *Form accepted.* If the president or such other officer agrees that the information presented in such preliminary certified statement form is accurate, the president or such other officer may sign and date the form on the lines provided.

(ii) *Form amended.* If the president or such other officer does not agree that the information presented in such preliminary certified statement form is accurate, the president or such other officer may make such corrections in the information as may be needed, and may then sign and date the form on the lines provided.

(4) *Use of Preliminary certified statement form.* The SAIF member may file a signed and dated preliminary certified statement form in lieu of the standard form, and such signed and dated preliminary certified statement form shall constitute the certified statement that such SAIF member is required to file pursuant to section 7(c) of the Federal Deposit Insurance Act.

Subpart D—Banks Participating in Section 5(d)(3) Transactions

§ 327.31 Scope.

(a) *Affected institutions.* Subpart D of this part applies to any bank that—

(1) Is a BIF member; and

(2) Is the assuming, surviving, or resulting institution in a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act.

(b) *Duration.* Subpart D of this part shall cease to apply to a bank if—

(1) On or after August 9, 1994, the Corporation approves an application by the bank to treat the transaction described in paragraph (a) of this section as a conversion transaction; and

(2) The bank pays the amount of any exit and entrance fee assessed by the Corporation with respect to such transaction.

§ 327.32 Computation and payment of assessment.

(a) *Amount of assessment*—(1) *Responsibility for computation.* Each bank subject to subpart D of this part shall compute its own assessment.

(2) *Rate of assessment*—(i) *BIF member rate.* (A) Except as provided in paragraph (a)(2)(ii) of this section, the assessment to be paid by a bank subject to subpart D of this part shall be computed at the rate applicable to BIF members.

(B) Such rate shall be applied to the bank's assessment base less that portion of the assessment base which is equal to the bank's adjusted attributable deposit amount.

(ii) *SAIF member rate.* Notwithstanding paragraph (a)(2)(i) of this section, that portion of the assessment base of a bank subject to subpart D of this part which is equal to the adjusted attributable deposit amount of such bank shall—

(A) Be subject to assessment at the assessment rate applicable to SAIF members pursuant to subpart C of this part; and

(B) Not be taken into account in computing the amount of any assessment to be allocated to the Bank Insurance Fund.

(3) *"Adjusted attributable deposit amount."* A bank's "adjusted attributable deposit amount" for any semiannual period is equal to the sum of—

(i) The amount of any deposits acquired by the bank in connection with a transaction described in § 327.31(a);

(ii) The total of the amounts determined under paragraph (a)(3)(iii) of this section for semiannual periods preceding the semiannual period for which the determination is being made under this section; and

(iii) The amount by which the sum of the amounts described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the greater of—

(A) An annual rate of 7 percent; or

(B) The annual rate of growth of deposits of such bank minus the amount of any deposits acquired through the

acquisition, in whole or in part, of a BIF member during such semiannual period.

(4) *"Deposits acquired by the bank."* As used in paragraph (a)(3)(i) of this section, the term "deposits acquired by the bank" means all deposits that are held in the institution acquired by such bank on the date of such transaction; *Provided,* That if the Corporation or the Resolution Trust Corporation has been appointed as conservator or receiver for the acquired institution, such term—

(i) Does not include any deposit held in the acquired institution on the date of such transaction which the acquired institution has obtained, directly or indirectly, by or through any deposit broker; and

(ii) Does not include that part of any remaining deposit held in the acquired institution on the date of such transaction that is in excess of $80,000;

(iii) Is limited to 80 per centum of the remaining portion of the aggregate of the deposits specified in paragraph (a)(4)(ii) of this section.

(5) *"Deposit broker."* As used in paragraph (a)(4) of this section, the term "deposit broker" has the meaning specified in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

(b) *Procedures for computation and payment.* A bank subject to subpart D of this part shall follow the payment procedure that is set forth in subpart B of this part.

§ 327.33 Form of certified statement.

The certified statement to be filed by a bank subject to subpart D of this part shall be in the form prescribed by the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of December 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29168 Filed 12-14-89; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements For An Outside Audit; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule adds § 701.13 and amends § 741.2. The rule prescribes the regulatory requirement for an outside, independent audit of any federally insured credit union by a certified public accountant (CPA) under certain specified conditions. The rule is being added to reflect applicable provisions of Public Law 101-73, the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The rule is substantially unchanged from a proposed rule issued in September 1989.

EFFECTIVE DATE: December 7, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Karen K. Kelbly, Office of Examination and Insurance, at the above address or telephone (202) 682-9640.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed rule stated that this rule imposed no additional paperwork requirements. During the comment period, NCUA staff reconsidered this position and determined that the proposed rule did impose additional requirements. They are as follows:

a. Some additional paperwork burden may be added in the case of a credit union which performed an audit under § 701.12 which was deemed unsatisfactory, and

b. Additional audit workpapers required by a CPA to complete an opinion audit will be required in the case of a credit union which has been determined to have serious and persistent recordkeeping problems.

These additional requirements were submitted to the Office of Management and Budget (OMB) on October 31, 1989. NCUA will publish a notice in the Federal Register once OMB action is taken on the submitted requirements.

Background

This rule is necessitated by section 919 of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) which amends section 202(a) of the Federal Credit Union Act [12 U.S.C. 1782(a)]. FIRREA requires that within 120 days of its enactment, the NCUA Board prescribe, by regulation, audit requirements for the outside, independent audit of any federally insured credit union by a certified public accountant under certain conditions. Accordingly, this rule is effective December 7, 1989, rather than allowing for a 30-day delayed effective date.

In September 1989, consistent with FIRREA, the NCUA Board issued a proposed revision to § 701.13 and § 741.2 of the NCUA Rules and Regulations. The Board sought comments and recommendations concerning the proposal, with the comment period ending on October 23, 1989. (See 54 FR 38870, September 21, 1989).

The proposed rule, in § 701.13, sets forth the three statutory conditions under which an outside, independent audit by a certified public accountant is to be required:

(1) The supervisory committee of the credit union has not conducted an annual supervisory committee audit; or

(2) The annual supervisory committee audit conducted was not complete and satisfactory; or

(3) The credit union has experienced serious and persistent recordkeeping deficiencies.

It was proposed that under either of the first two conditions, the scope of the audit would be that required by existing § 701.12; under the third condition, an opinion audit would be necessary. The proposal also defined what constitutes a "complete and satisfactory supervisory committee audit" and "serious and persistent recordkeeping deficiencies".

The proposal also recommended amending § 741.2 to require annual audits of federally-insured, state-chartered credit unions using the same standards as for federal credit unions.

Comments

A total of twenty-three comment letters were received in response to the proposed revisions to §§ 701.13 and 741.2. Seventeen letters were from Federal credit unions, two were from federally-insured state credit unions, three were from trade associations, and one from a Federal government department.

Nine commenters supported the proposed rule unchanged. One of these nine, as well as five additional commenters, voiced their support to regularly require an outside, CPA audit of all federally-insured credit unions. Because the financial hardship a routine CPA audit requirement would place on many smaller credit unions, the Board has no immediate plans to change the existing § 701.12 audit and verification requirements.

At the opposite end of the spectrum, four commenters objected to any requirements for a CPA audit arguing that audit quality is not assured by a CPA and that a CPA audit places an undue hardship on smaller credit unions. The FIRREA, which mandated that the Board institute this regulation, also mandated that the audit be "an outside, independent audit * * * by a certified public accountant." As a result, the Board is unable to consider these comments.

Several commenters did not understand that the proposed rule would take effect only if a particular credit union was not meeting existing regulatory audit and verification requirements (§§ 701.13 and 741.2), and thus, argued that the supervisory committee's and the credit union board's autonomy were being infringed. Based on this misunderstanding of the facts, one commenter criticized the lack of a regulatory flexibility analysis. The Board wishes to stress that credit unions can control their own destiny in this regard; if a credit union's supervisory committee is functioning in a manner that protects the members and the credit union as a whole consistent with the existing regulations, the new rule will have no effect on the credit union. Accordingly, the Board continues to feel that a Regulatory Flexibility Analysis is not required.

Because of differing state requirements and the fact that some state credit unions have audit committees rather than supervisory committees, one commenter suggested the Board drop the § 741.2 reference to the supervisory committee for federally-insured credit unions. While the Board recognizes that the intent of Congress was not to mandate the formation of supervisory committees by state-chartered credit unions, the Board has opted to retain the supervisory committee reference consistent with the FIRREA. The Board does not intend to take exception merely on the use of the term "supervisory committee" as opposed to other state-required language.

One commenter requested clarification of the Board's intent with regard to league auditing services and the permissibility of league audits to fulfill the § 701.13 and § 741.2 audit and verification requirements. In cases where the supervisory committee audit has not been conducted or was incomplete or unsatisfactory, league auditors may perform the audit through satisfying the requirements of § 701.12, provided the auditor is a certified public accountant. The condition triggered by serious and persistent problems may not be met through use of league auditing services but rather, requires an opinion audit performed by a certified public accountant accepting responsibility under those credentials. Auditors lacking certified public accountant standing will continue to be permitted to conduct § 701.12 audits and verifications.

One commenter expressed concern that credit unions with cited deficiencies be given a reasonable time for compliance and the implementation of corrective action before requirements of the new rule take effect. Two commenters believe the regulation should state precisely what the consequences would be if a credit union does not comply. One commenter felt the regulation permitted the Administration too much subjectivity in determining what constitutes "a complete and satisfactory audit" and "serious and persistent recordkeeping deficiencies." The Board believes the regulation as written provides as specific guidance as is advisable while affording the Administration the flexibility needed to carry out its supervisory responsibilities.

One letter of comment supported amending § 741.2(b) to read the credit union shall verify "all passbooks and accounts with the records of the treasurer not less frequently than on a yearly basis" rather than the existing "not less than once every 2 years." The commenter argued that in the case of "serious and persistent recordkeeping deficiencies," 2-years time is too prolonged a period between account verifications and would be detrimental to member's assets. Section 115 of the Federal Credit Union Act (12 U.S.C. 1761(d)) requires the supervisory committee to verify accounts every 2 years. The Board believes the proposed rule is consistent with statutory requirements and ensures the protection of member's accounts. Credit unions having serious and persistent recordkeeping problems are required by the new rule to obtain an outside, independent CPA audit which results in an opinion. Under generally accepted auditing standards, the CPA would have to perform tests (verifications) and gather evidential material to gain a level of assurance that all accounts, including member's deposits, were not materially misstated. The CPA's opinion would reflect the results of such tests and disclose his opinion/assurance with regard to member's deposits.

One commenter criticized the Board for allowing an insufficient period for comment. The Board did not have the option of permitting a longer period for comment; the FIRREA required implementation of the new rule within 120 days of enactment (December 1989). The final rule is substantially similar to the proposed regulation.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions. The rule will only affect small credit unions to the extent they do not adhere to existing regulations. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Congress has mandated in section 919 of FIRREA that NCUA prescribe regulations requiring that all federally-insured, state-chartered credit unions obtain an outside, independent audit by a certified public accountant if the credit union has not obtained an annual supervisory committee audit, the supervisory committee audit is not complete and satisfactory or the credit union has experienced serious and persistent recordkeeping deficiencies as defined by the NCUA Board.

To implement the FIRREA provisions, it is incumbent upon NCUA to define what constitutes a "complete and satisfactory supervisory committee audit" and "serious and persistent recordkeeping deficiencies". To accomplish this, NCUA has applied to federally-insured, state-chartered credit unions the same standards that exist in §§ 701.12 and proposed 701.13 for federal credit unions.

It is the NCUA Board's belief that this is the most fair and administratively feasible method of accomplishing the requirements of FIRREA, and that, inasmuch as state-chartered credit unions are already subject to comparable audit requirements under state law, significant new burdens will not be imposed beyond those legislatively mandated by FIRREA.

List of Subjects

12 CFR Part 701

Credit unions; Reporting and recordkeeping requirements; Supervisory committee audits.

12 CFR Part 741

Credit unions; Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 7, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations (12 CFR parts 701 and 741) as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761(a), 1761(b), 1766, 1767, 1782, 1784, 1787, 1789, and 1796; and Pub. L. 101–73. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.6 is also authorized by 31 U.S.C. 3717.

2. Section 701.13 is added to read as follows:

§ 701.13 Requirements for an outside audit.

(a) A federal credit union shall obtain an outside, independent audit by a certified public accountant for any fiscal year during which any one of the following three conditions is present:

(1) The supervisory committee of the federal credit union has not conducted an annual supervisory committee audit;

(2) The annual supervisory committee audit conducted did not meet the audit requirements of § 701.12 including § 701.12(e);

(3) The federal credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) In the case of an audit required pursuant to paragraph (a)(1) or (2) of this section, the scope of the outside, independent audit conducted by a certified public accountant must fully encompass the requirements set forth in § 701.12. In the case of an audit required pursuant to paragraph (a)(3) of this section, the outside, independent audit by a certified public accountant must be an opinion audit as that term is understood under generally accepted auditing standards.

(c) As used in paragraph (a)(3) of this section, persistent recordkeeping deficiencies shall mean serious recordkeeping problems which continue to exist past a usual, expected, or normal period of time. Persistent recordkeeping deficiencies shall be considered serious if the Administration has a reasonable doubt that the financial condition of the credit union is accurately and fairly presented in the credit union's statements and that management practices and procedures are sufficient to safeguard members' assets.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790; Pub. L. 101–73.

2. Section 741.2 is revised to read as follows:

§ 741.2 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13.

(b) Each credit union which is insured pursuant to title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the treasurer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13.

[FR Doc. 89–29191 Filed 12–14–89; 8:45 am]
BILLING CODE 7535–01–M

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12 CFR Parts 705 and 701

Community Development Revolving Loan Program for Credit Unions; Nonmember and Public Unit Accounts

AGENCY: National Credit Union Administration.

ACTION: Final Rule.

SUMMARY: This rule makes several clarifying changes to Part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions") and one corresponding change to § 701.32 of NCUA's Rules and Regulations ("Nonmember and Public Unit Accounts"). These amendments result from a review of Part 705 following a recent amendment to the Federal Credit Union ("FCU") Act clarifying that the Community Development Credit Union Revolving Loan Fund ("Fund") is subject only to the rules and regulations prescribed by the NCUA Board. NCUA has been unable to approve any loans because the Office of Management and Budget did not make an allotment to NCUA for use of the funds. The monies in the Fund are now available for loans.

The Board has made this rule effective immediately since it simply updates and clarifies the existing regulations, and does not impose any new requirements.

EFFECTIVE DATE: December 15, 1989.

ADDRESS: National Credit Union Administration, 1776 G St., NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert J. LaPorte, Central Liquidity Facility, or Julie Tamuleviz, Staff Attorney, at the above address or telephone: (202) 682–9780 (Mr. LaPorte) or (202) 682–9630 (Ms. Tamuleviz).

SUPPLEMENTARY INFORMATION:

Background

The Community Development Revolving Loan Fund Program for Credit Unions

Congress established the Community Development Revolving Loan Fund Program ("Program") to make loans to participating credit unions to enable them to provide basic financial and related services to residents in needy communities and to stimulate economic activities in the communities they serve, resulting in increasing income, ownership and employment opportunities for low–income residents and other community-growth efforts. In 1986, Congress transferred the Fund and the authority to administer the Fund from the Secretary of Health and Human Services ("HHS") to the NCUA. Part 705 of NCUA's Regulations established the program under which loans from the Fund are made.

No state or local funds are required. A Federal or state-chartered credit union applies to NCUA for a loan from the Fund. 12 CFR 705.5(a). A state-chartered credit union seeking a loan must obtain "written concurrence from [its] state regulatory authority." 12 CFR 705.8. A state-chartered credit union receiving a loan under the Program remains subject to supervision and examination by the state regulator.

Funding for the Program comes from Congressional appropriation. The Fund received a $6,000,000 appropriation in 1979 and currently has a balance of $6,679,000. Since the Fund was transferred to NCUA in 1986, NCUA has solicited, received, and reviewed loan fund applications from eligible credit unions. However, NCUA has been unable to approve any loans because the Office of Management and Budget had not authorized use of the appropriation.

Public Law 101–144

Public Law 101–144, enacted on November 9, 1989, amended Section 120 of the FCU Act (12 U.S.C. 1766) by adding the following new subsection (k):

(k) Notwithstanding any other provision of law, the Board may exercise the authority granted to it by the Community Development Credit Union Revolving Loan Fund Transfer Act (Public Law 99–609, sec. 1, November 6, 1986, 100 Stat. 3475) subject only to the rules and regulations prescribed by the NCUA Board.

The amendment provides NCUA with

full control of the Fund's balance, and ensures that the funds are now available for loans.

Technical Amendments to Part 705

Section 705.0—Applicability

This section currently provides that monies from the Fund loaned after October 1, 1987, are governed by Part 705. This final amendment deletes the reference to October 1, 1987. When the regulation was promulgated, the date was included to make clear that any loans extended by HHS prior to the time Congress transferred control of the Fund to NCUA would be subject to HHS regulation. Since the only loan remaining will be paid off by the end of this year, reference to the date is no longer necessary.

Section 705.7—Loans to Participating Credit Unions and Section 701.32—Nonmember Deposits

Section 705.7(b)(1) requires that credit unions receiving loans from the Fund must match the amount of the loan monies received by increasing member and nonmember share deposits to an amount at least equal to the loan amount. Section 701.32 of NCUA's Rules and Regulations was amended in July 1989 (54 FR 31182, 7/27/89) to require that federally-insured credit unions that wish to maintain nonmember and public unit shares in excess of 20% of their total shares submit a plan setting forth the intended use of the funds and request NCUA's approval. Credit union acceptance of deposits to meet the matching requirement does not relate to the problems at which § 701.32 is aimed. Part 705 requires that a participating credit union submit, as part of its application for a Program loan, financial information and a plan for the use of the loan funds. It also requires that a community development committee be established to continue to evaluate the participating credit union's needs. 12 CFR 705.5 and 705.6. In effect, these requirements and the matching requirement are a substitute for the plan required under § 701.32. Moreover, § 705.7(a) of NCUA's Regulations limits the amount of loans from the Fund to $200,000, thereby setting a cap on any nonmember deposits for purposes of meeting the matching requirement to $200,000. The NCUA Board deems it unnecessary to include the matching shares accepted under § 705.7(b)(1) in the limitations set forth in § 701.32. A corresponding change has been made to § 701.32(c). Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to § 701.32.

Section 705.9—Application Period

Section 705.9 currently provides that applications for loans will be accepted through November 30, 1987. This statement is being deleted. Rather than setting a new date in the regulation that would require future amendments to the regulation depending upon the availability of funds, amended § 705.9 provides that when funds are available, application periods will be announced and notice provided to all eligible credit unions through publication in the **Federal Register.**

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. It updates and clarifies the existing regulation. Therefore, a regulatory flexibility analysis is not required.

Executive Order 12612

Part 705 applies to FCU's and state-chartered credit unions. State-chartered credit unions need not be federally insured to participate in the Program. The amendments made to the regulations only update and clarify the current regulations. The amendments will not change current practice.

List of Subjects in 12 CFR Part 701

Credit unions, nonmember accounts, community development revolving loan program.

12 CFR Part 705

Credit unions, community development revolving loan program.

By the National Credit Union Administration Board on December 7, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1787, and 1789. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1781 and 42 U.S.C. 3601–3610.

2. Section 701.32(c) is revised to read as follows:

§ 701.32 Payments on shares by public units and nonmembers.

* * * * *

(c) The limitations herein do not apply to accounts maintained in accordance with § 701.37 (Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government) and matching funds required by § 705.7(b) (Community Development Revolving Loan Program for Credit Unions). Once a loan granted pursuant to part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

PART 705—[AMENDED]

1. The authority citation for part 705 is revised to read as follows:

Authority: Pub. L. 97–35; Pub. L. 99–609, note to 42 U.S.C. 9822; Pub. L. 101–144.

2. Section 705.0 is revised to read as follows:

§ 705.0 Applicability.

Monies from the Community Development Revolving Loan Fund for Credit Unions are governed by this regulation.

3. Section 705.7(b)(1) is revised to read as follows:

§ 705.7 Loans to participating credit unions.

* * * * *

(b) * * *

(1) Loan monies made available must be matched by the participating credit union by increasing its member and nonmember share deposits in an amount at least equal to the loan amount. Share deposits accepted to meet this matching requirement are not subject to the § 701.32 limitation on nonmember deposits. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to § 701.32.

* * * * *

4. Section 705.9 is revised to read as follows:

§ 705.9 Application period.

NCUA will announce and publish in the **Federal Register** when applications for participation in the program may be submitted. Such notice will be dependent upon the availability of funds.

[FR Doc. 89–29190 Filed 12–14–89; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Albendazole Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by SmithKline Animal Health Products. The NADA provides for use of albendazole paste as an anthelmintic in cattle.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed NADA 128–070 providing for oral use of a 30-percent albendazole paste (Valbazen™) in cattle. It is used for removal and control of adult liver flukes, heads and segments of tapeworms, adult and 4th stage larvae of stomach worms (brown stomach worm, barberpole worm, small stomach worm), intestinal worms (thread-necked intestinal worm, small intestinal worm), lungworms, 4th stage inhibited larvae of brown stomach worm, and adult stages of certain intestinal worms (hookworm, bankrupt worm, nodular worm).

The NADA is approved and 21 CFR 520.45b is added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.45b is added to read as follows:

§ 520.45b Albendazole paste.

(a) *Specifications.* The product contains 30 percent albendazole.

(b) *Sponsor.* See No. 000007 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.34 of this chapter.

(d) *Conditions of use in cattle*—(1) *Amount.* Equivalent to 4.54 milligrams per 1 pound of body weight (10 milligrams per kilogram).

(2) *Indications for use.* For removal and control of the following internal parasites of cattle: adult liver flukes (*Fasciola hepatica*); heads and segments of tapeworms (*Moniezia benedeni, M. expansa*); adult and 4th stage larvae of stomach worms (brown stomach worms including 4th stage inhibited larvae (*Ostertagia ostertagi*); barberpole worm (*Haemonchus contortus, H. placei*); small stomach worm (*Trichostrongylus axei*)); adult and 4th stages larvae of intestinal worms (thread-necked intestinal worm (*Nematodirus spathiger, N. helvetianus*); small intestinal worm (*Cooperia punctata* and *C. oncophora*)); adult stages of intestinal worms (hookworm (*Bunostomum phlebotmum*); bankrupt worm (*Trichostrongylus colubriformis*), nodular worm (*Oesophagostomum radiatum*)); adult and 4th stage larvae of lungworms (*Dictyocaulus viviparus*).

(3) *Limitations.* Administer as a single oral dose. Do not slaughter within 27 days of last treatment. Do not use in female dairy cattle of breeding age. Do not administer to female cattle during first 45 days of pregnancy or for 45 days after removal of bulls. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: December 7, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–29318 Filed 12–14–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) in amending certain animal drug regulations in 21 CFR part 558, failed to properly reflect the change of several medicated feed definitions from "premixes" to "Type A medicated articles." In addition, a phrase was inadvertently omitted in amending another section. This document amends the regulations accordingly.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 1986 (51 FR 7382), FDA published a final rule implementing the "Second Generation Medicated Feed Program." That program provided for use of such terms as "Type A medicated articles and Type B and Type C medicated feeds." In 21 CFR 558.15(g), the introductory text was amended to incorporate those terms. Inadvertently, a subsequent document published in the **Federal Register** of March 14, 1986 (51 FR 8811 at 8812), amended that text improperly. In addition, in 21 CFR 558.3(b)(4), the third sentence is revised. Accordingly, this document amends §§ 558.3(b)(4) and 558.15(g), introductory text.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.3 is amended by revising the third sentence in paragraph (b)(4) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) * * *

(4) * * * It is manufactured by diluting a Type A medicated article or a Type B medicated feed. A Type C medicated feed may be further diluted to produce another Type C medicated feed. * * *

* * * * *

§ 558.15 [Amended]

3. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the introductory text of paragraph (g) by removing the term "Type B feed" wherever it appears and inserting in its place "Type A medicated article".

Dated: December 6, 1989.

Robert C. Livingston,

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

[FR Doc. 89-29319 Filed 12-14-89; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) by adding a new Table I-90 to Appendix D. Table I-90 is to be used by any terminating pension plan with a valuation date falling in 1990 to determine expected retirement ages for plan participants. This Table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a general rule, all plans wishing to terminate in a distress termination under ERISA section 4041(c) must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in part 2619. Plans terminating in a standard termination may also use the formulas in Part 2619 to value benefit liabilities for purposes of the notice to the PBGC required by ERISA section 4041(b)(2)(A), although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Under § 2619.46, early retirement benefits are valued according to the annuity starting date, if a retirement date has been selected, or according to the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of Part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in Appendix D. The first set, Selection of Retirement Rate Category (I-79 through I-89), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II-A, II-B, and II-C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I-79 through I-89 in Appendix D establish retirement rate categories for the calendar years 1979 through 1989. The table for each year applies only to plans with valuation dates in that year. This rule amends Appendix D to add Table I-90 in order to provide an updated correlation, appropriate for calendar year 1990, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-90 will be used to value benefits in plans with valuation dated that occur during calendar year 1990.

The PBGC has determined that notice of an public comment on this rule are impracticable and contrary to the public interest.

Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1990, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1990. Moreover, because of the need to provided immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Appendix D to part 2619 is amended by adding Table I–90 as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

* * * * *

TABLE I–90—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 1989, and before January 1, 1991]

Participant reaches NRA in year	Participant's retirement rate category is—			
	Low [1] if monthly benefit at NRA is less than	Medium [2] if monthly benefit at NRA is		High [3] if monthly benefit at NRA is greater than
		From	To	
1991	326	326	1,374	1,374
1992	337	337	1,418	1,418
1993	346	346	1,456	1,456
1994	354	354	1,488	1,488
1995	360	360	1,513	1,513
1996	366	366	1,539	1,539
1997	378	378	1,565	1,565
1998	385	385	1,592	1,592
1999	391	391	1,619	1,619
2000 or later	398	398	1,647	1,647

[1] Table II–A. [2] Table II–B. [3] Table II–C.

Issued at Washington, DC, this 8th day of December, 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89–29271 Filed 12–14–89; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulations contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of January 1990.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 533 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
January 1990 ...	.0825	.08	.0775	.075	.0725	.07	.07	.07	.07	.07	.065	.065	.065	.065	.065	.05875

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-29270 Filed 12-14-89; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Financial Interests

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of an amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment changes the Indiana Surface Mining Law provisions concerning: (1) Filing statements of employment and financial interest, (2) authority to pursue legal action against any person interfering with implementation of the regulatory program, and (3) procedures for forwarding conflict of interest disclosure statements. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal rules, and to clarify and simplify existing requirements.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Room 300, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204; telephone, (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Amendments
III. Director's Findings
IV. Public and Agency Comments
V. Director's Decision
VI. Procedural Determinations

I. Background

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982, and fully approved the program on August 19, 1983. Information regarding the general background on the Indiana program, including the Secretary's findings, and the disposition of comments can be found in the July 26, 1982, **Federal Register** (47 FR 32107) and the August 19, 1983, **Federal Register** (48 FR 37631). Subsequent actions concerning the conditions of approval and proposed amendments are identified in 30 CFR 914.10, 914.12, 914.15, and 914.16.

II. Discussion of Amendments

By letter dated March 18, 1988 (Administrative Record No. IND-0559A), the Indiana Department of Natural Resources (IDNR) submitted to OSM pursuant to 30 CFR 732.17, proposed State program amendments. The provisions of the amendments were included in three laws enacted by the 1988 Indiana General Assembly: Senate Enrolled Acts Nos. 45, 121, and 231. By letter dated October 19, 1988 (Administrative Record No. IND-0611), Indiana requested that OSM process each of the three laws separately as individual program amendments. This notice concerns Senate Enrolled Act No. 45 that revised provisions at Indiana Code (IC) 13-4.1-2-3; 13-4.1-11-10; and 35-44-1-3. Decisions concerning the amendments contained in Senate Enrolled Act No. 121 and Senate Enrolled Act No. 231 will be presented in separate **Federal Register** notices.

The provisions of Senate Enrolled Act No. 45 are briefly summarized below.

(1) Senate Enrolled Act No. 45, Section 1 amends IC 13-4.1-2-3 to require that each member of the Natural Resources Commission file, in addition to the filings required under existing IC 35-44-1, a statement of employment and financial interest. The amendment also provides that commission members may not participate in proceedings that may affect the member's direct or indirect financial interests.

(2) Senate Enrolled Act No. 45, Section 2 amends IC 13-4.1-11-10 by changing all references to the "permittee" to read "person" or "persons." This change is intended to allow the State to pursue legal action against anyone interfering with implementation of the regulatory program, including non-permitted "persons."

(3) Senate Enrolled Act No. 45, Section 3 amends IC 35-44-1-3 to delete the requirement that referenced disclosures be forwarded under IC 13-4.1-2-3.

(4) Senate Enrolled Act No. 45, Sections 4 through 24 make changes to the Indiana oil and gas statutes. These do not apply to the Indiana program approved by OSM and are, therefore, not discussed in this **Federal Register** announcement.

OSM announced receipt of the proposed amendments in the May 10, 1988, **Federal Register** (53 FR 16560) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy. The public comment period ended June 9, 1988. There were two requests for a public hearing concerning the May 10, 1988, submittal, and a hearing was held on June 6, 1988.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Indiana program.

1. IC 13-4.1-2-3 Conflict of Interest

The Indiana statute at Indiana Code (IC) 13-4.1-2-3 states that an employee of the department who has any duty under the Surface Coal Mining and Reclamation Article (IC 13-4.1) may not have a direct or indirect financial interest in any surface coal mining operation. Indiana proposes to amend IC 13-4.1-2-3 to add the requirement that, in addition to the filings required under IC 35-44-1, each member of the Natural Resources Commission (NRC) must file annually with the Director of the Department of Natural Resources a statement of employment and financial interests. The proposed amendment also adds that commission members may not

participate in proceedings that may affect the member's direct or indirect financial interests. Prior to this amendment, IC 13–4.1–2–3 required that members of the commission who had a direct or indirect financial interest in any surface coal mining operation file annually with the State board of accounts a disclosure statement of that interest.

The Indiana Department of Natural Resources (IDNR) is the designated State Regulatory Authority. The statute establishing the IDNR provides that the IDNR "shall consist of the NRC, the director of the IDNR, * * * and such other personnel as are necessary * * *" (IC 14–3–3–2). The NRC is designated by statute as the ultimate authority of the IDNR (IC 14–3–3–21(a)). Indiana law defines "ultimate authority" as the "individual or panel of individuals in whom the final authority of an agency is vested by law or executive order" (IC 4–21.5–1–15). The NRC is designated by statute as the entity to adopt rules on behalf of the IDNR (IC 14–3–3–21(b)), and to issue notices of violation (NOV's) and assess civil penalties for laws administered by the IDNR (IC 14–3–3–22). Therefore, members of the NRC have a duty under the Indiana Surface Coal Mining and Reclamation Article (IC 13–4.1).

Section 517(g) of SMCRA states that no employee of the regulatory authority performing any function or duty under SMCRA shall have a direct or indirect financial interest in any underground or surface coal mining operation. The provisions of 30 CFR part 705 establish certain filing requirements and restrictions on financial interests, to implement the prohibition in SMCRA Section 517(g) against regulatory employees having any financial interests in surface coal mining operations. In order to determine whether the provisions of part 705 apply to NRC members, it must be determined whether or not members of the NRC may appropriately be considered employees of the regulatory authority under 30 CFR 705.5. That section defines "employee" to include "* * * commission members * * * who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations." Section 705.5 defines "performing any function or duty under this Act" to mean "those decisions or actions, which if performed or not performed by an employee affect the programs under the Act." The NRC members meet this definition. They adopt rules and issue NOV's and civil penalties under the regulatory program for the IDNR.

The definition of "employee" in § 705.5 also provides that "members of * * * commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees." NRC members, however, are not required or authorized by statute or regulation to represent different interests, such as environmental interests or industry interests. The statute which establishes NRC membership (IC 14–3–3–3) provides that seven of the twelve NRC members are to be the head of officers of specified state agencies and advisory councils, and the other five members are to be appointed by the governor. No reference to representation of interests was set out in the statutory provision concerning NRC membership. Therefore, members of the NRC must be considered employees of the regulatory authority. As employees of the regulatory authority, members of the NRC may not have a direct or indirect financial interest in coal mining operations and must comply with the Indiana regulations at 310 IAC 12–7–1(b) concerning employees performing any duty or function under the Act (IC 13–4.1).

The proposed language to be added to IC 13–4.1–2–3 states that a member of the commission may not participate in proceedings that may affect the member's direct or indirect financial interests. As discussed above, however, OSM must consider members of the NRC to be employees of the regulatory authority and, as such, members of the NRC may not have a direct or indirect financial interest in any surface coal mining operation. Therefore, the proposed language contradicts the approved provision which prohibits employees of IDNR who have any functions or duty under IC 13–14.1 from having a direct or indirect financial interest in any surface coal mining operation. The proposed language implies that members of the NRC may have such direct or indirect financial interests. Similarly, the proposed language which states "in addition to the filings required under IC 35–44–1, each member of the commission shall file annually with the director a statement of employment and financial interest on a form prescribed by the department" implies that NRC members may not be employees of IDNR as discussed above. This is also inconsistent with the finding discussed above.

The Director finds that the proposed amendments to IC 13–4.1–2–3 are not consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 and cannot be approved. In addition, the language of the existing statute which states, "A member of the commission who has such an interest shall file annually with the state board of accounts a disclosure statement of that interest on a form prescribed by the state board of accounts," is also inconsistent with SMCRA and the Federal rules. The language implies that members of the NRC may have a direct or indirect financial interest in any surface coal mining operation. As discussed above, members of the NRC are employees of the regulatory authority who have a function or duty under SMCRA, and, as such, may not have a direct or indirect financial interest in any coal mining operation. Therefore, the Director is requiring that Indiana amend IC 13–4.1–2–3 or otherwise amend the Indiana program to be consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA.

2. IC 13–4.1–11–10 Civil Actions for Relief

Indiana has amended its program at IC 13–4.1–11–10 to delete the words "the permittee" and to insert the words "a person." In addition, at subsections 3 and 4, the word "his" is deleted and the words "the person's" are inserted. These changes have been enacted to ensure that implementation of the article cannot be construed to apply only to permittees. Indiana has indicated that the purpose for this amendment is to make clear that any person engaging in surface mining operations without a valid surface coal mining permit, or attempting to obstruct implementation of the Indiana program are subject to the State surface mining law as are permittees (Administrative Record No. IND–0559).

The proposed amendment is consistent with the Indiana Code at IC 13–4.1–1–7 which specifies that "a person who engages in surface coal mining operations and is not a permittee, is subject to the criminal, civil, and regulatory provisions of this article as if the person were a permittee." The amendment provision is also consistent with the Indiana Code at IC 13–4.1–12–3 which states any person who willfully resists, prevents, impedes, or interferes with the director or his representatives in the performance of his duties under the Indiana surface coal

mining and reclamation law is guilty of a Class A misdemeanor.

The Director finds that the amendment is in accordance with and no less stringent than the provisions of SMCRA at section 521(c) concerning civil action for relief and at section 704 concerning the protection of government employees. The Director, therefore, approves the amendment to the Indiana code at IC 13–4.1–11–10.

3. IC 35–44–1–3 Offenses Against Public Administration

Indiana has amended its program at IC 35–44–1–3(e) by deleting the citation "IC 13–4.1–2–3." The provision now requires that the state board of accounts forward a copy of all disclosures filed with the board under IC 16–12.1, IC 16–12.2–5, or IC 34–44–1–3. The disclosures required by IC 35–44–1–3 apply to a public servant who has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the government entity being served by the public servant. Indiana considers the requirement to forward a copy of a financial interest disclosure under both IC 13–4.1–2–3 and IC 35–44–1–3 to be redundant.

The Federal regulations at 30 CFR 705.11 require all state regulatory authority employees performing any duties or functions under SMCRA to file statements of employment and financial interest. The Indiana Code at IC 13–4.1–2–3, as amended here, and the Indiana rules at 310 IAC 12–7–4 continue to require any employee of the Department of Natural Resources performing a duty or function under SMCRA to file conflict of interest statements. The Director finds, therefore, that the amendment to the Indiana program is in accordance with the requirements of SMCRA and can be approved.

IV. Public and Agency Comments

As discussed in the section of this notice entitled "Discussion of Amendments," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments concerning the amendments addressed in this rulemaking were received from the public during the public comment period which closed on June 9, 1988. No comments which concern the amendments addressed in this rulemaking were presented during the hearing which was held on June 6, 1988.

Pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. No comments pertaining to these amendments were received.

V. Director's Decision

Based upon the above findings, the Director is approving the amendments submitted by Indiana on March 18, 1988, and included in Senate Enrolled Act No. 45, with the exception of those amendments determined not to be in accordance with SMCRA.

Based upon Finding 1, the Director is not approving the proposed amendments to IC 13–4.–2–3. In addition, the Director is also requiring that Indiana amend the existing language of IC 13–4.1–1–2–3 which concerns members of the Indiana Natural Resources Commission or to otherwise amend the Indiana program to be in accordance with SMCRA at section 517(g) and consistent with the Federal rules at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA.

The Federal rules at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effects of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 914—INDIANA

1. The authority citation of part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Paragraph (x) is added to § 914.15 to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(x) The following amendments to the Indiana permanent regulatory program, as submitted to OSM on March 18, 1988, are approved, with the exception of the proposed amendments to IC 13–4.1–2–3 concerning the filing of statements of employment and financial interest, effective December 15, 1989: Revisions to the Indiana Code (IC) as contained in Senate Enrolled Act No. 45 that amend IC 13–4.1–11–10, concerning authority to pursue legal action against any person interfering with implementation of the regulatory program; and IC 35–44–1–3,

concerning procedures for forwarding conflict of interest disclosure statements.

3. In § 914.16, paragraph (b) is revised to read as follows:

§ 914.16 Required program amendments.

* * * * *

(b) By May 15, 1990, Indiana shall submit revisions to IC 13–4.1–2–3 or otherwise propose to amend its program to be in accordance with SMCRA at section 517(g) and consistent with the Federal regulations at 30 CFR part 705 which require that no employee of the State regulatory authority performing any function or duty under SMCRA shall have a direct or indirect financial interest in any underground or surface coal mining operation.

[FR Doc. 89–29279 Filed 12–14–89; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 917

Kentucky Regulatory Program; Cultural and Historic Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments modify five Kentucky regulations concerning cultural and historic resources and are intended to revise the Kentucky program to be consistent with the Federal regulations. In addition, the Memorandum of Agreement (MOA) between the Kentucky Natural Resources and Environmental Protection Cabinet—Department for Surface Mining Reclamation and Enforcement and Kentucky's State Historic Preservation Office has been submitted to provide a narrative description on the consultation procedures that will be used in arriving at decisions regarding historical, cultural, and archeological resources. OSM finds this MOA to be acceptable.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of Amendments
III. Director's Findings
IV. Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, Federal Register (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Submission of Amendments

Pursuant to 30 CFR 732.17(f)(1), OSM notified Kentucky by a letter dated June 9, 1987 (Administrative Record Number KY–736), of needed changes to the State regulations concerning cultural and historic resources that were necessary to keep the Kentucky program as effective as the Federal program.

In response to OSM's letter, Kentucky submitted on December 21, 1988, proposed program amendments to the cultural and historic resources regulations contained in the Kentucky program (Administrative Record No. KY–841).

Within the January 24, 1989, Federal Register (54 FR 3493), OSM announced the receipt of and requested public comments on the proposed amendments. The public comment period closed February 23, 1989.

By letter dated July 5, 1989 (Administrative Record No. KY–903), Kentucky submitted a revised amendment package to supersede the December 21, 1988, amendment package. Additionally, Kentucky submitted a MOA between the Department for Surface Mining Reclamation & Enforcement (DSMRE) and the Kentucky Heritage Council (the State Historic Preservation Officer (SHPO)).

Within the August 4, 1989, Federal Register (54 FR 32093), OSM announced the receipt of the second amendment package and solicited public comments. The comment period for the revised amendments closed September 5, 1989. A summary of pertinent comments received and their disposition appears in the section of this notice entitled "Disposition of Comments."

The proposed amendment modifies portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendment makes the following modifications.

1. 405 KAR 8:010 is revised at Section 14 by adding a requirement for an additional written finding to be made by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) to support its decisions on approval or denial of permit applications. The added finding is intended to ensure that the NREPC has taken into account the effect of proposed operations on properties listed or eligible for listing on the National Register of Historic Places.

2. 405 KAR 8:020 is revised at Section 2 to require that information on cultural or historic resources listed or known to be eligible for listing on the National Register of Historic Places, and known archeological resources located within the proposed exploration area; and any other information which the NREPC may require regarding known or unknown historic or archeological resources, be included in the narrative description portion of the exploration and reclamation operations plan of each application for an exploration permit.

3. 405 KAR 8:030 and 405 KAR 8:040 are revised at Section 11 to specify that Kentucky may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analysis.

4. 405 KAR 8:030 and 405 KAR 8:040 are revised at Section 30 to clarify that the protections of these sections apply to publicly-owned parks and to any places, regardless of ownership, listed on the National Register of Historic Places. The revision also specifies that each mining and reclamation plan shall contain a description of measures to be used to prevent adverse impacts to public parks and places listed on the National Register of Historic Places, and that the NREPC may require the applicant to utilize appropriate mitigation and treatment measures to protect historic or archeological properties listed or eligible for listing on the National Register.

5. 405 KAR 24:040 is revised at Section 2 to permit the relocation of cemeteries if authorized by applicable State law or regulations.

In addition, Kentucky MOA between DSMRE and the SHPO identified the specific procedures to arrive at

decisions regarding historic, cultural, and archeological resources.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Kentucky program. Only substantive changes will be discussed in detail, revisions not specifically discussed are found to be no less stringent that SMCRA and no less effective than the Federal regulations.

1. 405 KAR 8:010 General Provisions for Permits

Kentucky proposes to revise 405 KAR 8:010 Section 14 to ensure that the protections provided by this section are extended to both private and publicly owned places listed on the National Register of Historic Places, and to require an additional written finding by the NREPC prior to its approval of a permit application. The language of the amendment closely parallels the language of the Federal rules at 30 CFR 773.15(c) as revised February 10, 1987. Therefore, the Director finds the proposed amendment to be no less effective than the Federal rules.

2. 405 KAR 8:020 Coal Exploration

Kentucky proposes to revise 405 KAR 8:020 Section 2 to require that a permit application for coal exploration operations intending to remove more than 250 tons of coal contain a narrative description of cultural or historic resources listed or known to be eligible for listing on the National Register of Historic Places, known archeological resources located within the proposed exploration area, and any other information regarding known or unknown historic or archeological resources that the NREPC may require. The addition of this new language renders Kentucky's rule substantively identical to the Federal rule at 30 CFR 772.12 as revised on February 10, 1987.

Therefore, the Director finds the proposed amendment to be no less effective than the Federal rules.

3. 405 KAR 8:030 Surface Coal Mining Permits and 405 KAR 8:040 Underground Coal Mining Permits

Kentucky proposes to revise 405 KAR 8:030 Section 11, and 405 KAR 8:040 Section 11, to require that each permit application include a description of and identification of the nature of archeological resources listed or eligible for listing on the National Register of Historic Places, and known archeological sites within the permit and adjacent areas. Paragraph 2(b) is added to these sections to specify that the NREPC may require an applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses. The language of the amendments closely parallel that of 30 CFR 779.12 and 30 CFR 783.12 as revised February 10, 1987. Therefore, the Director finds the proposed amendments to be no less effective that the Federal rules.

4. 405 KAR 8:030 Surface Coal Mining Permits and 405 KAR 8:040 Underground Coal Mining Permits

Kentucky proposes to revise 405 KAR 8:030 Section 30, paragraph 1 and 405 KAR 8:040 Section 30, paragraph 1 to clarify that "any" places, including privately owned places, listed on the National Register of Historic Places that may be affected by the proposed operations, are afforded the protections of these sections. Paragraph (1) is further revised to require that each mining and reclamation plan describe the measures to be used to prevent adverse impacts, or, if valid existing rights exist or joint agency approval is to be obtained, to minimize adverse impacts to cultural or historic resources. A new paragraph (2) is added to these sections to specify that the NREPC may require an applicant to protect historic or archeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. The language of these amendments closely parallels that of 30 CFR 780.31 and 30 CFR 784.17 as revised February 10, 1987. Therefore, the Director finds the proposed amendments to be no less effective than the Federal rules.

5. 405 KAR 24:040 Areas Unsuitable for Mining.

Kentucky proposes to revise 405 KAR 24:040 Section 2 to provide that cemeteries may be relocated if authorized by applicable state law or regulations. The language of the proposed amendment renders Kentucky's rule substantively identical to the Federal rule at 761.11(g). Therefore, the Director finds the proposed amendment to be no less effective than the Federal rules.

6. Memorandum of Agreement Between the Natural Resources and Environmental Protection Cabinet, Department for Surface Mining Reclamation and Enforcement, and the State Historic Preservation Officer (SHPO)

As part of their July 5, 1989, amendment package, Kentucky submitted a Memorandum of Agreement (MOA) between DSMRE and the Kentucky Heritage Council, the SHPO for the Commonwealth of Kentucky. This MOA establishes procedures whereby the DSMRE will consult with the SHPO regarding all proposed mining and reclamation operations, exploration operations removing more than 250 tons of coal, and all exploration operations in areas designated unsuitable for mining, regardless of tonnage. The MOA further prescribes the procedures for consultation, recommendations for conducting archeological surveys in advance of mining, identification of adverse impacts to important resources, and determination of appropriate mitigation measures.

The Director finds that the MOA establishes procedures that are consistent with the implementing regulations as proposed and fulfills the requirement of 30 CFR 731.14 (g)(17) by providing a narrative description of the system for consulting with agencies having a responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a hearing announced in the August 4, 1989, **Federal Register** ended on September 5, 1989. No one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

In response to the request for public comments, one individual representing the Kentucky Resources Council (KRC) submitted comments by way of a letter dated September 5, 1989 (Administrative Record No. KY–913). In that letter, KRC stated that on February 7, 1989, they had commented on the previous amendment package and that those previous comments (Administrative Record No. KY–850) apply and should supplement these comments.

OSM agrees to address both sets of comments submitted by the KRC.

1. KRC stated that the Federal regulations and by extension the State amendments are in violation of the

National Historic Protection Act by not protecting eligible-for-listing cultural and historic properties by requiring consultation with the SHPO and establishing a procedure for surveys of proposed mine operations for unknown but eligible sites.

OSM will restrict its comments to the adequacy of the Kentucky program and proposed amendments. As part of the approved Kentucky program, 405 KAR 8:010 Section 3 requires the NREPC to coordinate with other agencies to avoid duplication and to ensure that the requirements of various laws are met. Among these laws, is the National Historic Preservation Act of 1966 as amended. The MOA submitted by Kentucky as part of the July 5, 1989, amendment package specifies under Section II: "[T]he importance of a resource is defined by its eligibility for listing on the National Register, as set forth in 36 CFR 60.6. All determinations of eligibility will be made by consultation between the SHPO and DSMRE. Cultural resource management decisions by DSMRE will be made in consultation with the SHPO."

Under Section IV of the MOA, procedures for consultation with the SHPO are specified for the protection of unknown eligible sites. The SHPO is afforded the opportunity to recommend further investigation of the site if there seems to be a probability of discovering a site eligible for listing on the National Register of Historic Places (NRHP). DSMRE has the authority under 405 KAR 8:030 Section 11(2)(b) to require that an applicant identify and evaluate important historic and archeological resources that may be eligible for listing on the NRHP. The Director believes the amendment to be no less effective than 30 CFR 780.31 and 30 CFR 784.17 and has reflected that opinion in his decision.

2. The KRC's comments of February 7, 1989, state that the proposed Kentucky amendment at 405 KAR 8:010 Section 8(7)(c) does not provide for coordination with the Office of the State Archaeologist. The Director agrees with the KRC, but points out that the Federal regulations at 30 CFR 773.13(a)(3)(ii), are specific in their requirements for the notification of, and coordination with the SHPO, but that there is no requirement for coordination with the State archeologist.

3. The KRC's comments of February 7, 1989, state that the proposed amendment does not protect archeological sites from the impacts of coal exploration. However, the Director notes that the proposed amendment contains, at 405 KAR 8:020 Section 2, protective language substantively identical to the Federal rule at 30 CFR 772.12. The Director also notes that the MOA completed on April 4, 1989, between the NREPC and the SHPO does apply to all coal exploration operations removing more than 250 tons of coal and to exploration in areas designated unsuitable for mining.

4. The KRC's comments of February 7, 1989, expressed a concern for the use of the term "surface mining activities" as that term is used in proposed 405 KAR 8:030 Section 30(2). The KRC suggests that the use of this language prevents Kentucky from requiring the completion of mitigating measures before any impact associated with the mining operation occurs. KRC states further that this same provision denies the State the authority to require completion of mitigation measures prior to permit issuance.

The Federal rules at 30 CFR 780.31(b) provide that appropriate mitigation and treatment measures may be required to be taken after permit issuance provided they are completed before the properties are affected by any mining operations. This language recognizes the importance of having appropriate mitigation and treatment measures in place before a property is affected by mining, but does not preclude the completion of the appropriate measures after a permit has been issued. While the Federal regulations do not rule out the use of the language proposed by Kentucky neither do they require it. There is no Federal requirement for the completion of mitigating measures prior to permit issuance. The Kentucky proposal provides protections similar to the federal rule by requiring that mitigation and treatment measures be completed before the properties are affected by surface mining activities.

5. The KRC's comments of February 7, 1989, expressed a concern for the failure of the proposed amendment to identify how Kentucky will assure that sites that are eligible for listing on the National Register of Historic Places, but have not yet been identified, will be screened and identified prior to mining. The Director notes that Kentucky's proposal submitted on July 5, 1989, contains a MOA executed by the NREPC and the SHPO on April 4, 1989. The MOA addresses the issues of KRC's concern and provides the key elements for the identification and screening of sites not yet identified. The content of a memorandum of agreement between state agencies is not dictated by SMCRA or the Federal regulation. The Director finds, however, that MOA submitted for approval as part of the package outlines the basic coordination process for the protection of cultural and historic resources and does not preclude the implementation of the regulations proposed.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kentucky program. Several agencies responded but with no substantive comments.

Pursuant to 30 CFR 732.17(h)(4), the State Historic Preservation Officer (SHPO) and the Advisory Council for Historic Preservation were sent a copy of the amendment for comment. Comments were received only from the SHPO. The Kentucky Heritage Council (KHC) is the SHPO in Kentucky. By letter dated August 11, 1989 (Administrative Record No. KY-910), KHC commented on the proposed amendment package.

1. KHC stated Kentucky regulations on cultural and historic resources, like their Federal counterparts, are deficient in several critical areas. The regulations suffer from lack of definition and inconsistent use of key terms.

Although OSM agrees that a consistent use of terminology would improve the clarity of the amendments, the terms used by Kentucky are consistent with the Federal program and do not render the Kentucky amendment submittal less effective in protecting cultural and historic resources.

2. KHC commented that the draft regulations fail to reference recognized professional standards such as the minimal qualifications for archeologists and historians, and the standards and guidelines for archeology and historic preservation.

The professional standards prescribed by 36 CFR part 66, Appendix C and the "Standards and Guidelines for Archaeology and Historic Preservation" are not binding on the states. For further discussion of this issue, see the February 10, 1987, **Federal Register** notice (52 FR 4251). In the review of the Kentucky amendments, OSM considered in accordance with section 503(b)(7) whether the rules submitted were consistent with the regulations issued by the Secretary pursuant to SMCRA. The Director has found that the regulations and the MOA submitted are consistent with the Federal regulations and has indicated his rationale in the Section "Director's Findings".

3. KHC commented that the submission was impaired by the absence of specific procedures for making management decisions for

historic properties. Specifically, the revised regulations fail to establish specific guidelines on how each requirement of the regulations will be met.

As discussed under the Section "Director's Findings", the proposed Kentucky regulations are found to be substantively similar to and no less effective than the equivalent Federal regulations. The procedures for implementing the proposed regulations are further specified in the MOA between the DSMRE and the SHPO. This MOA was found to be consistent with the proposed regulations and would not preclude the implementation of those regulations.

4. KHC states that 405 KAR 8:010, Section 12 limits the confidentiality placed on archeological and historical resources to information on public and Indian lands as required by the Archeological Resources Protection Act of 1979. The SHPO's inventory of archeological and historical site locations are exempt from public inspection pursuant to the Commonwealth's Open Record's Act. To make this locational information available to the public as part of the permit file would be damaging to the historic resources of the Commonwealth.

Section 505 of SMCRA states that no State law or regulation that provides for more stringent land use or environmental controls will be construed to be inconsistent with the SMCRA. The Commonwealth's Open Record's Act exemption as interpreted by the State Attorney General would not be superseded by the adoption of the proposed regulation as written. The Director based his findings on the proposed regulation on the basis that the regulation provided as stringent controls as afforded under SMCRA and controls as effective as controls afforded under the Federal regulations.

5. KHC states that 405 KAR 8:010, Section 14(5) (a) and (b), prescribe that DSMRE must determine that places included on the National Register of Historic Places are not adversely affected, except as provided for in 405 KAR 24:040, Section 2(4). DSMRE must also take in account the effect of proposed operations on properties listed or eligible for listing in the National Register of Historic Places. KHC is concerned that there is no explanation of effect, and the way that these will be taken in account.

The MOA prescribes in Section V that the DSMRE will consult with the SHPO on the nature of the operations and there effects on cultural resources. As a part of the SHPO's responsibilities under that MOA, the SHPO must provide comments on effect and suggest mitigation measures. The language of the regulation is substantively similar to the equivalent Federal regulation. As stated on the February 10, 1987, **Federal Register** notice (52 FR 4250), regulatory authorities "are not obligated to use the definitions at 36 CFR 800.9 for determining an adverse effect on historic resources from surface coal mining operations."

6. KHC commented that 405 KAR 8:030, Section 11(2); 405 KAR 8:030, Section 23(c); 405 KAR 8:040, Section 11(3)(a); and 405 KAR 8:040, Section 23(1)(c) all make references to resources listed on or eligible for the NHRP. KHC felt that working is poorly organized and there is a lack of consistent use of terms.

As discussed in response to comment No. 1 in this section, Kentucky's use of certain terminology is consistent with the terms used in the Federal surface mining regulations.

7. KHC states that 405 KAR 8:030, Section 30, and 405 KAR 8:040, Section 30 provide that the applicant provide a mine reclamation plan for the protection of public parks and historic places. Section 30(2) of each regulation states that DSMRE may require the applicant to protect historic and archeological properties listed or eligible for listing on the National Register. KHC states that this is in direct conflict with 405 KAR 24:040, Section 2 which requires DSMRE to deny a permit if it determines that a mining operation would be adversely affected.

The language proposed by Kentucky is substantively similar to 30 CFR 780.31(b) and 784.17(b). The proposed regulations do not conflict with 405 KAR 24:040, Section 2 in that there are certain situations under 405 KAR 24:040 where mining is allowed, such as when an operator has valid existing rights to mine. The proposed language in 405 KAR 8:030, Section 30, and 405 KAR 8:040, Section 30 gives the DSMRE the authority to require certain protective measures whenever those properties specified in 405 KAR 8:030, Section 30(1) are subject to valid existing rights or joint agency approval is obtained. For further discussion of this issue see the **Federal Register** notice published on February 10, 1987 (52 FR 4259).

8. KHC states that 405 KAR 24:040, Section 2(3) allows for the relocation of cemeteries if authorized by applicable State law or regulations. KHC points out that cemeteries may be listed or eligible for listing on the National Register of Historic Places and should be appropriately protected.

The authority to move a cemetery if State law permits is prescribed by 30 CFR 761.11(g). In the case where a cemetery was listed or eligible for listing on the National Register of Historic Places, it is afforded appropriate protection. There is no indication that the protection that is afforded to sites eligible or listed on the National Register would be precluded by 405 KAR 24:040, Section 2(3).

V. Director's Decision

Based on the findings discussed above, the Director is approving the proposed amendment to the Kentucky permanent program regulations and the Memorandum of Agreement submitted on July 5, 1989.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 11, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (bb) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment to the Kentucky Administrative Regulations (KAR) and the Memorandum of Agreement between the Natural Resources and Environmental Protection Cabinet—Department for Surface Mining Reclamation and Enforcement and the State Historic Preservation Officer as submitted to OSM on July 5, 1989, are approved effective December 15, 1989: Revisions to 405 KAR 8:010, 405 KAR 8:020, 405 KAR 8:030, 405 KAR 8:040, and KAR 24:040 concerning protection of cultural and historic resources.

[FR Doc. 89-29280 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Regulatory Program; Revegetation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval in part of Program Amendment Number 25 Revised (25R) to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to incorporate changes to the program initiated by the State in response to OSM's findings on Program Amendment 25 published in the **Federal Register** on July 17, 1987 (52 FR 26971). The amendment provides information to support Ohio's use of average county yields for demonstrating yield restoration on cropland which is not prime farmland and information in support of Ohio's method of evaluation of revegetation success.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 935.11, 935.12, 935.15 and 935.16.

II. Submission of Amendment

By letter dated November 3, 1987 (Administrative Record No. OH-987), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 25R in response to OSM's findings on Program Amendment 25 published in the **Federal Register** on July 17, 1987 (52 FR 26971). 30 CFR 935.16(d-h) required that an amendment to the Ohio program be submitted by October 17, 1987 to address deficiencies found in Program Amendment 25.

Program Amendment 25R proposes to amend several rules: OAC 1501:13-9-09(A)(4) and (E)(3) concerning coal waste disposal sites; OAC 1501:13-9-15(F)(4)(b) concerning revegetation standards for non-prime farmlands; OAC 1501:13-9-15(B) to exempt small areas from the requirement to establish vegetation where the vegetation would interfere with the post-mining land use as long as no environmental harm would occur; OAC 1501:13-9-15(F)(5)(e)(i) concerning the 5-year period of extended liability; OAC 1501:13-9-15(F)(5) (f and g) concerning demonstration of restored yields on prime farmland for Phase II bond release; OAC 1501:13-9-15(F)(12) concerning non-augmentative practices; and, administrative record information was provided in response to required State program amendments identified at 30 CFR 935.16(f) concerning a statistically valid technique to evaluate revegetation success, (g) to support the use of average county yields as a measure of comparable productivity on cropland which is not prime farmland, and (h) concerning the required crop yield information for Phase II bond release.

OSM announced receipt of the proposed amendment in the December 10, 1987 **Federal Register** (52 FR 46783), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

During review of the proposed amendment, OSM identified concerns relating to three sections of the proposed amendment. These concerns related to yield requirements needed to satisfy the requirements for a phase II bond release on areas containing prime farmland, insufficient support for Ohio's method of evaluating success of revegetation, and inadequate support of the use of county average yields for demonstrating restored yields on cropland which is not prime farmland. OSM notified Ohio of these concerns by letter dated March 7, 1988 (Administrative Record No. OH-1225). This letter indicated that at Ohio's request, OSM would conduct a study of the Ohio method of evaluating revegetation success and would defer final action on this concern until the study was completed.

Ohio responded, by letter dated May 24, 1988 (Administrative Record No. OH-1030), indicating that the state was working with the Ohio Crop Reporting Service to develop a method to address OSM's concern about the use of county average yields on cropland and would need additional time to resolve the concern. The letter also indicated that the concern on prime farmland yield requirements at the time of phase II bond release would be addressed in Program Amendment 34.

By letter dated May 24, 1988, Ohio submitted Program Amendment 34 (Administrative Record No. OH-1033). This amendment superseded the proposed changes to OAC 1501:13-9-09 (A)(4) and (E)(3), OAC 1501:13-9-15(F)(4)(b) OAC 1501:13-9-15(F)(5)(e) (i), (f), and (g) OAC 1501:13-9-15(B), and the administrative record information in response to the required amendment at 30 CFR 935.16(h) presented in Program Amendment 25R. OSM approved

Program Amendment 34 on December 22, 1988 (53 FR 51543). Therefore, these provisions of proposed Program Amendment 25R will not be considered part of this rulemaking.

By letter dated April 17, 1987 (Administrative Record No. OH–0931), Ohio submitted Program Amendment No. 28. This amendment addressed non-augmentative practices at OAC 1501:13–9–15(F)(12), and superseded the proposed changes to OAC 1501:13–9–15(F)(12) in Program Amendment No. 25R. A final rule notice concerning Program Amendment No. 28 was published in the Federal Register on February 21, 1989 (54 FR 7406–7409). By letter dated January 26, 1989 (Administrative Record No. OH–1135), Ohio submitted Program Amendment No. 29R. This amendment also addressed non-augmentative practices at OAC 1501:13–9–15(J)(2)(c), formerly (F)(12). The final rule notice concerning Program Amendment No. 29R is being prepared by OSM and, therefore, the provisions concerning non-augmentative practices will not be considered part of this rulemaking for Program Amendment No. 25R. As a result of these other program amendments, the only proposed amendments which remain from the original submittal of proposed Program Amendment No. 25R involve narrative information submitted in response to the required program amendments identified at 30 CFR 916.35 (f) and (g).

By letter dated July 28, 1988 (Administrative Record No. OH–1226), OSM granted additional time for Ohio to work with the Ohio Crop Reporting Service. The letter also indicated that, due to the severe drought, the study on the Ohio method of evaluation of revegetation had been delayed. The letter extended the time to respond to the OSM letter of March 7, 1988 to November 1, 1988.

Ohio submitted additional information on December 27, 1988 (Administrative Record No. OH–1122) to support the use of yield data from the Ohio Crop Reporting Service in response to the OSM concern about use of county average yields for demonstration of restored yield on cropland that is not prime farmland. On May 4, 1989 (Administrative Record No. OH–1195), Ohio submitted information from the Ohio Crop Reporting Service indicating the yields obtained by the new procedures.

The OSM study on the Ohio method of evaluating revegetation success was completed and a final report was forwarded to Ohio by letter dated June 30, 1989 (Administrative Record No. OH–1196). The study concluded that the Ohio's ocular method was not as effective as a statistically valid method.

In summary, the two remaining issues to be addressed by this rulemaking are a finding on Ohio's use of county average yields to demonstrate restored productivity on cropland which is not prime farmland and a finding on the Ohio method of evaluating revegetation success.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

1. County Average Yields

In approving Program Amendment No. 25 on July 17, 1987 (Finding 41, 52 FR 26967) the Director required at 30 CFR 935.16(g) that Ohio amend its program at OAC 1501:13–9–15(F)(4)(c) to require yield on restored cropland, which is not prime farmland, to be restored to production levels representative of unmined lands in the area being reclaimed to be no less effective than 30 CFR 816.116(a)(2).

The Ohio Crop Reporting Service collects crop yield information on an annual basis by distributing a questionnaire to farms throughout the state. In response to a request from the Ohio Division of Reclamation, the Crop Reporting Service revised its questionnaire so that any farms reporting yields on any land that was previously mined will not be counted in developing the county average yield. The information submitted by Ohio indicates that the county average yield collected by the Ohio Crop Reporting Service does not include yields reported from mined areas. Therefore, the Director finds that Ohio has demonstrated that the requirements at OAC 1501:13–9–15(F)(4)(c) are no less effective than the corresponding Federal rules at 30 CFR 816.116(a)(2).

2. Evaluation Method

In approving Program Amendment No. 25 on July 17, 1987 (Finding 41, 52 FR 26966), the Director required at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid technique for the evaluation of revegetation to augment its current method to be as effective as the Federal rules at 30 CFR 816.116(a).

Ohio submitted additional information in support of its method of evaluation of revegetation but did not include any analysis indicating the reliability of the ocular ground cover estimates nor did it provide any indication that a statistically based sampling method would be used on questionable areas. Ohio in turn requested that OSM conduct a study to evaluate their method. OSM conducted a study which reviewed a random sample of sites in the State by using a statistically valid method of evaluating the revegetation on the areas where Ohio had approved bond release. The study was conducted jointly with Ohio Division of Reclamation personnel and OSM personnel during the fall of 1988. A draft report on the study was provided to Ohio for their review and comment. Ohio's comments were considered in development of the final report which was completed and sent to Ohio on June 30, 1989 (Administrative Record No. OH–1196). The study found that the method of evaluating the success of revegetation presently being used by Ohio does not provide results as effective as a statistically valid sampling technique. Based on this study, the Director finds that Ohio has not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a).

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the December 10, 1987, Federal Register (52 FR 46783) ended January 11, 1988.

Comments were received on the proposed amendment from the National Coal Association. Their comments supported the use of average county yields as a measure of comparable productivity on cropland which is not prime farmland. As discussed in Finding 1 above, Ohio has developed a method of excluding crop data of previously mined lands from data used to calculate county average crop yield. Based on this information, the Director has determined that Ohio has demonstrated that the requirements at OAC 1501:13–9–15(F)(4)(c) are no less effective than the corresponding Federal rules at 30 CFR 816.116(a)(2). Other comments addressed other portions of the proposed amendment which are no longer a part of this rulemaking since they were superseded by Program Amendment No. 34. A final rule notice concerning Ohio Program Amendment No. 34 was published in the Federal Register on December 22, 1988 (53 FR 51534–51550).

The scheduled public hearing was not held as no one requested an opportunity to provide testimony within the time

period specified in the Federal Register notice of December 10, 1987.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service; the U.S. Department of Labor, Mine Safety and Health Administration; and the Department of the Army, Office of the Chief of Engineers responded to proposed portions of the amendment which have been superseded by Program Amendment No. 34. Their comments no longer pertain to this rulemaking. The U.S. Department of Agriculture, Farmers Home Administration responded indicating that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on Finding 1 above, the Director is approving in part, Ohio Program Amendment No. 25R as supported by the additional information submitted on December 27, 1988 and May 4, 1989 concerning the use of average county yields as a measure of comparable productivity on cropland which is not prime farmland.

Based on Finding 2 above, the Director has determined that Ohio has not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a), and is, therefore, continuing to require that Ohio amend its program to include a statistically valid technique to evaluate revegetation success. The required program amendment contained in 30 CFR 935.16(f) is being revised to provide Ohio with additional time to amend its program. The additional time is justified based on the findings of the OSM study on Ohio's current method discussed above.

The Director is amending 30 CFR part 935 to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (kk) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(kk) The following amendment, as submitted to OSM on November 3, 1987, with additional information submitted on December 27, 1988 and May 4, 1989 is approved effective December 15, 1989: Revisions to the procedure used to obtain county average yields which supports the requirements of OAC 1501:13-9-15(F)(4)(c).

3. In § 935.16, paragraph (g) is removed and reserved, and paragraph (f) is revised to read as follows:

§ 935.16 Required program amendments.

* * * * *

(f) By May 31, 1990, Ohio shall amend its program to include a statistically valid technique for the evaluation of revegetation success to augment or replace its current method to be as effective as the Federal rules at 30 CFR 816.116(a).

[FR Doc. 89-29278 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-89-121]

Temporary Drawbridge Operation Regulations; Oceanport Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the New Jersey Transit Rail Operations (NJTRO), the Coast Guard is issuing temporary regulations permitting the Oceanport drawbridge over Oceanport Creek, at mile 8.4, at Little Silver, New Jersey to remain closed for seven months from 1 December 1989 through 30 June 1990. This temporary regulation is needed to facilitate replacement of machinery and repairs to the center pier of the swing bridge. This action will relieve the bridge owner of the burden to open the draw during the reconstruction of the bridge and will only permit marine traffic which can pass under the closed span to transit the waterway.

EFFECTIVE DATE: These regulations become effective on 1 December 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulation is issued under 33 CFR 117.35(d) and will not be codified in the CFR.

DRAFTING INFORMATION: The drafters of this regulation are Sylvia L. Bowens, project officer, and Lieutenant John B. Gately, project attorney.

DISCUSSION OF FINAL TEMPORARY REGULATIONS: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these temporary regulations is necessary to complete the bridge repairs previously required by the Coast Guard to provide for the needs of navigation. The existing drive mechanism which is badly deteriorated must be removed and the center pier repaired before the installation of the new drive mechanism can commence.

The primary users of the bridge are the taller vessels moored at the Fort Monmouth Marina. The Fort Monmouth Special Services operates this 75 to 90 boat marina (from approximately 1 May through 31 October each year) for the Post's civilian and military personnel and retirees. On 1 November 1989, a meeting was held at Fort Monmouth with all interested parties. At this meeting, closure of the bridge was agreed upon, providing provisions were made for the New Jersey Department of Environmental Protection (NJDEP) dredging and the Fort Monmouth construction equipment to transit the bridge on or after 1 March 1990. The bridge in the closed position provides a vertical clearance of four feet above Mean High Water (MHW).

The current regulations provide that the draw of the bridge shall open on signal from 15 May through 15 September between 5 a.m. and 9 p.m.; except that, the bridge need not open from 6 a.m. to 7:45 a.m. and 5:30 p.m.to 7:30 p.m. on weekdays except holidays. At all other times the draw will open on signal upon four hours advanced notice. Additionally, public vessels of the United States and vessels in distress are required to be passed as soon as possible at any time. The temporary regulation would allow the bridge to remain in the closed position from 9 a.m. on 1 December 1989 through 11:59 p.m. on 30 June 1990, inclusive.

ECONOMIC ASSESSMENT AND CERTIFICATION: These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished largely during the winter months when the Fort Monmouth Marina is closed and recreational boating is shut down. Additionally, the railroad has agreed to make provisions for critical vessel transits on or after 1 March 1990. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

FEDERALISM IMPLICATION ASSESSMENT: This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

TEMPORARY REGULATIONS:

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.736 is amended by designating the existing paragraph as (a); the new paragraph (a) is suspended from 1 December 1989 through 30 June 1990, and a new paragraph (b) is added effective 1 December 1989 through 30 June 1990 to read as follows: Because this is a temporary rule this paragraph will not be codified in the CFR.

§ 117.736 Oceanport Creek.

* * * * *

(b) Repair of NJTRO Oceanport Bridge. The draw of the NJTRO Oceanport Bridge, mile 8.4 near Oceanport, NJ need not be opened for the passage of any vessel and paragraph (a) above is suspended from 7 a.m. December 1, 1989 through 7 p.m. June 30, 1990.

Dated: December 5, 1989.

R. I. Rybacki,

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

[FR Doc. 89–29214 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3696–6; AL–020]

Approval and Promulgation of Implementation Plans; Alabama: Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Alabama that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Alabama has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the exception of Exxon Company's Big Escambia Creek Treating Facility and Tennessee Valley Authority's Colbert Steam Plant. The analysis for these sources will be dealt with in a subsequent notice. Also, the negative declaration does not apply to 13 other sources which received credit under stack height regulation provisions remanded to EPA by the U.S. Court of Appeals for the D.C. Circuit.

EFFECTIVE DATES: This action will be effective on February 13, 1990, unless notice is received on or before January 16, 1990, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch,

Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365
Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F. 2d 436.

On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Public Law 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitation to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitation consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65m in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height. The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On May 29, 1987, the Alabama Department of Environmental Management submitted the required documentation for Good Engineering (GEP) Stack Height (this documentation is available for review at the State office listed above). Since the State formally revised its SIP, a public hearing on these stack height reviews was held on April 23, 1987. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above GEP or any other dispersion technique, with the exception of Exxon Company's Big Escambia Creek Treating Facility and the Tennessee Valley Authority's Colbert Steam Plant. The analysis for these two sources will be dealt within a subsequent notice.

Alabama reviewed its inventory of existing sources to determine stacks potentially affected by the GEP stack height regulations. After reviewing the files on 3300 emission units, Alabama compiled two lists of potentially affected sources. The first identified all sources with stacks greater than 65 meters. The second list identified all sources which share a common stack.

Further review of each stack greater than 65 meters indicated that 75 of the 107 emission units identified had stacks which were not in existence as of December 31, 1970. Additional analysis was required for the 75 units in question. Forty-seven (47) units had stacks which were greater than 65 meters, but less than GEP. Review of the GEP calculations by Alabama indicated that 11 facilities had 28 units with stacks greater that GEP (one of the 28 units emitted only volatile organic compounds). Each stack that exceeded the GEP stack height or utilized other prohibited dispersion techniques was modeled at the respective GEP stack height.

Sources which share a common stack were reviewed further to determine which sources did not meet the EPA requirements regarding plume rise techniques. Of the 3,300 emission units reviewed, 198 units were determined to be ducted to merged stacks. Further investigation revealed that the following sources were exempt from dispersion analysis.

Exemption	Number of units
Total facility wide emissions less than 5,000 tons SO_2/yr	91
Exhaust streams merged prior to 12/31/70	28
Facility originally designed and constructed with merged gas streams	23
Exhaust streams were merged prior to July 8, 1985 and merging was part of a change in operation that included installation of emission control equipment	46
Exhaust streams were merged prior to July 8, 1985 and merging was carried out for sound economic or engineering reasons	6

The review determined that the TVA Colbert Steam Plant, units 1 through 4, were utilizing plume rise techniques prohibited by the GEP regulations. All 4 units were merged into one stack.

On January 22, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on thirteen other sources (Alabama Electric Cooperative—Lowman Steam Plant; Alabama Power Company—Miller Steam Plant, Gadsden Steam Plant, Gorgas Steam Plant, and Barry Steam Plant; Alabama River Pulp; Champion International Corporation; Container Corporation of America; General Electric Burkville Plant; International Paper; Scott Paper Company; Union Camp Corporation; and U.S. Steel) because they currently receive credit under one of the provisions remanded to the EPA. Alabama and EPA will review these sources for compliance with any revised requirements when EPA

completes rulemaking to respond to the *NRDC* remand.

EPA Review. EPA has reviewed Alabama's submittal and concurs with the conclusion that no revisions to Alabama's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Alabama has therefore met its obligations under section 406 of Public Law 95–95 for existing source emission limitations with the exception of Tennessee Valley Authority's Colbert Steam Plant and Exxon Company's Big Escambia Creek Treating Facility. The analysis for these sources will be dealt with in a subsequent notice.

Final Action. EPA approves the declaration by Alabama that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. This action is taken without prior proposal because the issues are straightforward and no adverse comment is anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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 February 13, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP action 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 Tables 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

Air pollution control, Intergovernmental relations, Sulfur oxides, Particulate matter.

Dated: December 4, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.62 is added to read as follows:

§ 52.62 Control strategy: Sulfur oxides and particulate matter.

In a letter dated May 29, 1987, the Alabama Department of Health and Environmental Control certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Alabama Electric Cooperative—Lowman Steam Plant; Alabama Power Company—Gorgas Steam Plant, Miller Steam Plant, Gadsden Steam Plant, and Barry Steam Plant; Alabama River Pulp; Champion International Corporation; Container Corporation of America; Exxon Company's Big Escambia Creek Treating Facility; General Electric's Burkville Plant; International Paper; Scott Paper Company; TVA's Colbert Steam Plant; Union Camp Corporation; and U.S. Steel.

[FR Doc. 89–29262 Filed 12–14–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–29; RM–5798]

Radio Broadcasting Services; Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 275C2 for Channel 277C2 in Anchorage, Alaska, and modifies the license of Station KXDZ(FM), Anchorage, in response to a petition for reconsideration filed by Peninsula Communications, Inc. The allotment of Channel 275C2 will provide Anchorage with an additional expanded coverage area FM broadcast service. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 24, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 88–29, adopted November 22, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Anchorage, Alaska, is amended by removing Channel 277C2 and adding Channel 275C2.

Federal Communications Commission.

Douglas Webbink,

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

[FR Doc. 89–29248 Filed 12–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–390; RM–6302]

Radio Broadcasting Services; Coosa, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237A to Coosa, Georgia, as that community's first local FM service, at the request of Steven L. Gradick. The channel can be allotted to Coosa, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.4 kilometers south to avoid a short-spacing to unoccupied but applied for Channel 239A at Trion, Georgia. The coordinates for this allotment are North Latitude 34–13–54 and West Longitude 85–21–25. With this action, this proceeding is terminated.

DATES: Effective January 24, 1990; The window period for filing applications will open on January 25, 1990, and close on February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–390, adopted November 22, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Coosa, Georgia, Channel 237A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29249 Filed 12–14–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[Federal Acquisition Circular 84–44]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: For the purpose of annually revising 48 CFR part 1 (Federal Acquisition Regulation), this document revises the correction to Federal Acquisition Circular (FAC) 84–44 published in the **Federal Register** on Monday, May 1, 1989 (54 FR 18507).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAC 84–44 correction.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–10333 (FAC 84–44 correction), on page 18507, in the second column, in **SUPPLEMENTARY INFORMATION,** remove the words "by removing the introductory text of paragraph (j)(3)(i)". This introductory text is to be retained in section 31.205–6 and is correct in FR Doc. 89–7370 (FAC 84–44) as published on Wednesday, March 29, 1989 (54 FR 13022).

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 11, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 89–29246 Filed 12–14–89; 8:45 am]

BILLING CODE 6820-JC-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 24)]

Rail General Exemption Authority—Miscellaneous Manufactured Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Under its authority in 49 U.S.C. 10505, the Commission adds to the list of exempt commodities identified in 49 CFR part 1039, the transportation by rail of the manufactured commodities set forth below. Regulation as to these commodities is not needed to carry out the nation's rail transportation policy objectives; and the level of intermodal competition is sufficiently pervasive that continued regulation is not necessary to protect shippers from actual or potential abuse of rail market power.

EFFECTIVE DATE: The final rule is effective January 14, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Lundy, (202) 275–6853 (TDD Services (202) 275–1721).

SUPPLEMENTARY INFORMATION: By decision served February 9, 1988, noticed at 53 FR 3900 (February 10, 1988) we proposed to exercise our authority under 49 U.S.C. 10505 to exempt from regulation the transportation by rail of various named manufactured or processed commodities and commodity groups. The final rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD Services, (202) 275–1721.

This action will not significantly affect the quality of the human environment or energy conservation.

This action will not have a significant economic impact on a substantial number of small entities. It imposes no new regulatory burden or reporting requirements on any person. The impact, if any, will be to reduce the amount of paperwork, tariff filing and related activities.

List of Subjects in 49 CFR Part 1039

Railroads, Agricultural commodities, Intermodal transportation.

Decided: November 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for 49 CFR part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10762 and 11105, 5 U.S.C. 553.

2. Section 1039.11(a) is amended by adding to the end of the chart the following commodities and also by adding concluding text to paragraph (a).

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
20	6001–Q, eff. 1–14–90.	Food and kindred products except 20 331 Lard. 20 139 Meat products, nec. 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. 20 911 Cottonseed oil. 20 914 Cottonseed cake or meal or by products. 20 92 Soybean oils or by-products. 20 93 Nut or vegetable oils or by-products.
22	do	Textile mile products.
23	do	Apparel or other finished textile products.
24 9	do	Miscellaneous wood products except 24 91 Treated wood products.
25	do	Furniture or Fixtures.
26	do	Pulp, paper or allied products except 26 1 Pulp or pulp mill products. 26 211 Newsprint. 26 212 Ground wood paper. 26 213 Printing paper, coated or uncoated, etc. 26 214 Wrapping paper, wrappers or coarse paper. 26 218 Sanitary tissue stock. 26 471 Sanitary tissue or health products. 26 6 Building paper or building board.
27	do	Printed matter.
30	do	Rubber or miscellaneous plastics products except 30 111 Rubber pneumatic tires or parts.
31	do	Leather or leather products.
32	do	Clay, concrete, glass or stone products except 32 411 Hydraulic cement, natural, portland or masonry. 32 741 Lime or lime plaster. 32 95 Nonmetallic earths or minerals, ground or treated.
33 123	do	Iron or steel sheet or strip.
33 13	do	Electrometallurgical products.
33 15	do	Steel wire, nails, or spikes.
33 219	do	Iron or steel castings, nec.
33 5	do	Nonferrous metal basic shapes.
33 6	do	Nonferrous metal or base alloy castings.
33 9	do	Miscellaneous primary metal products.
34	do	Fabricated metal products except 34 6 Metal stampings. 34 919 40 Radioactive metal shipping containers.
35	do	Machinery, except electrical except 35 11 Steam engines, turbines, turbine generator sets or parts. 35 31 Construction machinery. 35 85 Refrigerators, Refrigeration machinery or complete air conditioners.
36	do	Electrical machinery, equipment or supplies except 36 12 Power distribution or specialty transformers. 36 21 Motors or generators.
38	do	Instruments, photographic goods, optical goods, watches or clocks.
39	do	Miscellaneous products of manufacturing.

Also excepted from this exemption are those recyclable products specifically identified by the Commission at 358 I.C.C. 445–447, those commodities previously exempt, and any transportation service regarding which the Commission has made a finding of market dominance. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad "protections" in the case of boxcars.

* * * * *

[FR Doc. 89–29283 Filed 12–14–89; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 54, No. 240
Friday, December 15, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would establish new and uniform load out requirements for warehouses approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, and Seed Storage Agreement.

DATES: Comments must be received on or before January 16, 1990, in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Jerry Goodall, Director, Storage Contract Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–4018.

FOR FURTHER INFORMATION CONTACT: Jerry Kretsch, Storage Contract Division, USDA, Room 5968-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7433.

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this proposed rule. In addition, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

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

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent possible, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed that must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, transportation industry, State warehousing laws, and federal contracting requirements during the past few years require amendment of the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

Presently, under CFR 1421.5552(a)(9), warehousemen approved under the Uniform Grain Storage Agreement are required to have a work force and equipment available to complete a load out of their facility within approximately thirty 30 working days. Warehousemen approved under the Uniform Rice Storate Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, and Seed Storage Agreement are allowed ninety (90) working days to complete a load out of their facility.

Several grain warehousemen and members of the grain trade have requested that CCC reconsider the thirty day requirement and permit a grain warehouseman a longer period of time to effect a complete load out of his facility. They believe a longer load out time is needed because many warehousemen have lost their rail service over the last several years, and load out from these warehouses is now limited to truck only. In addition, many warehousemen have increased their respective storage capacities during the 1980's, at the urging of CCC, when storage space was very tight.

CCC agrees that these changes may cause several warehousemen problems in meeting the thirty day load out requirement. However, any increase in the amount of time permitted a warehouseman to load out his facility must be balanced against CCC's ability to service its foreign and domestic programs. CCC has determined that the

maximum amount of time a warehouseman could be permitted to load out his entire inventory without hurting CCC's ability to serve its foreign and domestic sales and donation program would be sixty (60) working days. The ninety working days permitted to complete a load out of warehouses approved under the Rice, Bean, and Seed Storage Agreements is excessive and could hinder CCC's ability to service its domestic and foreign programs, especially in the case of emergencies. In addition, CCC believes, to the maximum extent practicable, all warehousemen storing commodities for CCC should operate under the same set of procedures. Therefore, it is proposed that the maximum load out time afforded all warehousemen subject to these regulations be set at sixty working days.

List of Subjects in 7 CFR Part 1421

Agriculture, Grain, Loan programs, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Proposed Rule

PART 1421—[AMENDED]

According, it is proposed that 7 CFR part 1421 be amended as follows:

1. The authority citation for 7 CFR part 1421, Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425.

2. In § 1421.5552, paragraph (a)(9) is revised to read as follows:

§ 1421.5552 [Amended]

* * * * *

(a) * * *

(9) Have a work force and equipment available to complete load out within sixty (60) working days of that quantity of grain, rice, beans, or seed for which the warehouse is or may be approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, or Seed Storage Agreement. The load out capacity of any of these warehouses need not exceed the equivalent of 200 railroad cars per day.

* * * * *

Signed at Washington, DC on December 12, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-29276 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R-0681]

Home Mortgage Disclosure; Notice of Intent to Terminate Exemptions for Connecticut, Massachusetts and New Jersey

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to terminate state exemptions.

SUMMARY: Certain financial institutions in Connecticut, Massachusetts, and New Jersey are currently exempted from the Home Mortgage Disclosure Act because the Board determined that they are subject to substantially similar mortgage disclosure requirements under state law. Recent amendments to the act and to the Board's implementing rule, Regulation C, have produced discrepancies between the federal provisions and current state laws such that the state laws are considered no longer to be substantially similar to the federal statute and regulation, as amended.

Notice is hereby given that the Board proposes to terminate the current exemptions as a result of the recent amendments to federal law, effective January 1, 1990, when the amended act and regulation go into effect. The formal determination may be made after January 1, given the need to assess public comment, but any termination of exemption will be retroactive to January 1, 1990.

DATES: Comments must be received on or before January 15, 1990. The effective date for the termination of these state exemptions, if adopted, would be January 1, 1990.

ADDRESSES: Comments should refer to Docket No. R-0681 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to room B-2222 of the Board's Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. Comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas J Noto or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation currently requires depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporation that have over $10 million in assets and have offices in metropolitan statistical areas or primary metropolitan statistical areas, to disclose annually their originations and purchases of mortgage and home improvement loans. Individual loan data must be aggregated by the institutions and itemized by census tract (or by county, in some instances) and also by type of loan. A disclosure statement covering the data on a calendar-year basis currently must be made available to the public and sent to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which was signed into law on August 9, 1989, made major revisions to HMDA. (FIRREA, Pub. L. No. 101-73, section 1211, 103 Stat. 183 (1989).) First, the coverage of HMDA was expanded to include mortgage lenders that are not affiliated with depository institutions or holding companies. Second, the FIRREA amendments require reporting of data regarding loan applications; currently, institutions report only data regarding loans originated or purchased. Third, the amendments require most covered lenders to report the race, sex, and income of mortgage applicants and borrowers (depository institutions with assets under $30 million are exempt from this particular requirement). Fourth, the FIRREA amendments require that lenders identify the class of purchaser for mortgage loans that they sell. Fifth, the amendments permit lenders to explain the basis for lending decisions to their supervisory agency. Finally, the revised Regulation C provides for a "register" form of reporting. Lenders will record certain data for each application (whether granted, denied, withdrawn, or incomplete) that they receive and for each home purchase or home

improvement loan that they originate or purchase, and will submit the registers to their supervisory agency at the close of the calendar year. Thus, covered institutions will no longer be required to aggregate loan data, as was the case under federal law previously.

The revisions to Regulation C to implement the FIRREA amendments to HMDA have been published in final form elsewhere in this issue of the Federal Register.

Under HMDA and Regulation C, the Board may grant exemptions to state-chartered institutions that are subject to state mortgage disclosure laws that are substantially similar to the Federal law and that contain adequate provision for enforcement. Based on the act and regulation in effect prior to the recent amendments, exemptions have been granted for institutions subject to the state mortgage disclosure laws of Connecticut, Massachusetts, and New Jersey.

Exemptions are subject to termination if the Board determines that the state laws no longer impose requirements substantially similar to the Federal law or do not adequately ensure enforcement. Due to the substantial changes encompassed in the FIRREA and Regulation C amendments, and the discrepancies thus arising between federal and state laws, the Board proposes to terminate the current exemptions as of January 1, 1990, the effective date of the changes to HMDA and Regulation C.

After the 30 day comment period has ended, if the Board confirms that this termination is warranted, an Order will be issued revoking the exemptions effective as of January 1, 1990. In that event, institutions currently exempted from HMDA and Regulation C by virtue of the disclosure laws of Connecticut, Massachusetts, and New Jersey would have to comply with the data collection requirements of the federal law as of that date.

If the Board determines that a state has adopted new requirements that are substantially similar to the federal law, and they are effective as of January 1, 1990, the Board may grant a continuation of the exemption or may reinstate it at a later date, effective January 1.

To meet the "substantially similar" test, however, it will be necessary for the state law to cover applications as well as loans granted and purchased; to require reporting of information on the race or national origin, sex, and income of applicants and borrowers; and to call for a register form of reporting. Thus, even if an exemption is continued or is reinstated, lenders that have been within the scope of an exemption in one of these three states will, as a practical matter, have to comply with the revised federal rules beginning on January 1, 1990. Continuation or reinstatement of a state exemption will simply mean that, at year end 1990, they need submit only one report (to their state supervisory agency) and not separate reports to federal and state regulators.

The proposed termination of state exemptions do not affect the mortgage disclosures required for loans made or purchased in calendar year 1989. Exempt institutions must comply with the applicable disclosure laws currently in effect and submit reports to their state supervisory agency in keeping with state law requirements.

By order of the Board of Governors of the Federal Reserve System, December 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29241 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 229

[Regulation CC; Docket No. R-0679]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to its Regulation CC, Availability of Funds and Collection of Checks. The regulation requires banks to make funds available to their customers within specified times, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. The proposals include shortening the time requirements for giving notice of nonpayment, proposed changes to the model forms, and other technical and clarifying modifications to the regulation and its Official Commentary (Appendix E to the regulation).

DATES: Comments must be submitted on or before February 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0679, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Manager (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to Appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010). The regulation requires banks [1] to make funds available to their customers for withdrawal within specified time frames, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. Section 229.33(a) of the regulation requires a paying bank to provide notice of nonpayment of any returned check in the amount of $2,500 or more. This notice must be received by the depositary bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depositary bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depositary banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Therefore, the Board is requesting comment on alternatives to shorten the current time requirements for giving notice of nonpayment. In addition, the Board is issuing proposed revisions to

[1] The regulation defines "bank" to include all depository institutions, including commercial banks, savings and loan associations, and credit unions. A "depositary bank" is defined as the first bank to which a check is transferred. A "paying bank" is generally the bank by, at, or through which a check is payable and to which it is sent for collection. A "returning bank" is a bank (other than the paying or depositary bank) that handles a returned check or a notice in lieu of return.

the deposit deadlines for the Federal Reserve notice of nonpayment service that would take effect if the time requirements for notice of nonpayment were to be shortened. (See Docket R-0680 elsewhere in today's **Federal Register**.) Further, in response to various questions that have been raised by banks regarding the regulation, the Board is issuing for comment proposed technical and clarifying amendments. The proposed changes to shorten the time for giving notice of nonpayment and the proposed technical and clarifying amendments are described below.

Section 229.2(k) Definition of "check." The Board has been requested to clarify the status of ACH debit transfers under Regulation CC. The Board is proposing a revision to the Commentary to the definition of "check" to state explicitly that an ACH debit transfer is not a check.

Section 229.2(r) Definition of "local check." The Board adopted final rules regarding the issuance of bank payable through checks in July 1989. Under the new rules, effective February 1, 1991, bank payable through checks are required to contain the words "payable through" followed by the name of the payable through bank. Two sentences in the Commentary to the definition of "local check" refer to bank payable through checks that do not contain a designation of the payable through bank. The Board proposes to delete these sentences and to revise the Commentary to indicate that, in the case of bank payable through checks, the depositary bank can rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

Section 229.2(u) Definition of "noncash item." The Board is proposing a revision to the Commentary to "noncash item" to clarify that if a bank handles an item in the same manner as it would handle a cash item, the item does not qualify as a noncash item.

Section 229.3(a) Enforcement agencies. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Congress amended the Expedited Funds Availability Act regarding the enforcement agency for savings associations. The Board is proposing a conforming amendment to Regulation CC to provide that the Director of the Office of Thrift Supervision has authority to enforce compliance with Regulation CC by savings associations.

Section 229.13(h)(4) Availability of deposits subject to exceptions. The regulation provides that if a bank invokes an exception hold under § 229.13(b) through (f), it may extend the availability schedule by a reasonable period of time. Currently, the regulation provides that a four business day extension is a reasonable period and that a longer extension may also be reasonable, but the bank has the burden of so establishing. The four day period is designed to provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned. Thus, under the temporary schedule, a bank invoking an exception hold under § 229.13 may normally hold local checks until the seventh business day after deposit and nonlocal checks until the eleventh business day after deposit. When the permanent schedule becomes effective on September 1, 1990, these periods will shorten to six and nine business days, respectively.

Because there will be no significant payment system improvements applicable to the return of checks before the permanent schedule becomes effective, it is unlikely that depositary banks will learn of the return of many checks subject to a § 229.13 exception faster they do today.[2] The Board, therefore, believes it may be appropriate to extend the reasonable hold period. The Board is requesting comment on a proposal to extend the reasonable hold period from four days to five days for local checks and from four days to six days for nonlocal checks, thereby retaining the existing exception hold periods of seven and eleven days, respectively. The Board requests comment on whether such a change would obviate the need to revise disclosures and the need to extend the reasonable hold period, based on current returned check experience.

Section 229.18(e) Changes in policy. The temporary schedule allows case-by-case holds under § 229.16(c) to be imposed for up to seven business days for nonlocal checks. Unless a longer time is reasonable, exception holds under § 229.13 can be imposed for eleven business days. If the Board does not revise § 229.13 as discussed above, these periods will be reduced under the permanent schedule to five and nine business days, respectively. Banks that provided disclosures referencing the longer time periods permitted under the temporary schedule would have to notify their consumer account-holders of the change in accordance with § 229.18(e). The Board proposes to revise the Commentary to § 229.18(e) to provide guidance on how this change could be disclosed. The notice must be provided by October 1, 1990. (If the Board adopts the proposed changes to § 229.13(h) lengthening reasonable exception holds, the proposed Commentary language to § 229.18(e) as well as the changes to the model forms in Appendix C discussed below would be revised accordingly.)

Section 229.19(a) When funds are considered deposited. Under § 229.19(a)(5) (ii), funds deposited at an ATM or off-premise facility after the depositary bank's cut-off hour of 12:00 noon or later are considered deposited on the next banking day. The Board has been asked whether the 12:00 noon cut-off is determined by the local time of the ATM or off-premise facility or the local time of the branch holding the customer's account.

The Commentary to the definitions of "banking day" and "business day" states, "A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit * * * The day of deposit for such funds is determined by the banking day at the account-holding branch at the time the funds are received at the ATM." Similarly, the Commentary to § 229.19(b) regarding availability of funds at the start of business on a day funds are available for withdrawal states that the start of business is determined by the local time of the account-holding branch. Consistent with these provisions, the Board proposes to clarify that the depositary bank may establish a cut-off hour for deposits at ATMs or other off-premise facilities of no earlier than 12:00 noon local time of the account-holding branch.

Under the proposal, an East Coast bank that permits its customers to make deposits at ATMs nationwide may establish a 12:00 noon Eastern Time cut-off for receipt of ATM deposits by its customers. Thus, deposits made by customers of the East Coast bank at West Coast ATMs after 9:00 a.m. Pacific Time can be considered received on the next banking day. Conversely, a West Coast bank must consider all deposits made at East Coast ATMs by 3:00 p.m. Eastern Time (12:00 noon Pacific Time) received on that banking day.

The Board specifically requests comment on the operational and customer service implications of this proposal, and whether the cut-off should be determined by the local time of the

[2] Although the Board is requesting comment on whether to shorten the time within which to provide notice of nonpayment of large-dollar checks, many checks subject to § 229.13 exception holds are not subject to the notice of nonpayment requirement.

ATM, rather than the local time of the account-holding branch. Depending on whether the account-holding branch is east or west of the ATM in which the deposit is made, the earliest cut-off time permitted under the proposal could be either earlier or later than 12:00 noon local time of the ATM. If the time zone of the ATM is west of that of the account-holding branch, the proposal may adversely affect the customer's availability of funds, because the cut-off hour for considering deposits received on a given banking day may be earlier than 12:00 noon local time of the ATM. However, if the time zone of the ATM is east of that of the account-holding branch, the proposal would limit the time for the ATM processor to remove the deposits from the ATM, verify and process them, and put them in the forward collection stream.

Section 229.19(c) Effect on policies of depositary bank. The Board is proposing a revision to the Commentary to § 229.19(c) to clarify the relationship between the availability schedules and the depositary bank's right to charge back its customer's account for a returned check. The revised Commentary would state explicitly that the depositary bank may charge back its customer's account upon receipt of a returned check or notice of nonpayment, even if the check or notice is received after the time by which the proceeds of the check must otherwise be made available for withdrawal under the provisions of the regulation.

Section 229.30(c) Extension of deadline. Increasingly, banks are providing banking services to the public on Saturdays and/or Sundays. These days are not regarded as banking days under Regulation CC, because Saturdays and Sundays are not "business days," but they may be regarded as banking days for the purposes of the Uniform Commercial Code ("UCC"). Banks that are open on Saturday may not have couriers leaving on Saturday to deliver returned checks, and even if they did, the returning or depositary bank to which the returned checks were sent might not be prepared to receive or process checks until Sunday night or Monday morning.

Prior to the implementation of Regulation CC, these banks could meet a UCC Saturday night midnight deadline for checks presented on Friday by mailing their returned checks on Saturday. Since the implementation of Regulation CC, however, these banks have been subject to expeditious return requirements that generally may not be met by mailing returned checks. For checks presented on Fridays, these banks cannot meet both a UCC Saturday midnight deadline and the expeditious return requirements of Regulation CC without establishing special courier runs on Saturday evening to deliver returned checks to returning or depositary banks. Such runs would often be in addition to runs during the day on Sunday delivering forward collection checks to the same banks in their capacity as collecting or paying banks in the forward collection process. (The Federal Reserve Banks and many correspondent banks accept deposits on Sunday afternoon or evening so that mailing returns is not necessary to meet the Sunday night midnight deadline for Saturday presentments.)

To address this problem, the Board is proposing to extend the Saturday night midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle for returned checks following the Saturday midnight deadline.

Section 229.33(a) Notice of nonpayment. This section requires a paying bank to provide notice of nonpayment of any returned check in the amount of $2,500 or more. Currently, this notice must be received by the depositary bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depositary bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depositary banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Specifically, under the permanent schedule, the first $5,000 of the deposit of a local check must be made available to the customer for withdrawal by the second business day following deposit. The amount in excess of $5,000 may be held for a longer period of time under the large-deposits exception (see § 229.13(b)). Because it generally takes at least a day for a check to be sent from the depositary bank to the paying bank, the depositary bank generally would not receive notice of nonpayment of a large-dollar local check until the third business day following deposit (which would be the second business day following presentment to the paying bank). Because funds must be made available for withdrawal before the depositary bank has an opportunity to learn of the return of the check, the depositary bank is at increased risk of loss from insolvent or fraudulent depositors. (Generally, this problem would not exist for nonlocal checks, because the depositary bank would receive notice of nonpayment of these checks before the funds must be made available for withdrawal under the permanent availability schedule.)

In a recent survey on the impact of the Expedited Funds Availability Act and Regulation CC conducted by a number of depository institution trade associations in coordination with the Federal Reserve, approximately nine percent of the respondents reported an increase in fraud losses as a result of the Act and regulation.[3] Although the Board is concerned that this percentage may increase, the Board believes that because banks are still adjusting to the changes in returned check procedures prompted by Regulation CC, further significant operational changes to the check return system may be premature. Nevertheless, some bankers have suggested shortening the time within which notice of nonpayment must be provided to the depositary bank. Therefore, the Board requests comment on whether the risks inherent in the requirement that funds be made available to the customer for withdrawal prior to the time the depositary bank has an opportunity to learn of the return of large-dollar local checks are sufficient to warrant accelerating the time within which notice of nonpayment must be provided to the depositary bank.

If shortening the time within which the depositary bank receives notice of nonpayment is warranted, how early can the paying bank initiate such notice? Today, paying banks generally post checks to their customers' accounts on the evening of the day of presentment. In many banks, however, the decision to return a check is not made at the time of posting, but is dependent on subsequent bank management review, which may entail contacting the customer. In these cases, the decision to return a check unpaid may not be made until early afternoon on the day following presentment. Shortening the time in which notice can be given could require these decisions to be made earlier in the day, particularly for West Coast paying

[3] See The 1989 Report to Congress Under the Expedited Funds Availability Act, Board of Governors of the Federal Reserve System, June 1989.

banks if notices must be given so that they are received at East Coast depositary banks prior to their close of business on the day following presentment. (A paying bank giving notice warrants that it has returned or will return the check.) Shortening the time in which decisions to return checks must be made may, in turn, increase the number of checks returned causing other difficulties or inconveniences for paying banks' customers, increased risks to depositary banks, as well as additional burdens on the check return system.

One approach to the East Coast-West Coast time zone problem would be to apply the notice requirement only to large-dollar local checks that are returned unpaid. If the earlier notice requirement applied only to large-dollar local checks, rather than to both local and nonlocal checks, the paying bank would generally have additional time within which to initiate the notice, because it would not be subject to time zone constraints. This greater flexibility is reduced for some paying banks in the 15 check processing regions that cover multiple time zones.

The Board requests comment on the ability of paying banks to provide notice of nonpayment for local and/or nonlocal checks that would be received by the depositary bank (1) late in the day (e.g., 4:00 p.m. or 8:00 p.m.) on the next business day following the banking day on which the check is presented, or (2) earlier than 4:00 p.m. (e.g., 10:00 a.m. or 1:00 p.m.) on the second business day following the banking day on which the check is presented.

The Board also requests comment on the extent to which shortening the time within which notice of nonpayment must be provided would affect the manner by which the paying bank provides notice. For example, some paying banks currently rely on the return of local checks to the depositary bank to fulfill the notice requirement. If the notice of nonpayment requirement was made earlier than 2:00 p.m. on the second business day following presentment, paying banks could not rely on receipt of the physical check to satisfy the notice requirement for many local checks, particularly local checks not returned through a clearing house arrangement.

In addition, the Board requests comment on the benefits to the depositary bank of receiving notice of nonpayment at these earlier times. Do depositary banks act on notices of nonpayment promptly when they are received, or do they defer action until that evening's account processing? How promptly, and by what means (e.g., by phone or by written notice) is the depositor notified of the receipt of the notice of nonpayment by the depositary bank? If notice of nonpayment must be provided by late in the day on the business day following presentment (e.g., by 8:00 p.m.) would depositary banks have staff available at that time to accept and act on the notices? If notices are sent to a correspondent bank that indorses as depositary bank, would the correspondent bank be able to relay an earlier notice to the original depositary bank?

Docket R–0680 in today's **Federal Register** proposes changes to the Federal Reserve's notice of nonpayment service that may be adopted if the Board were to adopt a more stringent requirement in § 229.33 regarding the timing of notices of nonpayment. The Board also requests comment on the extent to which other service providers could continue to offer notice of nonpayment services to facilitate compliance by paying banks with an earlier notice requirement.

Section 229.34(a) Warrant of Returned Check The regulation provides that a paying or returning bank that transfers and receives settlement for a notice in lieu of return warrants that the original check has not and will not be returned. The Board has been asked to clarify that the paying or returning bank is warranting that the original check has not and will not be returned for payment, as opposed to being returned to the depositary bank for other purposes, such as to provide evidence of a forgery, that do not call for payment of the check under § 229.32. The Board proposes to amend the Commentary accordingly.

Section 229.35(a) Indorsement Standards. Since September 1988, when Regulation CC became effective, the quality of indorsements has varied widely. In some cases, banks that handle returned checks have found indorsements to be illegible, even though the indorsements may meet the informational requirements of the regulation. There are several reasons indorsements may be unclear, such as very small type size, or poor imprinting mechanisms, which may result in faint or indistinct indorsements.

Currently under § 229.35 and Appendix D, the duty of an indorsing bank to apply a legible indorsement is implied, but not explicit. The Board believes that the requirement that an indorsing bank should be responsible for ensuring that its indorsement is legible should be made explicit and is proposing to make this duty explicit in the regulation and the Commentary.

Section 229.36(e) Issuance of payable through checks. In July 1989, the Board amended Regulation CC to require certain information to be printed on checks payable by a bank and payable through another bank ("bank payable through checks"). Section 229.36(e) now requires such checks to contain the name, address, and first four digits of the routing number of the bank by which the check is payable, and the phrase "payable through" followed by the name and address of the payable through bank.

The Board has received inquiries as to whether it would be permissible for a bank that holds checking accounts and processes checks at a central location but that has widely-dispersed branches to label all of its checks as "payable through" a single branch and include the name, address, and four-digit routing symbol of another branch. These checks would be payable by and through the *same* bank,[4] and therefore the provisions of § 229.36(e) would not apply. If the Board were to allow such a practice, the result would be to lead depositors and depositary banks to believe mistakenly that the check is a bank payable through check for which availability must be assigned based on the location of the branch whose four-digit routing symbol appears on the check rather than on the location of the central office whose nine-digit routing number is encoded on the MICR line of the check.

The Board, therefore, is proposing an amendment to the regulation and the Commentary to provide that a bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in § 229.36(e).

Appendix C Model forms. The Board is proposing several revisions to the model forms and clauses in Appendix C and to the accompanying Commentary. Several of these changes are designed to reflect the availability periods under the permanent schedule and the recent revisions to the regulation regarding payable-through checks. Other changes are designed to provide additional guidance regarding the disclosure of availability times for electronic payments or to clarify existing language. The Commentary to Appendix C would be revised to make clear that banks may rely on earlier versions of the model forms though they are encouraged to update their forms when reordering new supplies.

[4] "Bank" is defined in § 229.2(e) to include all of a bank's offices in the United States. Therefore, all of a bank's U.S. branches would be considered part of a single bank.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (12 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (12 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or record-keeping requirements nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposals will apply to all depository institutions, regardless of size, but should not place a significant burden on small institutions. These proposals are aimed primarily at reducing risk to depositary banks under the permanent availability schedules and clarifying Regulation CC in response to questions that the Board has received from depository institutions. The Board does not believe that adoption of the proposals will result in any significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 229

Banks, Banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In § 229.3, paragraph (a)(2) is revised to read as follows:

§ 229.3 Administrative enforcement.

(a) Enforcement agencies.* * *

(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

* * * * *

3. In § 229.13, paragraph (h)(4) is revised to read as follows:

§ 229.13 Exceptions.

* * * * *

(h) *Availability of deposits subject to exceptions.* * *

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, an extension of up to five business days for local checks and six business days for nonlocal checks is a reasonable period. A longer extension may be reasonable, but the bank has the burden of so establishing.

4. In § 229.30, paragraph (c) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

* * * * *

(c) *Extension of deadline.* The deadline for return or notice of nonpayment under the UCC or Regulation J (12 CFR part 210) is extended:

(1) If a paying bank, in an effort to expedite delivery of a returned check to a bank, uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent on or before the receiving bank's next banking day following the otherwise applicable deadline; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) If the deadline falls on a Saturday that is a banking day, as defined in the UCC, for the paying bank, and the paying bank uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent prior to the receiving banks' cut-off hour for its next processing cycle after midnight Saturday night.

* * * * *

5. In § 229.35, paragraph (a) is revised to read as follows:

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check for collection or a returned check shall legibly indorse the check in accordance with the indorsement standard set forth in appendix D to this part.

* * * * *

6. In § 229.36, a new sentence is added to the end of paragraph (e) concluding text as follows:

§ 229.36 Presentment and issuance of checks.

* * * * *

(e) *Issuance of payable through checks.* * * *

(1) * * *

(2) * * *

* * * A bank is responsible for damages under § 229.38 of this part to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

Appendix C—[Amended]

7. Appendix C is amended as set forth below:

a. The first paragraph of model forms C–1, C–2, and C–3 is revised to read as follows:

at [*bank name and location*]

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

* * * * *

b. In model form C–3, the heading is revised, and under the subheading "Longer Delays May Apply," the second sentence of the first paragraph and the last sentence of the last paragraph are revised to read as follows:

C–3. Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (permanent schedule).

* * * * *

Longer Delays May Apply

* * * Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. * * *

* * * * *

* * * They will generally be available no later than the ninth business day after the day of your deposit.

* * * * *

c. In model forms C–4, C–5, C–6, and C–7, a new paragraph and a subheading is added immediately preceding the subheading "Next-Day Availability," and the first sentence under the subheading "Next-Day Availability" is revised to read as follows:

* * * * *

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers.

Checks drawn on [*bank name*] (unless [*any limitations related to branches in different states or check-processingregions*]).

* * * * *

d. In model forms C–4, C–6, and C–7, the second paragraph under the subheading "Other Check Deposits" is revised to read as follows:

* * * * *

Other Check Deposits

* * * * *

If the first four digits of the routing number (1234 in the examples above) are [local numbers], then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

* * * * *

e. In model form C–5, two new sentences are added at the beginning of the second paragraph under the subheading "Other Check Deposits" to read as follows:

* * * * *

Other Check Deposits

* * * * *

Some checks are marked "payable through" and have a four or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. * * *

* * * * *

f. In forms C–2, C–3, C–4, C–5, and C–6, under the subheading "Special Rules for New Accounts," the second paragraph is deleted, and the third paragraph is revised to read as follows:

Special Rules for New Accounts

* * * * *

Funds from electronic direct deposits into your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

* * * * *

g. In form C–7, under the subheading "Special Rules for New Accounts," the second, third, and fourth sentences of the first paragraph are deleted and the second paragraph is revised to read as follows:

Special Rules for New Accounts

* * * * *

Funds from electronic direct deposits into your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

* * * * *

h. In model clause C–8, the last sentence is deleted.

i. Model clauses C–19 and C–19A are deleted.

Appendix E—[Amended]

8. Appendix E is amended as set forth below:

a. In the Commentary to § 229.2, the first sentence of the last paragraph of paragraph (k) is revised, the last two sentences of paragraph (r) are removed and a new sentence is added to the end, and a new sentence is added to the end of the first paragraph of paragraph (u) as follows:

Section 229.2 Definitions

* * * * *

(k) Check * * *

The definition of "check" does not include an instrument payable in a foreign currency (i.e., other than United States money as defined in 31 U.S.C. 5101), a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. * * *

* * * * *

(r) *Local Check* * * * In these cases, the depositary bank may rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

* * * * *

(u) *Noncash item.* * * * To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item.

* * * * *

b. In the Commentary to § 229.13, in paragraph (h), the second sentence of the first paragraph, the first sentence of the second paragraph, and the fourth paragraph are revised to read as follows:

Section 229.13 Exceptions

* * * * *

(h) Availability of deposits subject to Exceptions. * * * This provision establishes that an extension of up to five business days for local checks and six business days for nonlocal checks is reasonable. * * *

For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. * * *

* * * * *

Five business days for local checks and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned.

* * * * *

c. In the Commentary to § 229.18, a new paragraph is added after the last paragraph of paragraph (e) to read as follows:

Section 229.18 Additional Disclosure Requirements

* * * * *

(e) Changes in policy * * *

* * * * *

In disclosing the changes (due to the implementation of the permanent schedule) in the maximum periods for case-by-case and exception holds, a bank may provide notice in any form that is clear and conspicuous. For example, banks could use language such as the following on account statements (or on inserts) to disclose the change in policy: "Our disclosure on funds availability described certain limited circumstances in which funds from deposits would not be available until the seventh or the eleventh business day following the day of your deposit. Effective September 1, 1990, those periods will be reduced, respectively, to five and nine business days."

d. In the Commentary to § 229.19, the third sentence of the fifth paragraph of paragraph (a) is revised, and two new sentences are added to the end of the second paragraph of paragraph (c) to read as follows:

Section 229.19 Miscellaneous

(a) *When funds are considered deposited.* * * *

* * * * *

* * * For receipt of deposits at ATMs or off-premise facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12:00 noon or later (local time of the branch or other location of the depositary bank at which the account is maintained). * * *

* * * * *

* * * (c) *Effect on policies of depositary bank.* * * *. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depositary bank may charge back the

customer's account for the full amount of the check. (See § 229.33(d) and Commentary.)

* * * * *

e. In the Commentary to § 229.30, the heading and first two paragraphs of paragraph (c) are revised to read as follows:

Section 229.30 Paying Bank's Responsibility for Return of Checks

* * * * *

(c) *Extension of deadline.* This paragraph permits extension of the midnight deadline, but not of the duty of expeditious return, in two circumstances:

(1) A paying bank may have a courier that leaves after midnight to deliver its forward collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches either the depositary bank or the returning bank to which it is sent on that bank's banking day following the expiration of the midnight deadline or other applicable time for return. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast depositary bank even if the check arrives after the close of the depositary bank's banking day.

(2) A paying bank may observe a banking day, as defined in the UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC midnight deadline for checks received on Friday might force the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depositary bank to which the returned checks were sent ("receiving bank") might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle following the Saturday midnight deadline.

The time limits that are extended in each case are the paying bank's midnight deadline in UCC sections 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12). As these extensions are designed to speed (§ 229.30 (c)(1)), or at least not slow § 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

* * * * *

f. In the Commentary to § 229.34, the first sentence of paragraph (a) is revised to read as follows:

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned check.* This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC, Regulation J, or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment (see the Commentary to § 229.30(f)). * * *

* * * * *

g. In the Commentary to § 229.35, a new sentence is added before the last sentence of the first paragraph of paragraph (a) as follows:

Section 229.35 Indorsements

(a) *Indorsement standards.* * * * The regulation places a duty on banks to ensure that their indorsements are legible. * * *

* * * * *

h. In the Commentary to § 229.36, two new sentences are added after the first sentence in the second paragraph of paragraph (e), and the second sentence is revised to read as follows:

Section 229.36 Presentment and Issuance of Checks

* * * * *

(e) *Issuance of payable through checks.* * * *

* * * Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labelled as provided in this section. (All of a bank's offices within the United States are considered part of the same bank; see § 229.2(e).) For example, a bank by which a check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under subpart B, that would not have occurred had the check, in the case of a payable through check, met the requirements of this paragraph, or, in the case of a check that is not payable through another bank, not been mislabelled. * * *

i. In the Commentary to Appendix C, under the subheading "Modes C–1 through C–7 generally," the last paragraph is revised and a new paragraph is added at the end thereof to read as follows:

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Models C–1 through C–7 generally. * * *

* * * * *

While § 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits ("direct deposits") be made available on the day the bank receives the funds. Model Forms C–1 through C–7 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the first business day following deposit. Banks with different policies should revise the forms to reflect the availability given in most cases for wire transfers.

Banks that have used earlier versions of the model forms or clauses (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering supplies of forms.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–29007 Filed 12–14–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–236–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–300 Series Airplanes, Serial Numbers 100 through 231, inclusive, which would require repetitive visual inspections to detect cracks and/or complete separation of the three bleed air precooler mounting lugs, and repair, if necessary. This proposal is prompted by reports of cracking and complete separation of engine bleed air precooler mounting lugs. This condition, if not corrected, could result in loss of support of the engine bleed air precooler and possible reputure of the engine bleed air ducts.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–236–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway

South, Seattle, Washington, or at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-236-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC-8-300 series airplanes. There have been recent reports of in-service cracks and complete separation of the engine bleed air precooler mounting lugs. This condition, if not corrected, could result in loss of support of the engine bleed air precooler and possible rupture of the engine bleed air ducts.

Boeing of Canada, Ltd., de Havilland Division, has issed Alert Service Bulletin A8-21-32, dated October 27, 1989, which describes procedures for repetitive visual inspections to detect cracks or complete separation of the bleed air precooler mounting lugs, and repair, if necessary. Transport Canada has classified this service bulletin as mandatory, and has issued a message dated October 31, 1989, addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual inspections to detect cracks or complete separation of the bleed air precooler mountings lugs, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently developing a modification which, when installed, will terminate the need for the repetitive inspections. Once this modification is developed, the FAA may consider further rulemaking action to revise this AD to require additional necessary action.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC-8-300 series airplanes, Serial Numbers 100 through 231, inclusive, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible rupture of the engine bleed air ducts, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time-in-service, perform a visual inspection to detect cracks or complete separation of the bleed air precooler mounting lugs, in accordance with de Havilland Alert Service Bulletin A8-21-32, dated October 27, 1989.

B. If cracks are found in more than one lug, or if any lug has completely separated, repair prior to further flight, in accordance with de Havilland Alert Service Bulletin A8-21-32, dated October 27, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptance level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at

the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on December 4, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29234 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13

[Docket No. 89-NM-221-AD]

14 CFR Part 39

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive high frequency eddy current (HFEC) inspections to detect cracks in the bottom skin stringers adjacet to Rib 14, and repair, if necessary. This proposal is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in the bottom skin stringers adjacent to Rib 14. This condition, if not corrected, could result in rupture of the bottom skin stringers and subsequent reduced structural capability of the wings.

DATES: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-221-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-221-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. During full-scale fatigue testing, the manufacturer discovered cracks in the bottom skin stringers adjacent to Rib 14. This condition, if not corrected, could lead to rupture of the bottom skin stringers and subsequent reduced structural capability of the wings.

Airbus Industrie has issued Service Bulletin A300-57-148, dated November 30, 1988, which describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracks in the bottom skin stringers adjacent to Rib 14, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-109-097(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive HFEC inspections to detect cracks in the botton skin stringers adjacent to Rib 14, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 25 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-57-148, dated November 30, 1988, certificated in any category. Complaince is required as indicated, unless previously accomplished.

To prevent rupture of the bottom skin stringers and subsequent reduced structural capability of the wings, accomplish the following:

A. Perform a high frequency eddy current (HFEC) inspection of the bottom skin stringers adjacent to Rib 14, in accordance with Airbus Industrie Service Bulletin A300-57-148, dated November 30, 1988, as follows:

1. Model A300 B2 Series Airplanes:

a. For airplanes that have accumulated less than 23,000 landings, the initial inspection must be performed prior to the accumulation of 25,000 landings.

b. For airplanes that have accumulated at least 23,000 landings but not more than 28,000 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 28,000 or more landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

2. Model A300 B4-100 and B4-2C series airplanes:

a. For airplanes that have accumulated less than 19,000 landings, the initial inspection must be performed prior to the accumulation of 21,000 landings.

b. For airplanes that have accumulated at least 19,000 landings but not more than 23,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 23,000 or more landings, the initial, inspection must be performed within 750 landings after the effective date of this AD.

3. Model A300 B4-200 series airplanes:

a. For airplanes that have accumulated less than 15,000 landings, the initial inspection must be performed prior to the accumulation of 17,000 landings.

b. For airplanes that have accumulated at least 15,000 landings but not more 19,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 19,000 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

B. If no cracks are found, repeat the inspections required by paragraph A., above, at the following intervals:

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to exceed 9,400 landings.

2. For Model A300 B4-100 and B4-2C series airplanes, repeat the inspection at intervals not to exceed 8,000 landings.

3. For Model A300 B4-200 series airplanes, repeat the inspection at intervals not to exceed 6,100 landings.

C. If cracks are found, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. Repeat inspections thereafter at intervals specified in paragraph B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way south, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29232 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13

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14 CFR Part 39

[Docket No. 89-NM-234-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require modification of the wing flap electronic control unit (ECU) and installation of a warning placard on the ECU. This proposal is prompted by the identification of a sequence of events, involving possible crew actions or environmental occurrences and subsequent hardware failure, that could result in the in-flight failure of the flap ECU and could create an asymmetric flap condition. This condition, if not corrected, could result in loss of wing flap asymmetry protection, which would adversely affect airplane controllability.

DATES: Comments must be received no later than February 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-234-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–234–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAE 146–100A, –200A, and –300A series airplanes. There have been reports of spurious flap fault indications occurring in extreme low temperature conditions. Reports received also indicate that a combination of possible crew actions or environmental occurrences, such as lightning, and subsequent possible hardware failures, could result in an asymmetric wing flap condition. The manufacturer is aware of occurrences wherein crew members have re-racked the wing flap electronic control unit (ECU) in an attempt to clear a fault warning. This particular crew action, or a lightning strike, can cause the ECU to fail in a way that it could unlock the flap actuators system and allow flaps to extend asymmetrically after a mechanical failure has occurred. This condition, if not corrected, could result in loss of wing flap asymmetry protection and would adversely affect airplane controllability.

British Aerospace has issued Service Bulletin 27–95–70420A, dated April 27, 1989, which describes procedures for installing an improved wing flap ECU having software and hardware modification, including a modification to control lane monitoring and a modification to improve lightning strike protection; and procedures for installing an engraved warning placard on the front face of the ECU, stating, "WARNING—This equipment must not be removed or re-racked in flight." The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the wing flap ECU, and installation of an engraved warning placard on the front face of the ECU, in accordance with the service bulletin previously described.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately two and one-half manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,100.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146–100A, –200A, and –300A series airplanes; Serial Numbers E1002 and subsequent, E2012 and subsequent, and E3118 and subsequent; certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of wing flap asymmetry protection and loss of airplane controllability, accomplish the following:

A. Install an improved wing flap electronic unit (ECU) in accordance with British Aerospace Service Bulletin 27–95–70420A, dated April 27, 1989.

Note: The British Aerospace Service Bulletin references Dowty Rotol Service Bulletin 146–27–75 for additional instructions.

B. Install a warning placard on the front face of the ECU, in accordance with British Aerospace Service Bulletin 27–95–70420A, dated April 27, 1989. The warning placard states:

"WARNING—This equipment must not be removed or re-racked in flight."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–29229 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89-NM-232-AD]

Airworthiness Directives; British Aerospace Model BAe 146-200A and -300A Series Airplanes Equipped With Modification HCM30107C and HCM30300A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-200A and -300A series airplanes, which would require an inspection of the cabin insulation bags between frames 19 and 26, and frames 32 to 40, inclusive, to ensure adequate clearance between the insulation bags and the floor, and modification, if necessary. This proposal is prompted by a report of insufficient clearance between the lower edge of the cabin insulation bags and the floor structure. This condition, if not corrected, could result in restricted airflow from above the cabin floor to below the floor in the event of rapid decompression, which could result in extensive structural damage to the airplane.

DATE: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-232-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-232-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-200A and -300A series airplanes. The manufacturer has reported that, with the installation of a new style interior trim, there is insufficient clearance between the lower edge of the cabin insulation bags and the floor structure. This condition, if not corrected, could result in restricted airflow from above the cabin floor to below the floor in the event of rapid decompression, which could result in extensive structural damage to the airplane.

British Aerospace has issued Service Bulletin 25-A157, dated August 14, 1989, which describes procedures for inspection of the insulation bags between frames 19 to 26 and frames 32-40, inclusive, to determine if there is adequate clearance between the lower edge of the cabin insulation bags and the floor structure, and modification, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory, and has issued Airworthiness Directive 009-08-89 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an inspection of the cabin insulations bags on the right and left of the airplane to determine if there is adequate clearance between the lower edge of the insulation bags and the floor structure, and modification, if necessary.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $120.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-200A and -300A series airplanes, equipped with Modification HCM30107C and HCM30300A, as listed in British Aerospace Inspection Service Bulletin 25-A157, dated August 14, 1989, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To ensure unrestricted passage of air from above the cabin floor to below the floor in the event of rapid decompression, accomplish the following:

A. Inspect the cabin insulation bags between frames 19 to 26, and frames 32 to 40, inclusive, both left and right sides of the cabin, to ensure the lower edge of the insulation bag is 4 inches above the level of the floor structure, in accordance with British Aerospace Service Bulletin 25-A157, dated August 14, 1989.

1. If sufficient clearance is found, reassemble parts and return the airplane to service.

2. If insufficient clearance is found, prior to further flight, modify the insulation bags by folding under the lower edge and securing the insulation bags, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29230 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-233-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A and -200A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A and -200A series airplanes, which would require installation of new roller bearing pins at the forward top position on flap track No. 3 lower carriage assemblies. This proposal is prompted by structural testing by the manufacturer which revealed inadequate strength under certain conditions in the forward top roller bearing pins on the lower carriage on right and left flap track No. 3. This condition, if not corrected, could result in the inability of the flap system to sustain expected loads, which would adversely affect airplane controllability.

DATES: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-233-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-233-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A and -200A series airplanes. Structural testing by the manufacturer has revealed inadequate strength in the forward top roller bearing pins on the lower carriage on the right and left No. 3 flap track. This understrength condition exists when an incipient jam condition occurs in the wing flap system. This condition, if not corrected, could result in the inability of the flap system to sustain expected loads, which would adversely affect airplane controllability.

British Aerospace has issued Service Bulletin 57-24-00911A, Revision 1, dated May 1, 1988, which describes procedures to install new roller bearing pins at the forward top position on flap track No. 3 lower carriage assemblies. The United

Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require installation of new roller bearing pins at the forward top position on flap track No. 3 lower carriage assemblies in accordance with the service bulletin previously described.

It is estimated that 54 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the required modification kit is $885 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,230.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A and -200A series airplanes, as listed in British Aerospace Service Bulletin 57-24-00911A, Revision 1, dated May 1, 1988, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent inability of the flap system to sustain expected loads and prevent loss of airplane controllability, accomplish the following:

A. Install new roller bearing pins at the forward top position on the right and left flap track No. 3 lower carriage assemblies, in accordance with British Aerospace Service Bulletin 57-24-00911A, Revision 1, dated May 1, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29231 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ANE-39]

Airworthiness Directives; CFM International (CFMI) CFM56-3/-3B/-3C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require installation of a new fan splitter fairing, and a new variable bypass valve (VBV) configuration in CFM56-3/-3B/-3C series turbofan engines. The proposed AD is needed to prevent power loss or flameout while operating in heavy precipitation.

DATES: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-ANE-39, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 89-ANE-39.

Comments may be inspected at the above location, in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's service bulletins (SB) may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215,.or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final

action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, New England Region, Office of the Assistant Chief Counsel, Room 311, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–39. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that CFM56–3 series turbofan engines have inadequate flameout margin for operation in heavy precipitation. The determination is based on three dual engine and one single engine power loss/flameout events which occurred while operating in heavy precipitation (rain and hail). Subsequent water ingestion ground testing has confirmed the finding of inadequate flameout margin. It has also been determined that installation of a new type fan splitter fairing, and a VBV configuration will significantly increase the engine's flameout margin in heavy precipitation. Therefore, a proposed AD is being issued which will require installation of the above noted hardware prior to July 1, 1990.

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

The FAA has determined that the proposed regulation involves 1,450 engines, and the cost per engine to the operators would be negligible since hardware and labor costs are being assumed by CFM International. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric: Applies to CFM International (CFMI) CFM56–3/3B/3C series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent power loss or flameout while operating in heavy precipitation, accomplish the following:

(a) Install fan splitter fairing, fan stage 1 vane assembly, and new centering shroud, in accordance with the accomplishment instructions contained in CFMI Service Bulletin (SB) 72–450, Revision 1, dated May 30, 1989, at the next shop visit, or on or before July 1, 1990, whichever occurs first.

(b) Install the 12 door variable bypass valuve (VBV) configuration in accordance with the accomplishment instructions contained in CFMI SB 72–462, Revision 1, dated May 30, 1989, at the next shop visit, or on or before July 1, 1990, whichever occurs first.

Note: Shop visit is defined as the introduction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on December 4, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–29235 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–238–AD]

Airworthiness Directives; Fokker Model F–27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–27 series airplanes, which would require a one-time X-ray inspection to detect cracks in Stringers 5 and 6 of the upper wing skin, and repair, if necessary. This proposal is prompted by reports of cracked Stringers 5 and 6 of the upper skin, outboard of Wing Station 10760. Undetected fatigue cracks could lead to reduced structural capability of the wing.

DATES: Comments must be received no later than February 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–238–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-238-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-27 series airplanes. Reports have been received of cracked Stringers 5 and 6 of the upper skin outboard of Wing Station 10760. The cracks started at the rivet holes for the connection of the stringer with the upper cap of ribs at Wing Stations 11260, 11860, 12660, and 13460. In one case, cracks were found at all eight positions on the left and right hand wing. The cause of the cracking is attributed to fatigue. Undetected fatigue cracks could lead to reduced structural capability of the wing.

Fokker has issued Service Bulletin F27/57-65, dated October 4, 1989, which describes procedures for a one-time X-ray inspection of the stringers at Wing Station 11260, 11860, 12660, and 13460, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 89-121 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time X-ray inspection to detect cracks in the top skin Stringers 5 and 6, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,480.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, 10102 through 10684, 10686, 10687, and 10689 through 10692, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to fatigue cracks, accomplish the following:

A. Perform a one-time X-ray inspection of the top skin Stringers 5 and 6 at Wing Stations 11260, 11860, 12660, and 13460, in accordance with Fokker Service Bulletin F27/57-65, dated October 4, 1989, and the following schedule:

1. For airplanes that have accumulated less than 40,000 landings as of the effective date of this AD, inspect prior to the accumulation of 30,000 landings or within 180 days after the effective date of this AD, whichever occurs later.

2. For airplanes that have accumulated 40,000 landings or more but less than 50,000 landings as of the effective date of this AD, inspect within 90 days after the effective date of this AD.

3. For airplanes that have accumulated 50,000 landings or more as of the effective date of this AD, inspect within 30 days after the effective date of this AD.

B. If cracks are found, repair prior to further flight, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57-65, dated October 4, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

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

All person affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway

South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29233 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3698-2]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota, Group II PM_{10} area submitted by the State on July 12, 1988, as part of the South Dakota SIP. The SIP commits the State to continuing monitoring for PM_{10} and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions related to PM_{10} to the existing SIP. EPA published a direct final rule approving the submittal in the May 15, 1989, **Federal Register** (54 FR 20845); however, because notice was received that adverse comments will be submitted, the final rule was withdrawn in another **Federal Register** notice (54 FR 29554, July 13, 1989).

DATE: Comments must be received on or before January 16, 1990.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Rob Corry, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405; (303) 293-1759, (FTS) 564-1759.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM_{10}) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM_{10} NAAQS. Group I areas have violated the PM_{10} NAAQS or have air quality data showing high (greater than 95 percent) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20 to 95 percent) probability of violating the PM_{10} NAAQS, and must commit to monitor for PM_{10} and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20 percent) probability of violating PM_{10} NAAQS, and no new control strategy requirements apply.

The Rapid City, South Dakota area has been classified as a Group II area. On July 12, 1988, the State submitted a Commital SIP for this area. The requirements for Group II Committal SIPs, and the State's response to these requirements are descibed below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM_{10} areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM_{10} standards, and PM_{10} should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM_{10} standard and the total suspended particulates (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM_{10}.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 $\mu g/m^3$ measured as PM_{10}, and the combined sulfur-dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in appendix L of part 51 were also revised to reflect PM_{10} concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM_{10} air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily at at least site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(1) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.

(2) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(3) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(4) Within 30 days of the notification referred to in (3), above, or within 37 months of promulgation of the PM_{10} NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(5) Within 6 months of the notification referred to in (4), above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(6) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

South Dakota Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM_{10} air quality standards.* The State has adopted ambient air quality

standards for PM_{10} at Administrative Rules of South Dakota (ASRD) 74:26:02:35. EPA approved this provision at 53 FR 34077, September 2, 1988.

(2) *Preconstruction review of major stationary sources of PM_{10}.* The State administers a new source review (NSR) program for non-PSD stationary sources and modifications. The State has not received delegation or SIP approval of the PSD program, and review of PSD sources is carried out by EPA. By adopting ambient air quality standards for the PM_{10}, the State has triggered a requirement (under the State regulations) for preconstruction review of all non-PSD sources of PM_{10}.

The Rapid City area was designated nonattainment for TSP on March 3, 1978 (43 FR 8962). This designation required the State to implement a nonattainment area NSR program under part D of the Clean Air Act. The State developed nonattainment area NSR regulations, which were approved by EPA on November 3, 1981 (46 FR 54541). These rules were based on the EPA requirements which were in effect prior to August 10, 1980, and contained several minor deficiencies. EPA approved the State NSR rules with the understanding that the State would revise its rules to conform to new EPA requirements promulgated on August 7, 1980 (45 FR 52676) and would correct the other existing deficiencies.

The State submitted revised rules on December 21, 1981; however, these rules also contained deficiencies. As a result, EPA proposed to disapprove the State NSR program on February 25, 1986 (51 FR 6564). No final action was taken by EPA, due to uncertainty over how promulgation of the PM_{10} NAAQS and repeal of the TSP NAAQS would affect the need for an NSR program in the existing TSP nonattainment area.

To protect the Rapid City area (and the rest of South Dakota) from violations of the PM_{10} NAAQS, the State must revise its NSR regulations to address 40 CFR 51.165(b) (NSR for attainment and unclassifiable areas). 40 CFR 51.165(b) prohibits the permitting of a source which would exceed certain ambient impact levels, and which would cause or contribute to a violation of the NAAQS, unless the source obtains offsets. In its Committal SIP, the State has committed to revise its NSR regulations by August 31, 1990.

Region VIII has provided extensive comments to the State on the existing NSR regulations. These comments were primarily focused toward assisting the State in revising its regulations to address 40 CFR 51.165(b), although EPA also identified several areas in the nonattainment area definitions (listed in 40 CFR 51.165(a) of the Federal NSR rules) where revisions were necessary.

EPA believes that the existing State NSR regulations contain language similar in intent to 40 CFR 51.165(b), and are acceptable in the interim until the State revises its regulations to address 40 CFR 51.165(b). For example, ARSD 74:26:01:12 allows the issuance of a construction permit only "when it has been shown that the operation of the new source will not prevent or interfere with the attainment or maintenance of an applicable ambient air quality standard." In addition, the State has retained ambient TSP standards, and the NSR program for TSP (which includes offset requirements) will remain in effect until a PM_{10} attainment demonstration is approved and the Rapid City area is redesignated from nonattainment to unclassifiable for TSP. The existing TSP NSR program will provide an additional degree of protection for the PM_{10} NAAQS by requiring permits for nearly all stationary sources of particulate matter in the Rapid City area.

(3) *Revised emergency episode plans.* In its Committal SIP, the State has committed to revise its emergency episode plans by December 1988, to reflect the changes in the Federal regulations due to PM_{10}. The State did not meet this deadline; these revisions are required to be completed by August 31, 1990.

(4) *PM_{10} monitoring networks.* The Rapid City PM_{10} monitoring network consists of three sites (one site was recently shut down due to loss of use of the property upon which it was located; the State has located a replacement site, but this site has not been formally reviewed by EPA). One of the sites is operated on an every-other-day schedule; the remaining sites monitor every sixth day. The monitoring network design and coverage were reviewed before the recent shutdown and approved by the Region VII Environmental Services Division on February 27, 1989.

(5) *Collection of ambient PM_{10} data.* The State began monitoring PM_{10} in January 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(9) *Submittal of a revised control strategy of PM_{10} if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit actual emissions of major sources of PM_{10} and TSP, and to notify EPA if a TSP monitor is being used as a surrogate PM_{10} monitor records an exceedance of the PM_{10} NAAQS.

EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental consultation have been satisfied by the State. These procedures have been approved as part of the SIP in previous **Federal Register** notices (44 FR 44494, July 30, 1979; 46 FR 54541, July 7, 1983; 53 FR 34077, September 2, 1988).

The State held a public hearing on the Committal SIP on June 14, 1988. A draft Committal SIP was submitted to EPA for review prior to this hearing. EPA reviewed the draft SIP and found it to meet the necessary requirements with some minor exceptions, which were corrected in the final submittal. EPA's comments on the draft SIP were the only comments received by the State.

Proposed Action: EPA proposes to approve the Committal SIP for the Rapid City, South Dakota PM_{10} Group II area as part of the South Dakota SIP.

Interested parties are invited to comment on all aspects of these proposed actions.

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.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: November 21, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89–20295 Filed 12–14–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 61

[AD-FRL 3697-7]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; clarification.

SUMMARY: On September 14, 1989 (54 FR 38044), EPA proposed national emission standards for hazardous air pollutants (NESHAP) limiting emissions of benzene from chemical manufacturing process vents, industrial solvent use, transfer operations, gasoline marketing, and waste operations. That action was proposed under section 112 of the Clean Air Act. Numerous public comments were received during the comment period requesting clarification on the industry categories to be covered by the proposed waste operation rule. The public comment period ended on November 13, 1989. This notice clarifies EPA's intent on coverage under the proposed NESHAP for benzene waste operations. The proposed rule is intended to apply only to benzene wastes from chemical plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatement, storage, and disposal facilities. Coverage of these industry categories is consistent with the background information used as the basis for the proposed rule (refer to Docket No. A–89–06).

ADDRESSES: *Docket.* Docket No. A–89–06 contains supporting information used in developing the proposed rule for benzene waste operations. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information, contact either Mr. Doug Bell at (919) 541–5568, or Ms. Debbie Stackhouse at (919) 541–5258, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 61

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: December 11, 1989.

William Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 89–29294 Filed 12–14–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 89–25]

Security for the Protection of the Public

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to add a new provision to subparts A and B of its rules requiring proof of financial responsibility for passenger vessels. The new language would provide that the Commission may permit, for good cause, deviations from the standard language prescribed in Forms FMC–132A, FMC–133A, FMC–132B and FMC–133B, which are the surety bond and guaranty forms for financial responsibility vis-a-vis nonperformance and casualty. The new regulations would provide greater flexibility for the Commission to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language.

DATES: Comments due January 4, 1990.

ADDRESSES: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION: The Commission's rules implementing Public Law 89–777, 46 U.S.C. app. 817d and 817e, are contained in part 540 of 46 CFR. They prescribe requirements for certification of financial responsibility for passenger vessels against nonperformance or liability for death or injury (casualty). Codified in the rules are the following forms which are to be used by applicants for certificates:

FMC–132A—Passenger Vessel Surety Bond (46 CFR Part 540) [Performance]

FMC–133A—Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act

FMC–132B—Passenger Vessel Surety Bond (46 CFR Part 540) [Casualty]

FMC–133B—Guaranty in Respect of Liability for Death or Injury, Section 2 of the Act

Under the present rules, applicants must submit surety bonds and guaranties using the language and format of the forms.

The Commission proposes to add the following provision to the relevant sections of the regulations: "The requirements of Form _____, however, may be amended by the Commission in a particular case for good cause." This change is intended to allow the Commission flexibility in considering evidence of financial responsibility when particular, unusual circumstances may justify a deviation from the forms. This rule is not intended to effect a lower or relaxed standard of evidence of financial responsibility, but rather to accommodate variations in arrangements which may be necessary in particular situations, lest a rigid adherence to form results in undue hardship on applicants.

The Federal Maritime Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Accordingly, OMB approval of the proposed rule is not required.

List of Subjects in 46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, the Federal Maritime Commission proposes to amend part 540 of title 46 of the Code of Federal Regulations as follows:

1. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716.

2. Section 540.5 is amended to add a new sentence to paragraph (c) as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self insurance.

* * * * *

(c) * * *

The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

3. Section 540.6 is amended to add a new sentence to paragraph (a) as follows:

§ 540.6 Surety bonds.

(a) * * *

The requirements of Form FMC–132A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

4. Section 540.24 is amended to add new sentences to paragraphs (b) and (d) as follows:

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

(b) * * *

The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

(d) * * *

The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–29223 Filed 12–14–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–560, RM–6952]

Radio Broadcasting Services; Dillingham, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Jackson McCormick, seeking the allotment of FM channel 256A to Dillingham, Alaska, as that community's first local FM broadcast service. Coordinates for this proposal are 59–02–30 and 158–27–30.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jackson McCormick, McCormick Construction & Maintenance, P.O. Box 157, Dillingham, AK 99576.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the commission's Notice of Proposed Rule Making, MM Docket No. 89–560 adopted November 29, 1989 and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

FR Doc. 89–29251 Filed 12–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–562, RM–6951]

Radio Broadcasting Services; Guntersville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Guntersville Broadcasting Co., Inc., licensee of Station WTWX–FM, Channel 240A, Guntersville, Alabama, seeking the substitution of FM Channel 240C3 for Channel 240A and modification of its license accordingly. Coordinates for this proposal are 34–23–03 and 86–12–57.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–562, adopted November 29, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchsed from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29250 Filed 12-14-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-563, RM-6953]

Radio Broadcasting Services; Walsenburg, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Hargrave Broadcasting Corporation, licensee of Station KSPK(FM), Channel 272A, Walsenburg, Colorado, seeking the substitution of FM Channel 272C3 for Channel 272A and modification of its license accordingly. Coordinates for this proposal are 37-37-39 and 104-49-17.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Julia L. Frey, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, 215 North Eola Dr., Orlando, FL 32801.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89-563, adopted November 29, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29252 Filed 12-14-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-561, RM-6968]

Radio Broadcasting Services; Veedersburg, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Christian Family Radio, seeking the allotment of FM Channel 225A to Veedersburg, Indiana, as that community's first local broadcast service. Coordinates for this proposal are 40-06-47 and 87-15-45.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James M. Weitzman, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901-15th St., NW., Suite 1100, Washington, DC 20005.

FOR FUTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-561, adopted November 29, 1989 and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M. Street NW., Suite, 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29253 Filed 12-24-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[General Docket 88-441; FCC 89-326]

Advanced Technologies for the Public Safety Radio Services

AGENCY: Federal Communications Commission.

ACTION: Further notice of inquiry; modification.

SUMMARY: The Commission has adopted a Further Notice of Inquiry dealing with advanced technologies for the public safety radio services. This action was taken following release of a Memorandum Opinion and Order, 54 FR 20615 (May 12, 1989), in which the Commission decided that concerns about interoperability and spectrum efficiency in the public safety services could be best addressed by focusing on the future use of advanced technologies, such as digital, in these services. The Commission directed the preparation of this Further Notice of Inquiry, which explores the many technical, economic, and regulatory issues relating to the

possible implementation of digital technology by the public safety services.

DATES: Interested persons may file comments on or before March 16, 1990 and may file reply comments on or before April 13, 1990.

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

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, Land Mobile and Microwave Division, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Inquiry, Gen. Docket No. 88-441, adopted November 28, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Further Notice of Inquiry

1. On September 7, 1988, the Commission released a Notice of Inquiry (53 FR 35965, 9/15/88), to obtain public comment on the issue of trunking standards for radio equipment operating in the 821-824/866-869 MHz public safety spectrum. The Commission received comments from a number of parties representing the public safety radio equipment industry, the user community, and other interested organizations. After careful consideration of the record, the Commission, in a Memorandum Opinion and Order released May 1, 1989, determined that standards based on current analog technologies were not necessary. At the same time, the Commission decided that the public safety community's concerns about interoperability and the Commission's ongoing objective of providing maximum spectrum efficiency would be best served by focusing on the future development and use of advanced radio technologies, such as digital, in the public safety services. Accordingly, the Commission ordered that a Further Notice of Inquiry be prepared to explore ways in which advanced technologies might be used to meet the future operational and spectrum requirements of the public safety community.

2. The Notice raises questions on a variety of topics, including (1) the differences between analog and digital technologies, (2) the operational features that digital technology may be able to offer, (3) the various cost factors that might be associated with a conversion to digital by public safety, (4) the issue of digital equipment standards, and (5) the possible role of the Commission in promoting the development of such standards.

3. The information acquired through this Further Notice will enable the Commission to make an informed decision on what further actions should be taken in this area, if any. The Commission invites all interested parties to comment on the questions raised in the Further Notice. Comments must be filed on or before March 16, 1990, and reply comments must be filed on or before April 13, 1990.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-29254 Filed 12-14-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201, 1202, 1204, 1206, 1209, 1212, 1215, 1219, 1222, 1225, 1227, 1233, 1245 and 1252

[Docket 46625 Notice No. 89-24]

RIN 2105-AB54

Acquisition Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal changes the Department's Transportation Acquisition Regulation (TAR). These changes add coverage on debarment and suspension, and on protests to the agency, as well as making changes with respect to several internal operating procedures. This proposed rule also adds coverage to the TAR to implement Federal Acquisition Circular 84-38.

DATES: Comments should be received by no later than February 13, 1990. Late-filed comments will be considered to the maximum extent practicable.

ADDRESS: Submit written comments, preferably original plus 4 copies to OST Docket Clerk, Docket Number 46625, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m. EST Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura at 400 Seventh Street SW, Room 9401, Washington, DC 20590, phone number (202) 366-4286.

SUPPLEMENTARY INFORMATION: The TAR is now up to date and current with the Federal Acquisition Regulation (FAR) through Federal Acquisition Circular 84-38. This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

Executive Order 12291

Under Bulletin No. 85-7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information requirements contained in the TAR were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504(h)), and were approved February 23, 1987. The OMB approval number for the TAR is 2105-0517.

National Environmental Policy Act

DOT has concluded that promulgation of this rule would not represent a major

Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations.

In OFPP letter 83–2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. The changes proposed are principally in the areas of format and internal procedures. The internal procedural changes are necessary primarily to set forth procedures with respect to debarment and protests to the agency.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act.

List of Subjects in 49 CFR Parts 1201, 1202, 1204, 1206, 1209, 1212, 1215, 1219, 1222, 1225, 1227, 1233, 1245, 1252

Government procurement.

This rule is issued under delegated authority under 49 CFR part 1.59(q).

Dated: December 11, 1989.

Melissa J. Allen,

Deputy Assistant Secretary for Administration.

Accordingly, the Department of Transportation amends 48 CFR Chapter 12 as follows:

1. The authority for 48 CFR Parts, 1201, 1202, 1204, 1206, 1209, 1212, 1215, 1219, 1222, 1225, 1227, 1233, 1245, 1252 continues to read as follows:

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended 40 U.S.C. 486(c); 41 U.S.C. 255 et. seq., 10 U.S.C. 2301 et. seq., 41 U.S.C. 403 et. seq., as amended by Pub L. 98–369; 48 CFR 1.301; 49 CFR 1.49.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1201.403 is revised to read:

1201.403 Individual deviations.

Requests for individual deviations from the FAR and TAR must be approved by the agency head. However, for OST, the request shall be submitted by the HCA to the Senior Procurement Executive for approval. All such deviations shall be coordinated with legal counsel. Requests for deviations shall cite the specific part of the FAR or TAR from which its desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The agency head shall transmit copies of approved individual FAR and TAR deviations to the Senior Procurement Executive.

1201.404 [Amended]

3. Section 1201.404 is amended by changing the first sentence to read: "Requests for class deviations to the FAR and TAR shall be submitted by the HCA to the Senior Procurement Executive for approval," in compliance with the requirements of FAR section 1.404.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Section 1202.170 is amended by adding paragraph (g) to this section to read:

1202.170 Definitions.

* * * * *

(g) "Headquarters Units in the Coast Guard" means:

Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina.

Commanding Officer, U.S. Coast Guard Training Center, Cape May, New Jersey.

Commanding Officer, U.S. Coast Guard Training Center, Petaluma, California.

Commanding Officer, U.S. Coast Guard Yard, Baltimore, Maryland.

Commanding Officer, U.S. Coast Guard Electronics Engineering Center, Wildwood, New Jersey.

Commanding Officer, U.S. Coast Guard Actvities, Europe, London.

Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Virginia.

Commanding Officer, U.S. Coast Guard Pay and Personnel Center, Topeka, Kansas.

Commanding Officer, U.S. Coast Guard Resident Inspection Officer, Middletown, Rhode Island.

Commanding Officer, U.S. Coast Guard Resident Inspection Office, Bath, Maine.

Commanding Officer, U.S. Coast Guard Resident Inspection Office, Lockport, Louisiana.

Commanding Officer, U.S. Coast Guard Resident Inspection Office, Seattle, Washington.

Commanding Officer, U.S. Coast Guard Aircraft Program office, Grand Prairie, Texas.

Commanding Officer, U.S. Coast Guard Air Station, Washington, National Airport, Washington, D.C.

Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, Alabama.

Commanding Officer, U.S. Coast Guard Station, Alexandria, Virginia.

Commanding Officer, U.S. Coast Guard Institute, Oklahoma City, Oklahoma.

Commanding Officer, U.S. Coast Guard COMDAC Support Facility, Portsmouth, Virginia.

Commanding Officer, U.S. Coast Guard Central Regional Recruiting Center, Hazelwood, Missouri.

Commanding Officer, U.S. Coast Guard Eastern Regional Recruiting Center, Norfolk, Virginia.

Commanding Officer, U.S. Coast Guard Western Regional Recruiting Center, Seattle, Washington.

Commanding Officer, U.S. Coast Guard Training Center, Governors Island, New York, New York.

PART 1204—ADMINISTRATIVE MATTERS

1204.602 [Amended]

5. Section 1204.602 is amended by adding paragraph (d) to read:

* * * * *

(d) The Federal Procurement Data System (FPDS) requires that the Dun & Bradstreet Data Universal Numbering System (DUNS) number and Congressional information be recorded for certain contract actions. Since each firm submitting bids or proposals on Department of Transportation (DOT) solicitations will know (or can readily determine) their DUNS number, as well as the Congressional District in which their home office and principal place of performance is located, a solicitation provision has been devised to obtain this information when bids or offers are submitted. Failure of a bidder or offeror to furnish the requested information as a part of his bid shall not render the bid nonresponsive and, in such instances, the information will be obtained by appropriate means. Use of this solicitation provision by DOT procurement offices is not mandatory. The procurement office may elect to obtain the information after opening bids or proposals or can purchase a DUNS microfiche file and look up the contractor's number. Contracting officers may use the solicitation provision at 1252.204–70, Congressional/DUNS Information, or a similar provision, in solicitations to obtain Congressional and DUNS information.

* * * * *

PART 1206—COMPETITION REQUIREMENTS

1206.304 [Amended]

6. Section 1206.304(a)(1)(ii) is revised to read:

(a) * * *

(1) * * *

(i) * * *

(ii) For the Coast Guard: The HCA for the Coast Guard Maintenance Logistics Commands and their units. The HCA for Coast Guard Headquarters. The HCA for the Coast Guard Academy. The Commander or Commanding Officer of the Headquarters Units defined under 1202.170 who have procurement authority over $25,000. This authority is delegable to no lower than the Comptroller, if applicable, of the Headquarters unit.

1206.305 [Amended]

7. The last sentence of section 1206.305 is changed to read: "A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification, or the justification should include sufficient information to support the waiver of snyopsis determination."

* * * * *

PART 1209—CONTRACTOR QUALIFICATIONS

1209.4 [Amended]

8. Subpart 1209.4 is amended to add sections 1205.470 through 1209.473 to read as follows:

Subpart 1209.4—Debarment, Suspension, and Ineligibility

* * * * *

1209.470 Debarring and suspending officials.

The debarring and suspending officials for the Department shall be "Head of the Agency" as defined at 1202.170.

1209.471 Distribution of consolidated list of debarred, suspended and ineligible contractors.

The Office of Acquisition and Grant Management (M–60) in the Office of the Secretary shall make distribution of the Consolidated Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs, which the General Services Administration (GSA) is to compile and maintain on a Government-wide basis.

1209.472 Notifying GSA of ineligible contractors.

Each Operating Administration shall, within 5 working days after debarring or suspending a contractor, or modifying or rescinding such action, notify GSA and the Senior Procurement Executive. The following information shall be provided:

(a) The name and address of debarred or suspended contractor;

(b) The cause for the action;

(c) The effective date of the action and, in the case of debarments, the termination date; and

(d) The name and telephone number of the office responsible for the action.

1209.473 Procedures.

(a) The Contracting Officer shall prepare a report to the debarring and suspending official incorporating the information outlined in paragraph (c) of this section when:

(1) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(2) A report is required due to suspicion of fraud or other improper business practices;

(3) A report is required by FAR 3.409 (contingent fees);

(4) A report is required by FAR 49.106 (fraud related to termination settlements);

(5) Buy American Act violations are suspected (see FAR 25.204); or,

(6) A contractor is suspected of attempting to evade the prohibition or debarments or suspensions imposed under this regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of Inspector General for investigative consideration, in accordance with DOT Order 8000.5, Office of the Inspector General Investigative Procedures. If appropriate, the Office of the Inspector General shall make a referral to the appropriate Departmental debarring official.

(b) In debarment situations which involve small business or businesses owned by minority or disadvantaged individuals and women, a copy of the report to the debarring and suspending official shall be furnished to the Office of Small and Disadvantaged Business Utilization (OSDBU), S–40.

(c) Each report prepared pursuant to this subsection shall contain the name and telephone number of the contracting officer handling the case and shall include substantially the following information, where available:

(1) Name and address of the contractor;

(2) Names of the principal officers, partners, owners, or managers;

(3) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(4) Description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(5) The status of vouchers;

(6) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(7) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, an the amount paid or due on such contracts;

(8) A complete summary of all pertinent evidence;

(9) A recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(10) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(11) The comments and recommendations of the Contracting Officer and of each successive point of review as to (i) whether the contractor should be suspended or debarred, (ii) whether any limitations should be applied to such action, and (iii) the period of any debarment; and,

(12) As an enclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, the notice of proposal to debar, copies of investigative reports and certified copies of indictments and judgments.

(d) The contracting officer shall obtain legal review and concurrence prior to presenting the report to the debarring and suspending official.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Part 1212 is amended to add subpart 1212.2 consisting of section 1212.202 to read as follows:

Subpart 1212.2—Liquidated Damages

1212.202 Policy.

(a) Upon final administrative determination, funds withheld or collected for liquidated damages pursuant to FAR clauses 52.212–4, Liquidated Damages-Supplies, Services, or Research and Development, and 52.212–5, Liquidated Damages-Construction, may be used to modify the existing contract or to award a new contract, if such contract or modification is for the express purpose of making the Government whole and ensuring that the Government receives the goods or services for which it bargained under the original contract, or to mitigate the damages suffered by the Government. Such funds may be obligated only if they have not yet expired.

(b) This section does not apply to: (1) The disposition of funds withheld or collected as unpaid wages and "liquidated damages" under FAR clause 52.222–4, Contract Work Hours and Safety Standards Act-Overtime Compensation, nor (2) the disposition of funds withheld pursuant to FAR clauses 52.222–6, Davis-Bacon Act, and 52.222–7, Withholding of Funds.

PART 1215—CONTRACTING BY NEGOTIATION

10. Section 1215.103 is added to read:

1215.103 Converting from sealed bidding to negotiation procedures.

The HCA is delegated the responsibility for determining that an invitation for bids is to be canceled and that the use of negotiation is appropriate to complete the acquisition.

11. Section 1215.170 is revised to read as follows:

1215.170 Pre-contract costs.

(a) *Authorizing pre-contract costs.* (1) Except as authorized in 1215.170(b), no DOT employee shall encourage or authorize any potential contractor to incur costs prior to contract award.

(2) Pre-contract costs shall not be authorized prior to approval by the HCA. The request for HCA approval shall include the following:

(i) Identification of the requirement;

(ii) Name of the proposed contractor;

(iii) Brief description of the work for which pre-contract costs are necessary;

(iv) Total amount of pre-contract costs involved and approximate duration of the period over which costs will be incurred;

(v) Reason(s) why use of pre-contract costs are necessary and in the best interest of the Government.

(3) Pre-contract costs shall only be authorized when funds are available. The contracting officer shall ensure that the pre-contract cost agreement does not violate the Anti-deficiency Act.

(4) Pre-contract cost agreements shall be bilateral and in writing when feasible.

(b) *Procedures.* (1) The contracting officer shall notify the contractor in writing when authorizing the incurrence of pre-contract costs. Such notice shall include:

(i) A not-to-exceed dollar limitation;

(ii) The period for which pre-contract costs are authorized; and

(iii) Notice to the contractor that reimbursement of all pre-contract costs incurred will be subject to award (or modification) (i.e., only those costs considered allowable and allocable under the terms of the awarded contract will be reimbursed), of a contract and the terms of the awarded contract (or modification), and that pre-contract costs incurred shall not be reimbursed prior to contract award (or modification).

(2) Payments shall not be made to a contractor for reimbursing pro-contract costs until a contract is awarded (or modified) and funds obligated for that purpose.

(3) Pre-contract cost agreements shall be incorporated into the terms and conditions of the awarded contract.

* * * * *

12. Section 1215.905–70 is amended by revising paragraph (b)(5) to read:

1215.905–70 Methods.

* * * * *

(b) * * *

(5) Generally, assignment of specific percentages from within the "profit weight ranges" shown in columns 6 (c), (d) or (e) of DOT Form 4220.32 can be established after appropriate analysis of the elements of cost (i.e., items 7 through 12 of DOT Form 4220.32). However, to ensure consistency of contract risk assessment for DOT acquisitions, the assigned weight (%) for Line 15, Cost Risk, of DOT Form 4220.32 shall generally be selected as follows:

* * * * *

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

13. Section 1219.705–4 is added to read:

1219.705–4 Reviewing the subcontracting plan.

It is DOT policy that all approved Public Law 95–507 subcontracting plans have at a minimum, a combined 10 percent goal for Small Business (SB) and Small Disadvantaged Business Enterprises (SDBE). For all proposed subcontracting plans with SB or SDBE goals of less than 10 percent, the Office of Small and Disadvantaged Business Utilization shall be afforded an opportunity to review the plans and provide comments and recommendations to the contracting officer, prior to acceptance of the plans.

* * * * *

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

14. Subpart 1222.4 consisting of sections 1222.404–6 and 1222.406–11 is added to read as follows:

Subpart 1222.4—Labor Standards for Contracts Involving Construction.

1222.404–6 Modifications of wages determinations.

Authority to request an extension to a general wage determination, pursuant to FAR 22.304–6(b)(6), is delegated to the HCA.

1222.406–11 Contract terminations.

The HCA is responsible for ensuring that a report is submitted to the Administrator, Wage and Hour Division, Department of Labor, and to the Comptroller General, as required by FAR 22.406–11.

* * * * *

PART 1225—FOREIGN ACQUISITION

15. Part 1225 is amended to add subpart 1225.10 consisting of section 1225.1003 to read as follows:

Subpart 1225.10—Restrictions on Federal Public Works Projects

1225.1003 Waivers.

Proposed waivers shall be submitted to the Secretary for approval via the Senior Procurement Executive. The administration requesting the waiver shall be responsible for publishing notice of the waiver in the **Federal Register** pursuant to FAR 25.1003(b).

PART 1227—PATENTS, DATA AND COPYRIGHTS

* * * * *

16. Section 1227.404 is added to read as follows:

1227.404 Basic rights in data clause.

(a) For contracts and solicitations which do not require the development, use or delivery of items, components or processes that are intended to be acquired by or for the Government, the contracting officer may include

Alternate 1 of FAR clause 52.227–14, Rights in Data-General (reference FAR 27.404(c)).

(b) For copyrighted data first produced in the performance of a contract, the contracting officer may obtain a copyright license of a different scope than that set forth in subparagraph (c)(1) of FAR clause 52.227–14, Rights in Data-General, if he or she determines in writing that such different license will substantially enhance the transfer or dissemination of the data first produced under the contract, and will not interfere with the Government's use of the data as contemplated by the contract or if required for international agreements (reference FAR 27.404(f)(1)).

(c) For copyrighted data not first produced in the performance of a contract, the contracting officer may obtain a copyright license of a different scope than that set forth in subparagraph (c)(2) of FAR clause 52.227–14, Rights in Data-General, if he or she determines in writing that the scope of the license is not inconsistent with the purpose for acquiring the data (reference FAR 27.404(f)(2)).

(d) For software first produced in the performance of the contract, the contracting officer may include a clause in contracts and solicitations restricting any claim(s) to copyright in any computer software for the purpose of meeting established agency distribution programs, or when required to accomplish the purpose(s) for which the software is produced.

1227.470 Validation of proprietary data.

Pursuant to Public Law 98–577, contracts for property or services which provide for the delivery of technical data shall include the clause at 1252.227–70, Validation of Proprietary Data.

* * * * *

PART 1233—PROTESTS, DISPUTES, AND APPEALS

17. Section 1233.103 is revised to read:

1233.103 Protests to the agency.

(a) *Policy.* It is the Department's policy to resolve protests in an informal manner whenever possible. Protesters are strongly encouraged to address their concerns to the contracting officer prior to resorting to litigation or other formal, external means of resolution. The objectives of the following procedures are to resolve agency protests effectively, to help build confidence in the Department's procurement system, to reduce the need to file protests at GAO or GSBCA, and to provide both the Department and the protester maximum information regarding their respective positions.

(b) *Procedures.* (1) Agency protests may be submitted by interested parties to the contracting officer.

(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be received prior to bid opening or the closing date for receipt of initial proposals. In negotiated acquisitions, for alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation, the protest must be received not later than the next closing date for receipt of proposals following the incorporation.

(3) In cases other than those covered in paragraph (b)(2) of this section, protests must be received not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.

(4) Protests shall be in writing and shall include, as a minimum, the following information:

(i) Name, address, and telephone number of the protester;

(ii) Solicitation or contract number;

(iii) Detailed statement of the legal and factual grounds for the protest, including copies of relevant documents;

(iv) Request for a ruling by the contracting officer to whom the protest is submitted;

(v) Statement as to the form of relief requested.

(5) Upon receipt of an agency protest, the contracting officer shall:

(i) Immediately notify legal counsel and provide them with a copy of the protest, as well as providing a copy to the Office of Acquisition and Grant Management for information;

(ii) Prepare a report as prescribed in FAR 33.104(a)(2), except that, if the contract action or contract performance continues after receipt of the protest, the report shall include any determination prescribed in FAR 33.103(a);

(iii) Obtain review of the protest response by legal counsel;

(iv) Ensure that the protest response is sent in sufficient time for the protester to receive it within 25 working days after receipt of the protest.

(6) If the contracting officer and the protester agree on corrective action, a report is not required; however, in addition to amending the solicitation or taking other corrective action, the contracting officer shall inform the protester in writing of the proposed corrective action and give written notice to the protester that the solicitation process or contract performance will continue or resume.

(7) For protests to the agency, the Agency Head on a non-delegable basis is responsible for the determination authorizing award of a contract prior to resolution of the protest.

(8) If a written protest after award has been lodged with the contracting officer, the HCA may authorize continued contract performance notwithstanding the pending protest if he or she makes a written determination that (i) performance of the contract is in the Government's best interest, or (ii) urgent and compelling circumstances significantly affecting interests of the United States do not permit waiting for the protest decision. A copy of this determination shall be forwarded to the Office of Acquisition and Grant Management, M–60.

* * * * *

PART 1245—GOVERNMENT PROPERTY

18. Section 1245.101 is amended by changing the definition of "Noncapitalized equipment" to read:

1245.101 Definitions.

* * * * *

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $100 or more but less than $5,000, and other items of personal property regardless of cost when so designated by the Government.

19. Subpart 1245.3 is amended by adding section 1245.304.1 to read as follows:

Subpart 1245.3—Providing Government Property to Contractors

* * * * *

1245.304–1 Policy.

(a) Contractors shall ordinarily furnish any motor vehicles needed in performing Government contracts. DOT administrations, however, may provide contractors with motor vehicles when it is in the Department's best interest, in accordance with the criteria in FAR 45.304.

(b) Prior to providing motor vehicles to contractors, DOT administrations shall contact the Office of Administrative Services and Property Management (M–40). M–40 will provide information on the priority of sources for satisfying vehicle requirements. Additionally, M–40 will provide up-to-date guidance on relevant requirements for contracting officers and contractors

relating to motor vehicle management and the official use of Government vehicles.

20. Subpart 1245.5 is amended by adding section 1245.505–71 to read:

Subpart 1245.5—Management of Government Property in the Possession of Contractors

* * * * *

1245.505–71 Listing Government property in contracts.

The contracting officer shall include in all contracts which include Government-furnished property, a list of Government property provided to the contractor under the contract, unless the contracting officer determines in writing that the inclusion of such a list would not be feasible. The list should identify the Government property by make or model number when possible and indicate the dollar value of the property. This requirement does not apply to contractor-acquired Government property.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 1252.209–70 is added to read:

1252.209–70 Congressional/DUNS information.

As prescribed at 1204.602(d), insert the following provision in Section K of solicitations.

Congressional/DUNS Information (Effective Date of Rule)

Each bidder or offeror is requested to fill in the appropriate information set forth below:

(a) DUNS Identification Number _____ [This number is assigned by Dun & Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none."]

(b) Home office County and Congressional District:

_____.

(c) Principal place of performance of the work required under the resulting contract (city, county, and state):

_____.

(d) Congressional District of the principal place of performance:

_____.

(End of Provision)

* * * * *

22. Section 1252.215–72 is amended as follows:

1252.215–72 [Amended]

In paragraph 2 of TAR provision 1252.215–72, Cost Proposal Instructions, the reference to "FAR Table 15–3" is revised to read "FAR Table 15–2."

1252.216–71 [Amended]

23. Section 1252.216–71 is amended by adding the words "or unacceptable" to the end of the last sentence.

24. Section 1252.227–70 is added to read:

1252.227–70 Validation of proprietary data.

As prescribed at 1227.470 insert the following clause in Section I of solicitations and contracts:

Validation of Proprietary Data (. . . Date . . .)

(a) The contractor, or subcontractor at any tier shall be prepared to furnish to the contracting officer, at his or her request, a written justification for any restriction asserted on the Government's right to use technical data delivered in accordance with the requirements of this contract.

(b) The contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the Government to use technical data furnished by the Government under this contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and the continued adherence to the asserted restriction by the Government would make it impracticable to procure the item competitively at a later time.

(c) Review; challenge; notice.

If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor challenging the restriction. The contractor, upon receipt of such notification, shall provide written notice to the subcontractor. Both notices shall state:

(1) The grounds for challenging the asserted restriction; and

(2) The requirement for a response within 60 days justifying the current validity of the asserted restriction.

(d) Written request; additional time; schedule of responses. If the contractor or subcontractor asserting a restriction subject to this clause submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(e) Decision. (1) Upon a failure by the contractor or subcontractor to submit any response under paragraph (b) of this clause, the contracting officer will issue a decision pertaining to the validity of the asserted restriction.

(2) If a justification is submitted in response to the notice provided pursuant to paragraph (b) of this clause, the contracting officer shall within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) Claim. Claims submitted by the contractor pertaining to the contracting officer's decision on the validity of the asserted restrictions shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)

(g) Final disposition of challenge.

(i) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the Government to use such technical data is sustained:

(A) The restriction on the right of the Government to use the technical data shall be canceled; and

(B) If the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of Title 28) incurred by the Government in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(ii) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the Government to use such technical data is not sustained:

(A) The Government shall continue to be bound by the restriction; and

(B) The Government shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of Title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Government is found not to have been made in good faith.

(End of clause)

[FR Doc. 89–29236 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB35

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Endangered Status for the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be extended for the proposed rule to determine the Mojave population of the desert tortoise *(Gopherus (=Xerobates, =Scaptochelys) agassizii)* as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act).

DATE: The comment period on this proposal is extended to January 19, 1989. Comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director (Attn: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232-4181. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director, Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to determine the Mojave population of the desert tortoise as an endangered species was published in the **Federal Register** (54 FR 42270) on October 13, 1989. The comment period on the proposal originally closed on January 11, 1989. The Service has been asked by the Nevada Department of Wildlife to extend the comment period one week.

The State of Nevada Department of Wildlife must receive approval from the State of Nevada Board of Wildlife Commissioners. To accommodate submission of this significant additional information, the Service is extending the comment period on the proposal for eight days. The comment period now closes on January 19, 1990. Written comments may be submitted until that time at the Service office in the ADDRESSES section.

Author

This notice was prepared by Dr. Jay F. Watson, Chief, Division of Technical Service, U.S. Fish and Wildlife Service, at the above address (telephone (503) 231-6154 or FTS 429-6154).

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

Dated: December 8, 1989.

Marvin L. Plenert,

Regional Director.

[FR Doc. 89-29152 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 23

RIN 1018-AA29

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention.

This document announces decisions by the Conference of Parties to CITES on amendments to Appendices I and II, and invites comments on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from implementing the Convention for a particular species. However, even if a reservation were taken, some importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The CITES amendments to Appendices I and II described in this document will enter into effect on January 18, 1990.

DATES: The amendments to Appendices I and II adopted at the recent meeting of the Conference of the Parties become effective 90 days after their adoption under terms of the Convention and therefore are enforceable as of January 18, 1990. The Service will consider all comments received by January 16, 1990 in determining whether the United States should enter any reservations.

ADDRESS: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 750, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

Recent Decisions

The seventh meeting of the Conference of Parties to CITES was held on October 9-20, 1989, in Lausanne, Switzerland. At the meeting, the Parties considered 43 different animal proposals and 49 different plant proposals to amend the appendices. These were listed in the **Federal Register** on September 5, 1989, for proposals

submitted by the United States (54 FR 36827) and October 6, 1989, for proposals by other Parties (54 FR 41282). Proposals on plant species were first discussed in the Plants Committee meeting as a group of Committee I. All proposed amendments were discussed and decided on in Committee I with each accredited attending Party having one vote. Amendments were adopted by a two-thirds majority of the Parties present and voting. Action by Committee I was accepted by the Plenary Session unless one-third of the Parties voting expressed the desire to reopen discussion on a specific species proposal. Debate was reopened on Thailand's proposal on *Pitta guajana* and a vote taken in the Plenary Session.

In addition, because of lack of time, Committee I did not reach a conclusion on the proposals on the Iberian lynx and the corals; the discussion of these proposals was completed and votes taken in the Plenary Session. Results of actions by the Conference of the Parties on the proposed amendments are given in the following table.

Species	Proposed amendment	Proponent	Final decision of the Parties
Mammals			
Order Chiroptera:			
Pteropus insularis (Truk flying fox)	Transfer from II to I.[17]	Sweden, USA	Approved.[17]
Pteropus mariannus (Mariana flying fox)	...do	...do	Do.
Pteropus molossinus (Ponape flying fox)	...do	...do	Do.
Pteropus phaeocephalus (Mortlock flying fox).	...do	...do	Do.
Pteropus pilosus (Large Palau flying fox).	...do	...do	Do.
Pteropus samoensis (Samoan flying fox).	...do	...do	Do.
Pteropus tokudae (Little Mariana flying fox).	...do	Sweden	Withdrawn[2].
Pteropus tonganus (Insular flying fox)	...do	Sweden	Approved.
Acerodon spp	Add to II.[14,17]	USA	Approved.[14,17]
Pteropus spp	Add to II.[15,17]	USA	Approved.[15,17]
Order Carnivora			
Melursus ursinus (Sloth bear)	Add to I.	Federal Republic of Germany, India.	Approved.
Ursus americanus (Black bear)	Add to II.	Japan	Withdrawn[1]
Ursus arctos (Brown bear)	Add to II.	Japan	Withdrawn[1]
Ursus arctos (Brown bear)	Include *U. arctos* population of Asia, Turkey and USSR on II[4].	China, Denmark	Approved.[4]
Ursus arctos (Brown bear)	Transfer *U. arctos isabellinus* and *U. arctos pruinosus* populations from I to II.	China, Denmark	Withdrawn[2]
Ursus arctos nelsoni	Replace present App. I listing with the listing *Ursus arctos* (population of Mexico).	China, Denmark	Approved.
Aonyx cinerea (Asian small-clawed otter).	Transfer from II to I.	India	Rejected.
Lutra perspicillata (Smooth-coated otter).	Transfer from II to I.	India	Rejected.
Felis pardalis (Ocelot)	Transfer from II to I.	Federal Republic of Germany	Approved.
Felis tigrina (Little spotted cat)	...do	...do	Approved.
Felis weidii (Margay)	...do	...do	Approved.
Lynx pardinus (Iberian lynx)	Transfer from II to I.	Portugal, Fed. Republic of Germany.	Approved.
Order Pinnipedia:			
Callorhinus ursinus	Add to II.	USA	Withdrawn.[1,18]
Order Proboscidea:			
Loxodonta africana (African elephant)	Transfer from II to I[5]	Austria, Gambia, Hungary, Kenya, Somalia, Tanzania, USA.	Approved.[5]
Order Artiodactyla:			
Cephalophus jentinki (Jentink's duiker)	Transfer from II to I.	Federal Republic of Germany	Approved.
Birds			
Order Rheiformes:			
Rhea americana (Rhea)	Add to II.	Japan	Withdrawn[1]
Order Tinamiformes:			
Rhynchotus rufescens (3 sspp.) (Rufous tinamous).	Remove from II.	Uruguay	Withdrawn[2]
Order Ciconiiformes:			
Ciconia ciconia (White stork)	Add to II.	Federal Republic of Germany	Rejected.
Order Galiiformes:			
Francolinus ochropectus (Djibouti francolin).	Remove from II.	Switzerland	Approved.
Francolinus swierstrai (Swierstra's francolin).	...do	...do	Approved.
Order Psittaciformes:			
Aqapornis cana (Grey-headed lovebird)	Remove from II (if accepted, Madagascar had indicated that they would include it in Appendix III).	Madagascar	Rejected.
Ara maracana (Illiger's macaw)	Transfer from II to I.	Paraguay	Approved.
Amazona tucumana (Tucuman amazon)	...do	Denmark	Approved.
Cacatua moluccensis (Moluccan cockatoo).	Transfer from II to I.	Switzerland	Approved.
Order Coraciiformes:			
Buceros bicornis (Great pied hornbill)	Remove from I.	Switzerland	Withdrawn.[1]

Species	Proposed amendment	Proponent	Final decision of the Parties
Buceros spp. (Hornbills)	Add to II	....do	Withdrawn.[1]
Buceros rhinoceros (Rhinoceros hornbill).	....do	Belgium	Approved.
Order Passeriformes:			
Pitta gurneyi Gurney's pitta	Add to I	Thailand	Approved.
Pitta quajana (Banded pitta)	Add to II	....do	Approved.
Pseudochelion sirintarae (White-eyed river martin).	Transfer from II to I	....do	Approved.
Reptiles			
Order Testudinata:			
Chelonia mydas (Green sea turtle)	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	Indonesia	Withdrawn.[2]
Eretmochelys imbricata (Hawksbill sea turtle).	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	....do	Withdrawn.[2]
Order Crocodylia:			
Crocodylus cataphractus (African slender-snouted crocodile).	Transfer Cong's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 600.	Congo	Approved.
Crocodylus niloticus (Nile crocodile)	Transfer Botswana's population from I to II, pursuant to Conf. 3.15 on ranching.[5].	Botswana	Approved.[5]
Crocodylus niloticus (Nile crocodile	Transfer Cong's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 150.	Congo	Withdrawn.[2]
Crocodylus nilotius (Nile crocodile)	Transfer Ethiopia's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 2,845 (of which 45 taken from the wild) in 1989 and increased quotas in subsequent years.[7].	Ethiopia	Approved.[7]
Crocodylus niloticus (Nile crocodile)	Transfer Kenya's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 5,000 (with 1,000 from the wild).[6].	Kenya	Approved.[6]
Crocodylus niloticus (Nile crocodile)	Transfer Madagascar's population from I to II, pursuant to resolution Conf. 3.15 on ranching.[13].	Madagascar	Withdrawn/ Approved.[13]
Crocodylus niloticus (Nile crocodile)	Transfer Malawi's population from I to II, pursuant to Conf. 3.15 on ranching.[5].	Malawi	Approved.[5]
Crocodilus niloticus (Nile crocodile)	Transfer Mozambique's population from I to II, pursuant to resolution Conf. 3.15 on ranching.[5].	Mozambique	Approved.[5]
Crocodilus niloticus (Nile crocodile)	Transfer Somalia's population from I to II, pursuant to resolution Conf. 5.21 with export quota of 2,000 specimens.[5]	Somalia	Approved.[5]
Crocodilus niloticus (Nile crocodile)	Transfer Sudan's population from I to II, pursuant to resolution Conf. 5.21 with export quota of 5,040 specimens in 1990	Sudan	Approved.
Crocodilus niloticus (Nile crocodile)	Transfer Tanzania's population from I to II, pursuant to resolution Conf. 5.21 subject to an export quota of 3,500 specimens.[8]	Tanzania	Approved.[8]
Crocodilus niloticus (Nile crocodile)	Transfer of Zambia's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Zambia	Approved.
Crocodylus porosus (Salwater crocodile).	Transfer Indonesia's population from I to II, pursuant to resolution Conf. 5.21 with export quota of 5,000 specimens.[8]	Indonesia	Approved.
Order Squamata:			
Dracaena paraquayensis(Caiman lizard)	Add to II	Paraguay	Approved.
Shinisaurus crocodilorus (Chinese crocodile lizard).	....do	Federal Republic of Germany	Approved.
Varanus bengalensis (Bengal monitor	Transfer from I to II	Japan	Withdrawn.[2]
Varanus grayi (Gray's monitor)	Transfer from II to I	Federal Republic of Germany	Rejected.
Varanus griseus (Desert monitor)	Transfer from I to II	Japan	Withdrawn.[1]
Naja naja (Cobra)	Add to II	India	Approved.
Ophiophagus hannah (King cobra)	....do	....do	Approved.
Ptyas mucosus (Oriental ratsnake)	....do	....do	Approved.
Fishes (Pisces)			
Cynoleblas spp. (Pearlfishes)	Remove from II	Switzerland	Withdrawn.[2]
Latimeria chalumnae (Coelacanth)	Transfer from II to I	Federal Republic of Germany	Approved.
Scleropages formosus Asian bonytongue).	Transfer from I to II, pursuant to resolution Conf. 5.21, subject to an annual export quota of 2,500 specimens.[8].	Indonesia	Approved.[8]
CORALS (CNIDARIA)			
Athecata spp	Add to II[9]	Israel, Philippines	two families Approved.[9]
Coenothecalia spp	....do	....do	Approved.
Scleractinia spp	....do	....do	Approved.
Stolonifera spp	....do	....do	one family Approved.[9]
Plants[16]			
Family Amaryllidaceae:			
Galanthus spp. and natural hybrids (snowdrops).	Add to II	USA	Approved.
Sternbergia spp. (sternbergias)	Add to II	United Kingdom	Approved.
Family Apocynaceae:			
Pachypodium baronii, P. brevicaule, P. decaryi, and their natural hybrids.	Transfer from II to I	USA	Approved.

Species	Proposed amendment	Proponent	Final decision of the Parties
Rauvolfia serpentina (snake—root devil-pepper).	Add to II [11]	India	Approved. [11]
Family Araceae:			
Alocasia zebrina	Remove from I	USA	Approved.
Family Aristolochiaceae:			
Aristolochia indica (India birthwort)	Add to II	India	Withdrawn. [2]
Family Berberidaceae:			
Podophyllum hexandrum (Himalayan may-apple).	Add to I [10,11]	India	Approved. [10,11]
Family Caryocaraceae:			
Caryocar costaricense (ajo)	Remove from I [10]	USA	Approved. [10]
Family Cycadaceae:			
Seeds (only) of App. II spp	Remove from II	USA	Approved.
Family Droseraceae:			
Drosera burmannii, D. indica, D. peltata	Add to II	India	Withdrawn. [2]
Family Euphorbiaceae:			
Euphorbia subgenus *Lacanthis* dwarf spp. in Madagascar and their natural hybrids: E. ambovombensis, E. cylindrifolia, E. decaryi, E. francoisii, E. moratii, E. parvicyathophora, E. primulifolia, E. quartziticola, and E. tulearensis.	Transfer from II to I	USA	Approved.
Family Fagaceae:			
Quercus copeyensis (copey oak)	Remove from II	Switzerland	Withdrawn. [2]
Family Gentianaceae:			
Gentiana kurroo (Indian gentian)	Add to II	India	Withdrawn. [2]
Prepusa hookeriana	Remove from I	USA	Approved.
Family Humiriaceae:			
Vantanea barbourii (caracolillo)	Remove from I [10]	Switzerland	Approved. [10]
Family Juglandaceae:			
Oreomunnea (=*Engelhardia*) *pterocarpa* (gavilán blanco).	Remove from I	Switzerland	Withdrawn. [2]
Family Leguminosae (Fabaceae):			
Cynometra hemitomophylla (guapinol negro).	Remove from I [9]	do	Approved. [10]
Platymiscium pleiostachyum, (cristobal)	do	do	Approved. [10]
Tachigali versicolor (cana fistula)	Remove from I *or* downlist to II	Switzerland/USA	Withdrawn Approved. [2]
Family Liliaceae:			
Gloriosa superba (Malabar gloriosa-lily)	Add to II	India	Withdrawn. [2]
Family Melastomataceae:			
Lavoisiera itambana	Remove from I	USA	Approved.
Family Meliaceae:			
Guarea longipetiola	Remove from I	USA	Approved.
Family Moraceae:			
Batocarpus costaricensis (ojoche macho).	Remove from I [10]	Switzerland	Approved. [10]
Family Orchidaceae:			
Eriopsis biloba (Guatemalan pop.) (bi-lobed eriopsis).	Transfer from II to I	Guatemala	Withdrawn. [2]
Lemboglossum (=*Odontoglossum*) *majale* (May lemboglossum).	do	do	Withdrawn. [2]
L. uro-skinneri (Skinner lemboglossum)	do	do	Withdrawn. [2]
Paphiopedilum spp. (Asian tropical lady-slipper orchids).	do	Netherlands	Approved.
Phraqmipedium spp. (New World tropical lady-slipper orchids).	do	Federal Republic of Germany	Approved.
Rossioglossum (=*Odontoglossum*) *williamsianum* (Williams rossioglosum).	d0	Guatemala	Withdrawn. [2]
Family Palmae (Arecaceae):			
Chamaedorea amabilis, C. ferruginea, C. glaucifolia, C. klotzschiana, C. montana, C. oreophila, C. pulchra, C. stolonifera, and *C. tenella.*	Add to I	USA	Rejected. [12]
Chamaedorea cataractarum, C. ernestiaugusti, C. metallica, C. radicalis, C. rojasiana, C. simplex, and *C. tuerkheimii.*	Add to II	USA	Rejected.
Chamaedorea elegans and *C. seifrizii*	do	USA	Withdrawn. [1], [19]
Phoenix hanceana var. *philippinensis*	Remove from II	USA	Approved.
Salacca clemensiana	do	do	Approved.
Family Podocarpaceae:			
Podocarpus costalis (coastal podocarp)	Remove from I	Switzerland	Approved.
Family Podophyllaceae (see Family Berberidaceae):			
Family Ranunculaceae:			
Aconitum deinorrhizum (then-rooted monkshood).	Add to II	India	Withdrawn. [2]
Family Sterculiaceae:			
Pteryqota excelsa (=*Basiloxylon excelsum*) (*castaño*).	Remove from II	Switzerland	Approved.

Species	Proposed amendment	Proponent	Final decision of the Parties
Family Valerianaceae:			
Nardostachys grandiflora (=*N. Jatamansi*) (*Indian nard*).	Add to II	India	Withdrawn.[2]
Family Welwitschiaceae:			
Welwitschia mirabilis	Transfer from I to II	USA	Approved.
Family Zamiaceae:			
seeds (only) of App. II spp.	Remove from II	do	Approved.
Chiqua spp.	Transfer from II to I	do	Approved.

[1] Withdrawn prior to consideration at the meeting of the Conference of the Parties.
[2] Withdrawn during Plants Committee and/or Committee I discussions.
[3] Withdrawn after rejection by Committee I, but prior to consideration in Plenary session.
[4] Proposal amended to exclude population in U.S.S.R. and then approved after clarification that populations in Iran, Iraq, and Syria also were included.
[5] Appendix I proposal rejected, but then approved with the stipulation that a panel of experts be established to recommend whether specific biological and trade criteria are met for certain populations that would warrant the Parties transferring these populations to Appendix II.
[6] Amended proposal approved that excluded export of specimens taken from the wild in Botswana and Kenya, and that reduced the export of wild specimens from 750 to 250 in Malawi, and from 1,000 to 20 in Mozambique.
[7] Approved export quotas for specimens from Ethiopia included 45 wild-caught adults, 2,500 skins from "ranched" animals, and 300 curios from "ranched" animals in 1989 (added to 1990 quota); 70 wild-caught adults, 2,500 wild-caught hatchlings, 4,000 skins from "ranched" animals, and 300 curios from "ranched" animals taken in 1990; and similar quotas in 1991 and 1992, except that the quotas for skins from "ranched" animals would be increased to 6,000 each year.
[8] Amended proposal approved so that Somalia's quota included 500 wild-caught specimens and 1,500 "ranched" specimens; Tanzania's quota included only 1,000 wild-caught specimens; Indonesia's saltwater crocodile quota included 3,000, 3,000 and 2,500 wild-caught specimens in 1990, 1991 and 1992 respectively, with a further restriction on breeding adults (based on limitation in skin width), and 2,000, 3,000 and 5,000 "ranched" specimens in 1990, 1991 and 1992 respectively; and finally the quotas for Asian bony-tongue specimens from Indonesia included 1,250 wild-caught in 1990, 1,500 specimens in 1991 with a portion from captive-breeding programs, and 2,500 specimens in 1992 with 1,250 specimens from captive-breeding programs.
[9] Amended proposal that was approved included the Orders Scleractina and Coenothecalia, the family Tubiporidae in the Order Stolonifera, and the families Milleporidae and Stylasteridae in the Order Athecata in Appendix II, but any fossil coral taxa in these groups were excluded.
[10] Approved after proposal was amended to transfer from Appendix I to Appendix II.
[11] Approved with exemption of chemical derivatives.
[12] Rejected after proposal was amended to list the species in Appendix II instead of Appendix I.
[13] The proposal to downlist Madagascar's Nile crocodile population under provisions of resolution Conf. 3.15 on "ranching" was withdrawn. A proposal to retain the species in Appendix II with export quotas under provisions of resolution Conf. 5.21 was approved with a zero quota for 1990, and quotas for 2,000 "ranched" specimens (raised from wild-collected eggs and hatchlings) in 1991, and 4,000 such specimens in 1992.
[14] Includes *Acerodon jubatus* listed under provisions of Article II paragraph 2(a) with other species listed for reasons of similarity of appearance under provisions of paragraph 2(b).
[15] Includes *Pteropus speciosus* listed under provisions of Article II paragraph 2(a) with other species listed for reasons of similarity of appearance under provisions of paragraph 2(b).
[16] The proposal not to annotate any of the species in Appendix I prior to this 7th meeting was approved. Consequently, their artificially propagated hybrids will be regulated in the same manner as Appendix II species. [Similarly, such hybrids of the Appendix I species listed at this 7th meeting will be regulated as the Appendix II species, in accord with resolution Conf. 6.19(a).]
[17] The Parties accepted an interpretation that dead specimens could not be regulated separately. Therefore, the listing of *Pteropus* and *Aderodon* species was interpreted to also include live specimens.
[18] The Service did not have sufficient information to show that any taking of specimens for the purpose of international trade was likely to threaten the survival of this species.
[19] For both species, the extent of trade in young and mature whole plants from the wild appeared to be less than first believed and not to threaten the survival of the species. For both species artificial propagation in México, while not fully known, appears to be significant. Recent information from México on *Chamaedorea elegans* made its overall status in the wild unclear. Additionally, information on trade in wild specimens was lacking from the mid-portion of its range. Also, the extent of taking seeds and leaves from the wild in the remainder of its range and whether it might be excessive became less clear. *Chamaedorea seifrizii* is easily and extensively propagated artificially (from non-wild seeds). Recently, its known range was expanded to include Belize and Guatemala. There was no clear evidence that taking seeds or leaves from the wild was excessive.

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (i.e., on January 18, 1990) under terms of the Convention.

Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species. In the case of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the meeting at which the Parties voted to place the species in Appendix I or II. If the United States enters any reservation, this action would be announced in the **Federal Register** by January 18, 1990.

Reservations may do little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted the Convention as part of its positive law, and that nation has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States would continue to require Convention documents as a condition of import. A reservation by the United States also might provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to the Convention would generally require Convention-equivalent documentation from the United States even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all of the information required in Convention permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II, according to resolution Conf. 4.25, thereby still requiring Convention documents for export of these species.

The Service requests comments on whether it should be recommended that the United States enter a reservation on any of the recent CITES amendments. At present, the Service proposes not to recommend any reservations. It would do so only if evidence is presented to show that implementation of the amendment would be contrary to the interests of law of the United States.

Note: The Department has determined that amendments to Convention appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) does

not apply to this listing process. This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended). It was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority.

Proposed Regulation Promulgation

The Service proposes to amend the list of species contained in § 23.23 of title 50 of the Code of Federal Regulations by incorporating all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the supporting statement of the present notice.

Dated: December 5, 1989.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-29187 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 628

Bluefish Fishery

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

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted the Fishery Management Plan for the Bluefish Fishery (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the FMP and any other documents made available.

DATE: Comments will be accepted until February 8, 1989.

ADDRESS: Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the envelope "Comments on Bluefish FMP". Copies of the FMP, Environmental Assessment, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION: This FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*). This FMP proposes measures for managing the Atlantic bluefish fishery. The measures proposed will (1) establish an allocation of 80 percent of the total catch for the recreational fishery and 20 percent for the commercial fishery, (2) establish controls if the commercial fishery exceeds its allocation, (3) establish a recreational possession limit of 10 fish and a means of adjusting the possession limit, and (4) establish a permit requirement for those individuals fishing commercially.

The receipt date for this FMP is December 10, 1989. Proposed regulations for this FMP will be published within 15 days.

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

Dated: December 11, 1989.

David S. Crestin,

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

[FR Doc. 89-29227 Filed 12-12-89; 9:00 am]

BILLING CODE 3520-22-M

Notices

Federal Register
Vol. 54, No. 240
Friday, December 15, 1989

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program: Electronic Benefit Transfer Alternative Issuance Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Amended General Notice.

SUMMARY: The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend project operations through June 30, 1990. The continuing project is being conducted under the research, demonstration and evaluation authority of section 17 of the 1977 Food Stamp Act, as amended. Pennsylvania is currently pursuing the development of an Enhanced EBT demonstration project designed to replace the current Reading system with a system designed to improve the operating efficiency and cost effectiveness of benefit delivery.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey Cohen, Supervisor, Demonstration Projects Section, Program Design Branch, Program Development Division; Food Stamp Program; Food and Nutrition Service, USDA; Alexandria, Virginia 22302. Telephone: (703) 756–3517.

SUPPLEMENTARY INFORMATION:

Executive Order 12291/Secretary's Memorandum 1521–1

This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The notice will affect the economy by less than $100 million a year. The notice will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the notice as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This notice has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). G. Scott Dunn, Acting Administrator of the Food Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The Commonwealth of Pennsylvania and its local welfare agencies will be affected to the extent that they are involved in administering this alternative system. Food retailers and banks within the demonstration project area will be affected to the extent that they agree to participate. Individuals participating in the Food Stamp Program and living within the Reading, Pennsylvania demonstration project area in Berks County will be affected to the extent that they will continue using an alternative benefit issuance instrument and continue to be subject to the alternative issuance procedures.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Comments

This notice provides for a further extension, through June 30, 1990 of a current operating system without any significant changes to the demonstration's operating procedures. Consequently, comments are not being requested and the provisions of this notice will be effective upon publication.

Background

On July 8, 1983, the Department of Agriculture published a General Notice in the **Federal Register** (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the **Federal Register** (48 FR 33152) which provided additional details on the operational procedures of the project. The reader is referred to those previous publications as a background to this publication.

The Original Demonstration Project

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in February 1985. USDA contracted with Planning Research Corporation (PRC) of McLean, Virginia for the administration of EBT system operations through December 1985.

Reaction to the system by the different groups participating in the demonstration was favorable. Recipients had few problems using the system. Retailers and banks expressed their pleasure regarding the time and effort saved by not having to process coupons. While there were some system problems during early stages of the test which raised concern by all parties, system improvements were implemented to minimize the chance for problem recurrence and to satisfy the retailers and recipients. Further enhancements were not viewed as appropriate by the Department during this initial phase because of its limited duration.

The final evaluation report for the initial period of EBT operations was published in May 1987 and is available for inspection at FNS Headquarters in Alexandria, Virginia.

The Extended Demonstration Project

In consultation with the Commonwealth of Pennsylvania, the Department decided in 1985 to extend demonstration project operations. The purpose of the extended EBT demonstration project evaluation was to obtain data to provide recommendations for management of the EBT system and

guide other State and Federal EBT initiatives. Included in the more specific objectives were the collection and assessment of data in five major areas: the costs to the government in operating a redesigned EBT system, the vulnerability of the EBT system to loss or misuse of program benefits, the costs retailers incur to participate in the EBT system, the effects of the EBT system on the recipients themselves and the costs and effects of the EBT system upon participating financial institutions.

On December 30, 1985, the Department published an Amended General Notice in the Federal Register (50 FR 53170) to extend the project for 15 additional months. During this extension, the operating procedures remained as published in the August 1984 Amended General Notice except that the EBT Center was operational 24 hours per day instead of the 18 hours stated in the notice. The State's operation of the EBT Demonstration Project is governed by an amendment to the State Plan of Operation. In this amendment the State agreed to maintain the EBT system performance at a level which met or exceeded the pre-existing acceptable levels of performance, with no degradation of system operations or performance and to include a back-up system which provided continuous processing to minimize system down-time and manual processing.

For the first three months of the extended demonstration, PRC continued to operate the EBT system under contract with the Pennsylvania State agency. Subsequent to this period, Pennsylvania assumed responsibility for operating the EBT system and moved the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During this second phase, all operations were coordinated by State personnel in Harrisburg.

With the publication of an Amended General Notice dated May 28, 1987, the third phase of the Extended Demonstration Project began. Upon receiving FNS approval, the State proceeded to convert to a redesigned EBT system. FNS approval was based on the State's demonstration of system readiness through the documentation provided by the State and by FNS' satisfaction with the acceptance tests being conducted. The State transferred operations to the new system on June 22, 1987. The primary difference between the State's and PRC's system is in the utilization of system equipment. Functionally the two systems are equivalent. However, the PRC system computers were totally dedicated to EBT operations. The State's system is fully integrated into two systems are equivalent. However, the PRC system computers were totally dedicated to EBT operations. The State's system is fully integrated into the existing PDPW production environment and shares processing resources with other programs. System enhancements which accompanied this phase were for the most part transparent to users. The changes improved internal systems accountability and cost performance. The Department also permitted a small expansion of the project to include approximately 500 households that were customers of retailers already participating in the project.

In an Amended General Notice dated Tuesday, July 12, 1988, the EBT demonstration project was again extended. In conjunction with the extension, an option to expand both retailer and recipient participation was proposed by the State and tentatively approved by USDA. It was anticipated that approximately 1,500 additional FSP recipients and all retailers (wishing to participate) in Berks County would be added. Performance standards for this extension were the same as those previously negotiated by the Department with the State. The planned retailer/recipient expansion was not pursued by the State during the extension period.

An evaluation of the EBT demonstration continued through the extension period. Evaluation results should be completed and available to the public sometime in early 1990.

Current Action

This extension will allow the extended EBT demonstration to continue to operate under demonstration project authority through June 30, 1990. During this period the PDPW will seek waiver authority from USDA to substantially modify, enhance and expand its EBT system. The proposed system modification is expected to include the disbursement of Aid to Families with Dependent Children (AFDC) payments, both at point-of-sale and through automated teller machines (ATM's). It is also anticipated that the proposal will call for system deployment in the remainder of Berks County, and in four counties in western Pennsylvania to facilitate further increases in overall cost-effectiveness by spreading the costs over a larger number of households. This extension is designed to enable such a modification without disrupting the current EBT system; however, approval of a proposed system revision must be obtained by PDPW from FNS.

Dated: November 24, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-29277 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Lower Aquilla-Hackberry Creek Watershed, TX

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Aquilla-Hackberry Creek Watershed; Hill and McLennan Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501, telephone (817) 774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to conserve water, improve water quality, reduce sediment damage, assure the capability to sustain long-term agricultural productive capacity, and improve social well-being of area residents. The plan consists of an accelerated land treatment program that provides financial and technical assistance to apply conservation practices on cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on

file and may be reviewed by contacting Harry. W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: December 6, 1989.

Harry. W. Oneth,

State Conservationist.

[FR Doc. 89-29224 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-16-M

BOARD FOR INTERNATIONAL BROADCASTING

SES Performance Review Board; Membership

Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Because of the Board for International Broadcasting's small size, a Performance Review Board register is established in which SES members from other small agencies participate. This notice is to establish a PRB for the Board for International Broadcasting. The members whose names appear are:

Gary Edles,
Legal Counsel,
Administrative Conference of the U.S.,
(PRB Chairman);
Gerald J. Smith,
Executive Secretary,
Barry Goldwater Foundation;
Kenneth M. Pusateri,
Deputy Director,
Federal Energy Regulatory Commission.

Mark. G. Pomar,

Acting Executive Director.

[FR Doc. 89-29316 Filed 12-14-89; 8:45 am]

BILLING CODE 6155-01-M

DEPARTMENT OF COMMERCE

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

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

Agency: National Oceanic and Atmospheric Administration.

Title: Marine Fisheries Initiative (MARFIN).

Form Number: None; OMB-0648-0175.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 60 respondents; 390 reporting hours; average hours per response—1.86 hours.

Needs and Uses: Any citizen of the U.S. may apply for a research and development grant to optimize the use of a U.S. Gulf of Mexico fishery involving U.S. vessels. The information submitted in an application is used to evaluate the relative merits of proposals and to determine funding.

Affected Public: Individuals or households, state or local governments, business or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: On occasion, quarterly, and annually.

Respondent's Obligation: Required to obtain or maintain a benefit.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29286 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

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

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

Agency: Bureau of Export Administration (BXA).

Title: Swedish Consignee's Letter of Assurance.

Form Number: Export Administration Regulations, Part 772.5; OMB No. 0694-0062.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 289 respondents; 154 reporting/recordkeeping hours. Approximate hours per response is one-half hour.

Needs and Uses: This information is submitted to BXA by Swedish importers of controlled U.S. origin goods or technology. The purpose of these collections is to provide the U.S. with an extra measure of security against the diversion of these goods or technology to proscribed destinations.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald 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 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: December 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29287 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

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

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

Agency: National Oceanic and Atmospheric Administration.

Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northeast Region).

Form Number: None.

Type of Request: New collection.

Burden: 77 respondents; 10 reporting hours; average time per response—5 minutes.

Needs and Uses: U.S. fish processors, joint venture companies, and fishermen involved in selected fisheries in the Northeast Region of the U.S. are required to provide the tonnage of their actual and expected use of the species. The information is used to establish

fishery quotas and to develop fishery management plans.

Affected Public: Business or other for-profit, and small businesses or organizations.

Frequency: Semi-annual, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–29288 Filed 12–14–89; 8:45 am]

BILLING CODE 3510–CW–M

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

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

Agency: National Oceanic and Atmospheric Administration

Title: Deep Seabed Mining Regulations for Exploration Licenses

Form number: None; OMB–0648–0141

Type of request: Request for extension of OMB approval for a currently approved collection

Burden: 4 respondents; 80 reporting hours; average time per response—20 hours

Needs and uses: U.S. companies wishing to conduct deep seabed mining exploration activities must obtain a license. The information required in the application and subsequent reports is used to ensure that the provisions of the Deep Seabed Hard Mineral Resources Act are met.

Affected public: Business or other for-profit

Frequency: On occasion, annually

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89–29284 Filed 12–14–89; 8:45 am]

BILLING CODE 3510–CW–M

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

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

Agency: National Oceanic and Atmospheric Administration

Title: National Marine Sanctuary Permits

Form Number: None; OMB—0648–0141

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 30 respondents; 52 reporting hours; average hours per response—.875 hours

Needs and Uses: Persons seeking to conduct otherwise prohibited activities in marine sanctuaries may request a permit. The application information is reviewed to determine if the proposed activity is consistent with the management goals of the sanctuary.

Affected public: Individuals or households, state or local governments, business or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB Desk officer: Russell Scarato, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

FR Doc. 89–25285 Filed 12–14–89; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 455]

Approval for Expansion of Foreign-Trade Zone 106; Oklahoma City, OK

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

Whereas, the Port Authority of Oklahoma City, Oklahoma, Grantee of Foreign-Trade Zone 106, has applied to the Board for authority to expand its general-purpose zone at the Will Rogers World Airport in Oklahoma City, within the Oklahoma City Customs port of entry, and for authority for manufacturing within the zone on behalf of the dialysis machine manufacturing operation of Organon Teknika Corporation (OTC);

Whereas, the application was accepted for filing on July 15 1987, and notice inviting public comment was given in the **Federal Register** on July 31, 1987 (Docket 8–87, 52 FR 28581);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Oklahoma City area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that approval of the application would be in the public interest, provided approval is subject to a restriction requiring OTC to elect privileged foreign status on all foreign components admitted to its zone manufacturing operation;

Now, therefore, the Board hereby orders:

That, subject to the foregoing restriction on the OTC activity, the Grantee is authorized to expand its zone in accordance with the application filed July 15, 1987. The Grantee shall notify the Board for approval prior to the commencement of any additional manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 7th day of December, 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-29291 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-307-801]

Antidumping Duty Order; Aluminum Sulfate From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its antidumping duty investigation, the U.S. Department of Commerce (the Department) determined that aluminum sulfate from Venezuela is being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of aluminum sulfate from Venezuela.

As a result of the affirmative findings of the Department and the ITC, pursuant to section 736(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673e(a)(1)) (the Act) all unliquidated entries of aluminum sulfate from Venezuela, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 14, 1989, the date on which the Department published its preliminary affirmative antidumpting duty determination in the **Federal Register**, will be liable for the possible assessment of antidumping duties.

A cash deposit of estimated antidumping duties must now be made on all entries of aluminum sulfate from Venezuela entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Kimberly Hardin, or Mary Clapp, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1756, 377-8371, or 377-3965 respectively.

SUPPLEMENTAL INFORMATION: We note some ambiguities exist in the scope language previously published in the initiation, preliminary and final determinations notices with regard to aluminum sulfate. Therefore, to clarify the definition of the scope of this investigation, this investigation covers both liquid and dry aluminum sulfate. Aluminum sulfate is used in water purification, in waste water treatment, and for other industrial applications, and is currently provided for under HTS item number 2833.22.00.00.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on October 18, 1989, the Department made its final determination that aluminum sulfate from Venezuela is being sold at less than fair value (54 FR 43438, October 25, 1989). On December 6, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of aluminum sulfate from Venezuela are materially injuring a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of aluminum sulfate from Venezuela entered or withdrawn from warehouse, for consumption, on or after August 4, 1989, the date on which the Department published its preliminary determination notice in the **Federal Register** (54 FR 33254, August 14, 1989).

On or after the date of publication in the **Federal Register** of this antidumping duty order, U.S. Customs officers must require a cash deposit equal to the margin percentage noted below for entries of aluminum sulfate from Venezuela:

Manufacturer/producer/exporter	Margin percentage
Sulfatos Del Orinoco, C.A. (SULFORCA)	259.17%
All Others	259.17%

This determination constitutes an antidumping duty order with respect to aluminum sulfate from Venezuela, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

December 8, 1989.

[FR Doc. 89-29292 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

1988 Survey of Striped Bass Fisheries

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

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1988. The report of survey results is required by the Atlantic Striped Bass Conservation Act. The intent is to provide information on the status of the striped bass fisheries.

ADDRESSES: Copies of the 1988 survey results are available from David G. Deuel, NOAA/NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301-427-2347.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1988 Survey Results

Section 6 of the Atlantic Striped Bass Conservation Act (Pub. L. 98-613, 16 U.S.C. 1851) requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey was to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of striped bass in the coastal states during the period considered in the survey. The results of each annual survey are to be published in the **Federal Register**. Reauthorization of the Atlantic Striped Bass Conservation Act (the Act) in 1986 (Pub. L. 99-432) and in 1988 (Pub. L. 100-589), extended the requirement for the annual survey. This report presents data for calendar year 1988 as required by section 6 of the Act.

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 through 1989, funds were authorized but not appropriated. Thus, for calendar years 1985 through

1988, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (U.S. Department of Commerce) routinely collects data on all U.S. commercial fisheries and on marine recreational fisheries on the Atlantic, Gulf, and Pacific coasts. These data are used in this report to satisfy the requirements of section 6 of the Act.

A description of the statistical survey procedures for the commercial fishery landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1986" (U.S. Department of Commerce, 1987).

The Act addresses striped bass from Maine through North Carolina; the data presented here are for the same area. Commercial landings of striped bass in 1988 totaled 407,000 pounds, a decrease of 24,000 pounds from the 1987 landings of 431,000 pounds. Landings in 1986 of 335,000 pounds were the lowest on record. Maximum landings of 14.7 million pounds occurred in 1973, but have steadily declined at about 20 percent per year since that time (Figure 1). Part of the decline since 1982 has resulted from restrictive regulations on the commercial fishery. Commercial landings by state from 1981 through 1988 are shown in Table 1.

Catch and harvest of striped bass by recreational fisherman were estimated from the annual marine recreational fishery statistics surveys from 1979 through 1988. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish which were removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species which occur more frequently in the catch than for those which occur infrequently. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high variability of striped bass catch estimates by state from year to year. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct.

In 1988, recreational fishermen caught an estimated 1,465,000 striped bass, of which 114,000 were harvested. The remaining 1,351,000 were released alive. The estimated weight of the 1988 recreational harvest was 1.4 million pounds. Table 2 presents estimates of the total recreational catch of striped bass by state from 1981 through 1988.

The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish annually from 1983–1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch since 1986 likely reflects the increased abundance of the 1982 and subsequent year classes, which have received nearly total protection by management measures in force since 1985. The number of striped bass harvested declined from about 1.3 million fish in 1979 to 51,000 in 1987, and was only 111,000 in 1988. Since the early 1980's, the percentage of the total catch that was released alive has generally increased. From 1979–1981, an average of 24 percent was released alive; from 1982–1985, an average of 76 percent was released alive; and from 1986–1988, an average of 92 percent of the fish caught was released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass in the recreational fishery.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended), have had a significant impact on the level of the recreational harvest and of the commercial landings. Most new management regulations were put in place between 1982 and 1986, with those having the most impact being implemented during 1984, 1985, and 1986. These regulations include closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. Most significantly, a moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in the marine waters of New York, Connecticut, and Rhode Island. Since then, a one fish per angler per day bag limit has been allowed for the recreational fishery in New York (during the open season) and Rhode Island. Several other states prohibit sale of striped bass and all states have now implemented a 36-inch total length minimum size limit. Bag limits range from 1 to 5 fish in states which allow possession of recreationally caught fish.

Appropriate data from which to estimate the striped bass population size have not been collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly affected by management regulations. Thus, caution should be used in interpreting recent landings data.

In the last few years commercial and recreational fishermen have reported increases in the numbers of striped bass. In addition to these undocumented reports, data obtained from sampling the population shows an increase relative abundance of fish from recent year classes (year in which fish are born). This increase supports the hypothesis that high levels of fishing mortality contributed significantly to the severe decline of the striped bass population on the Atlantic coast during the 1970's, and certainly shows that management measures have been effective in conserving and rebuilding the striped bass population.

Recent information indicates that female striped bass of the Chesapeake Bay stock may not all mature until age 8, and females from the first year class (1982), offered nearly total protection from fishing mortality, are just now reaching full maturity. Full recovery of the population from the decline of the 1970's now depends on successful reproduction by the females of these protected year classes. Production of juvenile striped bass in 1987 in the Hudson River and in the Virginia portion of the Chesapeake Bay reached record highs and remained high during 1988, although production in the Maryland portion of Chesapeake Bay remained low in 1988 relative to earlier years.

Historically, spawning areas in Maryland have produced the majority of the striped bass found along the Atlantic coast. While fishing mortality was certainly a factor in the decline of the population, reduced water quality may have also played a role through reduced survival of eggs and/or larval fish. In some spawning rivers in Maryland during some years, survival of larval striped bass exposed to various contaminants and/or low pH levels present in the rivers was less than the survival of larvae exposed to water without contaminants or low pH. Thus,

although an increased number of females are now in the spawning population, successful reproduction also will depend on water quality during the spawning season to allow survival of eggs and larval fish.

Note: Juvenile production in Maryland for 1989, as measured by the Maryland juvenile index, was 25.2. The next highest index on record of 30.4 occurred in 1970. Both indices far exceed the 1954–1989 average index of 8.9.)

Dated: December 8, 1989.

Richard H. Schaefer,

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

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1981–1988

State	1981	1982	1983	1984	1985	1986	1987	1988
Maine	1	—	—	—	1	—	—	—
New Hampshire	—	—	—	—	—	—	—	—
Massachusetts	708	643	224	107	119	96	78	80
Rhode Island	235	270	196	54	61	11	1	—
Connecticut	5	6	2	2	6	—	—	—
New York	822	471	310	595	469	—	—	—
New Jersey	14	10	20	9	12	10	—	—
Delaware	23	26	7	37	—	—	—	—
Maryland	1,641	518	446	1,108	43	8	33	45
Virginia	395	147	151	508	241	23	57	165
North Carolina	417	338	361	513	280	189	262	115
Total	4,261	2,429	1,717	2,933	1,232	337	431	407

Source: National Marine Fisheries Service, F/RE1, unpublished data.
Dash denotes none reported.
Note: Restrictive regulations contributed to the decrease in landings since 1981.

TABLE 2.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1981–1988.

State	1981	1982	1983	1984	1985	1986	1987	1988
Maine	—	—	—	—	77	—	—	—
New Hampshire	—	0	—	0	—	0	—	—
Massachusetts	—	129	68	132	123	655	138	301
Rhode Island	—	—	—	72	50	—	107	31
Connecticut	—	555	45	41	41	—	95	30
New York	37	—	36	101	95	149	227	146
New Jersey	40	151	210	84	—	43	89	704
Delaware	0	0	—	—	—	0	—	36
Maryland	174	40	155	148	102	502	181	163
Virginia	0	0	—	—	—	—	—	—
North Carolina	576	0	—	—	—	—	0	—
Total	892	911	568	626	618	1,399	886	1,465

Estimates include both fish harvested and those released.
— = less than 30,000 reported
0 = none reported
Sources: 1981–1982: USDOC, 1985. Current Fishery Statistics No. 8324. 1983–1984: USDOC, 1985. Current Fishery Statistics No. 8326. 1985: USDOC, 1986. Current Fishery Statistics No. 8327. 1986: USDOC, 1987. Current Fishery Statistics No. 8392. 1987–1988: National Marine Fisheries Service, R. Essig, personal communication.

BILLING CODE 3510-22-M

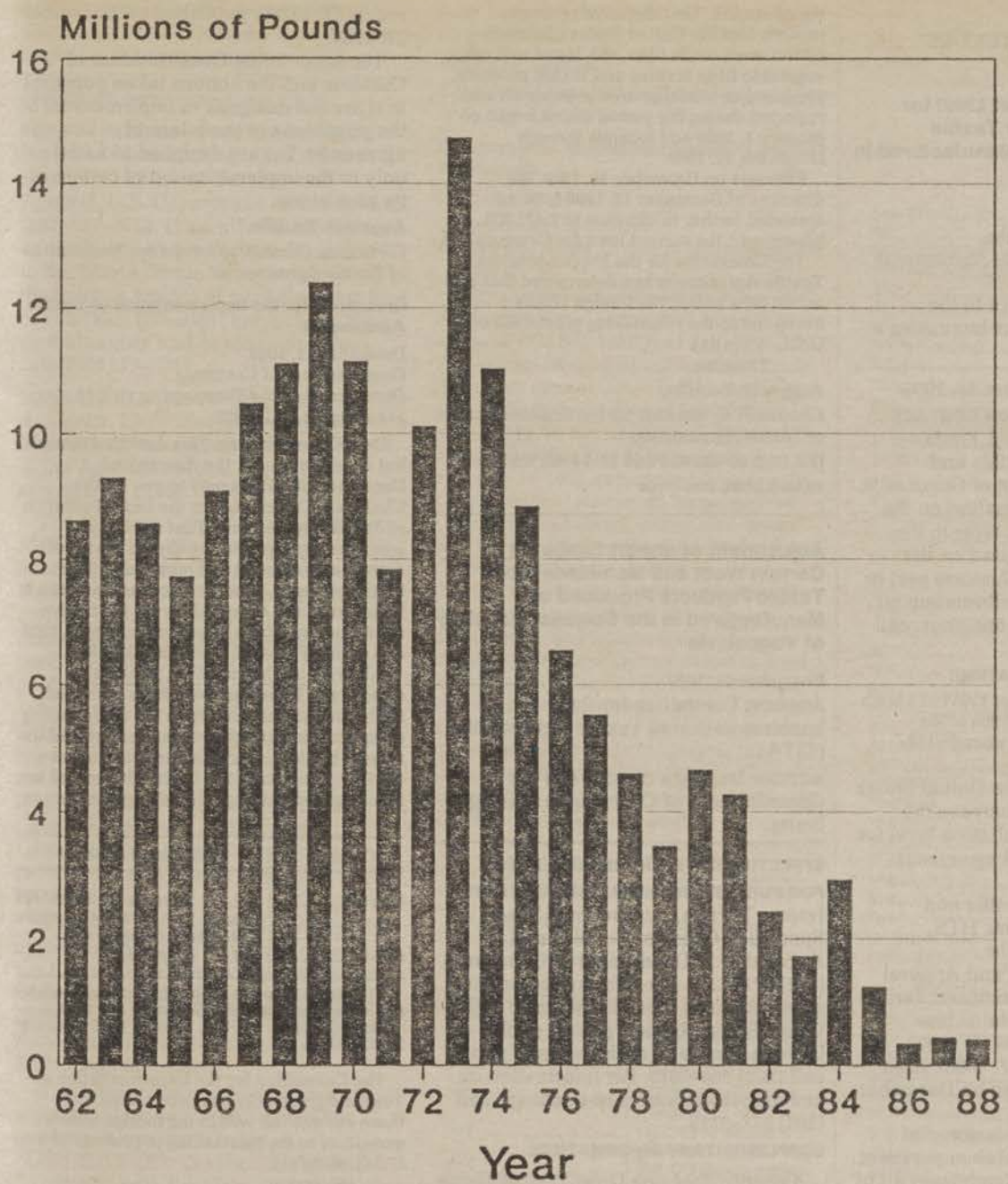


Figure 1. Reported commercial landings of striped bass along the Atlantic Coast, 1962-1988.

Note: Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

[FR Doc. 89-29189 Filed 12-14-89; 8:45 am]
BILLING CODE 3510-22-C

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 11, 1989.

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

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

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

The Governments of the United States and Pakistan agreed to increase the current designated consultation level for Category 666 for the 1989 agreement year only.

A description of the textile and apparel categories in terms HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50438, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designated to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1989.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1989 by the Chairman, Committee for the Implementation of Textile Agreeements. That directive concerns imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 18, 1989, the directive of December 12, 1988 is being amended further to increase to 1,471,933 kilograms [1] the current limit for Category 666.

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29289 Filed 12–14–89; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Yugoslavia

December 11, 1989.

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

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

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51299, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1989.

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

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 18, 1989 the directive of December 16, 1988 is amended further to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia:

Category	Adjusted 12-mo limit [1]
443/643	312,139 numbers of which not more than 111,074 numbers shall be in Category 443.
604–A [2]	339,431 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 604–A, only HTS number 5509.32.0000.

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29290 Filed 12–14–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 11, 1989.

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

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

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

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For further information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs Port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States establishes import limits for certain cotton, wool and man-made fiber textile products for 1990, including certain categories subject to the Special Regime. Sublevels for Special Regime categories are established for products which are not subject to the terms of the Special Regime. The limit and sublimit for Categories 341/641 and the limit for Categories 604–O/607–O have been reduced for carryforward applied to the 1989 limits.

A copy of the current bilateral textile agreement between the Governments of the United States and United Mexican States is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1989

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

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following levels and sublevels of restraint:

Category	Twelve-month limit
218–220, 225–227, 313–326, 611–617 and 625–629, as a group.	41,336,779 square meters equivalent.
Sublevels within the group	
218	939,473 square meters.
219	10,334,200 square meters.
313	20,668,399 square meters.
317	10,334,200 square meters.
316	939,473 square meters.
Individiuel limits not in the group	
[1] 201–C/669–C	1,274,141 kilograms.
222	408,233 kilograms.
[2] 223pt.	635,029 kilograms.
[3] 229–F	680,389 kilograms.
[4] 229–O	771,107 kilograms.
237	80,000 dozen.
239	583,000 kilograms.
[5] 300/301/607–Y	6,751,156 kilograms of which not more than 3,750,642 kilograms shall be in Category 300.
334	78,652 dozen.
335	134,832 dozen.
336/636	202,248 dozen.
338/339/638/639	1,235,960 dozen.
340/640	404,496 dozen.
341/641	758,880 dozen of which not more than 274,176 dozen shall be in blouses with two or more colors in the warp and/or filling in Categories 341–Y/641–Y [6].
342/642	307,400 dozen.
345	19,022 dozen.
347/348/647/648	4,213,500 dozen.
349/649	2,809,000 dozen.
350	13,725 dozen.
351/651	325,844 dozen.
352/652	2,809,000 dozen.
[7] 359–C/659–C	850,502 kilograms.
[8] 359–O	878,219 kilograms.
363	5,500,000 numbers.
[9] 369–B	1,274,141 kilograms.
[10] 369–U	181,437 kilograms.
[11] 369–D	1,707,348 kilograms.
[12] 369–O	181,437 kilograms.
410	397,160 square meters.
433	11,000 dozen.
435	10,201 dozen.
442	5,556 dozen.
443	84,000 numbers.
447	12,000 dozen.
459	22,680 kilograms.
[13] 604–A	637,787 kilograms.
[14] 604–O/607–O	1,923,232 kilograms.
621	90,718 kilograms.
632	750,000 dozen pairs.
633	95,506 dozen.
634	73,034 dozen.
635	129,214 dozen.
645/646	45,000 dozen.
650	13,725 dozen.
[15] 659–H	159,757 kilograms.
[16] 659–S	254,828 kilograms.
[17] 659–O	822,554 kilograms.
666	3,461,817 kilograms.
[18] 669–B	662,553 kilograms.
[19] 669–O	294,835 kilograms.
670	2,494,758 kilograms.

Non-special regime category sublimits Category	Sublimit
239	212,000 kilograms.
335	33,708 dozen.
338/339/638/639	617,980 dozen.
340/640	101,124 dozen.
342/642	61,480 dozen.
347/348/647/648	505,901 dozen.
349/649	561,800 dozen.
351/651	48,877 dozen.
352/652	1,264,050 dozen.
359–C/659–C (coveralls and overalls).	168,187 kilograms.
369–B (handbags and luggage).	191,121 kilograms.
369–U (shoe uppers)	256,102 kilograms.
633	9,551 dozen.
634	10,955 dozen.
659–S (swimwear)	25,482 kilograms.
666	1,730,909 kilograms.

[1] In Categories 201–C/869–C, only HTS numbers 5607.41.3000, 5607.49.1500, 5607.49.2500, 5607.50.2000 and 5607.90.2000 in Category 201–C; and 5607.49.3000 and 5607.50.4000 in Category 669–C.

[2] In Category 223pt., all HTS numbers except 5601.21.0010.

[3] In Category 229–F, only HTS numbers 5608.11.0000, 5608.19.1010 and 5608.19.1020.

[4] In Category 229–O, all HTS numbers except 5608.11.0000, 5608.19.1010 and 5608–19–1020 in Category 229–F.

[5] In Categories 300 and 301 and in 607-Y, only HTS numbers 5509.53.0030 and 5509.53.0060.

[6] In Categories 341-Y/641-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030 in Category 341-Y; and 6204.23.0050, 6204.29.2030, 6206.40.3010, and 6206.40.3025 in Category 641-Y.

[7] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

[8] In Category 359-O, all HTS numbers except 6103.42.2025, 6103-49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C.

[9] In Category 369-B, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.92.1500, 4202.292.3015, and 4202.92.6000.

[10] In Category 369-D, only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.045.

[11] In Category 369-U, only HTS numbers 6406.10.7560.

[12] In Category 369-O, all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369-B; 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369-D; and 6406.10.7560 in Category 369-U; and 5601.10.1000 and 5601.21.0090.

[13] In Category 604-A, only HTS number 5509.32.0000.

[14] In Category 604-O, all HTS numbers except 5509.32.0000; and in Category 607-O, all HTS numbers except 5509.53.0030 and 5509.53.0060.

[15] In Category 659-H, only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[16] In Category 659-S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[17] In Category 659-O, all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C; 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060 in Category 659-H; and 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6211.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659-S.

[18] In Category 669-B, only HTS numbers 6305.31.0020 and 6305.39.000.

[19] In Category 669-O, all HTS numbers except 5607.49.3000 and 5607.50.4000 in Category 669-C; 6305.31.0020 and 6305.39.0000 in Category 669-B, and 6305-31-0010 which covers polyethylene or polypropylene packing bags weighing one kilogram or more.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The bilateral agreement establishes separate treatment for products in certain categories. Those products which are made of U.S. formed and cut fabric are subject to the Special Regime and to the category limits listed in this directive. Those products which are exported from Mexico to the United States under provisions of the Special Regime on and after January 1, 1990 must be accompanied by a properly certified Form ITA-370P.

Any shipment for entry under the Special Regime Program which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products in categories covered by the Special Regime, but that are not subject to the Special Regime, are subject to the applicable limits and sublimits listed in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29293 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 16, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 29, 1989, the Committee for Purchase from the Blind and Other Handicapped published notice (54 FR 40160) of proposed addition to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments on this proposed addition were received from the current contractor for this service, the Local Union representing that contractor's employees, and members of Congress. The commenters expressed concern that the employees who may be displaced if this service is added to the Procurement List would be unable to obtain other employment.

The Committee recognizes that some impacts of this nature are a necessary consequence of its operations, and carefully considers the overall impact of each of its actions. The concerns expressed in the comments about the loss of employment and the possible inability of the displaced employees to obtain other employment at comparable wages were considered by the Committee in arriving at its decision to add this service to the Procurement List. The Committee has determined that the employment gains for persons with profound disabilities who have difficulty in finding a job at any wage outweigh the possible loss of employment by persons who do not have severe disabilities.

The value of firm's current contract for this service represents 5.0 percent of its total annual sales. This is not considered to be severe adverse impact.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1990: Janitorial/Custodial, U.S. Customhouse, 423 Canal Street, New Orleans, Louisiana.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-29273 Filed 12-14-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 16, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Clip, End Strap
8315–01–259–6863

Dropcloth, Painter's
8340–00–068–7908

Marker, Tray
P.S. Item 01249A
P.S. Item 01249B
P.S. Item 01249C
P.S. Item 01249D
P.S. Item 01249E
P.S. Item 01249F
P.S. Item 01250A
P.S. Item 01250B
P.S. Item 01250C
P.S. Item 01250D
P.S. Item 01250E
P.S. Item 01250F

Services

Commissary Shelf Stocking & Custodial, Kelly Air Force Base, Texas
Grounds Maintenance, Naval Air Station, Corpus Christi, Texas
Janitorial/Elevator Operator, Navy Yard Annex, Building 205, Washington, DC

Beverly L. Milkman,
Executive Director.

[FR Doc. 89–29274 Filed 12–14–89; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Notice was published on November 7, 1989, at 54 FR 46758 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet on December 11–12, 1989 at 4401 Ford Avenue, Alexandria, Virginia. Further notice was published on November 21, 1989, at 54 FR 48131 that this meeting was rescheduled for December 18, 1989 because of operational necessity.

This meeting has been further rescheduled for January 8, 1990 to avoid a conflict in schedule.

In accordance with 5 U.S.C. 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Dated: December 12, 1989.

Sandra M. Kay,
Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–29338 Filed 12–14–89; 8:45 am]
BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.116B–3]

Notice Inviting Applications for New Awards Under the Comprehensive Program Final Year Dissemination Competition Conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1990 (CFDA No. 84.116B–3)

Purpose: Provides grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results. Eligibility under the Final Year Dissemination Competitions is limited to grantees of FIPSE whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of its project.

Deadline for Transmittal of Applications: January 19, 1990.

Applications Available: November 28, 1989.

Available Funds: $80,000.

Estimated Size of Awards: $8,000 maximum.

Project Period: Not to exceed 12 months.

Application Regulations: (a) The regulations governing the Fund for the Improvement of Postsecondary Education, 34 CFR parts 74, 75, 77, 79, 80, and 85.

For Applications or Information Contact: Sandra Newkirk, 400 Maryland Avenue, SW. (room 3100, ROB–3), Washington, DC 20202–5175. Telephone number (202) 732–5750.

Authority: 20 U.S.C. 1135a–3.

Dated: December 7, 1989.

Leonard L. Haynes, III,
Assistant Secretary for Postsecondary Education.

[FR Doc. 89–29220 Filed 12–4–89; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Determination To Establish the Secretary of Energy Advisory Board

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Public Law 92–463), and in accordance with 41 CFR 101–6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board has been established.

The Board will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy and provide expert guidance in these areas to the Department.

Board members will be selected for their backgrounds and experience in the basic sciences, in energy production and distribution technologies, in related fields of conservation, economics, the environment, management, and public policy, and in the national defense field, such as nuclear weapons research, testing, and verification and nuclear weapons research, testing, and verification and nuclear materials production and safety. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The establishment of the Secretary of Energy Advisory Board has been determined necessary and in the public interest in connection with the performance of duties imposed upon the

Department of Energy by law. The Board will operate in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Elinor Donnelly (202/586–3448).

Issued in Washington, DC, on December 12, 1989.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 89–29264 Filed 12–14–89; 8:45 am]

BILLING CODE 6450–01–M

Proposed Finding of No Significant Impact for the Southwestern Public Service Co. Circulating Fluidized Bed Boiler Repowering Demonstration Project, Amarillo, TX

AGENCY: Department of Energy.

ACTION: Proposed finding of no significant impact (FONSI) for the Southwestern Public Service Company circulating fluidized bed boiler repowering demonstration project, Amarillo, Texas.

SUMMARY: The Department of Energy (DOE) is negotiating a Cooperative Agreement with Southwestern Public Service Company (SPS) under the Innovative Clean Coal Technology (ICCT) Demonstration Program to conduct a cost-shared demonstration of the economic and environmental acceptability of a circulating fluidized bed (CFB) boiler repowering technology. The proposed project would be located at the SPS Nichols Station, Unit 3, in Potter County, Texas, near the City of Amarillo. Construction for the proposed facility would begin in 1990 and end in early 1993; the demonstration project would begin in 1993 and continue through 1997. If the demonstration is successful, commercial operation of the CFB boiler at Nichols Station would continue until the year 2027.

Before a cost-sharing demonstration project can proceed beyond preliminary design, DOE must comply with the requirement of the National Environmental Policy Act of 1969 (NEPA) to assess the impact of the proposed action and its alternatives. As part of its overall NEPA strategy for the ICCT Program, DOE conducted a comparative environmental review of alternative sites and alternative technologies. The results of this review were factored into the evaluation of the proposals and the selection of demonstration projects for negotiation.

In addition, an Environmental Assessment (EA) has been prepared to evaluate the potential impacts of the proposed action and the following alternative actions: no action, delayed action, alternative sites, and alternative technologies. The alternatives were rejected in favor of the proposed action because (1) No action would not contribute to the accomplishment of the objectives of the ICCT because it would preclude the collection of data and information on the economic and environmental acceptability of the CFB boiler technology as part of that program; (2) delayed action would delay the collection of data and information on the CFB technology and its commercial application; (3) alternative sites within the SPS system were not of the appropriate size or age for a demonstration of the CFB boiler technology; and (4) demonstration of an alternative technology at the Nichols station would eliminate the opportunity for collection of data and information on the CFB boiler technology as part of the ICCT demonstration program.

The analysis presented in the EA concludes that the proposed project will have no significant adverse impacts on air and water quality; ecological, socio-economic, and cultural resources; and any other facet of the human environment in Potter County, Texas, and regionally. The proposed project will be located at an existing industrial facility on previously disturbed land, have zero wastewater discharge, and operate within the atmospheric emissions limits set forth in the facility's federal and state air permits.

Based on the EA, the DOE has determined that the proposed CFB boiler repowering project is not a major federal action that would siginficantly affect the quality of the human environment within the context of NEPA, and as such, proposes to issue a Finding of No Significant Impact (FONSI). The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following the date of this notice. Following completion of the public review period, DOE will make its final determination on whether to issue a FONSI or to prepare an Environmental Impact Statement (EIS) for the proposed project.

Copies of the EA are Available From: Allyn Hemenway, FE–222, Office of Clean Coal Technology, U.S. Department of Energy, 1000 Independence Ave., SE., Washington, DC 20585, Telephone: 202/586–7162.

For Further Information About the Proposed Action Contact: John Brellenthin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26505, Telephone: 304/291–4379.

For Further Information About the NEPA Process Contact: Carol Borgstrom, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: 202/586–4600.

Comments: Comments on the proposed FONSI may be sent to Mr. Hemenway at the above address. Comments must be received by January 16, 1990 to assure consideration.

Background: The DOE has prepared an EA for the proposed CFB boiler repowering project pursuant to NEPA, as amended (42 U.S.C. 4321 et seq.), and the President's Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). Following is a summary of the analysis presented in the EA

Description of the Proposed Action

The proposed action is a repowering project to be conducted at the SPS Nichols Station, Unit 3, in Potter County, Texas, near the City of Amarillo. Nichols Station consists of 3 gas-fired units capable of generating a total of 479 megawatts (MW). The demonstration technology would be a CFB coal-fired boiler, which would replace the existing 256 MW gas-fired Unit 3. The proposed action is intended to demonstrate the successful application of a repowering technology that could be used by U.S. utilities to replace a major portion of an existing facility. Application of this technology could increase facility capability, extend facility life, improve system efficiency, add/or provide for the use of different fuel while complying with environmental standards. The demonstration of the CFB boiler has been scaled to generate sufficient data from design, construction, and operation so that private industry can assess its potential for commercial application.

Construction activities for the demonstration project will include; (1) excavation for the boiler building foundations, utilities, the baghouse, and the stack; (2) set up the boiler, auxiliary systems, baghouse, and stack; (3) connection of utilities; (4) installation of a new railroad siding and access road at the north end of the plant; (5) development of temporary ash storage and/or permanent ash disposal areas; and (6) construction of a coal conveyor from the SPS Harrington Station located one mile north of Nichols. About 12 acres of previously disturbed land will be excavated for new CFB facilities.

From 15 to 55 acres of land would be needed for temporary ash storage and/or permanent ash disposal sites. Construction is scheduled to begin in 1990 and extend through completion in early 1993.

Demonstration of the CFB boiler would begin in 1993 and would last 4 years. For purposes of analyzing projected project impacts from the proposed action, the EA assumes that the repowered Unit 3 would operate continuously at its full rated capacity (256 MW). Part of the demonstration would be dedicated to testing various coals having different properties, especially sulfur and ash content, and various sorbents. The actual capacity factor of the unit may vary during the demonstration based on SPS system demand.

Operation of the CFB boiler will involve coal and limestone sorbent being simultaneously introduced into a combustion chamber in a bed of solids that is suspended through the action of fluidized combustion air. Fluidization will promote the turbulent mixing conditions required for high combustion efficiency and a reaction of the sulfur in the coal combustion gases with the calcium in the sorbent. The process will provide a 70–90% reduction of sulfur dioxide (SO_2) emissions without the need for flue gas scrubbers. Combustion temperature will be less than that of conventional coal-fired boilers and will reduce the formation of nitrogen oxides (NO_x) in the combustion gases by about 60%.

Cyclones collect and recirculate most of the solids emitted by the fluidized-bed boiler. The combustion gas will exit the cyclone and flow to a baghouse which collects particulate matter (fly ash).

Alteratives to the Proposed Action

As discussed above, alteratives considered in the review of the proposed action included: (1) No action, (2) delayed action, (3) alternative sites, and (4) alterative technologies.

Environmental considerations

Because of the quantitative changes in atmospheric emissions when coal rather than natural gas is burned, the EA describes the existing air quality in detail, and the impacts analysis correspondingly focuses on air quality. Other areas of potential impact include terrestrial ecology, land use, water quality and socioeconomics.

Based on the analysis presented in the EA, DOE concludes that the proposed project will not significantly impact air and water quality; ecological, socioeconomic, and cultural resources; or any other facet of the human environment in Potter County, Texas, and regionally. The following points support the conclusion of no significant impact from the SPS CFB boiler repowering demonstration project.

Air Quality

Coal combustion in the Nichols Unit 3 boiler would increase the maximum emissions of all measurable air pollutants over maximum emissions from the existing natural gas fired boiler as shown in Table 1.

TABLE 1—COMPARISON OF MAXIMUM AIR EMISSIONS FOR NICHOLS UNIT 3 GAS-FIRED, AND NICHOLS UNIT 3

[CFB in tons per year*]

Pollutant	Nichols 3 Gas-Fired	Nichols 3 CFB
Sulfur Dioxide (SO_2)	5.9	7298
Nitrogen Oxides (NO_x)	5420	7298
Particulate Matter (PM)	49	368
Carbon Dioxide (CO_2)	0.95×10^6	1.64×10^6
Carbon Monoxide (CO)	394	2146
Sulfuric Acid (H_2SO_4)	0.06	35
Volatile Organic Compounds (VOC)	14	33
Fluoride (F)	Trace	2.9
Mercury (Hg)	Trace	1.5
Lead (Pb)	Trace	0.05
Beryllium (Be)	Trace	0.000006

*Maximum emissions based on a variety of coal types. Actual emissions are expected to be less.

Potential impacts from coal combustion emissions (PM, SO_2, NO_x, and CO) were evaluated by comparing maximum predicted ground-level concentrations in the ambient air (at or beyond the SPS perimeter) to the National Ambient Air Quality Standards (NAAQS). Because no NAAQS exists for H_2SO_4 mist and Hg, predicted ambient concentrations of these were compared with Texas ambient air quality standards and Prevention of Significant Deterioration (PSD) *de minimis* impact values, respectively. Emissions of VOC, Pb, F, and Be were not subjected to further analysis since none exceeded the PSD significant emission rates.

Comprehensive air dispersion modeling was performed using the Industrial Source Complex Short Term (ISCST) model to estimate maximum ground-level concentrations of particulate matter, SO_2, NO_x and CO. ISCST estimates concentrations of a pollutant from multiple point sources by using a steady-state Gaussian plume equation for continuous sources.

Predicted concentrations from the CFB boiler alone and cumulative emissions from the CFB boiler and existing sources were compared with HAAQS and PSD increments for SO_2 and NO_x. for PM and CO, predicted concentrations from the CFB boiler alone were found to be such a small fraction of the standards that the evaluation of impacts from cumulative emissions is unnecessary. The comparison of cumulative emissions to PSD increments includes some sources existing prior to the implementation of PSD regulations; therefore, this analysis goes beyond regulatory requirements. Examination of SO_2 and NO_x sources with the potential to contribute substantially to ambient concentrations revealed that the only major existing SO_2 sources are the three Harrington Station coal-fired units. Substantial existing NO_x sources include the Harrington units, the gas-fired Nichols units, and two smaller sources at the ASARCO Copper Refinery located approximately 1.5 km (0.9 mi) east of the project site.

Results of ISCST model runs indicate that maximum predicted concentrations are less than existing NAAQS and PSD increments for the four pollutants modeled (PM, SO_2, NO_x, and CO) for all averaging times. The 24-hour SO_2 concentration for cumulative emissions consumes the greatest percentage (85%) of the PSD increment (77 vs 91 ug/m ^{3}). Maximum concentrations occur within 10 km (6 mi) of Nichols Unit 3. Short-term SO_2 concentrations, and to a lesser extent annual NO_x concentrations, would be the "drivers" for the proposed project in meeting and maintaining air quality standards, (i.e., if maximum concentrations do not exceed NAAQS PSD increments for short-term SO_2, it is unlikely that other violations would occur). Predicted particulate matter and CO concentrations are a very small fraction of the standards. Maximum concentrations of sulfuric acid mist and mercury, estimated by prorating results from air dispersions modeling of SO_2 are less than or equal to 5% of the Texas ambient air quality standards and PSD *de minimis* impact value, respectively. Because of the conservative assumptions stated previously, the results for all pollutants form an upper bound of expected concentrations.

While compliance with regulatory standards is not conclusive evidence that the impacts from this project are insignificant, it provides a useful benchmark for comparison. Using the conservative analysis described above (maximum emission rates and inclusion of adjacent sources), the ambient air quality levels after the project begins operation are expected to remain well below the applicable NAAQS.

The above analysis indicates that on a 24-hour basis up to 85% of the available

PSD increment for SO_2 may be consumed. This raises questions regarding the potential for further industrial growth in the area because of the relatively small increment remaining. It is important to note several items regarding increments and predicted concentration levels. First, predicted concentrations are very sensitive to source locations in relation to one another, to the height at which pollutants are emitted (stack height), and to meteorological conditions, especially wind speed and direction, and atmospheric stability. Industrial growth would be possible by carefully considering these parameters during the design phase of future projects.

Second, the analysis presented here represents a combination of conditions that provide an upper bound against which to measure impacts. Third, this analysis includes sources (e.g., Harrington Units 2 and 2) which would not be included in a regulatory analysis of increment consumption designed to support a new source permit applications. Therefore, actual increment consumption could be less than predicted in this anaylsis.

The nearest Class I PSD area (designated to restrict the degradation of ambient air quality) is located 275 km (172 mi) east of Nichols Station in Oklahoma. Because of the distance of the Class I area from Nichols Unit 3, Nichols emissions are expected to result in ambient concentrations that are indistinguishable from existing background levels at the Class I PSD area.

Coal combustion generates atomspheric emissions of SO_2 and NO_x that are believed to contribute to the formation and deposition of acidic compounds. The effect of atmospheric emisssions of SO_2 and NO_x on acidic deposition (acid precipitation and dry deposition) is difficult to quantify. The complex chemical reactions that transform, SO_2 and NO_x into acidic compounds which contribute to acid rain are not fully understood, and these source-receptor relationships between power plant emissions and acidic deposition have not been fully quantified. Establishement of clear source-receptor relationship for acid rain is hampered by the long travel times between sources of acid rain precursors and the occurrence of acid rain. The long travel times translate into long distances between sources and receptors because the emissions are carried by the wind from one region to another. Acid rain is currently most evident in the eastern United States, with the greatest acidity (a pH of approximately 4.2) found in an area from eastern Ohio through Pennsylvania into Western and Northern New York. The 1987 National Acid Precipitation Assessment Program found that the Ozark Mountains, the nearest downwind region where project impacts from acid rain might occur, has acidity levels equal to average natural background precipitation for the eastern U.S. with a pH of approximately 5.0.

The relative contribution of the CFB project emissions to regional acidic deposition can be estimated by comparing the annual SO_2 and NO_x emissions from the CFB (6635 metric tons each (7298 tons)) with regional total SO_2 and NO_x emissions. SO_2 and NO_x emissions from the proposed project would equal 16% and 20% respectively, of the 1985 emissions from all coal-fired power plants in the northern Texas panhandle. From the perspective of the entire state of Texas, SO_2 and NO_x emissions from the proposed project would equal approximately 1% and 2% respectively, of existing state-wide emissions of SO_2 and NO_x. Project emissions would be less than 1% of the five-state total emissions for 1985. Because the comparison considers only coal-fired power plants (excluding industrial sources of SO_2 and NO_x) in the region and states, the percentages of emissions form an uppper bound of the CFB project's potential contribution to acidic deposition. Based on the current understandiang of acid rain phenomena, the emissions from the proposed project, and the meteorology of the project area, it cannot be stated conclusively whether or not the CFB project will cause or contribute to the adverse impacts associated with acidic deposition either regionally or nationally.

A critical worldwide environmental issue is the possibiility of significant changes in the global climate (e.g., global warming) as a consequence of increasing atmospheric concentrations of "greenhouse" gases, especially CO_2. It is generally agreed that fossil fuel burining is the primary contributor to increasing concentrations of CO_2. Because CO_2 is stable in the atomosphere and is essentially uniformly mixed throughout the troposphere and stratosphere, the climatic impact does not depend on the geographic location of sources. Therefore, an increase in CO_2 emissions at a specific source is effective in altering CO_2 concentrations to the extent that it contributes to the global total of fossil fuel burning that increase global CO_2 concentrations.

The proposed CFB boiler is expected to emit a maximum of 1.64 million tons per year of CO_2 compared with an existing maximum of approximately 0.95 million tons per year for the natural gas-fired Nichols Unit 3. The percentage increase in CO_2 emissions contributed by the CFB boiler compared with the total from all U.S. coal combustion is less than 0.1%. The percentages are even less when compared with U.S. and global combustion of all fossil fuels.

Water Resources

Sources of wastewater from operation of Nichols Unit 3 CFB include cooling tower blowdown, boiler blowdown, sanitary wastes, fly ash vacuum seal blowdown, and boiler water treatment and regeneration wastewater. All but the cooling tower blowdown and sanitary wastes would be recycled in the complex for use as makeup water. Sanitary wastes would be discharged to the plant's sewage system, while cooling tower blowdown would be pumped to onsite lined storage ponds for subsequent use in the irrigation of forage crops.

Cooling tower wastewater produced per MWh would be the same for gas- and coal-fired operation.

The daily total wastwater produced by Nichols Unit 3 (including boiler, cooling tower, and fly ash seal blowdown) will decrease from 319,488 to 288,768 gal during the demonstration project, or about 10%. For the Nichols-Harrington complex as a whole, the net decrease in daily wastewater produced during the demonstration will be 30,720 gallons, or a decrease of about 1%. The significance of this change was evaluated with regard to the holding capacity of the on-site storage ponds and the potential for irrigation water to contaminate surface water. Eleven on-site lined ponds store wastewater from the Nichols and Harrington plants for use in irrigation. The ponds have a combined capacity of 0.3 billion gal. Maximum annual wastewater produced from both Nichols and Harrington during the demonstration project would be 1.7 billion gallons. Therefore, if none of the stored water were used for irrigation, the on-site ponds would be capable of retaining all wastewater produced for 60 days on an average basis. The wastewater would be used for irrigation up to the maximum Texas Water Commission permitted rate of 4.6 acre-ft/acre/year (1.9 billion gal per year).

The Texas Water Commission permit to dispose of Nichols-Harrington wastewater specifies that "there shall be no discharge of process wastewaters to the waters of the State." It also defines the natural drainage of the

irrigation areas to Indian Creek and Bonita Creek and ultimately, the Canadian River Basin. The storage ponds are spatially located in the irrigated areas so that irrigation tailwater and surface runoff will flow back to them and not to surface waters. This prevents process wastewaters from flowing to waters of the State. No significant change in quantity or quality of wastewaters is expected to result due to repowering of the present gas-fired operations at Nichols Unit 3.

Implementation of this project will result in no measurable change to the existing groundwater impacts. Quantities of wastewater to be used in irrigation will decrease by about 1% for the Nichols-Harrington complex as a whole. The decrease is within the historical variation in annual wastewater volumes. Irrigation water application and monitoring of water table levels and groundwater chemistry will continue as required in the complex's wastewater disposal system permit.

Leachate generation rates through temporary ash storage or permanent ash disposal sites are expected to be low because there is a large annual excess of evaporation over rainfall at the site. It can be assumed that the calcium rich fly ash will react with water used for ash disposal to form a natural cement which will further limit the potential infiltration of rainfall (an assumption. which will be tested by leach tests on Nichols Station fly ash during the demonstration phase of CFB operations). Furthermore, the ash storage cell will be lined to contain any leachate generated within the cell and thereby prevent negative impacts of leachate on groundwater.

Land Use

The project activities are consistent with existing land use and no zoning changes would be required. The project would be installed and operated at an existing industrial facility in a previously disturbed location. The proposed site is not located in a floodplain, and no wetlands will be affected by construction or operation of the CFB boiler and associated facilities.

Terrestrial Ecology

Only about 5 ha (12 acres) would be permanently occupied by new construction. A few more hectares of land beneath the proposed conveyor belt would be needed. In addition, another 8 to 12 ha (20 to 30 acres) would be disturbed temporarily for ancillary activities (e.g., construction parking and materials laydown areas) during construction. The areas planned for the CFB boiler, the construction material laydown site, and the new plant access road are currently either planted in wheatgrass or have already been disturbed by prior plant activities. SPS has successfully revegetated other areas near Nichols Station with native grasses, and revegetation of areas temporarily disturbed during construction would be expected to be similar. The areas to be permanently covered by new construction currently do not provide significant wildlife habitat. When construction is complete and re-vegetation of temporarily disturbed sites is completed, wildlife would again use those areas. Thus, any impacts on terrestrial ecosystems due to construction would be fully mitigated.

Coal combustion in the CFB boiler at the Nichols plant would result in an increase in emissions of SO_2 and NO_x with corresponding potential for increases in regional acidic deposition. The prevailing southwesterly wind pattern suggests that most of the acidic material emitted would be carried aloft toward the northeast, ultimately increasing wet and dry deposition in the Ozark Mountains of Arkansas, Eastern Kansas, and Western Missouri. The impacts associated with deposition on crops and terrestrial ecosystems are not fully understood but are expected to be slight as present levels in the receptor areas. Potential effects that have been identified include (1) declines in forest productivity, (2) changes in forest cation cycling, (3) changes in wetlands species composition, and, in some cases, (4) reductions in crop yields (e.g., peanuts, soybeans). Hardwood forests and crops in Arkansas, Kansas, and Missouri would most likely be affected by regional emissions, including those from the Nichols CFB unit. However, soils in the target areas are naturally acidic and may not exhibit effects. Arkansas is one of the states considered potentially at risk for crop losses from acidic deposition. Because the increased emissions of SO_2 and NO_x from the demonstration project will constitute less than 1% of the five-state regional total emissions, impacts of the project to terrestrial ecosystems are not expected to be quantifiable using currently available techniques of measurement and analysis.

Ash from the demonstration phase of the CFB that is not marketed will be disposed at one of two alternative sites. Site I (the perferred site), is currently planted in wheatgrass and irrigated with wastewater. If this site is used for ash disposal, other areas on the site could replace its present use for wastewater disposal. Site II is currently vegetated with a mixture of low quality grasses, forbs and shrubs, that is typical of the undeveloped portions of the site. Specific characteristics of CFB generated ash are not fully known. A full chemical and physical characterization of the ash will be performed during the demonstration.

Irrigation with wastewater would be similar to that which is ongoing at the site. No significantly different impacts to terrestrial ecosystems have been observed to have resulted from irrigation with wastewater in the past, as compared to irrigation of similar crops with other water sources, and none would be expected in the future.

Aquatic Ecology

There are no permanent aquatic communities near the Nichols-Harrington complex that would be impacted by construction and operation of the proposed project. The absence of aqueous effluents from the site precludes impacts of off-site aquatic biota.

Impacts from the deposition of acidic air emissions on water quality and aquatic biota are related to the acid-buffering capacity of the receiving waters. Near the Nichols Station, surface waters are generally alkaline and would be affected little by a small increase in acidic deposition. However, the surface waters of eastern Texas and Oklahoma and western Arkansas are not highly mineralized and are susceptible to acidification. Acidification of lakes and streams could cause a loss of fish and other aquatic organisms, although the degree of pH change and any resultant loss of aquatic biota due to acidic deposition from the Nichols project would be difficult to quantify.

Threatened and Endangered Species

No state or federally proposed or listed threatened or endangered species or critical habitat for such species are present in the project area or are expected to be impacted by the proposed project. Consultation with the U.S. Fish and Wildlife Service in compliance with Section 7 of the Endangered Species Act has been completed.

Socioeconomics

The proposed action would require an average construction employment of 165 people from 1991 through 1993, with a peak employment of 279 in 1992. Most of the construction employment would be supplied from within the Amarillo area. However, there may be some craftsmen, such as boilermakers, who would be temporarily relocated to the Amarillo

area. Assuming 15% of the 279 required construction workers move into the area and the average increase per new worker is 2.3 persons, the total in-migration (workers plus family) for the project would be 96 during 1992. This would be temporary and would represent an increase of 0.05% of the existing population.

The operating phase of the proposed action would require 12 additional permanent employees. This increase is expected to have little, if any, discernible effect on long-term employment or population in the Amarillo area. The proposed action would provide a relatively small positive benefit to the local economy through increased employment and expenditures for labor during the construction period.

Potential impacts to housing, public services, and infrastructure would result from direct demands by the project on these services and/or indirect demands related to changes in income and population. The construction phase would induce an in-migration of about 42 construction workers with an additional 54 family members. These workers and their families temporarily would require housing and public services. However, demands would be well within Amarillo's capacity to accommodate them. In January 1989 it was estimated that there were 4000 unoccupied single-family units, more than 2800 unoccupied apartments, and around 300 unoccupied mobile homes in Amarillo. There is expected to be no significant influence on the Amarillo infrastructure and capacity to supply public services due to construction or operation of the CFB.

Traffic would increase during construction with a worst-case estimated peak employment of 279 in 1992. Demonstration project construction employees would work an 8 a.m. to 5 p.m. shift; plant operation employees work a 7:30 a.m. to 4 p.m. shift. Therefore, the additional traffic generated by construction would not exacerbate existing plant traffic during peak periods. Although increased traffic during construction would be noticeable during peak arrival and departure times, no significant delays or traffic problems would be anticipated. During later operation, the effect of 12 additional permanent employees on traffic would be minor. The proposed project would require 2 trucks per day to deliver limestone and an additional 2 trains per week to deliver coal. These deliveries represent a small increase in current operations which require no limestone trucks each day, and 7 trains weekly. Current truck traffic to the Nichols/Harrington complex for ash sales averages 15 trucks per day.

Cultural Resources

The Texas Historical Commission has indicated that the proposed action would not affect sites on or eligible for the National Register of Historic Places. The Commission has, however, indicated that cultural materials may be buried in the project area. If any are encountered during construction or disposal activities, excavation would be halted temporarily until the State Historic Preservation Office (SHPO) could be contacted for assistance and instructions in dealing properly with the cultural materials involved.

Noise

Ambient noise levels would increase temporarily during construction because of heavy equipment used for earth moving and compaction during excavation. This disturbance would begin in August 1990 and last several months. Noise levels between 65 and 100 dBA (at the source) would be audible at attenuated levels at residences about 1.2 km (0.76 mi) to the west and 0.5 km (0.3 mi) to the south. The noise would occur during daylight hours and would most likely affect only outdoor activities.

Noise from construction would attenuate to acceptable levels at the nearest residence (less than 65 dBA) and would not adversely affect hearing. However, prolonged disruption of the residential ambience could annoy residents and interfere with speech intelligibility. Impacts on residential well being would depend on the resident's subjective perceptions about the construction activity and the Nichols Station in general. Overall, impacts would be expected to be minor due to the temporary nature of heavy equipment use and the limited number of residents who are within hearing distance of the site. Increased noise during operation would result from forced draft fans (about 90 to 100 dBA). Noise inside buildings as a result of equipment not presently used for gas fired operations at Nichols Station would increase above present levels, and greater noise protection for employees will be provided. The fans will be equipped with sound deadening enclosures, acoustically effective insulation, inlet silencers, and/or variable speed drivers, as needed to protect employees in the vicinity of these units from high intensity sound.

Thus, the limited increase in noise during operation would occur primarily within plant structures and would not be expected to affect nearby residential areas.

Solid Wastes

Construction waste generated by the proposed project would include non-hazardous solids, concrete rubble, and excavated soil, all of which would be landfilled on-site near Harrington Station under the terms of an existing permit. Non-hazardous liquids would be incinerated by SPS for energy recovery. Hazardous liquids would be stored in drums at a temporary holding site and later shipped to an off-site RCRA-permitted hazardous waste facility.

Two alternative ash storage and/or disposal sites have been proposed. Either of these sites would be suitable because they lie on relatively high ground, well above the water table, and are unlikely to be impacted by floodwater. During operation of the CFB demonstration project, as much as 73,000 tons per year of fly ash would be generated. This could vary substantially depending on whether Powder River Basin or Raton Basin coal is utilized. During the demonstration period, fly ash would be temporarily stored on a 5 ha (12-acre) site to a depth of between 1.3 and 2.8 m (4.3 and 9.4 ft). The storage cell would be excavated to a depth of about 3 m (10 ft), and the soil removed would be used to construct a dike a few meters above grade to serve as a wind break and to direct runoff away from the cell. Upon completion of the demonstration period, the stored ash would either be sold and shipped off-site, or the storage cell would continue to receive ash during commercial operation until it reaches its full height of 12 m (38.4 ft). An additional 1.2 ha (3 acres) would be required for a laydown area. Total land requirements for ash storage during the 4-year demonstration project would be approximately 8 ha (19 acres). Details of design and construction of disposal sites would be negotiated between SPS and the Texas Water Commission, Solid Waste Division, to prevent groundwater impacts and to keep air quality, surface water, and land use impacts as low as reasonably achievable.

Electromagnetic Fields

Electrical power transmission lines produce electromagnetic fields around them. The CFB demonstration project would not require a change in the nature or number of existing transmission lines from the Nichols-Harrington complex, therefore, it is not expected that any additional impacts will result from construction or operation of the CFB facility.

Commercial Operation

SPS has indicated that commercial operation of the CFB boiler at Nichols Station Unit 3 would begin after the demonstration period ends in 1997 and would continue through the year 2027. During commercial operations the unit would generate a maximum of 256 MW and would be integrated into the SPS system, and be dispatched with the other SPS power generating facilities.

Since commercial operations are not expected to differ substantially from operations during the 4-year demonstration, the impacts from commercial operation are not expected to be significantly different than those described for the demonstration period.

Regulatory Consideration

SPS facilities are required to comply with the Federal Clean Air Act and the Texas Clean Air Act. A PSD air permit from EPA and a construction and operating permit from the state has been obtained for the proposed CFB project. Provisions for ash handling are included.

The project will be a new source regulated by Federal New Source Performance Standards (NSPS). Plant emissions will be monitored continuously by SPS for SO_2 opacity, NO_x and O_2 or CO_2. These data will be collected by instrumentation and averaged and recorded as required. The coal will be analyzed on a daily basis. The sulfur content and heating value of the coal will be used to determine the percent reduction of the sulfur emissions accomplished by the CFB technology.

The Nichols-Harrington complex presently operates under a zero discharge permit issued by the TWC (Wastewater Permit # 01990). Minor modifications of the permit are anticipated to include a notification of the process changes that would result from the proposed project. Irrigation application rates and water quality are expected to remain within permitted conditions.

Consultation with the U.S. Fish and Wildlife Service in compliance with section 7 of the Endangered Species Act has indicated that no proposed or listed threatened or endangered species or proposed or designated critical habitats would be affected by this project.

Section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) authorizes the Army Corps of Engineers to issue permits for the discharge of dredged or fill material into navigable waters of the U.S., which includes wetlands. No wetlands at or near the project site are expected to be affected by the proposed project, therefore, a dredge and fill permit will not be needed.

Liquid wastes are regulated by the TWC. Solid wastes are regulated by the TWC, Solid Wastes Section. Design and construction of temporary storage and/or permanent disposal cells for fly ash at Nichols Station will be carried out in accordance with guidelines of and consultation with the TWC.

The National Historic Preservation Act of 1966 (Pub. L. 89–665; 16 U.S.C. 470 *et seq.*), as amended, requires Federal agencies to consider the effect of their actions on any property included in, or eligible for inclusion in, the National Register of Historic Places. Compliance, as outlined in DOE's NEPA Compliance Guide, requires that such properties be identified and the effects of the project be determined in consultation with the State Historic Preservation Office (SHPO). If the process determines that there would be an adverse effect, DOE must consult with the SHPO and notify the Federal Advisory Council on Historic Preservation to determine appropriate mitigating measures. The Texas Historical Commission has advised DOE that no sites listed or eligible for the National Register of Historic Places occur at the Nichols Station and that further consultation is unnecessary.

Proposed Determination

Based on the information and analyses in the EA, the DOE believes that the proposed CFB Repowering Demonstration Project located in Potter County, Texas, does not constitute a major federal action that would significantly affect the quality of the human environment within the context of NEPA. Thus, DOE proposes to issue a FONSI and therefore not require the preparation of an EIS. DOE will make a final determination following consideration of comments received during the 30-day public review period.

Issued in Washington, DC, December 11, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

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Bonneville Power Administration

Record of Decision on the Surplus Power Sale and Exchange Agreement with M–S–R Public Power Agency

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision (ROD).

SUMMARY: BPA has decided to enter into a surplus firm power sale and exchange agreement with the M–S–R (Modesto-Santa Clara-Redding) Public Power Agency. Beginning the first day of the first calendar month after the California-Oregon Transmission Project (COTP) starts commercial operation, BPA will make available, and M–S–R will purchase, surplus firm power. When BPA determines that it will not have enough surplus firm power to serve its Pacific Northwest (PNW) customers and its extraregional obligations, the power sale will convert in whole or in part to a seasonal capacity-for-energy exchange. Conversions would occur in increments no smaller than 50 megawatts (MW). Furthermore in no case will power deliveries continue for more than 20 years following the date of execution of the contract. However, deliveries of capacity shall continue for 20 years following the date of initial deliveries under the contract. The date of initial delivery will depend on the commercial operation date of the COTP.

The agreement consists of 100 MW of demand with a 50-percent load factor from the beginning of the agreement (the first month after commercial operation of the COTP) through July 31, 1996. Contract demand will increase to 150 MW, also at a 50-percent load factor from August 1, 1996, until 20 years after the agreement is executed, unless previously converted to a capacity-for-energy exchange. Through January 1, 1990, M–S–R has a one-time right to increase or decrease either or both the 100-MW and 150–MW contract demand blocks with associated annual energy by up to 50 percent.

The Administrator relied on the Intertie Development and Use Final Environmental Impact Statement (IDU Final EIS, DOE/EIS–0125F) in determining the potential environmental effects of this decision. The IDU Final EIS analyzed the environmental effects of various potential extraregional firm marketing activities, such as this agreement with M–S–R. The alternative actions considered in the EIS were (1) to take no action, i.e., not to enter into firm contracts with extraregional entities; and (2) to enter into a variety of firm contracts including features like those contained in the agreement with M–S–R. In making this decision, the Administrator considered environmental, economic, and legal factors.

Except for potential effects on resident fish and cultural resources, the IDU analyses indicated no significant adverse environmental impacts in the PNW, California, Inland Southwest (ISW), or British Columbia as a result of BPA's proposal to make firm sales

outside the PNW. In consultation with the U.S. Fish and Wildlife Service and the State of Montana, BPA is funding imprint planting and habitat improvements on Hungry Horse Reservoir tributaries to preclude potential adverse impacts on resident fish, an important food source for bald eagles. To mitigate for potential adverse effects on cultural resources at the five major Federal storage reservoirs studied, BPA is developing a Programmatic Memorandum of Agreement (PMOA) with appropriate parties. This PMOA will fully satisfy BPA's National Historic Preservation Act obligations. All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted and all consultation, review, and permit requirements have been met.

Economic analysis of this agreement shows that the present value of the expected revenues from the power sale to M–S–R for Fiscal Years (FY) 1993 through 2001 is $168 million, versus the present value of forecast spot market sales of $104 million over the same period. After 2001, it is projected that the sale would convert to a seasonal capacity-for-energy exchange through the end of the contract term.

BPA's agreement with M–S–R is consistent with applicable legislation, including Public Law 88–552, 16 U.S.C. 837–837h (Northwest Preference Act), and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839–839h (Northwest Power Act).

Entering into an agreement with M–S–R is the environmentally preferred alternative because of slight near-term reductions in air pollution in densley populated area in California, reduced near-term consumption of nonrenewable oil and gas fuels, and the added potential to defer building new resources in both regions.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; telephone (503) 230–5136.

SUPPLEMENTARY INFORMATION:

I. Decision

Bonneville Power Administration has decided to sign a long-term surplus power sale and exchange agreement with M–S–R.

II. Major Components of the Agreement

The major components of the power sale and exchange agreement are as follows:

A. *Term.* The power sale for up to 20 years from the date of execution of the contract and the capacity/energy exchange for 20 years from the date deliveries begin.

B. *Amount of Power.* 100 MW of contract demand, with 438,000 megawatthours (MWh) annual energy through July 31, 1996; then 150 MW of contract demand with 657,000 MMh annual energy from August 1, 1996, through the end of the contract.

C. *Options to Increase or Decrease.* M-S-R has the one-time right to increase or decrease by up to 50 percent either or both the 100-MW and 150-MW contract demand blocks and the associated annual energy amount. Written notice must be received by BPA on or before January 1, 1990.

D. *Rate.* The rate for this sale is under BPA's Short-Term Surplus Firm Power Rate Schedule, SP–87, which received interim approval from the Federal Energy Regulatory Commission (FERC) on September 29, 1987, Docket No. EF87–2011–000 and EF87–2021–000, 40 FERC ¶ 61,351, or its successor rate schedule(s) (section II(c)(1)). The SP–87 rate schedule includes a contract rate and a flexible rate. The flexible rate provides that BPA may negotiate a price with its customer which may be less than or higher than the contract rate. The prices in the M-S-R contract were negotiated between BPA and M-S-R and fall under the flexible rate provision of the SP–87 rate schedule. Initial rate for deliveries prior to October 1, 1991, is $5.00 per kilowattmonth (kW-mo) of demand and 26.9 mills per kilowatthour (kWh) of energy. Each October 1, beginning October 1, 1991, demand and energy rates will escalate based on changes in BPA's Priority Firm (PF) rate, plus a 1.75 percent escalator compounded annually through October 1, 2003. Thereafter, the rates will escalate based on changes in BPA's PF rate.

E. *Conversion to Seasonal Capacity-for-Energy Exchange.* When BPA determines that not enough firm energy is available to serve both its PNW customers and its extraregional surplus firm energy obligations, the sale will convert in whole or in part to a seasonal capacity-for-energy exchange in increments no smaller than 50 MW. The sale may also convert to an exchange if, despite its best efforts, BPA is unable to maintain in effect rates that accommodate the rate formulae applicable to the sale.

F. *The Exchange.* Upon complete or partial conversion to the seasonal capacity-for-energy exchange, BPA will make peaking capacity available to M-S-R during the May 15 through October 15 period. In exchange, BPA will receive peaking replace energy and exchange energy. M-S-R will return peaking replacement energy to BPA equal to the amount of peaking energy M-S-R received earlier from BPA, by 2400 hours on the day following BPA's delivery of peaking energy to M-S-R. In addition, M-S-R will deliver exchange energy to BPA, in equal weekly increments, during the November 1 through April 15 period at an exchange ratio of 1200 kWh of exchange energy per kilowatt (kW) of BPA capacity.

G. *Energy Account.* An energy account will be established in BPA's favor for the deferral of deliveries of peaking replacement energy and exchange energy from M-S-R. Energy in the energy account may be withdrawn by BPA on a first-in/first-out basis. BPA may not withdraw more than 22,410 MWh/month from the energy account prior to August 1, 1996, and not more than 33,615 MWh/month thereafter. These figures will be adjusted pursuant to M-S-R's exercise of its option to increase or decrease contract demand. Energy remaining in the account after 11 months must be cashed out. No more than one monthly total of energy can be cashed out in any monthly bill.

H. *Restrictions:* Energy deliveries are subject to 60-day termination of deliveries, and capacity deliveries are subject to a 60-month termination of deliveries by BPA pursuant to Public Law 88–552, 16 U.S.C. § 837–837h (Northwest Preference Act) and 16 U.S.C. § 839–839h (Northwest Power Act).

III. Background

In the fall of 1984, BPA began preparing the IDU Draft EIS addressing actions related to the power system effects of (1) adoption of a Long-Term Intertie Access Policy (LTIAP); (2) potential export marketing arrangements; and (3) expansion of Intertie capacity. The Draft IDU EIS was issued on October 31, 1986. The need for the actions addressed by the IDU Draft EIS included managing the transfer of surplus power between the PNW and California (see IDU Draft EIS, p. 1–1). The BPA/M-S-R power sale and exchange agreement is an export marketing arrangement of the type analyzed in the IDU Draft EIS.

The IDU Draft EIS used computer models to simulate the operation of the PNW combined thermal and hydropower system and the resulting potential impacts on fish, recreational resources, cultural resources, irrigation, air and water quality, land use, and nonrenewable resources. As a result of

comments received during a 78-day public comment period, some changes were made in the models.

On November 13, 1987, BPA published the Hydro Operations Information Paper, based on an analysis of computer simulations produced by the revised, updated models. The paper included an analysis of the effects of long-term extraregional firm marketing on anadromous and resident fish, recreational resources, and cultural resources. The results of these analyses were similar to the results shown in the IDU Draft EIS. Public review and further BPA analysis did not reveal any significant new information, so BPA completed its IDU Final EIS and filed it with the U.S. Environmental Protection Agency on April 8, 1988. A ROD on one of the actions that was proposed in the IDU Draft EIS, that is, the adoption of a LTIAP, was signed by the Administrator on May 17, 1988.

Copies of the IDU Draft and Final EIS's, the Hydro Operations Information Paper, the LTIAP, the LTIAP ROD, the DC (Direct Current) Terminal Expansion ROD, the Third AC (Alternating Current) ROD, and the Southern California Edison ROD are available from BPA's Public Information Center, located in BPA's headquarters building, 905 NE. 11th Avenue, Portland, Oregon.

IV. Alternatives

BPA considered two alternatives: (1) Take no action—do not enter into such agreements as the power sale and exchange agreement with M-S-R; and (2) enter into contracts for extraregional firm power and exchange agreements such as the power sale and exchange agreement with M-S-R.

V. Decision Factors and Issues

In arriving at the decision to enter into the agreement with M-S-R, environmental, economic, and legal factors were considered.

A. *Environmental Factors.* In the IDU Final EIS, BPA analyzed how various extraregional long-term firm contract scenarios, including Federal marketing, could be expected to affect the quality of the human environment. The sale to M-S-R, including capacity-for-energy exchange options, represents only a small portion of the 2550 MW (capacity) of generic firm contracts analyzed under the Federal marketing scenarios in the EIS. Therefore, only a small portion of the total cumulative effects of Federal marketing activities addressed in the IDU EIS could be attributed to the BPA/M-S-R agreement. On the other hand, if BPA took no action, there would be no change in the environmental status quo in the Northwest.

1. *Impacts on Fish, Wildlife, and Vegetation Related to Operation of Pacific Northwest Hydroelectric Resources.* Under the Northwest Power Act, BPA must protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries. BPA must conduct its river operations in a manner that provides for equitable treatment for fish and wildlife. Firm extraregional marketing activities were found in general to have no significant effect on anadromous fish and vegetation. Potential adverse effects on resident fish (an important food source for bald eagles) at Hungry Horse Reservoir will be mitigated by imprint planting, habitat improvement, and monitoring.

Commenters on the IDU Draft EIS and Hydro Operations Information Paper stated that the potential for significant adverse effects on resident and anadromous fish, wildlife, and cultural resources from firm marketing activities was a major environmental concern. It was also contended that the methodology BPA used to analyze impacts on anadromous fish underpredicts, incorrectly predicts, or is too uncertain to predict these impacts.

BPA performed extensive analyses on how various firm marketing activities could affect fish. These results are reported in the IDU Final EIS. BPA believes that the Systems Analysis Model (SAM) and the FISHPASS model used for the IDU Final EIS constitute the best available methodology for analysis of impacts of operation of the hydrosystem on anadromous fish. Sensitivity analyses were performed to test the uncertainty of the model results with respect to key FISHPASS model parameters, bypass system assumptions, and key SAM assumptions. These analyses showed that, when used for a comparative analysis (i.e., when comparing fish survival under one alternative versus another), variations in the key assumptions did not significantly alter model results. Consequently, it is reasonable to conclude that much of the uncertainty of the FISHPASS model parameters is not critical to the study results for relative changes in survival associated with the alternatives addressed in the IDU Final EIS (see IDU Final EIS, pp. 4.2.3–23 through 4.2.3–32, and Appendix E, Part 6). The effects of firm marketing activities on anadromous fish survival were found to be small and are not expected to be significant, provided planned fish passage improvements are made at several mid-Columbia projects (see IDU Final EIS, pp. 4.2.3–35).

BPA's reliance on the accomplishment of planned fish passage improvements at Federal and public utility dams on the Columbia and Snake Rivers, to preclude potential significant impacts on anadromous fish, was an issue raised by several commenters in the IDU Draft EIS process. The potential effects of failure to install planned fish passage facilities were addressed in four sensitivity analyses (see IDU Final EIS, pp. 4.2.3–33 through 2.3–34). In the first, bypass installation was delayed 3 years beyond the dates assumed in BPA's principal analysis. In the second, planned new bypass systems at The Dalles and Ice Harbor Dams were assumed to be foregone. In the third, an assumption was made of no new planned bypass system at The Dalles, Ice Harbor, and Lower Monumental Dams. The fourth sensitivity test assumed no additional new bypass systems and no improvements of existing systems at any of the dams.

The predicted effects of firm marketing activities under these various conditions were minor. Sensitivity analyses indicate that failure to construct the planned mid-Columbia bypass facilities, in conjunction with Federal marketing activities, could impact Methow River spring chinook (see IDU Final EIS, p. 4.2.3–35). The Methow River spring chinook run is likely a mixture of natural stock and fish from Winthrop National Fish hatchery. The stock has shown improvement in recent years with both runs having about 600 spawners. It is still considered depressed and unharvestable, but the improvements are promising.

There has been no sport or Indian harvest of the Methow River spring chinook stock. Columbia River sport, commercial, and Indian spring chinook fisheries are regulated to harvest minimum numbers of upriver stocks. Therefore, it is assumed that no significant numbers of Methow spring chinook are taken in any fishery. The stock is managed throughout its life cycle as a critical hatcher-supplemented stock.

Design and testing of bypass facilities at the mid-Columbia Public Utility District projects are proceeding. BPA is confident that these bypass improvements will be completed within the time projected in the IDU Final EIS.

An analysis also was conducted to assess the impacts of firm marketing activities on the ability to coordinate fall and spring flow levels to facilitate successful adult spawning and fry emergence within the Hanford Reach. No significant effects were found (see IDU Final EIS, p. 4.2.3–41). BPA has

since become a party to the Vernita Bar agreement which insures protection of fall chinook on Vernita Bar.

With regard to resident fish production in PNW reservoirs, long-term firm power contracts, such as Federal marketing, do affect reservoir elevations. Elevations generally are lower in the fall and winter months. There are potential adverse impacts on resident fish in Hungry Horse Reservoir with monthly average reservoir levels dropping by as much as about 5 feet during the critical months of September through November (see IDU Final EIS, pp. 4.2.3–12 through 4.2.3–14). Mitigation to avoid these impacts is discussed later in this ROD.

Wildlife and vegetation around the reservoirs are not expected to be affected significantly because changes in reservoir operations are expected to be small and are within reservoir operating constraints (see IDU Final EIS, p. 4.2.5–1). BPA completed informal consultation with the U.S. Fish and Wildlife Service on endangered and threatened species and determined that firm marketing activities were not likely to adversely affect any threatened and endangered species. The U.S. Fish and Wildlife Service concurred with BPA's biological assessment.

2. *Impacts on Water Quality and Fish in British Columbia.* BPA found no adverse impacts on water quality and fish in British Columbia due to firm marketing activities. Anadromous fish do not exist in the Columbia or Peace River systems within British Columbia. Because firm marketing activities have only minor effects on reservoir levels and flows on the Peace River reservoirs and Columbia River reservoirs in British Columbia, impacts on resident fish are not expected to be significant (see IDU Final EIS, pp. 4.2.4–4 through 4.2.4–8).

3. *Impacts on Irrigation.* BPA found no adverse impacts on irrigation due to firm marketing activities. Levels of allowable irrigation withdrawals are determined by the States and are established water rights. Hydro operations planning is developed around flows that include authorized irrigation withdrawals. Therefore, firm marketing activities would not affect the amount of water available for irrigation (see IDU Final EIS, pp. 4.2.2–4 through 4.2.2–6).

4. *Impacts on Recreation.* No adverse impacts on recreation were found from firm marketing activities. Project changes in reservoir levels associated with firm marketing are small, especially during the summer recreation season, and result in minimal recreation impacts at all the reservoirs studied. Changes in downstream flows also are projected to have no significant effects (see IDU Final EIS, p. 4.2.2–4).

5. *Impacts on Cultural Resources.* Changes in reservoir levels (within existing constraints) at hydroelectric projects might have effects on cultural resources in and around Federal storage reservoirs in the PNW. These reservoirs are Grand Coulee (Lake Roosevelt), Dworshak, Libby (Lake Koocanusa), Albeni Falls (Lake Pend Oreille), and Hungry Horse. Many cultural resource sites in the areas of potential effect already have been and continue to be affected by erosion and vandalism. Changes in reservoir elevations may change the rate of site erosion and may make sites more or less accessible to vandals.

Known properties on or eligible for the National Register of Historic Places on these reservoirs are the Middle Kootenai River Archeological District at Lake Koocanusa, Montana, and the Kettle Falls Archeological District and the Fort Spokane Historic District at Lake Roosevelt, Washington.

Information about the existence and significance of cultural resources within the area of potential effect is incomplete. It is possible that other potentially affected properties may be eligible for the National Register.

Analysis of the data in the IDU Final EIS indicates that increased erosion of cultural resource sites at Libby Reservoir is a potential problem with firm marketing activities in 1988, the earliest year studied. Analyses were conducted to address both wave erosion effects and effects on site accessibility for vandals and relic collectors. Libby will continue to be operated according to project constraints used in Coordination Agreement planning and provided by the U.S. Army Corps of Engineers (Corps). The initiation of a Programmatic Agreement to mitigate potential impacts on cultural resources caused by firm marketing activities, as well as other power marketing activities analyzed in the IDU Final EIS, is discussed later in this ROD under Mitigation and Monitoring.

Other hydroelectric project reservoirs in the Federal Columbia River Power System are operated either as run-of-river of primarily for flood control and are generally independent of power marketing activities. Therefore, Federal marketing activities will not affect cultural resources at these projects (see IDU Final EIS, pp. 4.2.2–7 through 4.2.2–8, and 4.6–1 through 4.6–2).

6. *Nonrenewable Resource Use and Land Use Impacts.* No adverse impacts on nonrenewable resource use and land use were found from firm marketing activities. Differing levels of long-term firm contracts have negligible impacts on PNW coal generation. Hence, impacts on coal consumption and associated land disturbance also are negligible (see IDU Final EIS, p. 4.3.1–3).

Annual coal use in the ISW is projected to increase slightly with firm marketing (see IDU Final EIS, pp. 4.3.1–5 and 4.3.1–20). Gas and oil consumption in California is not significantly affected by firm marketing activities. During the early years, however, there is a slight reduction in consumption of gas and oil fuels (see IDU Final EIS, pp. 4.3.1–4 and 4.3.1–15).

7. *Air Quality and Solid Waste Impacts.* No adverse impacts were found in the PNW, California, or the ISW. Air quality impacts related to power system operational effects of firm marketing activities were found to derive from changes in the operation of coal-fired power plants in the PNW and the ISW and changes in the operation of gas- and oil-fired generating plants in California. All projected ambient air quality changes due to firm marketing activities are small (see IDU Final EIS, p. 4.3.2–13). In the early years, these changes do include small reductions in air pollution in densely populated air basins in California.

Solid waste impacts vary with changes in annual generation at coal-fired plants. Solid waste impacts from altering coal plant operations to accommodate firm marketing activities are not considered significant (see IDU Final EIS, p. 4.3.2–7 and Appendix C).

8. *Water Use and Quality Impacts of Thermal Plants.* No adverse impacts on water use and water quality in the PNW, California, or the ISW were found. The only potentially significant problem areas identified were entrainment at the Pittsburg and Contra Costa thermal plants in California. It was not possible to determine quantitatively how firm marketing activities would affect these entrainment problems. However, since the average annual generation at these plants is reduced with firm marketing activities, it is unlikely that the entrainment would be made worse (see IDU Final EIS, pp. 4.3.3–6 through 4.3.3–13).

9. *Impacts on Vegetation and Wildlife Related to Thermal Plant Operational Changes.* No adverse impacts in the PNW, California, or the ISW were found from firm marketing activities. This is primarily because air quality, acid deposition, solid waste, and water consumption impacts of the coal-fired plants considered in the analysis are not significant. In addition, because of permit requirements, enforcement of

compliance with permits, and the fact that effects on threatened and endangered species must be considered before permits are granted, firm marketing activities will not cause signficant adverse effects to any threatened or endangered species (see IDU Final EIS, p. 4.3.4–2).

Nuclear plant operations are not expected to be affected (see IDU Final EIS, p. 4.1–14). Therefore, firm marketing should not change the impacts on vegetation and wildlife from operation of nuclear plants.

10. *Impacts Related to Development of New Power Resources.* Firm marketing activities were found to have virtually no effect on the development of future PNW resources (see IDU Final EIS, p. 4.4–7). The BPA/M–S–R agreement converts to a seasonal capacity-for-energy exchange when there is insufficient firm surplus energy to support the power sale. Seasonal capacity-for-energy exchanges of the M–S–R variety may delay the need for development of new resources in both the PNW and California.

11. *Consultation, Review, and Permit Requirements.* In addition to their responsibilities under the National Environmental Policy Act (NEPA), Federal agencies are required to carry out the provisions of other Federal environmental laws. The Federal Government is required to take State and local government environmental and land-use laws and regulations into consideration when making its decisions (see IDU Final EIS, pp. 4.6–1 through 4.6–3). Throughout preparation of the IDU Draft EIS, the Hydro Operations Information Paper, IDU Final EIS, and the LTIAP, BPA worked closely with the Corps, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Columbia River Inter-Tribal Fish Commission to ensure that its responsibilities under NEPA and other appropriate laws and regulations were fulfilled.

B. *Economic Factors.* The economic effects that could be expected from BPA's proposed sale are potential impacts, as a result of the revenues received or foregone due to the sale, on (1) BPA's and M–S–R's member utilities' customers' rates; (2) both parties' financial conditions; and (3) BPA's ability to repay the U.S. Treasury as scheduled.

The proposed rate for surplus firm power sold under the M–S–R contract begins, for deliveries prior to October 1, 1991, at $5.00 per kW-mo of demand and 26.9 mills per kWh of energy. The initial demand and energy rates are escalated each October 1 beginning October 1, 1991, by factors based on changes in BPA's average PF rate. Through October 1, 2003, the annual escalation of the M–S–R demand and energy charges is the percentage change in the average PF (or successor) rate from the PF rate in effect on September 30, 1991, plus 1.75 percent compounded annually for each year after FY 1991. After October 1, 2003, at the time of any PF (or successor) rate increase, the M–S–R demand and energy rates in effect on October 1, 2003, will be escalated by the percentage increase in the average PF (or successor) rate in effect on October 1, 2003.

Both parties expect to benefit from the proposed rates. BPA's forecast of the present value of the power sales revenue is approximately $168 million for FY 1993–2001. The present value of forecast spot market sales, BPA's alternative market for the power, is approximately $104 million over the same period. After FY 2001, BPA projects that the sale would convert wholly to a capacity-for-energy exchange through the end of the contract period.

The proposed sales to M–S–R thus would provide higher revenues to BPA than the No-Action Alternative. The sales would provide BPA a stable market for a portion of its surplus firm power at favorable, predictable rate. This would aid BPA's long-term resource and financial planning and increase BPA's ability to keep its rates to its customer groups as low and stable as possible and to repay the U.S. Treasury on schedule.

In the future, when the power sale converts to a capacity-for-energy exchange, BPA and its ratpayers will continue to receive benefits. BPA's surplus of capacity is projected to last considerably longer than the energy surplus. A capacity-for-energy exchange would provide BPA with a prearranged market for surplus capacity. In return, BPA would receive a predictable amount of energy when needed. For 100 MW of demand, the exchange energy provided to BPA would equal 120,000 MWh; for 150 MW of demand, exchange energy would total 180,000 MWh. Energy from M–S–R could allow BPA to avoid expensive resource acquisition and would aid resource planning. The energy account feature allows BPA to take the peaking replacement energy and exchange energy only when needed or to be paid for it.

Similarly, the contract with BPA provides M–S–R with a stable amount of power at a predictable price. The purchase could aid M–S–R's long-term resource and financial planning, enhancing M–S–R's member utilities' rate and financial stability. Power from BPA could allow M–S–R to defer or postpone expensive purchase or construction of resources, especially sources of capacity.

C. *Legal Factors.* On May 24, 1988, BPA published notice that it had surplus firm power available for sale to the PNW and Pacific Southwest (PSW). BPA has forecast the long-term availability of surplus energy and capacity in its *December 1988 Pacific Northwest Loads and Resources Executive Summary* as being 481 average MW of firm power in 1989 and 2600 MW capacity through the year 2006.

In making marketing decisions, BPA must consider certain loads in forecasting future PNW customer requirements. These loads include those of BPA's direct service industrial customers and all utility loads, firm and nonfirm. Certain energy requirements of PNW customers are excluded. For example section 9(c) of the Northwest Power Act further excludes a utility's firm energy (both hydro and thermal) that is sold outside the region and which increases the firm energy requirements of that utility customer or any other utility customer of BPA in the region.

Under the Northwest Preference Act, BPA may sell outside the PNW only energy and peaking capacity from Federal hydro plants that is surplus to the present and planned power needs of the region. Section 9(c) of the Northwest Power Act applies this restriction to all BPA power sold outside the PNW.

Section 1(c) of the Northwest Preference Act defines surplus energy as electric energy generated at Federal hydroelectric plants in the PNW that otherwise would be wasted because of the lack of a market therefore in the PNW at any established rate. This definition is modified by section 9(c) of the Northwest Power Act which defines surplus energy as electric energy for which there is no market in the PNW at any rate established for the disposition of such energy. BPA has interpreted "any rate" in both section 9(c) and section 1(c) as meaning "the price" at which BPA proposes to sell energy to an out-of-region customer. Congress intended BPA's PNW customers to have a first right-of-refusal on the power sold and to compete in the surplus market for energy beyond their firm contract entitlements.

BPA demonstrates that there is no immediate PNW demand for this energy by offering it to PNW customers on the same terms and conditions, including price, as offered to a PSW purchaser. Although a PNW customer may offer to purchase at a rate lower than that specified by BPA, BPA is not required to sell at the lower price.

Section 2 of the Northwest Preference Act requires BPA to provide written notice to its customers that negotiations are pending for a contract for the sale, delivery, or exchange of surplus energy and peaking capacity for use outside the PNW. This notice is provided at least 30 days prior to contract execution. Upon request, BPA will make current drafts of a proposed contract available for inspection.

BPA provided notice of the M–S–R agreement in June 1989. BPA will not execute this agreement prior to 30 days following the date of notice. Copies of the contract draft offered by M–S–R are available on request.

PNW customers have an opportunity during the 30-day notice period, prior to BPA's execution of the M–S–R offer, to request a contract containing the same terms and conditions as the M–S–R offer. If no existing PNW customer of BPA seeks to purchase on the same terms and conditions, including price, within this period, the power is considered to be surplus to PNW needs. The Administrator then may accept the M–S–R offer.

Section 3(a) of the Northwest Preference Act requires the sale of surplus firm energy for use outside the PNW to be subject to a 60-day recall provision. The recall permits restriction of contract energy deliveries on 60 days' notice. The recall is exercised whenever it reasonably can be foreseen that such delivery would impair the Administrator's ability to meet the energy requirements of any PNW customer.

Before negotiating the present offer from M–S–R, BPA determined the amount of surplus firm power available for sale to both PNW and PSW customers. M–S–R's offer is less than the amount of available power. The sale will not impair the Administrator's ability to meet planned or forecasted energy requirements of BPA's PNW customers. The agreement includes several provisions to aid the Administrator in meeting the energy requirements of PNW customers in the event that a future unanticipated need arises.

These provisions include section 14 which provides that BPA may, in accordance with section 3 of the Northwest Preference Act, terminate energy deliveries to the extent that the energy is needed in the PNW to meet BPA customer requirements. If BPA terminates deliveries of such energy, section 8 of the agreement provides for a conversion to a capacity/energy exchange. The exchange, a firm energy resource, would help alleviate the energy shortage that caused the termination of energy deliveries. Additionally, under section 15, if BPA has restricted or terminated deliveries of energy under section 14, BPA and M–S–R may enter into either an exchange or a sale of capacity A sale of capacity under this section 15 is subject to termination upon 60 months' notice.

Under section 5 of the Northwest Preference Act, BPA may exchange surplus energy and capacity with the PSW and other regions. These exchanges are not subject to the limitations of sections 2 and 3 noted above. Thus, the capacity/energy exchange portion of the M–S–R contract is provided for in section 5 of the Northwest Preference Act.

VI. Environmentally Preferred Alternative

The environmentally prefered alternative is for BPA to enter into a power sale and exchange agreement with M–S–R. There are no significant adverse impacts from this alternative, assuming that bypass facilities are constructed at mid-Columbia dams, as planned, and provided that agreed-upon, planned mitigation activities for resident fish at Hungry Horse Reservoir and cultural resources at the five Federal storage projects are implmented. In addition, this alternative has some slight environmental benefits not achievable under the No-Action Alternative. These benefits are (1) small reductions in air pollution in densely populated air basins in California in the early years; (2) reduced consumption of nonrenewable gas and oil fuels in the early years; and (3) potential for additional defetral of the construction of new generating resources and their subsequent operation.

VII. Conclusion

Because a sale to M–S–R is the environmentally preferred alternative, would achieve economic benefits for BPA and others, and is consistent with statutory guidelines, BPA's decision is to enter into the previously described power sale and capacity-for-energy exchange agreement with M–S–R.

VIII. Environmental Mitigation and Monitoring

Several mitigation and monitoring actions are being adopted in conjunction with the LTIAP which are pertinent to this decision. These actions include programs to survey resident fish populations at Hungry Horse Reservoir to assure that an adequate food supply is maintained for the bald eagles living or passing through the area and to survey and evaluate cultural resource sites surrounding Federal storage reservoirs on tributaries to the Snake and Columbia Rivers.

BPA expects to preclude significant adverse impacts to resident fish at Hungry Horse Reservoir by undertaking measures to increase use of Hungry Horse tributaries by resident fish. BPA consulted with the U.S. Fish and Wildlife Service and the Montana Department of Fish, Wildlife and Parks in developing these measures. Measures include funding for imprint planting of west slope cutthroat trout and mountain whitefish in four Hungry Horse Reservior tributaries over a 5-year period. Also included is funding for offsite fish habitat improvements on Flathead River sloughs, including cleaning of spawning gravels and imprint planting of cutthroat trout, kokanee, and mountain whitefish (see IDU Final EIS, p. 4.2.3.–13). If monitoring studies at Hungry Horse Reservior indicate that significant adverse effects on resident fish are occurring as a result of Intertie actions, including Federal marketing activities, information from these monitoring studies will be used to develop and implement additional effective mitigation measures.

In order to mitigate for potential adverse effects on cultural resources at the Federal storage reservoirs, BPA has initiated procedures to develop a Programmatic Agreement with the Advisory Council on Historic Preservation; the Idaho, Montana, and Washington State Historic Preservation Officers; the Bureau of Reclamation; and the Corps. Also involved in devloping the Programmatic Agreement are the Confederated Tribes of the Colville Reservation, Washington; the Spokane Tribe of the Spokane Reservation, Washington; the Kalispel Indian Community of the Kalispel Reservation, Washington; the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; the Nez Perce Tribe of Idaho, Nez Perce Reservation, Idaho; the Kootenai Tribe of Idaho; the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; the Bureau of Indian Affairs; the U.S. Forest Service; and the National Park Service.

The Programmatic Agreement was initiated as mitigation for potential effects of firm marketing transactions but will satisfy BPA's responsibilities under section 106 of the National Historic Preservation Act (16 U.S.C. 470, *et seq.*) for all Federal actions taken with respect to operation of the Columbia River and Snake River Federal hydroelectric facilities for power production. Terms of the

agreement may include provisions for further identification and evaluation of potentially affected cultural resources.

The Programmatic Agreement also is being designed to ensure consistency with the American Indian Religious Freedom Act (42 U.S.C. 1966) by providing for BPA participation in the relocation of Native American burials if such sites are discovered through the resource survey and evaluation that will occur as part of the agreement.

Issued in Portland, Oregon, on October 31, 1989.

Edward W. Sienkiewicz,

Senior Assistant Administrator for Power Management.

[FR Doc. 29266 Filed 12-14-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time: January 8, 1990—9:00 a.m.–5:00 p.m., January 9, 1990—9:00 a.m.–12:00 Noon.

Place: The (Compri) Hotel, 805 Russell Avenue, Gaithersburg, Maryland.

Contact: George D. Duda, Office of Health and Environmental Research (ER-72), Office of Energy Research, Department of Energy, Washington, DC 20545, Telephone: 301/353-3651.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

January 8, 1990

- Report from HERAC Subcommittee on Boron Neutron Capture Therapy
- Report from HERAC Subcommitte on Technology Transfer
- Report from HERAC Subcommittee on Global Change
- Public comment (10 minute rule)

January 9, 1990

- Report from Representatives of the DOE/National Institutes of Health Joint Subcommittee on the Human Genome: Five-Year Plan
- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contract George D. Duda at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meetings; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 12, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-29267 Filed 12-14-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-91-000, et al.]

Northeast Utilities Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 6, 1989.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER90-91-000]

Take notice that on December 1, 1989, Northeast Utilities Service Company (NUSCO) acting as Agent for the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO, and together with CL&P the NU Companies) tendered for filing as an initial rate schedule an agreement (the Agreement) between NUSCO and Boston Edison Company (BECO). The Agreement dated as of March 7, 1988, provides for the exchange of capacity and associated energy, if any, from the NU Companies' and BECO's generating units/entitlements on a daily or weekly basis (an exchange).

BECO will pay a capacity charge, an energy charge, and station service energy charge to the NU Companies for each NU provided to BECO in an exchange. BECO will also reimburse the NU Companies for NEPOOL EHV-PTF transmission charges incurred by the NU companies for receiving from BECO an entitlement in a Pool Planned Unit. The NU Companies will pay BECO an energy charge and a variable maintenance charge for BECO Units provided to the NU Companies in an exchange.

NUSCO requests that the Commission waive its customary notice period and allow the Agreement to become effective on March 7, 1988.

The Agreement has been executed by the NU Companies and by BECO and copies have been mailed or delivered to each of them.

NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Indianapolis Power & Light Company

[Docket No. FA86-51-001]

Take notice that on November 22, 1989, Indianapolis Power & Light Company tendered for filing its compliance refund report in accordance with the Commission's Opinion No. 328 issued in this docket on July 11, 1989 and the Commission's order on rehearing issued on September 21, 1989.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Mary S. Metz

[Docket No. ID-2431-000]

Take notice that on November 29, 1989, Mary S. Metz, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director Pacific Gas and Electric Company
Director Union Bank

Comment date: December 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Montana-Dakota Utilities Company

[Docket No. EC90-5-000]

Take notice that on November 30, 1989, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing an application pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Regulations thereunder, for

authorization to sell a 15,000 KVA, 69–46 KV three phase power transformer in Elgin, North Dakota, to Mor-Gran-Sou Electric Cooperative, Inc. (Mor-Gran-Sou) all as more fully set forth in the application on file with the Commission and open to public inspection.

Comment date: December 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Central and South West Services, Inc.

[Docket No. ER84–31–002]

Take notice that on November 30, 1989, Central and South West Services, Inc., on behalf of the operating electric utility subsidiaries of Central and South West Corporation, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, submitted for filing certain tariff sheets and supporting workpapers in response to the Commission's Opinion No. 332 issued in Central and South West Services, Inc., Docket No. ER84–31–000, on August 31–000.

Central and South West Services, Inc. states that the filing will be served upon all parties to Docket No. ER84–31–000, and on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Central Louisiana Electric Company, Inc.

[Docket No. ER90–39–000]

Take notice that on December 4, 1989, Central Louisiana Electric Company, Inc. (CLECO) filed proposed revisions to its Interconnection Agreement for service to the City of Lafayette, Louisiana pursuant to FERC Rate Schedule No. 33. CLECO states that the rate changes would enable the City of Lafayette to receive its allocation in federally-generated hydroelectric peaking power from Southwestern Power Administration. The revised rate schedule is proposed to become effective on August 29, 1986, which is the date that the subject Interconnection Agreement was executed by the parties to the Agreement.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Cincinnati Gas & Electric Company

[Docket No. ER90–87–000]

Take Notice that the Cincinnati Gas & Electric Company (Cincinnati) tendered for filing November 30, 1989 Modification No. 4 dated as of December 1, 1989 to the Interconnection Agreement dated as of January 1, 1979, between Cincinnati and the Dayton Power and Light Company.

Modification No. 4 cancels existing rate schedules A, B, D, and E and adopts new rate schedules providing for emergency service, interchange power, short-term power and limited term power. There is no estimate of increased revenues since transactions will occur only as load and capacity conditions dictate. A December 1, 1989 effective date has been requested.

A copy of the filing was served upon the Dayton Power and Light Company and the Public Utilities Commission of Ohio.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Gulf States Utilities Company

[Docket No. ER90–88–000]

Take notice that Gulf States Utiliies Company (Gulf States) tendered for filing on November 30, 1989 a letter agreement between Gulf States and Sam Rayburn Dam Electric Cooperative, Inc. (SRDE) concerning the sale of reserve capacity by Gulf States to SRDE, for the period January 1, 1989, to May 31, 1990. The rate for the sales will be %4.10/KW/Month. Pursuant to section 35.11 of the Commission's regulations, Gulf States requests an effective date of January 1, 1989, for the letter agreement.

Gulf States also requests an effective date of January 1, 1987, for the $50.10/kw rate for reserves which Gulf Staes began billing to SRDE on that date and an effective date of January 1, 1985, for a $5.00/kw rate for reserves that Gulf States began billing on that date. Gulf States requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow these effective dates.

Copies of the filing were served on Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, Sam Rayburn G&T Electric Cooperative, Inc., and the Public Utilities Commission of Texas.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER90–89–000]

Take notice that on November 30, 1989, the Montana Power Company (Montana) tendered for filing with the Commission pursuant to 18 CFR 35.12 (1989) a "Power Sales Agreement Between The Montana Power Company and Puget Sound Power and Light Company." Montana requests that the Commission (a) accept the agreement for filing, to be effective on October 1, 1989; and (b) grant a waiver of notice pursuant to 18 CFR 35.11 (1989), so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is commenced.

Copies of the filing were served upon Puget Sound Power and Light Company and the State of Washington.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER90–90–000]

Take notice that on November 30, 1989, Northeast Utilities Company (NUSCO) as Agent for Connecticut Light and Power Company tendered for filing a Notice of Termination of the following rate schedule:

Transmission Service Agreement between CL&P, WMECO, and Newport Electric Corporation (Newport) dated April 1, 1989 (CL&P Rate Schedule FERC No. 453, WMECO FERC No. 347) (Agreement).

NUSCO requests that the Commission allow the termination to become effective October 31, 1989.

Comment date: December 20, 1989, in accordance with Standard Paragraph E 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. 89–29210 Filed 12–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89-237-002]

North Penn Gas Co.; Compliance Filing

December 7, 1989.

Take notice that on November 14, 1989, North Penn Gas Company (North Penn) filed a letter proposing the following plan for distribution of any under- or over-collected balances in Account 191:

(1) Within thirty (30) days after March 15, 1990, North Penn shall commence to clear any balance remaining in its Account 191 as of March 15, 1990 by either remitting to each of its then-current FERC-jurisdictional sales customers its allocable portion of any credit balance in a lump sum payment, or by directly billing to each of its sales customers its allocable portion of any debit balance in equal monthly principal installments over a period of six months. The percentage of any credit or debit balance (including carrying costs for the PGA period) to be allocated to each FERC sales customer shall be equal to (a) such customer's total volume purchases of gas from North Penn during the 12-month period ending February 28, 1990, divided by (b) North Penn's total FERC jurisdictional sales of gas during such 12-month period. Interest calculated from March 15, 1990 to the date or payment or billing by North Penn shall be added to any principal amounts to be paid or billed by North Penn, and shall be computed at the rates prescribed by § 154.67(c) of the Commission's Regulations.

(2) North Penn shall absorb any purchased gas costs or refunds received by North Penn after March 15, 1990 which are applicable to sales prior to March 15, 1990.

(3) The elimination of North Penn's PGA shall not diminish in any way North Penn's right to recover other gas supply related costs (such as production related costs under Order Nos. 94 and 473, LNG costs, Order No. 500 or other take-or-pay costs, or gas inventory charges) relating to past PGA time periods.

(4) The foregoing plan is subject to future Commission orders on the dispersal of North Penn's Account 191 balances, including any relevant orders in Docket Nos. RP88-190, *et al.* North Penn reserves the right to seek rehearing or judicial review of any Commission orders relating to or amending the distribution of Account 191 balances here proposed.

North Penn states that copies of this letter have been served upon each person designated on the official service list.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 14, 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. 89-29212 Filed 12-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-143-003]

Pacific Offshore Pipeline Co.; Compliance Filing

December 7, 1989.

Take notice that on December 1, 1989, Pacific Offshore Pipeline Company (POPCO) filed Alternate Original Sheet Nos. 10 and 18 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989.

POPCO states that it is offering these alternatives so that the Commission can decide whether its August 18, 1989 or this filing fully satisfies the directives contained in the letter order dated July 19, 1989.

POPCO states that a copy of this filing is being served on all parties listed on the Commission's official service list, on all its jurisdictional customers, the California Public Utilities Commission, and other interested parties.

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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 14, 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. 89-29211 Filed 12-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-36-000 [1], CP90-273-000, CP88-338, CP88-266, CP87-107 and CP87-106 (Not Consolidated)]

Viking Gas Transmission Co.; Filing of Offer of Settlement Concerning Part 284 Transportation and Other Matters

December 7, 1989.

Take notice that on November 21, 1989, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in the captioned proceeding a Stipulation and Agreement and motion to consolidate (the Stipulation) as an offer of settlement under Rule 602 of the Commission's regulations.

Viking states that the Stipulation resolves all issues in Docket No. RP89-36, involving Viking's restatement of its Base Tariff Rates effective January 1, 1989, and establishes the rates, terms and conditions under which Viking will conduct blanket open-access transportation pursuant to part 284 of the Commission's Regulations. Viking states further that the Stipulation includes Settlement Rates, which have been restructured consistent with the "Policy Statement Providing Guidance With Respect to the Designing of Rates," issued May 30, 1989 in Docket Nos. PL 89-2-000 *et al.*, Interstate Natural Gas Pipeline Rate Design, 47 FERC 61,295, order on rehearing, 48 FERC 61,122 (July 27, 1989).

Viking also states that, as part of the settlement, it has filed contemporaneously with the Stipulation a certificate application for a restructuring of its services. The service restructuring application filing includes: an application for a blanket certificate of public convenience and necessity, pursuant to part 284, subpart G of the Commission's regulations, to provide non-discriminatory, open-access transportation; a request for a declaration that § 284.10 does not apply to Rate Schedule CD-2 or a limited waiver of § 284.10 with respect to Rate Schedule CD-2 pending Commission

[1] The captioned docket is consolidated with *Midwestern Gas Transmission Company*, Docket No. RP89-35. The instant offer of settlement relates only to Docket No. RP89-36 and the operations of the system of Viking Gas Transmission Company. Midwestern Gas Transmission Company filed a separate Stipulation and Agreement in Docket No. RP89-35 on August 29, 1989.

action on an application by Viking to be filed in a separate docket not later than the date for the filing of comments on the Stipulation, which requests abandonment of Viking's limited merchant obligation under Rate Schedule CD–2 from 1990 through 1992 and conversion of such service to firm transportation; a request for pregranted abandonment of Viking's sales obligations to firm sales customers who convert to firm transportation; a request for pregranted abandonment of individually certificated (Volume No. 2) firm and interruptible transportation services where the affected shipper elects to convert to open-access transportation; [2] an application for blanket certificate and abandonment authority to allow Viking's system sales customers under Rate Schedule CR–2 and CRL–2 to reassign their firm sales obligations temporarily or permanently during the term of their service agreements; [3] an application to provide a limited quantity overrun sales service to Viking's small sales customers who historically have depended on interruptible sales gas to meet their requirements during extreme weather conditions; and, a request for authority to revise the quantity limitations on the availability of Rate Schedule CR–2 to 1,000 Dth per day, which exceeds Viking's maximum delivery obligations to the SR–2 customers.

Viking states that the Stipulation includes a request for consolidation of Docket No. RP89–36 with this new certificate application and the pending certificate application in Docket No. CP88–338–000 and the issuance of a contemporaneous decision in the referenced dockets. Viking further states that the Stipulation is intended to resolve Docket Nos. CP88–266, CP87–107 and CP87–106 by providing that, upon acceptance of a blanket certificate, Viking will enter into new transportation agreements with the affected shippers for the full terms and quantities requested in the certificate applications. Viking states that, consistent with Commission precedent, the priority date for these services for purposes of scheduling and interruption shall be the date of the original contracts.

Viking states that copies of this filing have been mailed to all parties on the official service list in the captioned proceeding and all affected customers and state regulatory commissions. Viking further states that it will expeditiously make copies of the Stipulation available to interested persons desiring to file comments.

Any interested person not already a party to the captioned proceeding who desires to file comments on the Stipulation should, on or before December 22, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, together with a motion to intervene, in accordance with the requirements of Rules 211, 214 and 602(f) of the Commission's Rules of Practice and Procedure.[4] Reply comments should be filed on or before January 5, 1990. 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. 89–29213 Filed 12–14–89; 8:45 am]

BILLING CODE 6717–01–M

[2] Viking states that it is intended that the conversion of individually-certificated transportation to self-implementing transportation will not affect the shipper's scheduling and curtailment priority.

[3] Viking states that the certificate application includes *pro forma* tariff sheets for the nondiscriminatory reassignment of firm sales and open-access firm transportation service rights. Viking has concluded that no certificate authorization is necessary for the reassignment of firm transportation rights as proposed by it.

[4] Under Rule 602(f), comments on the settlement from those already parties would be due on December 11, 1989, and reply comments on December 21, 1989. The dates are superseded by the deadlines established in this notice.

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued During the Week of September 18 Through September 22, 1989

During the week of September 18 through September 22, 1989, the decisions and orders summarized below were issued with respect to applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/C.O. Webster, et al., 9/20/89, RF304–4192, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $13,165, including $3,236 in accrued interest.

Atlantic Richland Company, Union Paving Company, et al., 9/18/89, RF304–6207, et al.

The DOE issued a Decision and Order concerning 117 Applications for Refund filed by 107 claimants from a consent order fund made available by Atlantic Richland Company. As end-users and reseller/retailers applying for small claims or mid-level presumption refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totaling $207,972, representing $157,304 in principal and $50,668 in accrued interest.

Beacon Oil Company/John Harness & Son, Inc., 9/22/89, RF238–20

The DOE issued a Decision and Order concerning an Application for Refund filed by John Harness & Son, Inc. (Harness) in the Beacon Oil Company (Beacon) special refund proceeding. Harness documented its purchases of 113,466 gallons of Beacon Diesel fuel. In addition, Beacon records indicated that Harness was entitled to receive $468 in unpaid credit that Beacon remitted to the DOE for Harness' purchases of motor gasoline from Beacon. Harness therefore received a refund of $2,201 in principal based on both its diesel fuel purchases and its unpaid motor gasoline credit. In addition, Harness received $2,399 in accrued interest for a total refund of $4,600.

Exxon Corporation/Balala's Exxon, 9/19/89, RF307–7068

The DOE issued a Decision and Order granting an Application for Refund filed by Federal Refunds, Inc. (FRI) on behalf of Balala's Exxon (Balala's) in the Exxon Corporation special refund proceeding. However, due to FRI's questionable filing practices and lack of knowledge of the OHA refund process, the DOE determined that this refund and subsequent refund checks issued to applicants represented by FRI in the Exxon proceeding would be sent directly to the applicant involved. Balala's purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. Accordingly, the DOE determined that Balala's was eligible to receive a refund equal to its full allocable share. The refund granted to Balala's is $524 ($427 principal plus $97 interest).

Exxon Corp./Brannock's Exxon, et al., 9/19/89, RF307–2, et al.

The Department of Energy issued a Decision and Order granting refunds to 24 applicants based on their purchases of refined petroleum products from Exxon Corporation during the period from petroleum products from Exxon Corporation during the period from March 6, 1973, through January 27, 1981. Each applicant submitted a purchase volume schedule prepared by Exxon to support its gallonage claim. Each applicant was either a reseller whose allocable share was less than $5,000 or an end-user of the products that it purchased, and was therefore eligible for a full volumetric refund under a presumption of injury. The sum of the refunds granted in this Decision is $31,960 ($26,960 ($26,056 principal and $5,904 interest).

Exxon Corporation/Guy Garnett Publishing Co., et al., 9/19/89, RF 307–6600, et. al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 41 Applications for Refund from consent order funds obtained from Exxon Corporation. Each applicant sought a refund of less than $5,000 and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $40,098.

Exxon Corporation/James D. Gouldin, Sr., 9/18/89, RF 307–10056

The Department of Energy issued a Decision and Order rescinding a refund previously granted in the Exxon Corporation refund proceeding after learning that the person who had filed the refund application and received the refund was not authorized to represent the applicant. The refund recipient, the current owner of a service station that purchased Exxon motor gasoline during the Exxon consent order period, claimed that he was entitled to a refund for the purchases made prior to his acquisition of the business. The Decision directs the refund recipient to return the refund, but permits him to file an application on his own behalf.

Exxon Corporation/Stan's Service Station, Ron's Automotive Service, 9/22/89, RF307–2818, RF307–2819

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both Applications were filed by Ron's Automotive Service, Inc. (Ron's), the current owner of a retail outlet previously doing business as Stan's Service Station. One of the applications was based on purchases made by Stan's Service Station, Case No. RF307–2818. The DOE determined that this application should be denied because the right to a refund was not transferred to Ron's from the previous owner. Ron's however, was found to be eligible to receive a refund based on its own purchases from Exxon. The refund granted to Ron's is $71 ($58 principal plus $13 interest).

Exxon Corporation/Star Exxon, 9/19/89 RF307–7246, RF307–8039

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both Applications were based on purchases of Exxon products made by Star Exxon. On March 24, 1989, the DOE issued a Proposed Decision and Order that tentatively denied both refund requests. However, after considering the comments filed in response to the Proposed Decision, the DOE determined that the application filed by Petroleum Funds, Inc., Case No. RF307–8039, should be denied because the submission contained a false certification. The application filed by Akin Energy, Inc., Case No. RF307–7246, was accepted for consideration, and Star was found to be eligible to receive a refund equal to its full allocable share. The refund granted to Star is $623 ($512 principal plus $111 interest).

Getty Oil Company/College Tire & Supply, et al., 9/22/89, RF265–2809, et al.

The DOE issued a Decision and Order concerning twenty-four Applications for Refund filed by resellers of retailers of refined petroleum products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In twenty-two of these claims, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining two claims, each of the applicants elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $119,181, representing $57,427 in principal and $61,754 in accrued interest.

Gulf Oil Corporation/H.C. McComas Fuel Company, et al., 9/20/89, RF 300–49866, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $18,346.

Gulf Oil Corporation/Hasler Oil Company, 9/22/89, RF300–4873

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $6,719.

Gulf Oil Corporation/Joseph Vizzi, et al., 9/18/89, RF300–3389, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $14,440.

Gulf Oil Corporation/Lou's Gulf Service, 9/18/89, RR300–2

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted on behalf of Lou's Gulf Service (Lou's) in the Gulf Oil Corporation special refund proceeding by Federal Refunds, Inc. Lou's original application was denied a refund because the applicant was unable to demonstrate that it purchased Gulf products during the consent order period. However, in its Motion for Reconsideration, Lou's was able to demonstrate that it did purchase Gulf products during this period, and therefore was granted a refund using a presumption of injury. The refund granted to Lou's in this Decision, which includes principal and interest, is $875.

Gulf Oil Corporation/R.G. Health, Britt Manufacturing Co., Inc., 9/20/89, RF300–4405, RF300–4407

The DOE isssued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by reseller/consignees of covered Gulf products. Because the firms combined allocable shares for their reseller gallons and 10 percent of their consignee gallons amounted to less than $5,000, they were presumed injured. The sum of the refunds granted equals $5,650.

Gulf Oil Corporation/Story-Winn Fuel Company, et al., 9/18/89, RF300–3850, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which

includes principal and interest, is $32,018.

Gulf Oil Corporation/Suburban Gas, Inc., et al., 9/22/89, RF300–8830, et al.

The DOE issued a Decision and Order concerning 21 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $41,508.

Gulf Oil Corporation/Virginia Electric and Power Company, 9/20/89, RF300–10065

The DOE issued a Decision and Order concerning an Application for Refund filed by Virginia Electric and Power Company (VEPCO), a regulated public utility, in the Gulf Oil Corporation special refund proceeding. The DOE granted the VEPCO refund request after the firm certified that it would notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it would pass through the amount of any refund received to its customers. The total refund amount granted in this Decision, inclusive of interest, is $128,864.

International Paper Company, 9/21/89, RC272–71

The DOE issued a Supplemental Decision and Order to International Paper Company modifying a Decision which granted the firm a refund in the Crude Oil subpart V Proceeding. The modification provides that the firm's refund shall be disbursed via electronic funds transfer in accordance with instructions submitted by the applicant's attorney.

Murphy Oil Corporation, James E. Dirago, Inc., Jimmy's Imperial Oil Co., Inc., 9/20/89, RF309–607, RF309–609

The DOE issued a Decision and Order granting Applications for Refund filed by two commonly owned applicants, each a purchaser of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. The two refund applications were considered together in the determination of the appropriate injury presumption because all of the stock in James E. DiRago, Inc., which includes the right to any unanticipated refund, was purchased by Jimmy's Imperial Oil Co., Inc. in 1977. The two applicants received a single principal refund of $5,000 under the mid-level reseller presumption of injury as defined in Murphy Oil Corporation, 17 DOE 86,782 (1988). The total of the refund granted in this Decision was $6,022, representing $5,000 in principal and $1,022 in accrued interest.

Total Petroleum, Inc./Saveway Oil Company, Sooner Petroleum Co., 9/22/89, RF310–219, RF310–220

The DOE issued a Decision and Order concerning applications for Refund filed by Saveway Oil Company and Sooner Petroleum Co. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Both applicants purchased Total motor gasoline and No. 2 oils during the consent order period. Because they share common ownership, the applicants' purchases were consolidated for the purpose of computing their refund. The joint refund was then disbursed on a pro rate basis. Under the standards established in Total Petroleum, Inc., 17 DOE 85,542 (1988), the DOE granted the applicants a joint refund of $9,217 ($7,696 principle and $1,521 interest). The DOE granted $4,424 to Saveway ($3,694 principal plus $730 interest) and $4,793 to Sooner ($4,002 principle plus $791 interest).

Yale e. Key, Inc., et al., 9/18/89, RF272–37303, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 33 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $59,604. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	Number of Appli-cants	Total refund
Buford Plantation, et al	RF272-2065	9/19/89	17	$4,892

Dismissals

The following submissions were dismissed:

Name	Case No.
A.T. Hamby	RF307-1128
Coast Gas, Inc	RF238-88
Darrell's Exxon	RF307-239; RF-307-239
Deerfield Auto & Tires	RF300-10668
Exxon Self Serve	RF307-3316
Jorge's Shell	RF315-2599; RF315-2656
Milford Oil Company	RF307-965
Myers Exxon Service Center	RF307-925
Peacock Oil Company	RF300-9060
Ramon Sanchez Marty	RF307-7778
Ridgeway Exxon	RF307-918
Sellers Shell Service	RF315-2598; RF315-1529
Sitton's Exxon	RF307-1954
Wattupa Oil Company, Inc	RF315-6524

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 7, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-29268 Filed 12-14-89; 8:45 am]

BILLING CODE 6450-01-M

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed

procedures for disbursement of $1,179,460.85, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under the terms of a consent order entered into with Cibro Sales Corporation, Inc. (Case No. KEF–0136). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case number KEF–0136.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Cibro Sales Corporation, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: December 6, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedure

December 6, 1989.

Name of Firm: Cibro Sales Corporation, Inc.

Date of Filing: June 19, 1989.

Case Number: KEP–0136.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Cibro Sales Corporation, Inc. (Cibro). This firm remitted a total of $1,179,460.85 to the DOE, in accordance with Consent Order 6C0X00289. An additional $233,552.82 in interest has accrued on that amount as of October 31, 1989. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE 82,508 (1981), and Office of Enforcement 8 DOE 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Cibro, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect resititution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated

on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, see, e.g., New York Petroleum, Inc., 18 DOE 85,435 (1988); Shell Oil Co., 17 DOE 85,204 (1988); Ernest A. Allerkamp, 17 DOE 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In re: The Department of Energy Stripper Well Exemption Litigation, 671 F Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. In re: The Department of Energy Stripper Well Exemption Litigation, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 10 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, an alleged crude oil violation amount of $1,179,460.85 in principal, plus $233,552.82 in interest, or $1,413,013.67, is covered by this proposed Decision. We have decided to reserve initially the full twenty percent of the alleged crude oil violation amounts, or $235,892.17 in principal, plus $46,710.56 in interest, or $282,602.73, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* MAPCO, Inc., 15 DOE ¶ 85,097 (1986); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. Greater Richmond Transit Co., 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See* A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. Berry Holding Co., 16 DOE 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See* New York Petroleum, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines, 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. Boise Cascade Corp., 16 DOE ¶ 85,214 at 88,411, reconsideration denied 16 DOE 85,494, aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation, 3 Fed. Energy Guidelines, 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($1,179,460.85) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868 n. 4. This yields a volumetric refund amount of $0.0000005836 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See* Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including Shell Oil Co., 17 DOE, 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with World Oil Co., 17 DOE ¶ 85,568, corrected, 17 DOE 85,669 (1988), and ending with Texaco Inc., 19 DOE 85,200, corrected, 19 DOE, ¶ 85,236 (1989). The deadline for filing an application for refund from the third pool of funds, pursuant to this proceeding, is October 31, 1990. The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $943,568.68 in principal, plus $186,842.26 in interest, or $1,130,410.94, should be disbursed in equal shares to

the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil moneys received by the states under the Stripper Well Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within thirty days of its publication in the Federal Register.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Cibro Sales Corporation, Inc. pursuant to the Consent Order executed on February 15, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 89-29269 Filed 12-14-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3697-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 27, 1989 through December 1, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 383-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-COE-E32071-00, Rating EC2, McAlpine Locks and Dams Navigation Improvement, Implementation Ohio River, Jefferson and Oldham Counties, KY and Floyd and Clark Counties, IN.

Summary: EPA feels that certain on-site adverse environmental consequences of the proposed upgrades to McAlpine Lock have been avoided by the election to enlarge an existing lock rather than use an entirely new location. There are a number of potential environmental ramifications of this project which could pose concern if measures are not taken to avoid them.

Final EISs

ERP No. F-FHW-L40161-AK, North Douglas Highway Extension, Outer Point to Point Hilda, Funding, Section 404 Permit and Right-of-Way Acquisition, City and Borough of Juneau, AK.

Summary

EPA continues to have environmental objections to the proposed action, and believes that significant environmental effects could occur as a result of road construction and induced development.

Dated: December 12, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-29322, Filed 12-14-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3697-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed December 4, 1989 Through December 8, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890342 FSuppl, EPA, MA, Metropolitan Boston Wastewater Treatment Facilities Construction and Operation, Grant, Deer Island, Suffolk, Norfolk and Middlesex Counties, MA, Due: February 6, 1990, Contact: Ann Rodney (617) 565-4424.

EIS No. 890343, Draft, BPA, OR, North/South Eugene-Springfield Transmission Line, Comprehensive Plan, Development, Lane County, OR, Due: February 1, 1990, Contact: Anthony R. Morrell (503) 230-3478.

EIS No. 890344, Final, EPA, FL, CF Mining Complex II, Open Pit Phosphate Mine and Beneficiation Plan, Construction and Operation, NPDES and 404 Permits, Hardee County, FL, Due: January 19, 1990, Contact: Heinz J. Mueller (404) 347-3776.

EIS No. 890345, DRevised, AFS, CA, Sherwin Bowl Ski Area Development Alpine Skiing, Special Use Permit, Substantive Changes, Inyo National Forest, Mammoth Ranger District, Mono County, CA, Due: January 29, 1990, Contact: John Ruopp (619) 873-5841.

EIS No. 890346, Final, BLM, CO, UT, Grand Junction Resource Area, Wilderness Study Areas (WSAs), Wilderness Designation or Non-designation, Demaree Canyon, Little Book Cliffs, Black Ridge Canyon, Palisade, Dominguez Canyon, Sewemup Mesa, Black Ridge Canyon West, Garfield, Mesa, Montrose and Delta Counties, CO and Grand County, UT, Due: January 14, 1990, Contact: John Singlaub (303) 243-6552.

EIS No. 890347, Draft, EPA, MA, New Bedford Secondary Wastewater Treatment Plant, Construction and Operation, City of New Bedford, MA, Due: February 12, 1990, Contact: Anne Rodney (617) 565-4424.

EIS No. 890348, DSuppl, AFS, CO, San Juan National Forest, Land and Resource Mgmt Plan Amendment, Timber Management Program, Implementation, CO, Due: March 15, 1990, Contact: Jim Powers (303) 385-1211.

Amended Notices

EIS No. 890273, Draft, FAA, MI, Detroit Metropolitan Wayne County Airport, Construction and Extension, Airport Layout Plan, Approval and Funding Wayne County, MI, Due: December 27, 1989, Contact: Ernest Gubry (313) 484-4040.

Published FR 10-13-89—Review period extended.

Dated: December 12, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-29321 Filed 12-14-89; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3697-9]

Notice of Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of CERCLA, notice is hereby given that the United States Environmental Protection Agency is proposing to enter into an administrative settlement for recovery of costs incurred at the Darling Hill Dump Superfund site in Lyndon, Vermont. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement resolves an EPA claim under section 107 of CERCLA against the following three parties who have executed signature pages

committing them to participate in the settlement: the Village of Lyndonville, Vermont, EHV-Weidmann Industries, Inc; and Vermont American Corporation. The settlement requires the settling parties to pay $308,226.66 to the Hazardous Substance Superfund. This amount represents 100 percent of the government response costs incurred at the Site up to and including August 31, 1989. The U.S. Department of Justice approved this settlement on November 21, 1989.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the Town Clerk's Office, Village of Lyndonville, 24 Main Street, Lyndonville, Vermont and at the EPA Records Center at 90 Canal Street, Boston, Massachusetts.

DATE: Comments must be submitted on or before January 16, 1990.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Records Center at 90 Canal Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from Samuel L. Silverman, U.S. Environmental Protection Agency Region I, Office of Regional Counsel, J.F.K. Federal Building—Room 2207, Boston, Massachusetts 02203. Comments should reference the Darling Hill Dump in Lyndon, Vermont, EPA Docket No. I-89-1089, and should be addressed to the Office of the Regional Administrator, U.S. Environmental Protection Agency Region I, J.F.K. Federal Building—Room 2203, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Samuel L. Silverman, U.S. Environmental Protection Agency, Office of Regional Counsel (RCE-2207), J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565-3443.

Dated: December 7, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-29299 Filed 12-14-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-36981]

Extension of Time to Either Withdraw the Proposed Determination or Prepare a Recommended Determination for Two Forks Dam and Reservoir

AGENCY: Environmental Protection Agency.

ACTION: Notice of an extension of time.

SUMMARY: As announced in the 5 September 1989 **Federal Register** (54 FR 36892), the EPA held Public Hearings to receive comment on the Two Forks Dam and Reservior 404(c) Proposed Determination in Denver, Colorado on 23-24 October 1989, and in Grand Islands, Nebraska on 27 October 1989. Over 350 individuals provided oral comment during the hearings. The public comment period for written comment closed 17 November 1989. Since the initiation of the 404(c) process in March, 1989, over 10,000 written comments have been received by the Region VIII office. Based on the diversity and numbers of comments received during the comment period, and the significance of the concerns raised, EPA has decided, under its authority contained at 40 CFR 231.8, to extend the 404(c) process to either withdraw the Proposed Determination or prepare a Recommended Determination until January 31, 1990.

FOR FURTHER INFORMATION CONTACT: Gene Reetz, Two Forks Technical Team Leader or Mary Alice Reedy, Records Clerk, State Programs Management Branch, Water Management Division, 999 18th Street, Suite 500, Denver, Colorado 80202-2405 (303) 293-1570, FTS 564-1570.

Lee A. DeHihns,

Regional Decision Officer, EPA Region VIII.

[FR Doc. 89-29298 Filed 12-14-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3697-8]

Grants; Availability and Review of New Financial Assistance Program; Wetlands Protection—State Development Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a new financial assistance program (66.461, "Wetlands Protection—State Development Grants") to support the initial development of State wetlands protection programs or to support refinement/enhancement of existing State wetlands protection programs. Grant funds cannot be used for operational support of State wetlands protection programs. Grants will be awarded under section 104(b)(3) of the Clean Water Act for research, investigations, experiments, training, demonstrations, surveys, and studies related to the development of State wetlands protection programs.

FOR FURTHER INFORMATION CONTACT:

Region I: Doug Thompson, Water Management Division, Wetlands Protection Section (WWP-1900), U.S. EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, 617-835-4421.

Region II: Dan Montello, Water Management Division, Wetlands Section (2WM-MWP) U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, 212-264-5170.

Region III: Barbara D'Angelo, Environmental Services Division, Wetlands and Marine Policy Section (3ES42), U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107, 215-597-9301.

Region IV: Gail Vanderhoogt, Water Management Division, Wetlands Planning Unit (4WM-MWB), U.S. EPA Region IV, 345 Courtland Street, Atlanta, GA 30365, 404-347-2126.

Region V: Doug Ehorn, Water Management Division, Wetlands Protection Section (5WQW-TUB-6), U.S. EPA Region V, 230 South Dearborn Street, Chicago, IL 60604, 312-353-2079.

Region VI: Jerry Saunders, Environmental Services Division, Technical Assistance Section (6E-FT), U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, 214-655-2263.

Region VII: Diane Hershberger, Environmental Review Branch, Wetlands Protection Section, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, 913-236-2823.

Region VIII: Gene Reetz, Water Management Division, Water Quality Requirements Section (8MW-SP), U.S. EPA Region VIII, 999 18th Street, Denver, CO 80202, 303-293-1575.

Region IX: Phil Oshida, Water Management Division, Wetlands Section (W-7-2), U.S. EPA Region IX, 215 Fremont Street, San Francisco, CA 94105, 415-744-2180.

Region X: Bill Riley, Water Management Division, Water Resources Assessment Section (WD-138), U.S. EPA Region X, 1200 Sixth Avenue, seattle, WA 98101, 206-442-1412.

Office of Wetlands Protection: Lori Williams, Office of Wetlands protection (A-104F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, 202-382-5043.

SUPPLEMENTARY INFORMATION: EPA will award grants to State wetlands protection agencies and/or agencies with wetlands related programs under the authority of the Clean Water Act (CWA) section 104(b)(3).

This program is eligible for intergovernmental review under Executive Order 12732 and is subject to the review requirements of section 204

of the Demonstration Cities and Metropolitan Development Act. States eligible for these grants must notify the following office within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Administration Division (PM–216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12732 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review.

SPOCs and other reviewers should send their comments on an application to the appropriate EPA Regional Grants Management Office, no later than sixty days after receipt of the application and other required material for review.

EPA has long recognized the role States can play in protecting the nation's wetlands, and has worked with States to develop effective wetlands protection programs. EPA is establishing a new financial assistance program (66.461; Wetlands Protection—State Development Grants) specifically designated for development of State wetlands protection programs. These grants will be awarded for research, investigations, experiments, training, demonstrations, surveys, and studies related to the development of State wetlands protection programs. These are not program operational support grants, but are intended to encourage program development or to enhance/augment existing, effective programs. Ongoing, effective State wetlands programs can be augmented in many ways, for example, by expanding the scope of activities regulated or geographic coverage.

States are encouraged to work closely with their appropriate Regional Offices to develop a formal grant application that effectively addresses the critical goals of this new grant program.

David G. Davis,

Director, Office of Wetlands Protection, Environmental Protection Agency.

[FR Doc. 89–29296 Filed 12–14–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100066A; FRL–3666–4]

Radian Corp., Science Applications International Corp., Pesticide Consulting Services Co.; 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 connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Radian Corp. and its subcontractors, Science Applications International Corp. (SAIC) and Pesticide Consulting Services Co. (PCSC) have been awarded a contract to perform work for EPA's Office of Water Regulations & Standards and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Radian Corp., its subcontractors SAIC and PCSC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively and will enable them to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATE: Radian Corp., its subcontractors SAIC and PCSC will be given access to this information no sooner than December 20, 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: This notice is to amend the list of subcontractors that appeared in a **Federal Register** notice of July 19, 1989 (54 FR 30258). SAIC and PCSC should have been listed in addition to the subcontractor for Radian Corp. mentioned in the above **Federal Register.**

Under the Clean Water Act, the Office of Water Regulations & Standards is conducting a survey to obtain information to support the development of an effluent guidelines regulation. A data base will be used to develop and evaluate a sampling plan for surveying the pesticide formulating/packaging point source category. In addition, the production rate of pesticide products will be used, in conjunction with the data obtained from the OWRS survey, towards the development of wastewater pollutant limitations and standards. The type of information to be collected includes a description of the formulating and packaging processes, the volume and chemical nature of wastewater generated by these processes and any related sources of wastewater, the treatment technologies used to remove pollutants from wastewater and the effectiveness of this treatment.

Under Contract No. 68–C8–0008, Radian Corp. and its subcontractors, SAIC and PCSC will assist with the engineering analysis for development of the effluent guidelines regulation.

The Office of Water Regulations & Standards and the Office of Pesticide Programs have jointly determined that the contracts herein described involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

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 contracts with Radian Corp. and its subcontractors SAIC and PCSC prohibit use of the information for any purpose other than purposes specified in the contract; prohibit disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Radian Corp. and its subcontractors, SAIC and PCSC are required to submit for EPA approval a security plan in accordance with the FIFRA Information Security Manual under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to the contractor and subcontractors until the above requirements have been fully satisfied. Records of information provided to the contractor and subcontractors will be maintained by the Project Officer for the contract in the

EPA, Office of Water Regulations & Standards. All information supplied to Radian Corp. and its subcontractors SAIC and PCSC by EPA for use in connection with the contract will be returned to EPA when they have completed their work.

Dated: December 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-29297 Filed 12-14-89; 8:45am]

BILLING CODE 6560-50-D

[FRL-3696-2]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of Second Update of the Federal Agency Hazardous Waste Compliance Docket Pursuant to CERCLA Section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or from which hazardous substance may be or have been released. CERCLA requires that the docket be updated every 6 months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the second update of the docket (i.e., facilities not previously listed on the docket and reported to EPA since the last update to the docket, November 16, 1988). EPA policy specifies that for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment and, if warranted, a site inspection, within 18 months of publication of this notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List and will provide EPA and the public with valuable information about the facility. In addition to the update list, this notice includes a section comprising revisions (i.e., corrections and deletions) to the initial docket list and the first update. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1268.

DATE: This list is current as of July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline. Telephone: (800) 548-1016 toll free.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Revisions to the Initial Docket
III. Process for Compiling the Updated Docket
IV. Facilities Not Included
V. Information Contained on Docket Listing

I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under Section 103 of CERCLA. The term "Federal facility" remains unchanged from that used for the initial docket and is based primarily on the RCRA definition of facility (see 47 FR 32288-9 (1982), 50 FR 28712 (1985), and 53 FR 4280 (1988)). The docket serves, among other reasons, three major purposes: (1) To identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to public health and the environment sufficient to warrant inclusion on the National Priorities List; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). The first update was published on November 16, 1988 (53 FR 46364). The second update of the docket is being published today.

Today's notice is divided into three major sections: (1) Corrections, (2) deletions, and (3) additions. The docket corrections section lists changes information on facilities already listed on the docket. The deletions section lists facilities that EPA is removing from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and are now being included on the docket.

The information submitted to EPA on each Federal facility is contained in docket repositories located in the EPA Regional Offices where the facility is found. (See 53 FR 4280 (1988) for a description of the information required under these provisions.) All docket repositories are currently operational and available to the public. Each repository contains the documents submitted to EPA under the reporting provisions (and correspondence relevant to the reporting provisions) for each facility. A complete national index of the information found in the Regional docket repositories will be maintained at EPA Headquarters in Washington, DC, and made available to the public. This index will also be available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (800-548-1016) for information on repository locations and arrangements for reviewing and copying specific documents.

II. Revisions to the Initial Docket

1. Corrections

Necessary changes to correct the initial docket were identified by both EPA and Federal agencies. These changes vary from simple address and spelling changes to facility names and ownership corrections. Many are simply typographical or typesetting errors. For each facility with a correction, the original entry as it appeared in the February 12, 1988, notice or the November 16, 1988, update is shown directly above the corrected entry for easy comparison.

2. Deletions

Facilities are being deleted from the docket for a number of reasons, such as incorrect reporting of hazardous waste activity, change in Federal ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted will no longer be required to conduct a preliminary assessment (PA) as required by CERCLA Section 120(d).

3. Additions

Today, 130 facilities are being added to the docket primarily because of new information obtained by EPA indicating that a facility should now be listed (i.e., recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CRECLA Section 103). In some cases,

facilities were inadvertently omitted from the initial list or first update. For all facilities being added in this section, it is EPA's policy that the responsible agency will complete the required PA, and, if warranted, a site inspection (SI), within 18 months from the date of this publication.

It is EPA's policy not to list on the docket facilities which are SQGs and have never produced more than 1,000 kg of hazardous waste in any month. However, the Agency believes that facilities which are SQGs but have reported releases under Section 103, or hazardous waste activities pursuant to another reporting mechanism, should be listed on the docket. EPA believes that such facilities should undergo remedial site evaluation activities, such as a PA and, where appropriate, a SI. All such facilities will now be listed on the docket regardless of whether they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is today adding to the docket are SQGs which had not been previously listed on the docket but which have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, a SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a Section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under Section 103 in the docket. In general, Section 103(a) requires notification of a release of a reportable quantity of hazardous substances and Section 103(c) provides for notification to EPA by any person who has knowledge of known, suspected, or likely releases of hazardous substances from a facility. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA Section 103 and are considered equivalent forms of notification for purposes of the docket. Thus, the Agency believes that facilities which have provided information equivalent to a CERCLA Section 103 notification, such as a Federal agency environmental restoration program report, should be included in the docket regardless of the absence of formal Section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from two EPA data bases (Hazardous Waste Data Management System and CERCLIS, the CERCLA data base) that contain Federal facility information submitted under the four provisions listed in Section 120(c).

Extensive computer checks compared the initial docket list with the information obtained from the above data bases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately owned facilities may have been included. These potential problems are the result of historical procedures used to report and tract Federal facility data, and the Agency is working to resolve them. Federal agencies are requested to contact EPA's Docket Coordinator in writing at the following address if revisions to this update information are necessary:

Federal Facilities Docket Coordinator, U.S. EPA, 401 M Street, SW. (OS-530), Washington, DC 20460.

IV. Facilities Not Included

As explained in the original docket preamble (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, where appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket, with responsibility for conducting PA's and SI's resting with the current owner.

2. Any facilities not currently owned by a Federal agency. For example, facilities that are operated by the Federal government under State or private ownership will not be listed on the docket.

3. SQGs that have never produced more than 1,000 kg in any month and have not reported releases under Section 103 or other hazardous waste activities under Section 3016.

4. Facilities that are solely transporters as reported under RCRA Section 3010.

5. Any Federal facility not reported to EPA pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103 (or an equivalent Federal agency environmental restoration program report, as discussed above).

V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section comprises corrections to the docket. The second section is a list of facilities being deleted from the docket. The third section is a list of new facilities that are being added to the docket. Each facility listed as part of the update has been assigned a code that indicates more specific reason(s) for the correction, deletion, or addition. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this second docket update submit a PA, and, if warranted, a SI, to EPA within 18 months of the date of this publication. This includes any facility changing responsible agencies (codes 21 and 22). These reports should be submitted to the CERCLA Federal Facility Coordinator in the appropriate EPA Regional Office.

Facilities in each section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA (indicated by an "x" in the appropriate column(s)), the EPA Region where the facility is located, and the correction codes.

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800-548-1016). As of today, the total number of Federal facilities that appear on the docket is 1268.

Dated: November 15, 1989.

Mary A. Gade,

Acting Assistant Administrator for Solid Waste and Emergency Response.

I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code.

Categories for Facility Removal

(1) Small Quantity Generator.
(2) Not Federally Owned.
(3) Formerly Owned.
(4) No Hazardous Waste Generated.
(5) Temporary Storage/One Time Permitted Disposal.
(6) Redundant Listing/Site on Facility.
(7) Combining Sites Into One Facility-Entries Combined.

FEDERAL FACILITIES DOCKET ADDITIONS

Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. code
Interior	Lake Clark National Park and Preserve.	Box 61, 701 C. St.	Anchorage	AK	99513				X	10	19A
Transportation	USDOT—FRA Arctic Cooperage.	932 Whitney Rd.	Anchorage	AK					X	10	19A
Transportation	USDOT—FAA Air Route Traffic Center.	5400 Davis Highway.	Anchorage	AK					X	10	15
Interior	Katmai National Park and Preserve.	Box 7	King Salmon.	AK	99613				X	10	19A
Interior	Noatak National Preserve		Kotzebue	AK	99752				X	10	19A
Interior	Bering Land Bridge National Preserve.	Box 220	Nome	AK	99762				X	10	19A
Interior	USDOI-BLM Maclaren Glacier Mine.	Fairbanks MER T19S R6E Sec 14NE Sec 11.	Paxson	AK					X	10	19A
Transportation	USDOT—FAA Biorka Island	6 mi W of Sitka	Sitka	AK	99835		X			10	19A
Army	Army Whittier Tank Farm	¾ mi N of Town	Whittier	AK					X	10	19A
Corps of Engineers Civil.	San Carlos irrigation project	Crn Hwy 287 & Coolidge Blvd.	Coolidge	AZ	85228		X			9	19A
Air Force	161st AREFG Air National Guard.	2001 S. 32nd St	Phoenix	AZ	85034		X			9	17
Health and Human Services.	HU HU KAM Memorial Hospital.	PHS Indian Health Service.	Sacaton	AZ	85247		X			9	19A
Interior	BLM Blue Rock Millsite	T8S R37E Sec 8 SESE.		CA					X	9	19A
Interior	BLM Desert Site	9mi west of Yuma, AZ.		CA					X	9	19A
Interior	BLM Duck Flat	T36NR 19E Sec 7 NWSE.		CA					X	9	19A
Interior	BLM Indio Hills	1 mi. E. of Dillon Rd.		CA					X	9	19A
Interior	BLM Victory Millsite	T11N R12W Sec 32.		CA					X	9	19A
Interior	BLM Afton Canyon/Union Pacific Railroad.	T10–11R4–6 Sec 4–22.	Afton	CA				X		9	19A
NASA	NASA JPL Goldstone Tracking Facil.	36 Mi n of Barstow @ Ft Irwin.	Barstow	CA	92311				X	9	19A
Interior	BLM Riverside Co. Dump	1,000 Midland Rd.	Blythe	CA					X	9	19A
Transportation	CAMSPAC San Francisco	525 Mesa Rd.	Bolinas	CA	94956		X			9	19A
Interior	BLM Brawley Drug Lab	Near Brawley	Brawley	CA					X	9	19A
Air Force	Davis Transmitter Site	Davis	Davis	CA					X	9	19A
NASA	NASA DFRF	Bldg 4800 Edwards AFB.	Edwards AFB.	CA	93523				X	9	19A
Interior	BLM Simcal Chemical Corporation.	50 W. Dannenberg Rd.	El Centro	CA					X	9	19A
Agriculture	Sierra Nat'l Forest	1130 O St. Room 3017.	Fresno	CA	93721				X	9	19A
Air Force	Fresno Aucrad	5168 East Dakota Ave.	Fresno	CA	93727		X			9	19A
Army	Army & Air Force Esch SVC	Bld 99 Maratime	Oakland	CA	94623		X			9	19A
Agriculture	Grizzard Property	1140 Mountain View.	Oxnard	CA				X		9	19A
Air Force	Douglas Aircraft Co	3000 E Ave M	Palmdale	CA	93550		X			9	19A
Agriculture	Plumas Nat'l Forest	159 Lawrence St. Box 11500.	Quincy	CA	95971 6025				X	9	19A
Agriculture	Shasta-Trinity N.F.	2400 Washington Ave.	Redding	CA	96001				X	9	19A
Navy	Portsmouth Naval Housing Area.	25th St & El Anita Dr.	San Pedro	CA					X	9	19A
Interior	BLM Stateline Dump	T48N R6 E Sec 18.	Stateline	CA				X		9	19A
Interior	BLM Delta County Landfill	T14N R95 W Sec 10, 6THPM.		CO					X	8	19A
Interior	BLM Bookcliff Landfill	T1N R101 W Sec 6, UTEPM.	Bookcliff	CO					X	8	19A
Interior	BLM Town of Granby Sanitary Landfill.	T2NR87W6, THPM Sec 23.	Granby	CO					X	8	19A
Interior	BLM Rangely Landfill	T1N R101 W Sec 6, 6THPM.	Rangely	CO					X	8	19A
Interior	BLM South Fork Landfill	T40N R3 E Sec 26.	Southfork	CO					X	8	19A
Interior	BLM Walden Landfill	T9N R79 W Sec 24, 6THPM.	Walden	CO					X	8	19A
Navy	NRL Underwater Sound Reference Detachment.	755 Gatlin Ave.	Orlando	FL	32806		X			4	19A
Air Force	Kaala AFS	Taxiway 5 & Kamakahi St.	Honolulu	HI					X	9	19A

FEDERAL FACILITIES DOCKET ADDITIONS—Continued

Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. code
Interior	BLM Browns Gulch	T6S R7E Sec 10W1/2.		ID					X	10	19A
Interior	BLM Castleford Butte	T10S R12E Sec 23.		ID					X	10	19A
Interior	BLM Feedlot Dump	T4S R3E Sec 26		ID					X	10	19A
Interior	BLM Montview	T8N R34E Sec 22 NWNW.		ID					X	10	19A
Interior	BLM W. Cerman Lake	T7S R25E Sec 9		ID					X	10	19A
Interior	BLM Warrior Road	T3S R1W Sec 11		ID					X	10	19A
Energy	Burley Maint HQ	1247 W. Main	Burley	ID	83318		X			10	17
Agriculture	Idaho Panhandle National Forests.	1201 Ironwood Dr	Coeur D' Alene.	ID	83814			X		10	19A
Agriculture	U.S. Sheep Experiment Station.	HC 62, Box 2010	Dubois	ID	83423			X		8	19A
Interior	BLM-Hell's Half Acre, E. Finger.	T1SR36E Sec 4	Firth	ID	83236				X	10	16
Interior	BLM-Hell's Half Acre, W. Finger.	T1SR36E Sec 32	Firth	ID	83236				X	10	16
Agriculture	Soil and Water Management Research Unit.	Route 1, Box 186, 3600 East.	Kimberly	ID	83341			X		10	19A
Agriculture	Salmon National Forest	P.O. Box 729	Salmon	ID	83467				X	10	19A
Justice	USDEA North Cen Lab	500 US Customs House 610 Canal.	Chicago	IL	60607		X			5	19A
General Services Admin.	US Army Corps of Engineers	219 S Dearborn St	Chicago	IL	60604		X			5	19A
Veterans Administration	US VA Medical Center	2401 W Main St	Marion	IL	62959		X			5	19A
Commerce	US Dept of Commerce Bureau of The Census.	2255 Enterprise Dr	Westchester.	IL	60153		X			5	19A
Corps of Engineers, Civil.	Floating Plant—Repair Facility	27th & Canal	Louisville	KY	40212		X			4	19A
Agriculture	Watertown Dairy	6 Moore Road	Wayland	MA				X		1	19A
Air Force	(Air National Guard)—Martin's Airport.	Eastern Ave and Wilson Point Rd.	Baltimore	MD					X	3	19A
Commerce	NMFS—Oxford		Oxford	MD						3	19A
Veterans Administration	USVA Medical Center	5600 Armstrong Rd.	Battle Creek.	MI	49016		X			5	19A
Agriculture	Huron-Manistee N.F.	412 S. Mitchell St	Cadillac	MI	49601				X	5	19A
Agriculture	Hiawatha Nat'l Forest	2727 N. Lincoln Rd.	Escanaba	MI	49829				X	5	19A
Postal Service	US Post Office	1515 Fort St	Lincoln	MI	48146		X			5	19A
Navy	US Naval Reserve Center	26400 E Eleven Mile Rd.	Southfield	MI	48075		X			5	19A
Veterans Administration	Veterans Administration Medical Center.	54th St & 48th Ave S.	Minneapolis.	MN	55417		X			5	19A
Energy	Tatum Dome		Hattiesburg	MS	39401				X	4	17
Interior	BLM High Ore Mine	17NR5WSEC36		MT					X	8	19A
Army	US Dept of the Army AMSA #5.	1430 Broadwater Ave.	Billings	MT	59102		X			8	19A
Agriculture	Beaverhead N.F.	610 N. Montana St.	Dillon	MT	59725				X	8	19A
Interior	US Bureau of Reclama (Hungry Horse Dam).	Edge of Hungry Horse.	Hungry Horse.	MT	59919		X			8	19A
Interior	BLM Steamboat Point	T25NR10E Sec 18PMM.	Loma	MT					X	8	19A
Army	Marine Ocean Terminal/ Sunny Point.	ATTN: MTE SU-FE.	Southport	NC	28461				X	4	17
Postal Service	US Postal Service	Federal Square room B-97.	Newark	NJ	07102		X			2	19A
Army	Pedricktown Support Facility	Route 130 Siever Sandberg USARC.	Pedricktown.	NJ	08067				X	2	19A
Postal Service	US Postal Service	680 State Hwy 130.	Trenton	NJ	08650		X			2	19A
Energy	Lovelace Inhalation Toxicology Research Inst.	Bldg. 9200, Kirtland AFB East.	Albuquerque.	NM	87185				X	6	17
Interior	BLM Anthony Landfill	T26R4ESEC30, NMPH.	Anthony	NM					X	6	19A
Interior	BLM Carlsbad Ldfl	T21S R27 E Sec 27NMPH.	Carlsbad	NM					X	6	19A
Interior	BLM Chaparral Landfill	T26S R5E Sec 14	Chaparral	NM					X	6	19A
Interior	BLM Espanola Landfill	T20N R9E Sec 6N MPH.	Espanola	NM					X	6	19A
Interior	BLM Hyde Mine	35/32/46 & 108/41/26.	Gallup	NM					X	6	19A
Interior	BLM Hill Landfill	T22S R1E Sec S3&4N MPH.	Hill	NM					X	6	19A

FEDERAL FACILITIES DOCKET ADDITIONS—Continued

Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. code
Interior	BLM Lemitar Landfill	T2S R1W Sec S13&24.	Lemitar	NM					X	6	19A
Army	US Aadacen & Ft Bliss	McGregor Range FAW 10.	McGregor Range.	NM	88003					6	19A
Air Force	US Air Force Melrose Range	25 Mi W of Cannon AFB.	Melrose	NM	88124		X			6	19A
Interior	BLM Mesquite Landfill	T24S R3E Sec 29N MPH.	Mesquite	NM					X	6	19A
Interior	BLM Orogrande Landfill	T22S R8E Sec 14SWSESW.	Orogrande	NM					X	6	19A
Interior	BLM San Antonio Landfill	T5S R1E Sec 6N MPH.	San Antonia.	NM					X	6	19A
Interior	BLM Thoreau Landfill	T14N R13W Sec 20N MPH.	Thoreau	NM					X	6	19A
Interior	BLM Truth or Consequences Landfill.	T13S R4W Sec 22N MPH.	Truth or Consequences.	NM					X	6	19A
Interior	BLM Velarde Landfill	T22N R9E Sec 20N MPH.	Velgarde	NM					X	6	19A
Agriculture	Humbolt N.F	967 Mountain City Hwy.	Elko	NV	89801				X	9	19A
Agriculture	Toiyabe National Forest	1200 Franklin Way	Sparks	NV	89431				X	9	19A
Transportation	USCG Group Moriches	100 Moriches Island Rd.	East Moriches.	NY	11940		X			2	19A
Transportation	CG Station Shinnecok	Unknown	Hampton Bays.	NY	11946		X			2	19A
Postal Service	US Postal Service	2400 Orange Ave GMF Room 208.	Cleveland	OH	44101		X			5	19A
Agriculture	Wayne National Forest		Ironton	OH	45638				X	5	19A
Corps of Engineers, Civil.	US Army COE Rossford Depot.	851 Third St	Perrysburg	OH	43551		X			5	19A
Corps of Engineers, Civil.	Army COE Erie Industrial Park	Erie Industrial Pk Bldg 2.	Port Clinton.	OH	43452		X			5	19A
Air Force	US Air Force Altus AFB	443 ABG/DEEV	Altus	OK	73521		X			6	19A
Agriculture	Southern Plains Range Research Laboratory.	2000 18th St	Woodward	OK	73801				X	6	19A
Agriculture	Willamette National Forest	Box 10607	Eugene	OR	97440				X	10	19A
Agriculture	Fremont Nat'l Forest	524 North G St	Lakeview	OR					X	10	19A
Army	USAR Center Clearfield	RD 2 Box 314	Clearfield	PA	16830		X			3	19A
Army	USARC - Pendel-Caminiti	950 New Castle Rd.	Farrell	PA	16121		X			3	19A
Agriculture	Allegheny Nat'l Forest	222 Liberty St Box 847.	Warren	PA					X	3	19A
Postal Service	US Postal Service-Warrendale.	300 Commonwealth Ave.	Warrendale.	PA	15086		X			3	19A
Energy	US DOE Y-12 Plant	Bear Creek Rd	Oak Ridge	TN	37830	X	X		X	4	17
Interior	BLM Snowville Landfill	T14NR9W Sec SC32SLM.	Snowville	UT					X	8	19A
Interior	BLM Wendover Landfill	T1SR19W Sec 3, Lots 1 & 2.	Wendover	UT					X	8	19A
Interior	US Navy Saint Helena Annex	South Main St	Norfolk	VA	23523		X			3	19A
Commerce	Columbia Gardens		Pasco	WA					X	10	19A
Army	US Army Reserve Ctr	619 W Wisconsin Ave.	Pewaukee	WI	53072		X			5	19A
Veterans Administration	USVA Medical Center	Veterans Dr	Tomah	WI	54660		X			5	19A
Army	USAR Martinsburg MEM Reserve Center.	900 Maryland Ave	Martinsburg.	WV	25401		X			3	19A
Interior	BLM Old Lysite Landfill	T30NR91W Sec 1		WY					X	8	19A
Interior	BLM South Bighorn County Landfill.	T52NR93W Sec 20.		WY					X	8	19A
Interior	BLM Baroil Landfill	T26NR90W Sec 26.	Baroil	WY					X	8	19A
Interior	BLM Boulder Landfill	T31NR108W Sec 3.	Boulder	WY					X	8	19A
Agriculture	High Plains Grassland Research Station.	8408 Hildreth Rd	Cheyenne	WY	82009			X		8	19A
Interior	BLM Cody Landfill	T52NR101W Sec 20.	Cody	WY					X	8	19A
Interior	BLM Riverton Landfill	T34NR96W Sec 26.	Riverton	WY					X	8	19A
Interior	BLM Birch Creek Site	T27NR113W Sec 34.	Worland	WY					X	8	19A
Interior	BLM Worland Landfill	T47NR93W Sec 23.	Worland	WY					X	8	19A

FEDERAL FACILITIES DOCKET REMOVALS

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Region	Corr. Code
Interior	US Dept of Interior Hope Wildlife area.	4 miles North off Hwy 32.	Hope	AR	71801				X	6	2
Interior	BLM-Caliente Resource area, Parcel No. 147-090-06.	520 Butte Street	Bakersfield	CA	93305				X	9	2
NASA	Canoga manufacturing facility	6633 Canoga Ave	Canoga Park.	CA	91303			X		9	6
General Services Admin.	Chet Holifield Federal Energy building.	24000 Avila Road	Laguna Ni Guel.	CA	92677		X		X	9	4
Air Force	Los Angeles Air Force station	2400 El Segundo Blvd.	Los Angeles.	CA	90009		X		X	9	6
Labor	Pepper Industries	91-294 Kauhi St	EWA Beach.	HI	96706	X				9	2
General Services Admin.	Federal Bldg	205 N 4th Street	Coeur D'Alene.	ID	83814		X		X	10	1
Interior	BLM-Hell's Half Acre, S. Finger and W. Finger.	T1SR36ESEC4&32	Firth	ID	83236				X	10	6
Agriculture	USDA-FS forestry sciences lab.	1221 S Main St	Moscow	ID	83843				X	10	4
Interior	Iberville Land Company Well #3.	2.2 Mi E of H-975, 5.5 Mi W I-10.	Henderson	LA	70517				X	6	6
Interior	Iberville Land Co. Well #1	3.03 Mi E of LA975 & 5.5 Mi N of I-10.	Henderson	LA	70517				X	6	6
NASA	NASA Michoud/Martin Marietta Aerospace.	13800 Old Gentilly Rd.	New Orleans.	LA	70129	X	X	X	X	6	6
Navy	Naval Facility Nantucket	Tom Nevers Head	Nantucket	MA						1	2
Army	US Army Reserve XVIII ARBN Corps.	Afza FE EE	Fort Bragg	NC	28307		X	X	X	4	6
Energy	Great Plains Coal gasification plant.	7 Mi NW of Beulah.	Beulah	ND	58523	X	X	X		8	3
Veterans Administration	GSA/VA Depot	Route 206	Somerville	NJ	08876				X	2	6
Agriculture	Mineral Creek Tailing	Forest Route 701 3.5 Mi E of Hwy 180.	Alma	NM	88039				X	6	2
Interior	Caddo County Landfill #1	SE/4 Sec7 T5N R11W SW/4 Sec8.	Apache	OK	73006				X	6	4
Army	US Army Bristol Nike Site	Rt 126	Bristol	RI	02809				X	1	2
Army	US Army Foster Nike Site	Off Boss Rd	Foster	RI	02825				X	1	2
Army	US DOD Defense Depot, Memphis.	Perry & Elliston Rd	Memphis	TN	38106				X	4	6
Agriculture	Unidentified site	US Forest Service property.	Huntsville	TX	77340				X	6	4
Agriculture	US Dept Agri livestock insects.	Fredericksburg Road.	Kerrville	TX	78028	X	X			6	6
Treasury	US Customs—Millington addition.	East of FM 170	Presidio	TX	79845				X	6	2
Interior	East Summit mining claims			UT				X		8	6
Army	Cape Charles Air Force Station.		Cape Charles.	VA	23310		X			3	6
Treasury	Customs Service—Seattle	909 First Ave.	Seattle	WA	98174		X			10	1
Agriculture	Clam Lake		Clam Lake	WI				X		5	6
Veterans Administration	Veterans Admin Medical Center.	5000 W. National Avenue.	Wood	WI	53193		X	X		5	1
Air Force	Wake Island Air Fld	154ABW	Wake Island.	WQ	96798				X	9	6

FEDERAL FACILITIES DOCKET CORRECTIONS

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Air Force	Murphy Dome AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X			10	
C—Air Force	Murphy Dome AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X				20A
O—Air Force	Sparrenvohn AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Sparrenvohn AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Indian Mountain AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Indian Mountain AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Air Force	USAF—Aniak AFB LDFL	Head Shank Kuskokwim RIV/ SLOGH.	Aniak	AK	99557				X	10	
C—Air Force	Aniak AFB	Head Shank Kuskokwim RIV/ SLOGH.	Aniak	AK	99557				X	10	20A
O—Air Force	USAF—Bethel AFS LDFL	Airport—W end of main road.	Bethel	AK	99559		X		X	10	
C—Air Force	Bethel AFS	Airport—W end of main road.	Bethel	AK	99559		X		X	10	20A
O—Air Force	USAF—Big Mountain AFS LDFL.	S Shoure Iliamna/ S side Big Mtn.	Big Mountain AFS.	AK	99501		X		X	10	
C—Air Force	Big Mountain AFS	S Shoure Iliamna/ S side Big Mtn.	Big Mountain AFS.	AK	99501		X		X	10	20A
O—Air Force	USA—Clear AFS LDFL	Hwy 3 & Nenana Rd.	Anderson	AK	99704		X		X	10	
C—Air Force	Clear AFS	13 MWS/CC	Anderson	AK	99704		X		X	10	20A
O—Air Force	USAF—Dewline Site POW-3	E of Flaxman Island.	Bullen Point.	AK	99723				X	10	
C—Air Force	USAF—Dewline Site POW-3	E of Flaxman Island.	Bullen Point.	AK	99723		X		X	10	23
O—Air Force	USAF—Driftwood Bay AFS LDFL.	N Coast Unalaska Island.	Driftwood Bay.	AK	99553				X	10	
C—Air Force	USAF—Driftwood Bay AFS	N Coast Unalaska Island.	Driftwood Bay.	AK	99553				X	10	20A
O—Air Force	USAF—Duncan Canal LDFL	12 mi. SW of CY	Petersburg	AK	99883				X	10	
C—Air Force	Duncan Canal	12 mi. SW of CY	Petersburg	AK	99883				X	10	20A
O—Air Force	USAF—Fort Yukon AFS LDFL.	N of Yllota Slough	Fort Yukon	AK	97740				X	10	
C—Air Force	Fort Yukon AFS	N of Yllota Slough	Fort Yukon	AK	99740		X		X	10	23 20A
O—Air Force	USAF—North River AFS LDFL.	Mouth of North River.	Unalakleet	AK	99684				X	10	
C—Air Force	USAF—North River AFS	Mouth of North River.	Unalakleet	AK	99684				X	10	20A
O—Air Force	USAF—Port Heiden AFS LDFL.	NW Shore of Heiden Bay.	Port Heiden.	AK	99549				X	10	
C—Air Force	USAF—Port Heiden AFS	NW Shore of Heiden Bay.	Port Heiden.	AK	99549				X	10	20A
O—Transportation	USDOT—CG Kodiak Support Ctr.	Womans Bay Kodiak Isl.	Kodiak	AK	99619		X		X	10	
C—Transportation	USDOT—CG Kodiak San LDFL.	USCG Support Center.	Kodiak	AK	99619				X	10	20A 24
O—Air Force	Cape Newenham AFS	11 TCG/CC Bay	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Cape Newenham AFS	11 TWC/CC Bay	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Eielson AFB	5010 CSG/DE 343 CSG DEEV BLDG 2258.	Eielson AFB.	AK	99702	X	X	X	X	10	
C—Air Force	Eielson AFB	343 CSB/DE	Eielson AFB.	AK	99702	X	X	X	X	10	20A
O—Air Force	Tatlina AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Tatalina AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Tin City AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Tin City AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Elmendorf AFB	215 CSG/DE 21 CSG/DEEV B22-009.	Elmendorf AFB.	AK	99506-5000	X	X	X		10	
C—Air Force	Elmendorf AFB	21 CSG/CC 21	Elmendorf AFB.	AK	99506-5000	X	X	X	X	10	23 20A
O—Air Force	Cape Romanzof AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Cape Romanzof AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	USAF Cape Lisbourne AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	USAF-Cape Lisbourne AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Air Force	USAF-Dewline site POW-2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599				X	10	
C—Air Force	USAF-Dewline site POW-2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599		X		X	10	23
O—Army	USA Redstone Arsenal	CMDR USAMICOM DRSMI-K - Triana/ Tennessee River Redstone Arsenal.	Huntsville	AL	35898	X	X	X	X	4	
C—Army	USA Redstone Aresenal	CMDR USAMICOM DRSMI-K.	Huntsville	AL	35898	X	X	X	X	4	20A
O—Air Force	USAF Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB.	AL	36112	X	X		X	4	
C—Air Force	USAF Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB.	AL	36112		X		X	4	20
O—Tennessee Valley Authority.	TVA Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals.	AL	35660	X	X	X	X	4	
C—Tennessee Valey Authority.	TVA Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals.	AL	35660	X	X	X		4	24
O—Tennessee Valley Authority.	TVA Bellefonte Nuclear Plt	Off US Hwy 72	Hollywood	AL	36401		X		X	4	
C—Tennessee Valley Authority.	TVA Bellefonte Nuclear Plt	Off US Hwy 72	Hollywood	AL	36401	X	X		X	4	23
O—Army	DOA/Wheeler National Wildlife Refuge.	PO Box 1643	Decatur	AL	35602			X		4	
C—Army	DOA/Wheeler National Wildlife Refuge.	PO Box 1643	Decatur	AL	35602			X	X	4	23
O—Tennessee Valley Authority.	TVA Colbert Steam Plant	Off US Hwy 72 W	Tuscumbia	AL	35674				X	4	
C—Tennessee Valley Authority.	TVA Colbert Steam Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	X	X		X	4	23
O—Air Force	USAF Blytheville Air Force Base.	97 CSG/DEEV	Blytheville	AR	72315-5000	X	X		X	6	
C—Air Force	Eaker AFB	97 CSG/DEEV	Eaker AFB	AR	72315-5000	X	X	X	X	6	23 20A
O—Air Force	Little Rock AFB	314 CSG/CC	Little Rock AFB AR.	AR	72979	X	X	X	X	6	
C—Air Force	Little Rock AFB	314 CSG/CC	Little Rock AFB AR.	AR	72099	X	X	X	X	6	20A
O—Army	Navajo Army Depot	I-40	Flagstaff	AZ	86001	X	X		X	9	
C—Army	Navajo Army Depot	I-40	Flagstaff	AZ	86001	X	X	X	X	9	23
O—Air Force	Arizona Air Natl Guard 162 TAC FTR Gp.	1500 E. Valencia Road.	Tucson	AZ	85706	X	X		X	9	
C—Air Force	Arizona Air Natl Guard 162 TAC FTR Gp.	1500 E. Valencia Road.	Tucson	AZ	85706		X		X	9	20A 24
O—Air Force	Air Force Plant 44 (Hughes Aircraft Co.).	Emery Port Station	Tucson	AZ	85734	X		X		9	
C—Air Force	Air Force Plant 44 (Hughes Aircraft Co.).	Old Nogales Road	Tucson	AZ	85734	X		X		9	20A
O—Interior	Yuma Desalting Plt	7301 Calle Agua Salada.	Yuma	AZ	85364	X	X	X		9	
C—Interior	Yuma Desalting Plant	7301 Calle Agua Salada.	Yuma	AZ	85364	X	X	X		9	20A
O—Agriculture	USDA Shafter US Cotton Research.	17053 Shafter Avenue.	Shafter	CA	93263		X		X	9	
C—Agriculture	US Cotton Research Center	17053 Shafter Avenue.	Shafter	CA	93263		X	X	X	9	23 20A
O—Air Force	Edwards Air Force Base	AFFTC Edwards AFB.	Edwards	CA	93523	X	X	X	X	9	
C—Air Force	Edwards Air Force Base	P.O. Box 458	Edwards	CA	93523	X	X	X	X	9	20A
O—Air Force	McClellan AFB	SM-ALC/EM	McClellan AFB.	CA	95652	X	X	X	X	9	
C—Air Force	McClellan AFB	SM-ALC/EM	Sacramento.	CA	95652	X	X	X	X	9	20A
O—Air Force	Point Arena Air Force Station	26 ADS/DE	Pt. Arena AFS.	CA	95468				X	9	
C—Air Force	Point Arena Air Force Station	26 ADS/DE	Pt. Arena AFS.	CA	95468			X	X	9	23
O—Air Force	March AFB	22 CSG/CC	March AFB	CA	92518	X	X		X	9	
C—Air Force	March AFB	22 CSG/CC	March AFB	CA	92518	X	X	X	X	9	23
O—Air Force	Air Force Plant 19	4297 Pacific Coast Hwy.	San Diego	CA	92101				X	9	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
C—Air Force	Air Force Plant 19	4297 Pacific Coast Hwy.	San Diego	CA	92101-5001				X	9	20A
O—Energy	Lawrence Livermore Lab—Site.	Corral Hollow Rd.	San Diego	CA	94550	X	X		X	9	
	300		Joaquin/ Alameda Counties.								
C—Energy	Lawrence Livermore Lab—Site 300.	Corral Hollow Rd.	San Diego Joaquin/ Alameda Counties.	CA	94550	X	X	X	X	9	23
O—Energy	US Doe Sandia Natl. Lab	7261 East Avenue	Livermore	CA	94550	X	X	X	X	9	
C—Energy	US Doe Sandia Natl. Lab	7011 East Avenue	Livermore	CA	94550	X	X	X	X	9	20A
O—Navy	Naval Shipyard Hunters Point		San Francis-co.	CA	94593		X		X	9	
C—Navy	Naval Station Treasure Island Shipyard Hunters Point Annex.		San Francis-co.	CA	94130		X	X	X	9	20A 23
O—Navy	Naval Air Station Moffett Field.		Moffett Field.	CA	94035	X	X		X	9	
C—Navy	Naval Air Station Moffett Field.		Moffett Field.	CA	94035	X	X	X	X	9	23
O—Navy	Naval Supply Ctr. Oakland-Pt. Molate Ste.	End Western Dr. Off SR 17.	Richmond	CA	94801	X	X			9	
C—Navy	Naval Supply Ctr. Oakland-Pt. Molate Ste.	End Western Dr. Off SR 17.	Richmond	CA	94801		X			9	24
O—Navy	Naval Air Station Lemoore	Naval Air Station	Lemoore	CA	93245		X		X	9	
C—Navy	Naval Air Station Lemoore	Naval Air Station	Lemoore	CA	93245		X	X	X	9	23
O—Navy	Naval Station Treasure Island	Treasure Island	San Francis-co.	CA	94130	X	X		X	9	
C—Navy	Naval Station Treasure Island	Treasure Island	San Francis-co.	CA	94130	X	X	X	X	9	23
O—Navy	Dept. of Defense Housing Facility.	Branch HSG Office Bldg. 1000.	Novato	CA	94939		X			9	
C—Navy	Dept. of Defense Housing Facility.	Branch HSG Office Bldg. 1000.	Novato	CA	94939		X	X		9	23
O—Navy	Marine Corps Recruit Depot San Diego.	Barnett Ave. & Pacific Hwy.	San Diego	CA	92140		X		X	9	
C—Navy	Marine Corps Recruit Depot San Diego.	Barnett Ave. & Pacific Hwy.	San Diego	CA	92140		X	X	X	9	23
O—Navy	Marine Corps Air Station Tustin.	MCAS Tustin	Tustin	CA	92719			X		9	
C—Navy	Marine Corps Air Station Tustin.	MCAS Tustin	Tustin	CA	92719	X		X		9	23
O—Air Force	George Air Force Base	331 CSG/DE	George AFB.	CA	92392	X	X	X	X	9	
C—Air Force	George Air Force Base	831 CSG/DE	George AFB.	CA	92392	X	X	X	X	9	20A
O—Air Force	Air Force Plant 42 (Rockwell International).	20th Street & E Aves. D&M.	Palmdale	CA	93550	X	X		X	9	
C—Air Force	Air Force Plant 42 (Rockwell International).	20th & E Street Aves. D & M.	Palmdale	CA	93550-0678	X	X	X	X	9	20A 23
O—Defense	Defense Fuel Supply Center Ozol.	Carquinez Scenic Drive.	Martinez	CA	94553		X	X	X	9	
C—Defense	Defense Fuel Supply Center Ozol.	700 Carquinez Scenic Drive.	Martinez	CA	94553		X	X	X	9	20A
O—Energy	Energy Technology Engineering Center.	Santa Susana Mtn.	Chatsworth County.	CA	93063	X		X		9	
C—Energy	Energy Technology Engineering Center.	Santa Susan Mountain.	Simi Hills	CA	93063	X		X		9	20A
O—Navy	Naval Air Logistics Force Crows Landing.	Nalf Crows Landing.	Crows Landing.	CA	95313		X			9	
C—Navy	Naval Air Logistics Force Crows Landing.	Nalf Crows Landing.	Crows Landing.	CA	95313		X	X		9	23
O—Energy	Naval Petroleum Reserve #1	Elk Hills	Tupman	CA	93276			X	X	9	
C—Energy	Naval Petroleum Reserve #1	Elk Hills, P.O. Box 11.	Tupman	CA	93276			X	X	9	20A
O—Air Force	Norton Air Force Base	63ABG/DE	Norton AFB.	CA	92409	X	X	X	X	9	
C—Air Force	Norton Air Foce Base	63ABG/CC	Norton AFB.	CA	92409	X	X	X	X	9	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Navy	Naval Submarine Base San Diego.	Naval Station Building 545.	San Diego	CA			X	X		9	
C—Navy	Naval Submarine Base San Diego.	140 Sylvester Rd. Naval Station Building 545.	San Diego	CA	92106		X	X		9	20A
O—Agriculture	Aquatic Weed Research Facility.	University of Calif.	Davis	CA	95616			X		9	
C—Agriculture	Aquatic Weed Control Research Laboratory.	3116 Wickson Hall University of Calif..	Davis	CA	95616			X		9	20A
O—Agriculture	Fresno Research Center	2021 South Peach Ave..	Fresno	CA	93727			X		9	
C—Agriculture	Fresno Horticultural Field Station.	2021 South Peach Ave..	Fresno	CA	93727			X		9	20A
O—Interior	BLM Horse Corrals	T29NR15ESEC9 6 mi NW of Susanville.	Susanville	CA	96130				X	9	
C—Interior	Susanville Site	T29NR15ESEC9 6 mi NW of Susanville.	Susanville	CA	96130				X	9	20A
O—Interior	Cuyama Drug Lab.	T10N, R28W, SEC15, NESE.		CA				X		9	
C—Interior	Cuyama Drug Lab.	T10N, R28W, SEC15, NESE.	Santa Barbara.	CA				X		9	20A
O—Navy	Sere Camp		Warner Springs.	CA					X	9	
C—Navy	Fleet Aviation Spec. Operational Training Group.		Warner Springs.	CA					X	9	20A
O—Army	Pueblo Army Depot	I-50, 13 mi. E. of Pueblo.	Pueblo	CO	81002	X	X		X	8	
C—Army	Pueblo Army Depot	1-50, 13 mi. E. of Pueblo.	Pueblo	CO	81002	X	X	X	X	8	23
O—Air Force	Peterson Air Force Base	All Bldgs. on Base	Colorado Springs.	CO	80914		X		X	8	
C—Air Force	Peterson Air Force Base	1003 SSC/CC	Peterson AFB.	CO	80914	X	X		X	8	23 20A
O—Air Force	US Air Force Academy	10 mi. N. Colorado Springs on 1-25.	Colorado Springs.	CO	80912		X		X	8	
C—Air Force	US Air Force Academy	AFA/DE	Colorado Springs.	CO	80840		X		X	8	20A
O—Interior	Water & Power Resources Serv.	910 Van Buren	Loveland	CO	80537		X		X	8	
C—Interior	Bureau of Reclamation	910 Van Buren	Loveland	CO	80537		X		X	8	20A
O—Transportation	FHWA Central Direct Fed. Div. Materials.	6th St., Bldg. 52, DFC.	Denver	CO	80225		X		X	8	
C—Transportation	FHWA Central Direct Fed. Div. Materials.	6th St., Bldg. 52, DFC.	Denver	CO	80225	X	X		X	8	23
O—Energy	Anvil Points	7 mi W. of Rifle	Rifle	CO	81650				X	8	
C—Energy	Anvil Points	7 mi W. of Rifle	Rifle	CO	81650		X		X	8	23
O—EPA	National Enforcement Investigation Center.	DFC	Denver	CO	80225	X				8	
C—EPA	National Enforcement Investigation Center.	DFC	Denver	CO	80225		X			8	23 24
O—Interior	BLM-Chaffee County Landfill	T.51.N.R.8.E. SEC. 21.		CO					X	8	
C—Interior	BLM-Chaffee County Landfill	T.51.N.R.8.E. SEC. 21, US Hwy 285 10m North of Salida.		CO					X	8	20A
O—Army	Fitzsimons Army Medical Ctr	Corner of Colfax and Peoria.	Aurora	CO	80045		X		X	8	
C—Army	Fitzsimons Army Medical Ctr	Corner of Colfax and Peoria.	Aurora	CO	80045	X	X		X	8	23
O—Interior	US Bureau of Rec—Engineering & Research Center.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	X	X			8	
C—Interior	US Bureau of Rec—Engineering & Research Center.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	X	X		X	8	23
O—Interior	BLM-Montrose County Dump	T48N R19W SEC. 22.	Montrose	CO					X	8	
C—Interior	BLM-Montrose County Dump	T48NR19W SEC. 22.	Montrose	CO					X	8	
O—Army	Stratford Army Engine Plant	550 South Main Street.	Stratford	CT	06497	X		X		1	
C—Army	Stratford Army Engine Plant	550 South Main Street.	Stratford	CT	06497	X	X	X		1	23

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Energy	US DOE Knolls Atomic Power Laboratory Windsor Site.	Prospect Hill Road	Windsor	CT	06095	X	X			1	
C—Energy	US DOE Knolls Atomic Power Laboratory Windsor Site	Prospect Hill Road	Windsor	CT	06095	X	X	X	X	1	23
O—Navy	Naval Underwater Systems Center.	New London Laboratory.	New London.	CT	06320		X			1	
C—Navy	Naval Underwater Systems Center.	New London Laboratory.	New London.	CT	06320		X		X	1	23
O—Treasury	US Bureau of Engraving & Printing.	14th & C Sts. SW	Washington.	DC	20228		X		X	3	
C—Treasury	US Bureau of Engraving & Printing.	14th & C Sts. SW	Washington.	DC	20228	X	X			3	23 20
O—Air Force	Dover Air Force Base	436 Military Airlift Wing/DE.	Dover AFB	DE	19901	X	X	X	X	3	
C—Air Force	Dover Air Force Base	436 ABG/CC	Dover AFB	DE	19902	X	X	X	X	3	20A
O—Navy	Naval Underwater Systems Center Palm Beach.	Autec West Palm Beach.	W Palm Beach.	FL	33402		X			4	
C—Navy	Naval Underwater Systems Center Palm Beach.	801 Clematis Street.	W Palm Beach.	FL	33402		X			4	20A
O—Navy	US Naval Air Station Pensacola.	US Naval Air Station.	Pensacola	FL	32508		X	X	X	4	
C—Navy	US Naval Air Station Pensacola.	US Naval Air Station.	Pensacola	FL	32508	X	X	X	X	4	23
O—Air Force	USAF Hurlburt Field	Terry & Lokasik Ave.	Hurlburt Field.	FL	32544		X	X	X	4	
C—Air Force	USAF Hurlburt Field	834 CSG/CC	Hurlburt Field.	FL	32544	X	X		X	4	23 24 20A
O—Air Force	Patrick Air Force Base	Base Civil Engineer.	Patrick AFB.	FL	32925	X	X	X		4	
C—Air Force	Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB.	FL	32925	X	X	X	X	4	23 20A
O—Navy	Naval Air Station Cecil. Field	103rd St. & Normandy Blvd.	Jacksonville.	FL	32215	X	X	X		4	
C—Navy	Naval Air Station Cecil. Field	103rd St. & Normandy Blvd.	Cecil Field	FL	32215	X	X	X	X	4	20A 23
O—Navy	Naval Air Station, Key West	Naval Air Station	Key West	FL	33042	X	X			4	
C—Navy	Naval Air Station, Key West	Naval Air Station	Key West	FL	33042	X	X	X	X	4	23
O—Navy	Naval Air Station, Jacksonville.	Code 184 Public Works Department Box 5.	Jacksonville.	FL	32212	X	X			4	
C—Navy	Naval Air Station, Jacksonville.	Code 184 Public Works Department Box 5.	Jacksonville.	FL	32212	X	X	X	X	4	23
O—Air Force	Avon Park AFB	56 Combat Support Group/DE.	Macdill AFB.	FL	33608	X	X			4	
C—Air Force	Avon Park AFB	56 Combat Support Group/DE.	Macdill AFB.	FL	33608	X	X	X		4	23
O—Air Force	Elgin AFB	ADTC/CCN	Elgin AFB	FL	32542	X	X	X	X	4	
C—Air Force	Elgin AFB	3200 SPTW/DEV	ElginAFB	FL	32542	X	X	X	X	4	20A
O—Air Force	Homestead Air Force Base	31 CSG/DE	Homestead AFB.	FL	33039	X	X	X		4	
C—Air Force	Homestead Air Force Base	31 CSG/DE	Homestead AFB.	FL	33039	X	X	X	X	4	23
O—Navy	Naval Coastal Systems Ctr., Panama City.	Code 6310MC	Panama City.	FL	32407	X	X	X	X	4	
C—Navy	Naval Coastal Systems Ctr., Panama City.	Hwy 98 Code 6310MC.	Panama City.	FL	32407	X	X	X		4	20A 24
O—EPA	Environmental Research Facility.	Sabin Island	Gulf Breeze.	FL	32561		X	X		4	
C—EPA	Environmental Research Facility.	Sabin Island	Gulf Breeze.	FL	32561		X	X		4	20A
O—Agriculture	Osceola National Forest		Unincorporated Lake City.	FL	32055				X	4	
C—Agriculture	Osceola National Forest	National Forests of Florida.	Unincorporated Lake City.	FL	32055			X		4	23 24 20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Air Force	Cape Canaveral	6550 ABW/DER	Patrick AFB.	FL	32925	X	X	X	X	4	
C—Air Force	Cape Canaveral	6550 ABG/DEEV	Patrick AFB.	FL	32925	X	X	X	X	4	20A
O—Air Force	Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069				X	4	
C—Air Force	Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069			X	X	4	23
O—Army	USA Fort Gillem	Attn AFZK-EH-C	Forest Park.	GA	30330	X		X	X	4	
C—Army	USA Fort Gillem	ATTN AFZK-EH-C.	Forest Park.	GA	30330	X	X	X	X	4	23
O—Army	USA Fort Gordon & HQ USA Signal Ctr.	ATZHFE EC	Fort Gordon.	GA	30905		X		X	4	
C—Army	USA Fort Gordon & HQ USA Signal Ctr.	ATZHFE EC	Fort Gordon.	GA	30905	X	X	X	X	4	23
O—Air Force	Robins Air Force Base	2853 CES/DE	Robins Air Force Base.	GA	31098	X	X	X	X	4	
C—Air Force	Robins Air Force Base	WR-ALC/EM	Warner Robins Base.	GA	31098	X	X	X	X	4	20A
O—Air Force	USAF Plant No. 6 Lockheed Existing LDFL.	86 S Cobb Drive Di Chromate Spill Past LDFL.	Marietta	GA	30063	X	X	X	X	4	
C—Air Force	USAF Plant No. 6 Lockheed	86 S Cobb Drive Zone 54.	Marietta	GA	30063	X	X	X		4	20A 24
O—Navy	Naval Ship Repair Facility, Guam.		Agana	GU	96630	X	X			9	
C—Navy	Naval Ship Repair Facility, Guam.		Agana	GU	96630	X	X	X		9	23
O—Air Force	Andersen AFB	43 CSG/CC Route 1.	Yigo	GU	96912	X	X		X	9	
C—Air Force	Anderson AFB	43 CSG/CC Route 1.	Yigo	GU	96912	X	X	X	X	9	23
O—Navy	Naval Air Station Agana		Agana	GU	96637	X	X		X	9	
C—Navy	Naval Air Station Agana		Agana	GU	96637	X	X	X	X	9	23
O—Air Force	Hickam Air Force Base	15 ABW/DE	Honolulu	HI	96853	X	X		X	9	
C—Air Force	Hickam Air Force Base	15 ABW/DE	Honolulu	HI	96853	X	X	X	X	9	23
O—Air Force	Wheeler AFB	Base Civil Engineer.	Wheeler AFB.	HI	96854		X		X	9	
C—Air Force	Wheeler AFB	Base Civil Engineer.	Wheeler AFB.	HI	96854		X	X	X	9	23
O—Navy	Naval Magazine Lualualei	Naval Magazine Demilitarization Furnace.	Westloch	HI	96860	X	X		X	9	
C—Navy	Naval Magazine Lualualei	Naval Magazine Demilitarization Furance.	Westloch	HI	96860	X	X	X	X	9	23
O—Navy	Barbers Point Naval Air Station.		Barbers Point.	HI	96862		X		X	9	
C—Navy	Barbers Point Naval Air Station.		Barbers Point.	HI	96862		X	X	X	9	23
O—Navy	Pearl Harbor Naval Sta	US Naval Sta	Pear Harbor.	HI	96860		X		X	9	
C—Navy	Pearl Harbor Naval Sta	US Naval Sta	Pearl Harbor.	HI	96860		X	X	X	9	23
O—Navy	Kaneohe Bay Marine Corps Air Station.	MCAS Kaneohe Base Moakapu Penin.	Kaneohe Bay.	HI	96863	X	X		X	9	
C—Navy	Kaneohe Bay Marine Corps Air Station.	MCAS Kaneohe Base Moakapu Penin.	Kaneohe Bay.	HI	96863	X	X	X	X	9	23
O—Army	Makua Military Reservation	Makua Military Reservation.	Waianae	HI	96792	X	X			9	
C—Army	Ordinance Disposal Area, Makua Mil. Res.		Waianae	HI	96792			X		9	20A, 24, 23
O—Interior	Howland Island National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI				X		9	
C—Interior	Howland Island National Wildlife Refuge.	Lat. 1 N. Long. 170 W.	1 N. 170 W.,	HQ				X		9	20A
O—Army	Iowa Army Ammunition Plant	Hwy 79 off Middletown Road.	Middletown	IA	52636	X	X	X	X	7	
C—Army	Iowa Army Ammunition Plant	Hwy 79 off Middletown Road.	Middletown	IA	52638	X	X	X	X	7	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Agriculture	National Animal Disease Center.	2300 Dayton Road PO Box 70.	Ames	IA	50010			X		7	
C—Agriculture	National Animal Disease Center.	2300 Dayton Road PO Box 70.	Ames	IA	50010		X	X		7	23
O—Energy	Ames Laboratory	107 Office & Lab ISU.	Ames	IA	50011			X	X	7	
C—Energy	Ames Laboratory	107 Office & Lab ISU.	Ames	IA	50011	X		X	X	7	23
O—Interior	BLM Pesticide Dump, Murphy	Boise Dist Sec. 5	Murphy	ID	83650				X	10	
C—Interior	Pesticide Dumpsite Sec. 5	Boise Dist Sec. 5	Murphy	ID	83650				X	10	20A
O—Interior	BLM-Hulet Dump	Avail frm St. Office.		ID					X	10	
C—Interior	BLM-Hulet Dump	T. 35. R. 1W. Sec. 15.		ID					X	10	20A
O—Interior	BLM Shoshone (Gwinn Cave)	T4S R17E S14	Shoshone	ID	83352				X	10	
C—Interior	BLM Shoshone (Gwinn Cave)	T4S R17E S14	Shoshone	ID	83352			X	X	10	23
O—Army	Joliet Army Ammunition Plant	6 Miles S. of Elwood Off Rte. 53. Will County.	Joliet	IL	60634	X	X		X	5	
C—Army	Joliet Army Ammunition Plant	6 Miles S. of Elwood Off Rte. 53. Will County.	Joliet	IL	60634	X	X	X	X	5	23
O—Commerce	Wisconsin Steel	E. 106th & Torrence Avenue.	Chicago	IL				X		5	
C—Commerce	Wisconsin Steel	E. 106th & Torrence Avenue.	Chicago	IL		X	X	X		5	23
O—Air Force	US Air Force Scott AFB	375 ABG/DEEY Bldgs 59 & 540.	Scott Air Force Base.	IL	62225	X			X	5	
C—Air Force	Scott AFB	375 ABG/CC	Scott AFB	IL	62225	X	X		X	5	23 20A 20A
O—Air Force	Grissom Air Force Base	305th CSG/DE	Grissom AFB.	IN	46971	X	X		X	5	
C—Air Force	Grissom Air Force Base	305th CSG/DE	Grissom AFB.	IN	46971	X	X	X	X	5	23
O—Commerce	US Dept. of Commerce Bureau of Census.	1201 E. 10th Street.	Jeffersonville.	IN	47130		X	X		5	
C—General Services Admin.	Jeffersonville Federal Center	1201 E. 10th Street.	Jeffersonville.	IN	47130		X	X		5	21 20A
O—Army	Ft. Riley Infantry Div. (M)	Dickman Avenue	Junction City.	KS	66442	X	X	X		7	
C—Army	Ft. Riley 1st Infantry Div (M)	Bldg 330	Fort Riley	KS	66442	X	X	X		7	20A
O—Army	Kansas AAP	3 Miles East of Town.	Parsons	KS	67357	X	X	X	X	7	
C—Army	Kansas AAP	3 Miles East of Town.	Parsons	KS	66757	X	X	X	X	7	20A
O—Army	Sunflower Army Ammunition Plant.	103 Rd. St. South of Desoto.	Desoto	KS	66018	X	X	X	X	7	20A
C—Army	Sunflower Army Ammunition Plant.	33425 W. 103 Rd. Street.	Desoto	KS	66018	X	X	X	X	7	20A
O—Army	Combined Arms Cnt. & Ft. Leavenworth.	Ft. Leavenworth Reservation.	Leavenworth.	KS	66027	X	X	X		7	
C—Army	Combined Arms Center & Ft. Leavenworth.	Ft. Leavenworth Reservation DEH–Bldg 85.	Ft. Leavenworth.	KS	66027	X	X	X		7	20A
O—Energy	US DOE Paducah Gas Diffusion Plt.	PO Box 1410	Paducah	KY	42001	X	X	X		4	
C—Energy	US DOE Paducah Gas Diffusion Plt.	PO Box 1410 Hobbs Road.	Paducah	KY	42001	X	X	X		4	20A
O—Army	USA Lexington Blue Grass Depot Activity.	US Hwy. 421	Richmond	KY	40475				X	4	
C—Army	USA Lexington Blue Grass Depot Activity.	US Hwy. 421	Richmond	KY	40475	X			X	4	23
O—Agriculture	Southern Regional Research Center, USDA.	1100 Robert E. Lee Blvd..	New Orleans.	LA	70124		X		X	6	
C—Agriculture	Southern Regional Research Center, USDA.	1100 Robert E. Lee Blvd..	New Orleans.	LA	70124		X	X	X	6	23
O—Air Force	Otis Air Force Base	Mass. Military Reservation 102 FIW/CC.	Falmouth	MA	02542		X		X	1	
C—Air Force	Otis Air Force Base	Mass. Military Reservation 102 FIW/CC.	Falmouth	MA	02542		X	X	X	1	23
O—Air Force	Hanscom Air Force Base	3245 ABG/CC	Bedford	MA	01731		X	X	X	1	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
C—Air Force	Hanscom Air Force Base	3245 ABG/DEEV	Bedford	MA	01731	X	X	X	X	1	23 20A
O—Navy	Naval Air Station South Weymouth.	NAS S. Weymouth PWD Code 72.3.	South Weymouth.	MA	02190		X			1	
C—Navy	Naval Air Station South Weymouth.	NAS S. Weymouth PWD Code 72.3.	South Weymouth.	MA	02190	X	X			1	23
O—Interior	Cape Code Seashore	East Off Route 6	Wellfleet	MA	02667			X	X	1	
C—Interior	Old Camp Wellfleet	East Off Route 6	Wellfleet	MA	02667			X	X	1	20A
O—Air Force	Andrews Air Force Base	1776 ABW/DE	Camp Springs.	MD	20331	X	X	X	X	3	
C—Air Force	Andrews Air Force Base	1776 ABW/CC	Andrews AFB.	MD	20331	X	X	X	X	3	20A
O—Army	Fort Detrick—Frederick Can	Ft. Detrick	Frederick	MD	21701	X	X	X	X	3	
C—Army	Fort Detrick	Ft. Detrick	Frederick	MD	21701		X	X	X	3	20 20A
O—Army	Harry Diamond Labs-Adelphi	SLCIS-FE 2800 Powder Mill.	Adelphi	MD	20783	X	X	X	X	3	
C—Army	Harry Diamond Labs-Adelphi	2800 Powder Mill Rd..	Adelphi	MD	20783	X	X	X	X	3	20A
O—Health And Human Services.	NIH Bethesda	9000 Rockville Pike.	Bethesda	MD	20205	X	X	X	X	3	
C—Health And Human Services.	NIH Bethesda	9000 Rockville Pike.	Bethesda	MD	20892	X	X	X	X	3	20A
O—Navy	National Naval Medical Center.	National Capital Region.	Bethesda	MD	20814	X	X	X		3	20A
C—Navy	National Naval Medical Center.	8901 Wisconsin Ave..	Bethesda	MD	20814	X	X	X		3	
O—General Services Admin.	GSA Curtis Bay Deport	Ordnance Road	Baltimore	MD	21226	X	X	X		3	20A
C—General Services Admin.	GSA Curtis Bay Deport	710 Ordnance Road.	Baltimore	MD	21226	X	X	X		3	
O—Agriculture	Beltsville Agricultural Res. Ctr	Building 1321 & 204 Barc. Muirkirk Rd..	Beltsville	MD	20705		X	X	X	3	
C—Agriculture	Beltsville Agricultural Res. Ctr	Blding 003 BARC-West.	Beltsville	MD	20705		X	X	X	3	20A
O—Navy	US Naval Station, Annapolis	Old Severn river Bridge.	Annapolis	MD	21402		X		x	3	
C—Navy	US Naval Station, Annapolis	Old Severn River Bridge.	Annapolis	MD	21402	X	X	X	X	3	23
O—Army	Harry Diamond Lakes—Blossom.	Blossom Point Road.	La Plata	MD				X		3	
C—Army	Harry Diamond Labs.—Blossoms Point Facility.	Blossom Point Road.	La Plata	MD				X		3	20A
O—Navy	NSEC Solomons Island	Deptartment of the Navy.	Solomons	MD	20688				X	3	
C—Navy	Naval Air Station Patuxent River Annex.	Department of the Navy.	Solomons	MD	20688				X		
O—Navy	USN Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	X	X		X	1	
C—Navy	USN Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	X	X	X	X	1	23
O—Air Force	Selfridge Air National Guard	Detachment 1/ Dee.	Mount Clemens.	MI	48045	X	X		X	5	
C—Air Force	Selfridge Air National Guard	Detachment 1/ Dee.	Mount Clemens.	MI	48045	X	X	X	X	5	23
O—Transportation	USCG Air Station Ave. "E" Groundwater Contamination).	Aeropark Dr. Section 12 T27AR1 1W Grand Traverse County.	Traverse City.	MI	45685		X		X	5	
C—Transportation	USCG Air Station Ave. "E" Groundwater Contamination).	Airport Road	Traverse City.	MI	45685		X		X	5	20A
O—Agriculture	Northwoods Sanitary Landfill			WI				X		5	
C—Agriculture	Superior National Forest	Box 338	Duluth	MN	55801			X		5	20A
O—Commerce	Brainerd Foundry	10th & Pine Streets.	Brainerd	MN				X		5	
C—Commerce	Brainerd Foundry	10th & Pine Streets.	Brainerd	MN			X	X		5	23
O—Air Force	Twin Cities Air Force Reserve Base.	Minneapolis/St. Paul Hennepin County 3016 934 TAC/DE.	Minneapolis.	MN	54450		X		X	5	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Air Force	Twin Cities Air Force Reserve Base.	Minneapolis/St. Paul Hennepin County 3016 934 TAC/DE.	Minneapolis.	MN	54417		X	X	X	5	20A 23
O—Air Force	US AFB Duluth Intl. Airport	Stebner Rd.	Duluth Intl. Airport.	MN	55814				X	5	
C—Air Force	US AFB Duluth Intl. Airport	Stebner Rd.	Duluth Intl. Airport.	MN	55814	X	X		X	5	23
O—Army	US ATC Engineer & Ft. Leonardwood.	Fort Leonardwood 144.	Pulaski	MO	65473	X	X	X	X	7	
C—Army	US ATC Engineer & Ft. Leonardwood.	Fort Leonardwood 144.	Pulaski	MO	65473-5000	X	X	X	X	7	20A
O—Army	Lake City AAP	Jct. MO Hwy 78	Independence.	MO	64050	X	X	X	X	7	
C—Army	Lake City AAP	Jct. MO Hwy 78	Independence.	MO	64050-0330	X	X	X	X	7	20A
O—Army	St. Louis Army Ammo Plant	4300 Goodfellow Blvd. Hanley area.	St. Louis	MO	64131-3088			X	X	7	
C—Army	St. Louis Army Ammo Plant	4300 Goodfellow Blvd. Hanley area.	St. Louis	MO	63120			X	X	7	20A
O—Army	Weldon Springs Training Area, Ft. Lnrdwd.	25 Miles W. of St. Louis.	St. Charles	MO	63301			X	X	7	
C—Army	Weldon Springs Training Area, Ft. Lnrdwd.	Hwy. 94 South	St. Charles	MO	63301			X	X	7	20A
O—Energy	Weldon Spring Chemical Plant.	St. Hwy. 94 2 mi. S of US 40 Site Remedial Action Project, Rt. 2, Hwy 94 South.	St. Charles	MO	63301		X			7	
C—Energy	Weldon Spring Remedial Action Project.	St. Hwy. 94 2 Mi. S of US 40 Site Remedial Action Project. Rt. 2, Hwy. 94 South.	St. Charles	MO	63301		X	X		7	23 20A
O—Air Force	Richards Gebaur AFB	424 CSC/DE	Belton	MO	6430			X		7	
C—Air Force	Richards Gebaur AFB	442 CSC	Belton	MO	64030			X		7	20A
O—Air Force	Whiteman AFB	357 CSC/CC	Knobnoster.	MO	65336	X	X	X		7	
C—Air Force	Whiteman AFB	351 CSC/DEEV	Whiteman AFB.	MO	65305-5000	X	X	X		7	20A
O—Army	Mississippi Army Ammo Plant	Bldg. 9101 NASA NSTL.	Bay St. Louis.	MS	39529		X	X	X	4	
C—NASA	Mississippi Army Ammo Plant	Bldg. 9101 NASA SSC.	Bay St. Louis.	MS	39529	X	X	X	X	4	23 21 20A
O—Air Force	Pope Air Force Base	317 CSG/DE	Pope AFB	NC	28308	X	X		X	4	20A
C—Air Force	Pope Air Force Base	317 CSG/CC	Pope AFB	NC	28308	X	X		X	4	20A
O—Army	Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307			X		4	
C—Army	Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307		X	X	X	4	23
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	2144 Lakeshore Dr.	Wilmington	NC	28401		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	804 Fairview Rd.	Rocky Mount.	NC	28701		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	E French Broad St.	Brevard	NC	28712		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1300 Westover Dr.	Charlotte	NC	28205		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1228 Carrol St.	Durham	NC	27701		X		X	4	20A 23 24

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	224 Louisiana	Ashville	NC	28806		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE FE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	2017 Garner St	Garner	NC	27529		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	156 Parris Ave	High Point	NC	28307		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1825 Woodleaf Rd. PO Box 1927.	Salisbury	NC	28114		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1816 E Main St	Albermarle	NC	28001		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	405 Fisher St	Morehead City.	NC	28557		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	3115 Western Blvd.	Raleigh	NC	27606	X	X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1500 12th Street NW.	Hickory	NC	28601		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1412 Westover Dr	Charlotte	NC	28205		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1391 N Mem. Dr	Greenville	NC	27834		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1120 Church St	Greensboro.	NC	27405		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1400 Carthage Rd	Lumberton	NC	28358		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	724 Foster St	Durham	NC	27701		X		X	4	20A 23 24
O—Agriculture	Metabolism & Radiation Research Lab.	1605 W. College St.	Fargo	ND	58105		X	X	X	8	
C—Agriculture	Red River Valley Agricultureal Research Center.	1605 W. College St.	Fargo	ND	58105		X	X	X	8	20A
O—Agriculture	Northern Great Plains Research Lab.	P.O. Box 459, Hwy 6 S.	Mandan	ND	58554			X		8	
C—Agriculture	Northern Great Plains Research Lab.	P.O. Box 459, Hwy 6 S.	Mandan	ND	58544			X	X	8	23
O—Agriculture	Roman L Hruska Meat Animal Research Cntr.	State Spur 18D	Clay Center.	NE	68933		X		X	7	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
C—Agriculture	Roman L Hruska Meat Animal Research Cntr.	P.O. Box 166, State Spur 18D.	Clay Center.	NE	68933		X	X	X	7	20A 23
O—Air Force	Offutt Air Force Base	55 CSG/CC	Offfutt AFB.	NE	68113	X	X	X	X	7	
C—Air Force	Offutt Air Force Base	55 C56/DEEV	Offutt AFB.	NE	68113-5000	X	X	X	X	7	20A
O—Army	Cornhusker Army Ammunition Plant.	6 Mi W of	Grand Island.	NE	68802			X	X	7	
C—Army	Cornhusker Army Ammunition Plant.	P.O. Box 2041	Grand Island.	NE	68802			X	X	7	20A
O—Air Force	Pease Air Force Base	509 CSG/CC	Portsmouth.	NH	03801	X	X		X	1	
C—Air Force	Pease Air Force Base	509 CSG/CC	Portsmouth.	NH	03801	X	X	X	X	1	23
O—Air Force	McGuire Air Force Base	438 ABG/DE	Wright-stown.	NJ	08641	X	X	X	X	2	
C—Air Force	McGuire Air Force Base	438 ABC/CC	McGuire AFB.	NJ	08641	X	X	X	X	2	20A
O—Energy	Maywood Interim Storage Site.	Route 17 and Grove Street.	Maywood/ Rochell E Park.	NJ	07662				X	2	
C—Energy	Maywood Interim Storage Site.	Route 17 and Grove Street.	Maywood/ Rochell E Park.	NJ	07662			X	X	2	23
O—Transportation	FAA—NAFEC	Routes 563 and 575.	Pomona	NJ	08405				X	2	
C—Transportation	FAA—NAFEC	Routes 563 and 575.	Pomona	NJ	08405			X	X	2	23
O—Air Force	Bomarc/McGuire MSL	Rt. 539	New Egypt	NJ	08533				X	2	
C—Air Force	Bomarc/McGuire MSL	438 ABC/CC	McQuire AFB.	NJ	08533				X	2	20A
O—Veterans Administration.	GSA/VA Depot	Route 206	Somerville	NJ	08876				X	2	
C—General Services Admin.	GSA Depot	Route 206	Somerville	NJ	08876				X	2	20A
O—Air Force	Kirtland Air Force Base	1606 CSC/DE	Kirtland AFB.	NM	87117	X	X		X	6	
C—Air Force	Kirtland Air Force Base	1606 ABW/CC	Kirtland AFB.	NM	87117	X	X	X	X	6	23 20A
O—Interior	BLM—South Farmington Sanitary Landfill.	T29NR13WSEC20	Farmington	NM	87401				X	6	
C—Interior	BLM-South Farmington Sanitary Landfill.	T29NR13WSEC20	Farmington	NM	87401			X	X	6	23
O—Interior	BLM—Bloomfield City Landfill	T29NR11WSEC34	Bloomfield	NM	87413				X	6	
C—Interior	BLM—Bloomfield City Landfill	T29NR11WSEC34	Bloomfield	NM	87413			X	X	6	23
O—Interior	BLM—Amax Chemical	Eddy County	Artesia	NM	88201				X	6	
C—Interior	BLM—Duval Co.	Eddy County	Carlsbad	NM	88220				X	6	20A
O—Interior	BLM Las Cruces Landfill	T23SR2ESEC11	Las Cruces	NM	88001				X	6	
C—Interior	BLM Las Cruces Landfill	T23SR2ESEC11	Las Cruces	NM	88001			X	X	6	23
O—Interior	BLM—International Materials & Chemical.	Roswell	Roswell	NM					X	6	
C—Interior	BLM—International Mineral and Chemical.	Carlsbad	Carlsbad	NM					X	6	20A
O—Interior	BLM—Dee Gold Corp.	T37NR50ESC6	Elko	NV					X	9	
C—Interior	BLM—DEE Gold Mining Co.	T37NR50ESEC6	Elko County.	NV					X	9	20A
O—Army	USMA—West Point	Rt. 9W—Bldg 733	West Point	NY	10996	X	X		X	2	
C—Army	USMA—West Point	Rt. 9W—Bldg 733	West Point	NY	10996	X	X	X	X	2	23
O—Navy	Naval Weapons Industrial Reserve Plant.	S. Oyster Bay Rd.	Bethpage	NY	11714				X	2	
C—Navy	Naval Weapons Industrial Reserve Plant.	S. Oyster Bay Rd.	Bethpage	NY	11714			X	X	2	23
O—Air Force	US Air Force Plant #38	Porter & Balmer Rds.	Porter Twp	NY	14131	X	X		X	2	
C—Air Force	US Air Force Plant #38	Porter & Balmer Rds.	Porter Twp	NY	14131	X	X	X	X	2	23
O—Energy	Niagara Falls Storage Site	E. of Rt. 18. N. of Fletcher Rd.	Lewistown	NY	14092				X	2	
C—Energy	Niagara Falls Storage Site	East of Route 18, North of Fletcher Rd.	Lewistown	NY	14092			X	X	2	23 20A
O—Air Force	Newark Air Force Base	2803 ABG/DE	Newark AFB.	OH	43055	X	X	X		5	
C—Air Force	Newark Air Force Base	AGMC/EM	Newark AFB.	OH	43057	X	X	X		5	20A
O—Air Force	Wright Patterson Air Force Base.	2750 ABW/DE	Fairborn	OH	45433	X	X		X	5	
C—Air Force	Wright Patterson Air Force Base.	2750 ABW/EM	Dayton	OH	45433	X	X	X	X	5	23 20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Air Force	Rickenbacker Air Force Base	DET 1 HQ ANG/DE.	Ricken-backer AFB.	OH	43217	X	X			5	
C—Air Force	Rickenbacker Air Force Base	DET 1 HQ ANG/DE.	Ricken-backer AFB.	OH	43217		X	X		5	23 24
O—Army	US Army Lima Tank Center	1155 Buckeye Rd. Allen County.	Lima	OH	45804		X		X	5	
C—Army	US Army Lima Army Tank Center.	1155 Buckeye Rd. Allen County.	Lima	OH	45804		X	X	X	5	23
O—Air Force	US Air Force Youngstown MAP Ohio.	King Graves Rd.	Vienna Twp.	OH	44473				X	5	
C—Air Force	US Air Force Youngstown MAP Ohio.	King Graves Rd.	Vienna Twp.	OH	44473		X		X	5	23
O—Air Force	Tinker Air Force Base	OC—ALC/CC	Tinker AFB.	OK	73145	X	X	X	X	6	
C—Air Force	Tinker Air Force Base	OC—ALC/EM	Oklahoma City.	OK	73145	X	X	X	X	6	20A
O—Air Force	USAF Altus Air Force Base Landfill.	443 ABG/DEEV	Altus	OK	73521		X		X	6	
C—Air Force	Altus Air Force Base	443 ABG/CC	Altus AFB	OK	73523		X		X	6	20A
O—Interior	BLM-Vale City Dumpsite	T18SR45ESEC32	Vale	OR	97918–0008				X	10	
C—Interior	BLM-Vale City Dumpsite	T18SR45ESEC32	Vale	OR	97918–0008			X	X	10	23
O—Interior	BLM-Minexco Millsite	T9SR42ESEC8	Baker	OR	97814				X	10	
C—Interior	BLM-Minexco Millsite	T9SR42ESEC8	Baker	OR	97814			X	X	10	23
O—Interior	BLM-Merlin Ldfl.	T35SR6WSEC27	Merlin	OR	97532				X	10	
C—Interior	BLM-Merlin Ldfl.	T35SR6WSEC27	Merlin	OR	97532			X	X	10	23
O—Interior	BLM-Slides Dump Site	T15SR46ESEC35, Lots 1, 2.	Ontario	OR	97914				X	10	
C—Interior	BLM—Slides Dump Site	T15SR46ESEC35. LOTS1, 2.	Ontario	OR	97914			X	X	10	23
O—Navy	Navy Ships Parts Control Center.	5450 Carlisle Pike P.O. Box 2020.	Mechanics-burg.	PA	17055	X	X		X	3	
C—Navy	Navy Ships Parts Control Center.	5450 Carlisle Pike PO Box 2020.	Mechanics-burg.	PA	17055	X	X	X	X	3	20A
O—Navy	NAS Willow Grove	RT. 611	Willow Grove.	PA	19090	X	X			3	
C—Navy	NAS Willow Grove	RT. 611	Willow Grove.	PA	19090	X	X	X	X	3	23
O—Navy	Naval Regional Medical Center.	17 St. and Pattison Ave..	Philadel-phia.	PA	19145		X			3	
C—Navy	Naval Regional Medical Center.	17 St. and Pattison Ave..	Philadel-phia.	PA	19145		X	X		3	23
O—Navy	Naval Station Philadelphia	Broad St.-North Div. Code 114.	Philadel-phia.	PA	19112	X	X		X	3	
C—Navy	Naval Shipyard Philadelphia	Broad St.-North Div. Code 114.	Philadel-phia.	PA	19112	X	X	X	X	3	23
O—Commerce	DOC Econ. Dev. Adm. Robins Footwear.	208N. Division St.	Mt. Union	PA	17066			X		3	
C—Commerce	DOC Econ. Dev. Adm. Robin Footwear Facility.	208 N. Division St.	Mt. Union	PA	17066			X		3	20A
O—Navy	Naval Station Roosevelt Roads.	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	X	X			2	
C—Navy	Naval Station Roosevelt Roads.	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	X	X	X		2	23
O—Navy	Naval Construction Battalion Ctr. Davisville.	Off Quionessett Rd.	North Kingstown.	RI	02871				X	1	
C—Navy	Naval Construction Battalion Ctr. Davisville.	Off Quionessett Rd.	North Kingstown.	RI	02871			X		1	23
O—Navy	Navy Marine Corps. Reserve Center.	One Narragansett Ave.	Cranston	RI	03445		X			1	
C—Navy	Armed Forces Reserve Center.	One Narragansett Ave.	Providence	RI	03445		X			1	20A
O—Army	Charleston Army Depot	Remount Road	North Charles-ton.	SC	29406				X	4	
C—Navy	Charleston Army Depot	Remount Road	North Charles-ton.	SC	29406				X	4	21
O—Air Force	Myrtle Beach Air Force Base	354 CSG/DE	Myrtle Beach.	SC	29577	X	X	X	X	4	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Air Force	Myrtle Beach Air Force Base	354 CSG/DE	Myrtle Beach.	SC	29577	X	X	X	X	4	24
O—Navy	Naval Weapons Station, Charleston.	Redbank Road	Charleston	SC	29408	X	X	X		4	
C—Navy	Naval Weapons Station, Charleston.	Redbank Road	Charleston	SC	29408	X	X	X	X	4	23
O—Air Force	Charleston Air Force Base	437 ABG/DE	Charleston	SC	29404	X	X	X	X	4	
C—Air Force	Charleston Air Force Base	437 ABC/CC	Charleston AFB.	SC	29404	X	X	X	X	4	20A
O—Navy	Marine Corps Recruit Depot, Parris Island.	Marine Corps Recruit Depot.	Parris Island.	SC	29905	X	X	X	X	4	
C—Navy	Marine Corps Recruit Depot, Parris Island.	Marine Corps Recruit Depot.	Parris Island.	SC	29905	X	X	X		4	24
O—Energy	US Doe Savannah River Plt	PO Box A	Aiken	SC	29802 3016	X	X	X	X	4	
C—Energy	US Doe Savannah River Site	PO Box A	Aiken	SC	29802 3016	X	X	X	X	4	20A
O—Navy	Naval Weapons Industrial Res. Plant.	100 Vance Tank Road Raytheon Co.	Bristol	TN	36720-5698		X	X		4	
C—Navy	Naval Weapons Industrial Res. Plant.	100 Vance Tank Road Raytheon Co.	Bristol	TN	36720-5698			X	X	4	23 24
O—Army	UD DOD Defense Depot Memphis.	2163 Airways Blvd	Memphis	TN	38114	X	X		X	4	
C—Army	Defense Depot Memphis	2163 Airways Blvd	Memphis	TN	38114	X	X	X	X	4	23 20A
O—Air Force	Arnold Engr Devlp. Ctr	Commander AEDC	Arnold Air Force Base.	TN	37389 3010	X	X	X	X	4	
C—Air Force	Arnold Engr Devlp. Ctr	AEDC/DEV	Arnold Air Force Base.	TN	37389 3010	X	X	X	X	4	20A
O—Tennessee Valley Authority.	TVA Kingston Steam Plant	Natural Resources Building.	Norris	TN	37828		X		X	4	
C—Tennessee Valley Authority.	TVA Kingston Steam Plant	Off I-40 East	Kingston	TN	37763	X	X		X	4	23 20A
O—Agriculture	Subtropical Agriculture Research Lab.	FM 1015	Weslaco	TX	76115		X			6	
C—Agriculture	Subtropical Agriculture Research Lab.	FM 1015, South Expressway 83.	Weslaco	TX	76115		X	X		6	23 20A
O—Army	Lake Lavon—North Cully Site 1.	Highway 380	Wylie	TX	75077			X		6	
C—Corps of Engineers, Civil.	Lake Lavon—North Cully Site 1.	Highway 380	Wylie	TX	75077			X		6	21
O—Army	US Army Camp Stanley Storage.	Ralph Fair Road	San Antonio.	TX	78229	X	X			6	
C—Army	US Army Camp Stanley Storage.	Ralph Fair Road	San Antonio.	TX	78229	X	X	X		6	23
O—Army	US Army Plant #2 Bell Helicopter Textron.	Blue Mound Road Highway 156.	Saginaw	TX	76131		X			6	
C—Army	US Army Saginaw Aircraft Plant.	Blue Mound Road Highway 156.	Saginaw	TX	76131		X		X	6	23 20A
O—Agriculture	Livestock Insects Laboratory	SH 16/IH 10	Kerrville	TX				X		6	
C—Agriculture	Knipling-Bushland US Livestock Insects Laboratory.	Intesection SH 16 and IH 10.	Kerrville	TX	78028			X		6	20A
O—Air Force	USAF Ellington Air Force Base Hazardous Waste.	Clothier Avenue	Houston	TX	77209				X	6	
C—Air Force	147th ING at Ellington Field	Clothier Avenue	Houston	TX	77209				X	6	20A
O—Air Force	Hill Air Force Base	2849 ABC/DEEXX	Hill AFB	UT	84056	X	X	X	X	8	
C—Air Force	Hill Air Force Base	OC-ALC/EM	Ocden	UT	84056	X	X	X	X	8	20A
O—Navy	Naval Ind. Reserve Ordnance Plant-Hercules Inc.	8400 W. 4100 South.	Magna	UT	84044			X	X	8	
C—Navy	Naval Ind. Reserve Ordnance Plant/Hercules Inc.	8400 W. 4100 South.	Magna	UT	84044	X	X	X	X	8	23
O—Interior	BLM-Chevron Red Wash Unit	T7SR7ESEC22	Vernal	UT	84078				X	8	
C—Interior	BLM-Chevron Red Wash Unit	T7SR7ESEC 22	Vernal	UT	84078			X	X	8	23
O—Interior	BLM-Cottonwood Canyon	T37SR21ESEC3	Hite	UT	84511				X	8	
C—Interior	BLM-Cottonwood Canyon	T37SR21ESEC3	Hite	UT	84511			X	X	8	23
O—Interior	BLM-Deseret Mound & Mine	T35NR13WSEC35	Cedar City	UT	84720				X	8	
C—Interior	BLM-Desert Mound Mine	T35NR13WSEC35	Cedar City	UT	84720			X	X	8	23 20A
O—Interior	IRECO Chemical	17SR1ESEC5, 6, 7 Pelican Pt. Site A&B.	Lehi	UT	84043	X			X	8	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Interior	IRECO Chemical	17SR1ESEC5, 6, 7 Pelican Pt. Site A&B.	Lehi	UT	84043	X	X	X	X	8	23
O—Energy	Monticello Uranium Mill Tailings Site.	SE of Monticello	Monticello	UT				X		8	
C—Energy	Monticello Uranium Mill Tailings Site.	SE of Monticello	UT					X	X	8	23
O—Agriculture	Only Chance Mining Claim	Vernal Ranger Dist.	Uintah County.	UT				X		8	
C—Agriculture	Ashley National Forest	355 North Vernal Ave.	Vernal	UT	84078			X		8	20A
O—Air Force	Langley AFB	1 CSG/DE	Langley AFB.	VA	23665	X	X		X	3	
C—Air Force	Langley AFB	1CSG/DE	Langley AFB.	VA	23665	X	X	X	X	3	23
C—Army	Fort Belvoir	DFAE BLDG 193 ATZA-FE ATZA-DEH-EN Bldg. 1442.	Fort Belvoir.	VA	22060–50000	X	X	X	X	3	
C—Army	Fort Belvoir	ATZA-DEH-Bldg. 1442.	Fort Belvoir.	VA	22060–5113	X	X	X	X	3	20A
O—Army	Cameron Station	5010 Duke St	Alexandia	VA	22314		X		X	3	
C—Army	Cameron Station	5010 Duke St	Alexandria	VA	22314		X	X	X	3	23
O—Army	Fort Story	Bldg. 300	Fort Story	VA	23459	X	X	X	X	3	
C—Army	Fort Story	Bldg. 300	Virginia Beach.	VA	23459	X	X	X	X	3	20A
O—Navy	MC Devel. & Educ. Comm. Quantico.	N/A	Quantico	VA	22134	X	X	X	X	3	
C—Navy	Marine Corps Combat Development Center (MCCDC).	N/A	Quantico	VA	22134–5001	X	X	X	X	3	20A
O—Navy	DOD Armed Forces Exper. Training Activity.	Camp Peary—PO Box 1447.	Willimsburg	VA	23185		X		X	3	
C—Navy	DOD Armed Forces Exper. Training Activity.	Camp Peary—PO Box 1447.	Willimsburg	VA	23185		X	X	X	3	23
O—Navy	Naval Air Station Oceana	N/A	Virginia Beach.	VA	23460	X	X	X	X	3	
C—Navy	Naval Air Station Oceana	Public Works Department.	Virginia Beach.	VA	23460	X	X	X	X	3	20A
O—Army	Harry Diamond Labs Woodbridge.	U.S. Army	Woodbridge.	VA	22186			X	X	3	
C—Army	Harry Diamond Labs Woodbridge.	Dawson Beach Rd.	Woodbridge.	VA	22191			X	X	3	20A
O—Defense	Defense General Supply Center Richmond.	Jefferson Davis Highway.	Richmond	VA	23297	X	X	X		3	
C—Defense	Defense General Supply Center Richmond.	Jefferson Davis Highway.	Richmond	VA	23297	X	X	X	X	3	23
O—Navy	Naval Supply Center, Norfolk	Craney Island	Portsmouth	VA	23703	X	X	X	X	3	
C—Navy	Naval Supply Center, Norfolk	Craney Island Fuel Terminal.	Portsmouth	VA	23702	X	X	X	X	3	20A
O—EPA	EPA Environmental Photographic Interpretation Ctr.	Bld. 166—Vint Hill Farm.	Warrenton	VA	22186		X	X		3	
C—EPA	EPA Environmental Photographic Interpretation Ctr.	Bldg. 166—Vint Hill Farm Station.	Warrenton	VA	22186		X	X		3	20A
O—Navy	Fleet Combat Training Ctr	Dam Neck FCTC, Atlantic Dam NK.	Virginia Beach.	VA	23461		X	X	X	3	
C—Navy	Fleet Combat Training Ctr	FCTC Atlantic Dam Neck.	Virginia Beach.	VA	23461		X	X	X	3	20A
O—Interior	E. Shore VA Fisherman Island.	Rd. 1 Box 1228	Cape Charles.	VA	23310			X	X	3	
C—Interior	E. Shore VA National Wildlife Refuge.	Rd. 1 Box 122B	Cape Charles.	VA	23310			X	X	3	20A
O—Commerce	USDOC-NOAA Pacific Marine Center.	1801 Fairview Ave. E.	Seattle	WA	98102		X			10	
C—Commerce	USDOC-NOAA Pacific Marine Center.	1801 Fairview Ave. E.	Seattle	WA	98102		X	X		10	23
O—Air Force	Fairchild AFB	92 CSG/CC	Fairchild AFB.	WA	99011	X	X	X		10	
C—Air Force	Fairchild AFB	92 CSG/CC	Fairchild AFB.	WA	99011	X	X	X	X	10	23
O—Air Force	USAF McChord AFB	62 ABG/DE	Fairchild AFB.	WA	98438	X	X	X	X	10	
C—Air Force	McChord AFB	62 ABG/CC	McChord AFB.	WA	98438		X	X	X	10	20A 20
O—Energy	USDOE Hanford Site	Hanford Site	Richland	WA	99352	X	X		X	10	
C—Energy	USDOE Hanford Site	Hanford Site	Richland	WA	99352	X	X	X	X	10	23

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Navy	Navy Undersea Warfare Eng. Sta. Keyport.	Code 073 Hwy. 306, E. End.	Keyport	WA	98345	X	X		X	10	
C—Navy	Naval Undersea Warfare Eng. Sta. Keyport.	Code 073 Hwy. 306 E. End.	Keyport	WA	98345	X	X	X	X	10	23
O—Navy	Naval Shipyard Puget Sound	1st Street Code 106.	Bremerton	WA	98314	X	X		X	10	
C—Navy	Naval Shipyard Puget Sound	1st Street Code 106.	Bremerton	WA	98314	X	X	X	X	10	23
O—Navy	USNavy Bangor Submarine Base.	Clear Creek Rd	Bangor	WA	98315	X	X			10	
C—Navy	USNavy Bangor Submarine Base.	Clear Creek Rd	Bremerton	WA	98315–50000	X	X	X	X	10	20A 23
O—Agriculture	Wenatchee National Forest	T3IN R17E WM SEC7.	Holden	WA	98816				X	10	
C—Agriculture	Wenatchee National Forest	Box 811	Wenatchee	WA	98816			X	X	10	23 20A
O—Air Force	Volk Field—Camp Douglas OMS1.	Hwy. 94 Juneau County.	Camp Douglas.	WI	54618	X			X	5	
C—Air Force	Volk ANG Base—Camp Douglass OMS1.	Hwy. 94 Juneau County.	Camp Douglas.	WI	54618		X	X	X	5	23 20A
O—Air Force	Wake Island Air Field	Wake Island	Wake Island.	WQ	96798				X	9	
C—Air Force	Wake Island Air Field	15ABW, Wake Island.	Wake Island Air Field.	WQ	96798				X	9	20A
O—Navy	Naval Radio Station LF #1	10 Mi off Rte. 33	Sugar Grove.	WV	26815		X		X	3	
C—Navy	Naval Radio Station LF #1	10 mi off Rte. 33	Sugar Grove.	WV	26815		X	X	X	3	23
O—Air Force	F. E. Warren Air Force Base	1–25 and Randall Avenue.	Cheyenne	WY	82005–5000			X	X	8	
C—Air Force	F.E. Warren Air Force Base	90 Civ. Eng. Sq. Bldg. 320.	Cheyenne	WY	82005–5000	X	X	X	X	8	23 20A

[FR Doc. 89–28976 Filed 12–14–89; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010286–023.

Title: South Europe/U.S.A. Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Container Line, A Division of Contship Containerlines Limited
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Ltd.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification provides that in the French and North Spain sections, overcarriage and undercarriage, if any, for any, for each member will be calculated on the basis of their respective Pool Freight earnings in each such Pool section for the period February 1, 1989 through March 31, 1990.

Agreement No.: 202–011102–008.

Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties:

Compagnie Generale Maritime
Compania Trasatlantica Espanola, S.A.
Costa Container Line, A Division of Contship Containerlines Limited
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen B.V.
P&O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The modification amends the Agreement to provide that in the event any member fails to respond to a telephone or telex poll on any commodity rate item being considered by the Executive Committee or Pricing Committee by the close of the third business day following the initiation of such poll, the member shall be recorded as abstaining on the matter presented. In addition, the modification amends Appendix A of the Agreement to reflect the correct name of Lykes Lines.

Agreement No.: 207–011142–002.

Title: The NOSAC Agreement.

Parties:

Wilh. Wilhelmsen Limited A/S
K/S NOSAC A/S & Co.
K/S Benargus A/S & Co.

Synopsis: The proposed amendment would expand the scope of the Agreement to include Mediterranean ports in Europe and Africa, and all Red

Sea ports, as well as Pakistan and the Far East, east of Pakistan, including islands in the Pacific. It would also increase from four to seven the number of sailings per month and the capacities of the vessels employed in the Agreement trade. The parties have requested a shortened review period.

Agreement No.: 203–011170–003.
Title: Ro-Ro Agreement.
Parties:
Barber Blue Sea
NOSAC.

Synopsis: The proposed amendment would reflect the changed status of NOSAC as a common carrier westbound in the Agreement trade. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 11, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–29221 Filed 12–14–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200179–002.
Title: City of Los Angeles Terminal Agreement.
Parties:
City of Los Angeles,
California Cartage Company, Inc.

Synopsis: The Agreement amends the basic agreement. Section 1 is amended to add to the premises Bay No. 5 of Warehouse No. 16. Section 4(a) is amended to add compensation for Bay No. 5. A new subsection (c) is added to section 1 which provides for certain adjustments to the leased premises. This new subsection also provides that any further agreement relating to adjustment of the premises and associated compensation will be submitted to the Commission as an amendment.

By order of the Federal Maritime Commission.

Dated: December 11, 1989

Joseph C. Polking,

Secretary.

[FR Doc. 89–29222 Filed 12–14–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0680]

Proposals to Modify the Reserve Banks' Notice of Nonpayment Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed service modifications.

SUMMARY: The Board is publishing for comment proposals to modify the deadlines for the notice of nonpayment service offered by Federal Reserve Banks. Modification of the current deadlines may be adopted if the Board adopts an amendment to Regulation CC shortening the time requirement for providing notice of nonpayment to the depository bank.

DATE: Comments must be submitted on or before February 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R–0680, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3874) or Gayle Thompson, Manager (202/452–2934), Division of Federal Reserve Bank Operations; or Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Currently, Regulation CC requires paying banks to provide notice of nonpayment to the depository bank by 4:00 p.m. (local time of the depositary bank) on the second day following presentment for checks of $2,500 or more. Although this requirement reduces risk inherent in the return process, some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, the instances in which depository banks will not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal will increase. Specifically, under the permanent schedule, the $5,000 of the deposit of a local check must be made available to the customer for withdrawal by the second business day following deposit. Even though the amount in excess of $5,000 can be held for a longer period of time under the large-deposits exception [§ 229.13(b)], the depository bank's risk exposure may increase because it would generally not receive notice of nonpayment of a large-dollar local check until after the first $5,000 of the check must be made available for withdrawal.

The Board is requesting comment on whether the regulation should be revised to reduce the time within which notice of nonpayment must be provided to the depositary bank [See Docket R–0679 elsewhere in today's **Federal Register**]. The Board proposes that, if it amends Regulation CC to reduce the time within which notice of nonpayment must be given, the Reserve Banks would revise the deposit deadlines for the large-dollar notice of nonpayment service in support of this change. At this time, the Board is not proposing any fee changes; however, fees may need to be increased for notices of nonpayment originated by telephone or physical check if the processing is moved into a high-cost peak processing time. Any revised Reserve Bank deadlines would be structured to facilitate compliance with the regulatory requirement for receipt of notices of nonpayment, if the Board adopts such an amendment. Because no specific time requirement for depository bank receipt of notices of nonpayment is being proposed, following is a discussion of how the Federal Reserve service, might be modified to assist banks in meeting any new requirements.

If the regulation is modified to reduce the time within which notice must be given to 4:00 p.m. on the business day following the banking day on which the check is presented to the paying bank, the Reserve Banks would retain their current deadlines for the notice of nonpayment service; however, the paying bank would be required to provide the physical checks or information to its Reserve Bank one day earlier than is currently the case.

Origination method	Deadline
Wire	12:00 noon on due date.
Telephone call to Fed	9:00 a.m. on due date.

Origination method	Deadline
Physical check to Fed	9:00 a.m. on due date.

The Board recognizes that the deadlines for providing notice by 4:00 p.m. on the day following presentment generally would preclude use of the Federal Reserve notification service based on providing use of the Federal Reserve notification service based on providing the Reserve Bank with the typical check or making a telephone call to the Reserve Bank because most paying banks may not be able to make their return decision and then deliver the check or call the Reserve Bank by 9:00 a.m. on the day following presentment.

The times for both deposit and delivery of notices are based on local times of the paying bank's Reserve Bank and of the depository bank, respectively. The 12:00 noon deadline for wire origination is necessary because the Federal Reserve guarantees that a wire notice sent by a West Coast paying bank to an East Coast depository bank at 12:00 noon Pacific Time (PT) (3:00 p.m. Eastern Time (ET)) would be delivered to the depository bank by 4:00 p.m. ET. The Reserve Banks would be unable to guarantee delivery for notices initiated later than 12:00 noon PT. The 9:00 a.m. deadline for notices originated by telephone or physical check is necessary to allow the Federal Reserve sufficient time to process manually the notice information.

Alternatively, the Federal Reserve could establish the deadlines in Eastern Time. This could allow for later deadlines for non-West Coast paying banks; however, West Coast paying banks would still be constrained by the proposed deadlines. If the Board were to adopt a time than 4:00 p.m. for receipt of the notice by the depositary bank, the deadlines could be moved to a later time, accordingly; however, because the Federal Reserve service is provided via Fedwire, the cutoff for Federal Reserve provision of the notice would provide for receipt by the close of Fedwire, regardless of whether the legal requirement allowed for a later time. This constraint generally would not allow sufficient time for a bank located remotely from its local Reserve Bank office to originate notice by providing the physical checks to the Reserve Bank. In recognition of this, the Federal Reserve is investigating whether alternatives, such as fax delivery of a copy of the physical check, could provide a feasible service substitution for the paying bank; however, difficulty in producing legible facsimiles may preclude this alternative.

If the Board adopts an amendment to § 229.33(a) of Regulation CC requiring that notice of nonpayment be provided to the depositary bank by 4:00 p.m. on the day following presentment to the paying bank, the Board requests comment on whether the Federal Reserve notice of nonpayment service should be modified as described in the alternatives above. In addition, the Board requests commenters to provide suggestions regarding alternatives for paying banks to meet the deadline for providing notice of nonpayment from the physical check or via telephone call.

If the regulation were modified to require that notice of nonpayment be provided to the depositary bank by 10:00 a.m. on the second business day after presentment to the paying bank, the Board proposes to modify the notice of nonpayment service to provide same-day notice at the following new deadlines:

Origination method	Current deadline	Proposed deadline
Wire	12:00 noon local time on due date.	9:00 a.m. Eastern Time on due date.
Telephone call to Fed.	9:00 a.m. local time on due date.	4:00 p.m. local time on day before due date.
Physical check to Fed.	9:00 a.m. local time on due date.	12:01 a.m. local time on due date.

These proposed deadlines are based on a combination of Fedwire processing hours and check processing flows. The 9:00 a.m. Et wire deadline allows for information to be entered after the opening of Fedwire so that it can be delivered to the depositary bank by 10:00 a.m. local time. The 4:00 p.nm. local time on the day before the due date for telephone origination would allow paying banks to notify the Federal Reserve during business hours, when staff is generally available to accept the telephone calls. The Federal Reserve could provide a later deadline for receipt of the telephone notice, but this would likely result in higher prices because additional staff would be necessary to handle relatively small volumes. The 12:01 a.m. local time deadline for receiving physical checks from which the Federal Reserve would provide notice is tied to existing transportation arrangements for delivering checks to the local Reserve Bank office.

If the Board adopts an amendment to Section 229.33(a) of Regulation CC requiring that notice of nonpayment must be provided to the depositary bank on the second business day after presentment to the paying bank at 10:00 a.m., the Board requests comment on whether the Federal Reserve notice of nonpayment service be modified as described above.

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29010 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of October 3, 1989

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 3, 1989.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity continued to expand at a moderate pace in the third quarter. In July and August, total nonfarm payroll employment rose appreciably despite the depressing effect of strike activity. The civilian unemployment rate remained around 5¼ percent. Industrial production picked up in August, mainly because of a rebound in auto assemblies and coal mining. Consumer spending has registered larger gains in recent months, reflecting in part a surge in auto sales. Housing starts in July and August were slightly above their second-quarter average. Indicators of business capital spending suggest somewhat slower growth in the third quarter after the substantial increase in the first half of the year. The nominal U.S. merchandise trade deficit recorded a further decline in July relative to June and to the average for the second quarter as a whole. Sharp reductions in energy prices over the summer months damped increases in consumer prices and contributed to declines in producer prices. The latest wage data suggest no change in prevailing trends.

Interest rates generally show small mixed changes on balance since the Committee meeting on August 22. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies fell after the release of the G-7 statement on September 23; on balance, the dollar

[1] Copies of the record of policy actions for the Committee for the meeting of October 3, 1989, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

depreciated somewhat over the intermeeting period.

M2 grew fairly briskly in August and evidently also in September, lifting its expansion thus far this year to somewhat above the lower end of the Committee's annual range. M3 grew at a substantially reduced pace in this period, as assets of thrift institutions and their associated funding needs apparently contracted further; for the year to date, M3 has grown at a rate around the lower bound of the Committee's annual range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 3 to 7 percent and 3½ to 7½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic non-financial debt also was maintained at 6½ to 10½ percent for the year. For 1990, on a tentative basis, the Committee agreed in July to use the same ranges as in 1989 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of progress toward price stability, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the inter-meeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from September through December at annual rates of about 6½ and 4½ percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 7 to 11 percent.

By order of the Federal Open Market Committee, December 6, 1989.

Gary P. Gillum,

Deputy Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89-29242 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

Campbell Group, Ltd.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 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 through the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Campbell Group, Ltd., Worth, Illinois; to engage *de novo* in management consulting advice, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29243 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

F.N.B. Corporation, et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire 13.26 percent of the voting shares of Emclaire Financial Corporation (a bank holding company in formation), Emlenton, Pennsylvania, and thereby indirectly acquire The Farmers National Bank, Emlenton, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Campbell Group, Ltd., Worth, Illinois; to become a bank holding company by acquiring (1) 7.72 percent of the voting shares of Southwest Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire First National Bank of Danville, Danville, Illinois, Mount Greenwood Bank, Chicago, Illinois, and

Worth Bank and Trust, Worth, Illinois; (2) 9.6 percent of the voting shares of Terrapin Bancorp, Inc., Elizabeth, Illinois, and thereby indirectly acquire The Elizabeth State Bank, Elizabeth, Illinois; (3) 10.06 percent of the voting shares of Rock River Bancorporation, Inc., Oregon, Illinois, and thereby indirectly acquire Rock River Bank, Oregon, Illinois; (4) 15.0 percent of the voting shares of Scott County Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire The First State Bank of Winchester, Winchester, Illinois; and (5) 1.29 percent of the voting shares of Peotone Bancorp, Inc., Peotone, Illinois, and thereby indirectly acquire Peotone Bank and Trust Company, Peotone, Illinois.

Board of Governors of the Federal Reserve System, December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29244 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Robert R. Fowler III

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 8, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Robert R. Fowler, III, Trustee for the Robert R. Fowler Estate Marital Trust, Oxford, Georgia; to acquire 31.5 percent of the voting shares of Main Street Banks, Incorporated, Covington, Georgia, and thereby indirectly acquire The Bank of Covington, Covington, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. William H. Henson, Maysville, Oklahoma; to acquire an additional 10.16 percent of the voting shares of H. Pat Henson Company, Maysville, Oklahoma, and thereby indirectly acquire Farmers and Merchants Bank, Maysville, Oklahoma.

2. Ross McKnight, Throckmorton, Texas; to acquire 24.83 percent of the voting shares of H. Pat Henson Company, Maysville, Oklahoma, and thereby indirectly acquire Farmers and Merchants Bank, Maysville, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Mr. David L. Kriegel, Lima, Ohio; to acquire 5.79 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

2. Pinnacle Banc Group, Oakbrook, Illinois; to acquire 4.73 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

3. BMR Financial Group, Inc., Atlanta, Georgia; to acquire 4.73 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

4. Mr. Reed Rubin, New York, New York; to acquire 4.73 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

5. South Atlantic Venture, Tampa, Florida; to acquire 19.31 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

6. Mr. Richard D. Segal, Rye, New York; to acquire 48.29 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

7. Mr. Robert Feldman, Scarsdale, New York; to acquire 2.12 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

Board of Governors of the Federal Reserve System, December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29245 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0499]

Advisory List of Critical Devices—1988; Update

AGENCY: Food and Drug Administration.

ACTION: Notice; update.

SUMMARY: The Food and Drug Administration (FDA) is updating its "Advisory List of Critical Devices—1988" prepared by FDA's Center for Devices and Radiological Health (CDRH) that published in the **Federal Register** of March 17, 1988 (53 FR 8854) to add a device that the agency inadvertently omitted.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, MD.

FOR FURTHER INFORMATION CONTACT: Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1131.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1978 (43 FR 31508), FDA published the current good manufacturing practice regulation (CGMP) for devices. The preamble to the CGMP regulations provided a "Guideline List of Critical Devices" (43 FR 31508 at 31511). This was an illustrative list of 75 devices provided to give examples of devices that FDA concluded met the definition of critical device as found in the final CGMP regulations (21 CFR 820.3(f)). The definition reads "a device that is intended for surgical implant into the body or to support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user." In developing this list, FDA used the recommendations received from the Device Good Manufacturing Practice Advisory Committee (21 CFR 14.100(d)(2)) and the device advisory panels (21 CFR 14.100(d)(1)). The agency announced that the list was not exhaustive and that it was based on the most curent information available to FDA. The agency also stated that the list would be updated periodically as additional information became available and after consultation with the committee (43 FR 31508 at 31511).

In the Federal Register of March 17, 1988 (53 FR 8854), FDA published an updated and expanded "Advisory List of Critical Devices—1988" prepared by CDRH. In the 1988 list, FDA listed (No. 66) § 876.3350 *Penile inflatable implant. The agency should have also included § 876.3630 Penile rigidity implant* in the list.

Interested persons may submit comments to the Dockets Management Branch (address above). Comments will be considered in determining if further changes to the "Advisory List of Critical Devices—1988" are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The list and any comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-29320 Filed 12-14-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings.—The following advisory committee meetings are announced:

Abuse Liability Subcommittee of the Drug Abuse Advisory Committee

Date, time, and place.—January 8 and 9, 1990, 9 a.m., Parklawn Bldg., Conference Rms. G and H, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person.—Open public hearing, January 8, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; open committee discussion, January 9, 1990, 9 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee.—The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs which possess stimulant, depressant, or analgesic properties including those aspects of safety related to the potential of these drugs to produce dependence and to be abused.

Agenda—Open public hearing.—Interested persons may present data, information, or views, orally or in writing, or issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 21, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion.—The subcommittee will discuss the development of guidelines for research in the area of abuse liability testing, i.e., to develop guidelines for FDA which can be useful in ensuring the early recognition of abuse or dependence liability of new chemical entities, and to set minimum standards for categorizing abuse liability as negative.

Obstetrics—Gynecology Devices Panel

Date, time, and place.—January 18, 1990, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.

Type of meeting and contact person.—Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1230.

General function of the committee.—The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing.—Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 5, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion.—The committee will review, discuss, and make a recommendation on a premarket approval application on a home uterine activity monitor for preterm labor.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place.—January 25 and 26, 1990, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person.—Open public hearing, January 25, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, January 26, 1990, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 234 Summit St., Toledo, OH 43604, 419-259-6211 or 301-443-4730.

General function of the committee.—The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cardiovascular and renal disease and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing.—Interested persons wishing to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the contact person.

Open committee discussion.—On January 25, 1990, the committee will discuss guidelines for the study of antiarrhythmic drugs. On January 26, 1990, the committee will discuss new drug application 19-665, Unicard (dilevalol), sponsored by Schering Corp., to be indicated for hypertension.

Antiviral Drugs Advisory Committee

Date, time, and place.—January 29 and 30, 1990, 8:30 a.m., Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD.

Type of meeting and contact person.—Open public hearing, January 29, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, January 30, 1990, 8:30 a.m. to 4:30 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee.—The committee reviews and evaluates

available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing.—Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and adresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion.—On January 29, 1990, the committee will discuss expanded indications for Zidovudine (AZT). On January 30, 1990, the committee will receive an update from the FDA staff on the status of expanded availability of experimental agents for persons with human immunodeficiency virus (HIV)-infection (parallel tracking). The ongoing trials of Dideoxyinosine may be discussed in this context.

FDA public advisory committee meetings may have as many as four separable prtions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person lsited above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Room. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 8, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–29247 Filed 12–14–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on January 26, 1990, from 8:30 a.m. to 5 p.m., at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will be held in the Shannon Building, Wilson Hall, and will be open to the public.

The meeting will be devoted to a review and discussion of two reports prepared by ad hoc consultant panels of the Advisory Committee to the Director, NIH: the *Study of Scientific Review Procedures of the NIH Intramural Research Program*, and the *Report of the Panel on Physical Medicine and Rehabilitation Research.*

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: December 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–29216 Filed 12–14–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on January 18, 1990, in Building 31C, Conference Room 6, at the National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 10:30 a.m. to adjournment on January 18. The subcommittee will discuss the mission and directions of the Division of AIDS (DAIDS) providing input and broad programmatic advice on the DAIDS extramural program with respect to basic and clinical research. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary

of the meeting and a roster of the committee members upon request.

Mr. Thomas Voskuhl, Assistant Director for Program Operations, DAIDS, NIAID, NIH, Control Data Building, room 250P, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone (301–496–0545) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health)

Dated: December 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–29218 Filed 12–14–89; 8:45 am]

BILLING CODE 4140–1–M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 22–23, 1990, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on January 22 to adjournment on January 23. Attendance by the public will be limited to space available. Topic for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–29217 Filed 12–14–89; 8:45 am]

BILLING CODE 4140–01–M

Health Resources and Services Administration

Program Announcement and proposed Funding Preference for Training Grants for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces that during Fiscal Year (FY) 1990 approximately $14.3 million dollars are available for training grants to continue the development of AIDS Regional Education and Training Centers (ETCs) as authorized by section 788A of the Public Health Service Act and also being implemented under Section 301. These centers will provide training for health care personnel in the care of people with Acquired Imunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

Programmatic activity may be conducted under Section 301 dependent upon appropriation and authorization. Grants may be awarded to public and nonprofit private entities. Activities will be devoted to the preparation of primary care providers who are workers in high HIV prevalence areas.

In addition, grants are awarded to accredited health professions schools and academic health science centers under Section 788A to meet the cost of projects:

(1) To train the faculty of schools and graduate departments of medicine, nursing, osteopathic medicine, dentistry, public health, psychology, and allied health to teach health professions students to provide for the health care needs of individuals with acquired immune deficiency syndrome;

(2) With respect to improving clinical skills in the diagnosis, treatment, and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

(3) To develop and disseminate curricula relating to the care and treatment of individuals with acquired immune deficiency syndrome.

The centers will operate in collaboration with health professionsss schools, community hospitals, health departments, and other organizations involved in the provision of care to peopel with HIV related conditions. Comments are invited on the proposed funding preference. The review criteria which were established in Fiscal Year 1989 will remain unchanged in FY 1990. The funding categories for supplemental support established in Fiscal Year 1990, are rescinded. These categories are no longer considered necessary in Fiscal Year 1990, for programmatic reasons.

Approximately $10.4 million of the $14.3 million is needed for continuation commitments. Competing continuation needs are estimated at $3.9 million.

Review Criteria

Applications will be reviewed and rated according to the applicant's ability to meet the following review criteria which was established in 1989 and will be continued in FY 1990.

1. The degree to which the project plan adequately provides for meeting the project specifications;

2. The potential effectiveness of the project in carrying ot the purposes of the grant program;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanism may be applied in determining the funding of approved applications.

—Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications.

Statutory Funding Preference

In making grant awards in Fiscal Year 1990, as required by Section 788A, the Secretary shall give *preference* to projects which will:

(1) Train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immune deficiency syndrome and other individuals who are at high risk of contracting such syndrome; and

(2) Train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with acquired immune deficiency syndrome.

Established Non-Statutory Funding Preference

A funding preference established in FY 1989 will continue in FY 1990 to applicants proposing a center in a State where no federally funded ETC program office exists.

Proposed Non-Statutory Funding Preference

In making awards for FY 1990, an additional funding preference is proposed to be given to competing continuation applications that demonstrate: (1) an increased level of

nonfederal funding to support the project since previous grant funding, and (2) sustained or expanded levels of educational experiences to respond to the service needs of the targeted populations throughout the regions involved.

This preference is established to maximize both federal and non-federal investments and to allow projects to respond quickly to critical health needs.

Interested persons are invited to comment on the proposed funding preference. Normally the comment period would be 60 days due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before January 16, 1990, will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preference will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline date is January 19, 1990. Applications shall be considered as meeting the deadline if they are either:

1. *received on* or before the deadline date; or

2. *postmarked on* or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

Requests for technical or programmatic information should be directed to: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

Training grant application form (PHS 6025–1, approved under OMB number 0915–0060) and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer (D35), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

This program is listed at 13.145 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: November 1, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–29317 Filed 12–14–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2092]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of General Counsel, 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: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the June 23, 1989, Decree entered in *NAACP, Boston Chapter* v. *Kemp*, C.A. No. 78–850–S (D. Mass.). Section III.A of that Decree directs HUD to submit semi-annually "a report * * * setting forth the current racial makeup, family composition, and vacancy rate of HUD assisted housing in the City" of Boston, Massachusetts.

Pursuant to Section III.A of the Court's Decree, HUD needs to obtain the foregoing occupancy information from the owners of HUD-assisted privately owned multifamily housing developments, and HUD-insured single family housing, in Boston. To obtain this information, HUD has developed "Data Collection Form for Multi-Family Developments" and a "Data Collection Form for HUD-Insured Single-Family Housing," along with corresponding instruction sheets. In order to meet the requirements of the Decree, HUD has requested OMB to complete its review of these forms by December 18, 1989.

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: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 13, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Pursuant to Section III.A of the June 23, 1989 Decree in *NAACP* v. *Kemp*, C.A. No. 78–850–S (D.Mass.),

HUD proposes to issue two information collection forms and instruction sheets, as follows: (1) "Data Collection Form for Multi-Family Developments"; and (2) "Data Collection Form for HUD-Insured Single-Family Housing."

Office: General Counsel, HUD.

Description of the Need for the Information and Its Proposed Use: In order to implement Section III.A of the June 23, 1989 Decree in *NAACP* v. *Kemp*, HUD must submit semi-annually "a report * * * setting forth the current racial makeup, family composition and vacancy rate of HUD assisted housing in the City" of Boston, Massachusetts. The foregoing information collection forms are designed to elicit that information from the owners of HUD-assisted privately owned multifamily housing developments and HUD-insured single family housing in Boston.

Form Number: None.

Respondents: Owners of HUD-assisted privately owned multifamily housing developments and HUD-insured single family housing in Boston.

Frequency of Response: Twice a year for a minimum of five years.

Reporting Burden:

Description of info. collection	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Semi-annual reports by owners of privately owned HUD-assisted multi-family housing and HUD-assisted single family properties in Boston setting forth current racial makeup, family composition and vacancy rates.	221 (128 multi-family) (93 single-family).		2		16 (multi-family owners) (single-family owners).	1	4,282

Total Estimated Burden Hours: 4,282.

Status: New.

Contact: Ellen Dole, HUD (617) 565–5126. John Allison, OMB (202) 395–6880.

Dated: December 13, 1989.

[FR Doc. 89-29331 Filed 12-14-89; 8:45 am]

BILLING CODE 4210-10-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606-N-50]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 15, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC (20410; telephone (202) 755–7300; TDD number for the hearing- and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army Corps of Engineers: Bob Swieconek, HQ–US

Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW. Washington, DC 20415-1000, (202) 272-1750.

Dated: December 11, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

(Number of Properties [ ])

Virginia

Portion (borders Weir Ditch) [1]
Dismal Swamp Canal
Chesapeake, VA
Landholding Agency: COE
Location: Adjacent to Deep Creek United Methodist Church (excess)
Comment: .035 acres; access easement needs to be negotiated

Unsuitable Building (by State)

(Number of Properties [ ])

Wisconsin

Ceder Locks (Former Lockmaster's Dwell.) [1]
4527 E. Wisconsin Road
Appleton, WI
Landholding Agency: COE
Location:
Reason: Floodway
Appleton 4th Lock (Former Lock. Dwelling) [1]
905 South Lowe Street
Appleton, WI
Landholding Agency: COE
Location:
Reason: Within 2000 ft. from flammable or explosive material. Floodway
Kaukauna 1st Lock (Former Lock. Dwelling [1]
301 Canal Street
Kaukauna, WI
Landholding Agency: COE
Location:
Reason: Floodway
Little Chute 2nd Lock (For. Lock. Dwell) [1]
214 Mill Street
Little Chute, WI
Landholding Agency: COE
Location:
Reason: Floodway
DePere Lock (Former Lockmaster's Dwell) [1]
100 James Street
DePere, WI
Landholding Agency: COE
Location:
Reason: Floodway

[FR Doc. 89-29315 Filed 12-14-89; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe

December 11, 1989.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant Secretary has determined that the San Juan Southern Paiute Tribe, c/o Mrs. Evelyn James, P.O. Box 2956, Tuba City, Arizona 86045, exists as an Indian tribe within the meaning of Federal law.

This notice is based on a determination, following a review of public comments on the proposed finding to acknowledge the group, that the San Juan Southern Paiute Tribe meets all of the criteria set forth in 25 CFR 83.7, and, therefore, meets the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to acknowledge the San Juan Southern Paiute Tribe was published in the **Federal Register** on Tuesday, August 11, 1987 (pp. 29735-36, Volume 52, No. 154). The 120-day period provided in the regulations for comment on the proposed finding was extended for 90 days at the request of the Navajo Tribe and to ensure adequate opportunity for all parties to comment on the proposed finding. The Navajo Tribe's comments were received March 8, 1988. Under the regulations, § 83.8(d), the petitioner was afforded a period, initially set at 90 days, to respond to the Navajo comments. This period was extended until September 1, 1988, at the request of the petitioner because of the extent of comments, the length of time afforded the Navajo Tribe and other parties to comment on the proposed finding, and a change of counsel by the petitioner. Limited comments were received from several individual researchers who had worked with the San Juan Paiutes and/or related groups.

This final determination is based on a consideration of new evidence and arguments submitted by the Navajo Tribe in response to the proposed finding and by the San Juan Southern Paiute petitioner in response to the proposed finding and the Navajo Tribe's comments. The extensive evidence and arguments that were presented by the San Juan Paiutes and the Navajo Tribe for the proposed finding or were generated by the Branch of Acknowledgment and Research's (BAR) staff in the conduct of its own research in preparing the proposed finding were also considered in making this final determination.

The proposed finding concluded that the San Juan Southern Paiute Tribe had been identified as an Indian entity and as Paiute since earliest sustained contact. In response to the proposed finding, additional historical and ethnographic documents from the 19th and 20th centuries were submitted which identified the group as a distinct Paiute entity. No substantial evidence was presented which would change the proposed finding's conclusions. Almost all of the evidence submitted for the proposed finding, the additional evidence presented in response to the proposed finding, and that developed by the BAR staff, indicates that the San Juan Paiutes continue to be identified by Navajos and others in the local areas where they live as a distinct, Paiute entity. The materials submitted with the Navajo response in support of its assertion that the San Juan band's members have been absorbed into the Navajo Tribe and are no longer distinct from Navajos were of a general and recent nature and were inconsistent with the large, detailed body of materials used for the proposed finding and this final determination.

The proposed finding concluded that at first sustained non-Indian contact, in 1850, the San Juan Paiute band had a clearly-defined territory and constituted a single, well-defined social unit consisting of several subgroups which were political units under independent leaders. These subgroups had probably become unified into a single political unit by the 1870's. The band remained a culturally and socially distinct community throughout the 19th and early 20th centuries up until the present. Population decrease and the loss of territory due to the expansion of Navajo population led to a reduction of the band's composition to two subgroups by the 1920's. These two subgroups continue to exist today and the band continues to maintain significant internal social and economic relationships within its membership.

The responses to the proposed finding included no significant comment on or new evidence concerning the proposed finding's conclusion that the contemporary San Juan Paiutes maintained significant social contact within the band, including with its non-resident members.

No substantial documentary or ethnographic evidence was presented in the responses concerning the proposed

finding's conclusion that the present-day San Juan Paiutes are a distinct social group from the Navajos on the reservation, despite some participation in Navajo tribal institutions and close social interaction with Navajos which dates to the latter half of the 19th century.

Significant new evidence was presented concerning the historical existence of the San Juan Paiutes as a community. A brief 1933 ethnographic study of the Navajo Mountain Paiutes in 1933 and other new documentation indicated that while the Paiutes at Navajo Mountain were influenced by Navajo culture in some ways, they constituted a distinct group from the Navajos. Miscellaneous additional documentation between the 1890's and the 1930's supported the historical existence of the San Juan Paiutes as a community.

The proposed finding concluded that the Paiutes have maintained a distinct culture, uninfluenced by Navajo culture except in nonfundamental areas. Key institutions such as political and kinship organization and most of the belief systems were not influenced. The Paiutes presented extensive new evidence describing distinct San Juan Paiute beliefs, ceremonies and other cultural practices that have been maintained. Some of the elements of Navajo culture used by the Paiutes are more accurately characterized as due to cultural borrowing rather than acculturation to Navajo culture as the proposed finding had concluded.

The Navajo response challenged the proposed finding's conclusion that certain areas were "San Juan Paiute territory" previous to and after sustained non-Indian contact. It stated that the evidence was weak that the San Juan Paiutes had been a historical band, and that the historical Navajo presence in these areas was greater than the proposed finding had concluded.

The Navajo response did not address most of the basic ethnographic and documentary sources which were used to prepare the proposed finding concerning the existence of the band at the time of first sustained contact with non-Indians and the territory the band then occupied. A review of the evidence indicates that, with some minor modifications, the territory of the San Juan Paiutes in 1850 was substantially as described in the proposed finding.

None of the cited evidence or arguments concerning San Juan territory and the historical existence of the band provided a basis for changing the proposed finding that the San Juan Paiute band had occupied distinct areas, as a community, since first sustained contact, and that those areas had become reduced as the Navajo population in the area expanded sharply beginning in the 1870's. There was some additional evidence in the responses which supported this conclusion.

Therefore, the San Juan Southern Paiute Tribe has existed as a distinct community occupying a specific area from earliest sustained contact until the present.

The proposed finding described leaders and the exercise of tribal political authority within the San Juan Paiute band from earliest sustained contact until the present. The responses to the proposed finding provided limited additional data concerning the historical exercise of tribal political authority. Additional documentary evidence, from the Paiute response, provided earlier documentation than had previously been available of the leadership of Pakai, who was band leader until about 1930, and some supporting evidence of his role as economic intermediary for the band with outsiders in the early part of the 20th century. The majority of the proposed finding's conclusions concerning San Juan Paiute leaders, the historical exercise of tribal political influence, and the large body of documentary, ethnographic and oral history information on which the conclusions were based were not addressed by the Navajo response.

The Navajo response characterized the decision-making and leadership processes within the San Juan Paiute band as only those that might occur within an extended family rather than a tribe. The San Juan Paiute political system, although partly kinship-based, is also based on non-kinship factors such as religious knowledge and ability to mobilize support. The type of decisions and authority exercised went beyond those of an extended family.

The primary additional information submitted with the responses relevant to the maintenance of tribal political influence as an autonomous entity concerned whether the San Juan Paiutes participated in the political system of the Navajo Tribe and whether the Navajo Tribe was involved in the internal political processes of the band. Substantial new documentary materials concerning Paiute voting and possible involvement in Navajo chapters, tribal courts and tribal programs, were submitted by the Navajo Tribe.

No significant evidence was submitted to change the proposed finding's conclusion that the Navajo Tribe had not influenced the internal political processes of the San Juan Paiutes. Almost all of the evidence submitted was not valid evidence of such influence. Of the evidence cited by the Navajo response concerning dispute resolution, only one instance involved dispute resolution between Paiutes. The majority concerned disputes or other matters between Navajos and Paiutes. These occurred in Navajo institutions because the institutions' jurisdiction includes non-Navajos as well as Navajos. Paiute involvement, therefore, did not indicate political affiliation.

A detailed analysis was made of the history of Paiute voting in Navajo Tribal elections, based on extensive additional information submitted with the responses together with the evidence available for the proposed finding. Only a small portion of the resident Paiutes, less than 20 percent, had voted consistently. Sixty percent of the resident adult Paiutes, and 73 percent of the total adults in the band, had never been registered or had never voted though they were registered. Voting was the only significant evidence of possible involvement by Paiutes in the Navajo political system. The available evidence was that what voting there was not intended by the Paiutes to signify political participation in the Navajo Tribe.

The proposed finding's basic conclusion that the Paiutes had not been involved in Navajo chapter political or decision-making processes was not changed by the additional evidence submitted. Most of the extensive new evidence concerning the chapters did not indicate any political involvement. However, one individual marginal to the Paiute band was nominated to an important chapter office over 15 years ago. Another individual Paiute, not marginal, was elected to a community board office from that chapter 20 years ago but subsequently resigned because the Navajos on the board refused to respond to Paiute requests.

Substantial additional records concerning receipt of services were provided in the Navajo response. With some exceptions, these confirmed the proposed finding's conclusion that most of the services received were from programs, previously administered by other Federal or State agencies and now administered by the Navajo Tribe, which were not limited to members of the Navajo Tribe. The Paiutes had infrequently, and to a limited degree, received some services and employment through the chapters of a kind usually limited to tribal members. The records concerning services did not provide a basis for changing the conclusion that the San Juan Paiutes were not involved in Navajo chapter political or decision-making processes.

Overall, San Juan Paiute participation in the Navajo political system has not been significant nor continuous and there is little evidence of any participation at all before 1968. There is no significant evidence that a continuous political affiliation with the Navajo Tribe has existed among the San Juan Paiute membership.

The San Juan Paiutes have maintained tribal political influence within the band since earliest sustained historical contact. This has been, and is, autonomous of influence by the Navajo Tribe.

The San Juan Paiute Southern Tribe has no written governing document. The proposed finding concluded that the petition's description of the San Juan band's governing processes and its membership criteria was adequately complete and accurate. No new evidence or argument was presented to change the proposed finding.

The proposed finding concluded that the petitioner had submitted a current membership roll which had been prepared in response to Acknowledgement regulations. Members listed on the current roll were found to meet the tribe's own membership criteria of descent from a San Juan Paiute ancestor and participation in or allegiance to the group as a whole. The Navajo response to the proposed finding provided no evidence to the contrary.

The proposed finding concluded that virtually all of the petitioner's membership can trace their tribal ancestry to historic communities that can be identified as "San Juan Paiute." Their San Juan Paiute ancestry can be documented satisfactorily using records which span a period of 100 years. New materials presented in response to the proposed finding further support the finding that the petitioner's members are Paiute and descend from the historic tribe.

Acceptable evidence of their ancestry as Paiute appears in the historical records of the Federal Government and the records of the Navajo, Ute Mountain Ute, and Paiute Indians of Utah Tribes, and in the writings and field notes of anthropologists who have worked with the San Juan Paiutes and other Indians in the area. Even San Juan Paiutes who have some Navajo blood can be documented as descendants of historical Paiute communities which have been identified historically as "San Juan" Paiute, distinct from the Navajo. Identification of the San Juan Paiutes as "Indian" has never been an issue.

The San Juan Paiutes provided a list of their current members. These members meet the band's own membership criteria and can establish, using evidence acceptable to the Secretary, that they descend from the historic San Juan Paiute band.

Citerion 83.7(f) requires that a petitioner be principally composed of persons who are not members of an already recognized tribe. The definition of membership in a recognized tribe (83.1(k)) has two parts, each with two subparts. It defines such membership as meeting the membership requirements of the tribe or being recognized by the governing body, and continuously maintaining tribal relations with the tribe or being listed on a tribal roll, if such rolls are kept. The term "tribal roll" is not defined. To meet the definition of "Member of an Indian Tribe," the individual must meet at least one subpart in each of the two parts of the definition. Any combination of one of the subparts of part 1 with one of the subparts of part 2 will suffice. Inherent in and fundamental to the definition of membership in a recognized tribe is the principle that membership is a bilateral political relationship.

The proposed finding was that the 119 San Juan Paiutes who have "Navajo census numbers" were not legitimately members of the Navajo Tribe because they did not meet any of the subparts of the definition of "Member of an Indian Tribe." They further were found to have not maintained a continuous bilateral political relationship with the Navajo Tribe. However, they have maintained such a relationship with the San Juan Paiute band.

The proposed finding concluded that Paiutes with census numbers had not acquired or used them with the intent and understanding of becoming members of the Navajo Tribe. Census numbers were found to have been issued routinely by Bureau and/or tribal census clerks as part of a Bureau process and without approving action by the Navajo Tribal governing body. Legally adopted and in force sections of the Navajo Tribal Code governing membership and enrollment were not being used by the Tribe to enroll Navajos or Paiutes. The proposed finding was that the Navajo Tribe had not been exercising its authority to determine its own membership, Navajo or Paiute. The proposed finding further concluded that the defacto "Navajo Tribal Roll" is a reservation-wide census and did not have the character of a tribal roll within the meaning of the acknowledgment regulations. The Navajo response to the proposed finding provided no significant new evidence to refute the proposed finding's conclusions concerning the character of the "Navajo Tribal Roll."

The proposed finding concluded that the San Juan Paiutes do not meet the requirements for membership in the Navajo Tribe because the membership requirements are vague and ambiguous and do not indicate how much Navajo blood is required of persons "on the official roll" or which version of the BIA's 1940 censuses of the Navajo Reservation is to be used as the Tribe's "official roll." There is no tribal administrative record of determinations of tribal membership to indicate how such issues concerning membership requirements would be decided. Further, there is no evidence that the Tribe's legally adopted membership requirements and enrollment procedures have been used by the Tribe's governing body to determine eligibility for membership for either Navajos or Paiutes. The response to the proposed finding did not provide significant new evidence to refute the proposed finding's conclusions.

The response to the proposed finding did not provide significant new evidence to refute the proposed finding's conclusion that those Paiutes with census numbers have not met the alternative requirement of the definition of membership in a recognized tribe, collective acceptance by the Navajo Tribal government. The Navajo Tribe has not acted on applications, enrolled as members through existing tribal code procedures or otherwise established membership of the Paiutes who have census numbers. While some tribal government actions have implied acceptance of some of the Paiutes as members, there has been significant question in the Navajo Tribe about the legitimacy of the Paiutes holding census numbers and receiving membership benefits. Recent resolutions by tribal governing bodies do not constitute conclusive evidence of collective recognition of the Paiutes as members by the Navajo tribal governing body, given the circumstances surrounding their passage, the history of past questions about Paiute membership and the lack of clear membership standards.

We conclude that the Paiutes have not maintained tribal relations with the Navajo Tribe on a substantially continuous basis, and, therefore, do not meet that part of the definition of membership in a recognized tribe. Finally, they are not listed on a "tribal roll" of exclusively Navajo tribal members within the meaning of the Acknowledgment regulations and therefore we conclude they do not meet that part of the definition.

There was no new compelling evidence to refute the proposed finding's

conclusions that the Paiutes did not meet the membership criteria of the Navajo Tribe and that they had not been collectively recognized by the members of the Navajo Tribal governing body. It was not necessary to finally resolve these issues, since the 119 Paiutes with "Navajo census numbers" are neither listed on a tribal roll nor maintaining tribal relations with the Navajo Tribe and, therefore, do not meet the definition of membership in a recognized tribe set forth in the regulations.

In summary, the 119 Paiutes with "Navajo census numbers" do not meet the definition of membership in a recognized tribe. The names of 46 other Paiutes (24 percent) appeared only on the San Juan Paiute membership roll. The names of the 23 (12 percent) remaining members of the San Juan Paiute band appears on the rolls of one of three other recognized tribes. The relationships of the 23 to the other tribes was not researched in depth under criterion f because the size of this portion of the membership was not sufficient in and of itself to affect the determination under criterion f. The 23 were, however, found to be maintaining tribal relations with the San Paiute band.

At least 165 (88 percent) of the members of the San Juan Southern Paiute Tribe were found not to be members of any other North American Indian tribe. Therefore, the petitioner's membership is composed principally of persons who are not members of any other North American Indian tribe.

No legislation terminating the San Juan Paiutes or affecting their ability to be acknowledged as an Indian tribe was found. The 1922 executive action restoring to the public domain the reservation established in 1907 for the San Juan Paiutes did not constitute "termination" of them as a tribe. Subsequent executive branch actions indicate that they continued to be recognized. The 1974 Hopi-Navajo Settlement Act (Public Law 93-531), which provides for individual allotments for Paiutes "not now members of the Navajo tribe," deals with some of the Paiutes as individuals. The act makes no reference to, nor provisions for or against, the San Juan Paiutes as a tribal entity and thus does not forbid their acknowledgement as a tribe.

This determination is final and will become effective 60 days after the date on which this notice appears in the **Federal Register** unless the Secretary of the Interior requests a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR 83.10(a-c). Requests to the Secretary for reconsideration may be made by any party and must be received within 30 days of publication of this notice. Requests should be accompanied by a detailed statement of grounds and new evidence and should include a copy of such new evidence. Requests from parties other than the petitioner will have fifteen days to comment on any request to reconsider this decision to acknowledge it as a tribe. If necessary, the 60-day time limit in 83.10(a) may be extended to allow the Secretary a period of 30 days from the receipt of a request for reconsideration and any responses in which to act.

The Secretary may, at his discretion, consider the submission of materials after the closure of the comment period, if not considered in preparation of this final determination, as a request for reconsideration. The party submitting these materials may withdraw or supplement them within 30 days of the publication of this notice.

If the Secretary receives a request for reconsideration or considers materials submitted after the closure of the comment period to be a request for reconsideration, the Assistant Secretary—Indian Affairs, will recommend that such a request, together with any comments, be referred to the Director of the Office of Hearings and Appeals (OHA) and that the OHA will be authorized (pursuant to 43 CFR part 4) to determine whether reconsideration is merited on the grounds stated in 83.10(c)(1-3) of the Acknowledgement regulations (25 CFR 83). The Director of OHA may assign preparation of the decision to such other officials in his office as he may deem appropriate. The OHA may request that the Assistant Secretary submit comment on a request for reconsideration. The Assistant Secretary—Indian Affairs will further recommend that within 60 days the OHA shall either affirm this determination or, if the reconsideration request is merited, vacate the decision and return it to the Assistant Secretary for reconsideration. This determination will become final upon receipt by the Assistant Secretary of a decision by the OHA to affirm the determination. If the determination is returned for reconsideration, the Assistant Secretary shall, in accord with § 83.10(a), issue a reconsidered determination within 60 days of receipt of the OHA's decision. The reconsidered determination shall be final and effective upon publication in the **Federal Register**.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 89-29260 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-020-00-4351-02-24-11]

Availability of the Salt Lake Districts Animal Damage Control (ADC) Program Environmental Assessment (EA No. UT-020-89-35)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Salt Lake District Animal Damage Control (ADC) Program Environmental Assessment (EA No. UT-020-89-35).

SUMMARY: Notice is hereby given that pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared an Environmental Assessment (EA) on the Animal Damage Control (ADC) Program within the Salt Lake District, BLM, Utah.

The ADC Program is authorized by BLM and conducted by USDA APHIS/ADC for lands administered by BLM. This EA analyzes the environmental impacts of the ADC Program within the Salt Lake District. It addresses the impacts of the Proposed Action, No Action Alternative and a Limited Action Alternative. The continuation of the Existing Situation and an alternative of no restrictions on the ADC Program were considered but not analyzed since neither alternative would fulfill BLM's land management responsibility. The Proposed Action contains several changes to the Existing Situation. These changes are intended to increase the depth of the ADC Program and to mitigate or eliminate conflicts with other uses. These changes are administrative in nature and require no planning document amendments. The BLM and APHIS/ADC will develop and sign an Annual Plan of Operations based upon maps showing safety areas and restriction zones. Emergency Control and control in Wilderness and Wilderness Study Areas are stipulated. Nine restrictions and constraints are listed and are proposed to become part of the Annual Plan of Operation.

A copy of the Draft EA is available upon request at the following BLM office: Bureau of Land Management, Salt Lake District Office, 2370 South, 2300 West, Salt Lake City, Utah 84119.

DATE/ADDRESS: Written comments on the document will be accepted until January 31, 1990 and should be sent to the above address in care of Mr. Deane H. Zeller.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Brown (District Wildlife Biologist) at the above address or phone (801) 977–4332.

Deane H. Zeller,

District Manager.

[FR Doc. 89–29300 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-DQ-M

[NV–060–09–4132–02]

Battle Mountain District Advisory Council Meeting in Eureka, Nevada

December 6, 1989.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Thursday, January 11, 1990. The meeting will convene at 9:00 a.m. in the Eureka County Court House, Eureka, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Update on District recreation program;

2. Bird mortality from cyanide leach operations; and

3. Mining activity on Roberts Mountain.

The meeting is open to the public. Interested persons may make oral statements between 3:00 and 3:30 p.m. If you wish to make an oral statement, please contact James D. Currivan, District Manager, by 4:30 p.m., January 5, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635–5181.

James D. Currivan,

Battle Mountain, Nevada.

[FR Doc. 89–29239 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-HC-M

[CO–070–08–4432–09; FES 89–31]

Availability of Final Wilderness Environmental Impact Statement for Grand Junction Resource Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Wilderness Environmental Impact Statement (EIS) for the Grand Junction Resource Area, Grand Junction District, Colorado.

SUMMARY: This EIS analyzes the environmental effects of designating or not designating as wilderness seven Wilderness Study Areas (WSA) in the Grand Junction Resource Area. The names of the WSAs, their acreages, and the proposed action for each are as follows:

Wilderness study area	Total acres	Acres recommended suitable	Acres recommended unsuitable
Demaree Canyon	21,050	0	21,050
Little Book Cliffs	26,525	0	26,525
Black Ridge Canyons	18,143	[1] 19,595	590
Black Ridge Canyons West	54,265	[2] 54,342	673
The Palisade	26,050	0	26,050
Dominguez Canyon	75,800	[3] 73,888	2,245
Sewemup Mesa	19,140	18,835	305

[1] Includes 2,035 acres in a triangular parcel between Black Ridge Canyons and Black Ridge Canyons West which would be added to the designated wilderness area.

[2] Includes 725 acre presently outside the WSA boundary which would be added to the designated wilderness area.

[3] Includes 320 acres of a recently acquired private inholding and 13 acres presently outside the WSA boundary which would be added to the designated wilderness area.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. The Secretary must wait 30 days following the filing of this EIS before a final decision may be made. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A copy of the EIS may be obtained from the Area Manager, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, Colorado 81506. Copies are also available for inspection at the following Department of the Interior, Bureau of Land Management locations: 18th & C Street, NW., Washington, DC 20240; Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; Grand Junction District, 764 Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Bruce Conrad, District Manager, Grand Junction District, 764, Horizon Drive, Grand Junction, Colorado 81506.

Dated: December 6, 1989.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 89–28937 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-JB-M

[NV–930–00–4212–11; N–50889]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,

Sec. 9: NW¼NE¼SE¼.

Aggregating 10 acres (gross)

This parcel of land contains approximately 10 acres. The Clark County School District intends to use the land for an elementary school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations at the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29192 Filed 12-14-89; 8:45 am]

BILLING CODE 9310-HC-M

[NV-930-00-4212-11; N-51822]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 20: E½SW¼NE¼, E½W½SW¼NE¼, W½W½SE¼NE¼.

Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The Clark County School District intends to use the land for a high school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29193 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-41565-17]

Realty Action Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridan, Nevada

T. 21 S., R. 60 E.,
Sec. 25: NW¼SE¼NW¼.

Aggregating 10 acres (gross)

This parcel of land contains approximately 10 acres. The Clark County School District intends to use the land for an elementary school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29194 Filed 12-14-89; 8:45am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-41568-15]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 15, E½SE¼NE¼, SW¼SE¼NE¼.
Aggregating 30 acres (gross)

This parcel of land contains approximately 30 acres. The Clark County School District intends to use the land for a junior high school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29195 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-14; N-51785]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

Notice of Realty Action for N-51785 appearing on page 39817 of the **Federal Register** (Doc. No. 89-22907) published on Thursday, September 28, 1989 is hereby corrected. The legal description is corrected to delete the E½SW¼ SE¼SW¼, and to add the SW¼SE¼ SW¼, section 26, T. 22 S., R. 60 E., Mount Diablo Meridian, Nevada changing the total acreage from 127.50 to 132.50 acres (gross).

The remainder of the Notice of Realty Action was correct as published.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29196 Filed 12-14-89; 8:45 am]

BILLING CODE 9310-HC-M

Office of Surface Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form 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 (1029-0096), Washington, DC 20503, telephone 202-395-7340.

Title: Adoption of State Standards, 30 CFR part 718.

OMB Approval Number: 1029-0096.

Abstract: Information collected in part 718 of the regulations of the Office of Surface Mining Reclamation and Enforcement are used to determine whether State laws or regulations contain more stringent standards than the Federal requirements in 30 CFR parts 715, 716, or 717.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance Officer: Andrew F. DeVito, 202-343-5954.

Dated: November 21, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-29281 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Tyco Laboratories, Inc. One Tyco Park, Exeter, New Hampshire 03833, Incorporated in Massachusetts.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

Grinnell Corporation, Three Tyco Park, Exeter, New Hampshire 03833, Incorporated in Delaware

Allied Tube & Conduit Corporation, 1600 S. Lathrop Avenue, Harvey, Illinois 60426, Incorporated in Delaware

Mueller Co., 500 West Eldorado, Decatur, Illinois 62522, Incorporated in Illinois

Ludlow Corporation, One Tyco Park, Exeter, New Hampshire 03833, Incorporated in Massachusetts

Simplex Wire and Cable Company, 2073 Woodbury Avenue, P.O. Box 479, Portsmouth, New Hampshire 03801, Incorporated in Massachusetts

Armin Corporation, 301 West Side Avenue, Jersey City, New Jersey 07305, Incorporated in New Jersey.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29282 Filed 12-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31567]

CMW Acquisition Corp., Acquisition and Operation Exemption

CMW Acquisition Corp. (Acquisition), a non-carrier, has filed a notice of exemption to acquire and operate approximately 402 miles of rail lines owned by the Chicago, Missouri & Western Railway Company (CMW). The lines are located between Cockrell, IL (milepost 192.4) and Kansas City, MO (milepost 488.8); and between Roadhouse, IL (milepost 237.2) and Church and Tolson, near East St. Louis, IL (milepost 286.0), except that between Godfrey, IL (milepost 252.1) and Church and Tolson, IL, Acquisition will acquire only an undivided 50 percent interest. Acquisition will also acquire CMW's branch lines between Murrayville, IL (milepost 0.0) and Jacksonville, IL (milepost 11.0), and between Mexico, MO (milepost 0.0) and Fulton, MO (milepost 23.8). The transaction is proposed to be consummated on or about December 31, 1989.

Any comments must be filed with the Commission and served on Richard M. Smith, of Mayer, Brown & Platt, 2000 Pennsylvania Ave, NW., Washington, DC 20006.

Acquisition shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[1]

This notice is filed under 49 CFR 1150.31 and 1150.35. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc 89-29181 Filed 12-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31555]

CSX Transportation, Inc.; Trackage Rights Exemption

Central of Georgia Railroad Company has agreed to grant overhead trackage rights to CSX Transportation, Inc., between milepost 241.6±, at Oglethorpe, GA, and milepost 297.4±, at Albany, GA, a distance of approximately 56 miles. The trackage rights became effective on November 27, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, 500 Water Street, CSX Transportation, Inc., Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. (1980).

Dated: December 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29182 Filed 12-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 483]

Railroad Revenue Adequacy—1988 Determination

December 13, 1989.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments in revenue adequacy proceeding.

SUMMARY: In the **Federal Register** of November 20, 1989 (54 FR 48034), the due date for the submission of public comment was established to be December 18, 1989. The Association of American Railroads has requested that the due date be extended to January 17, 1990 for all parties. The petition shall be granted. Additional time is necessary to prepare and coordinate the Association's comments. The railroads found tentatively revenue adequate by the Commission have consented to be deemed revenue adequate during the extension period.

DATES: Public comments are due January 17, 1990.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489 (TDD for the hearing impaired: (202) 275-1721).

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29380 Filed 12-13-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States of America Versus Consolidated Rail Corp.

Notice is hereby given that on December 7, 1989, a proposed Consent Decree in *United States of America* v. *Consolidated Rail Corporation*, Civil Action No. 85-502 MMS, was lodged with the United States District Court for the District of Delaware.

The complaint filed by the United States in August 1985, under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), sought recovery of response costs incurred and to be incurred in responding to the release of coal tar and other hazardous substances from an abandoned treatment facility in Delaware. Named as defendants in the complaint were the operators of the facility, the owner of the facility, and six generators who had contracted with the operator for the treatment or disposal of their hazardous substances. The defendants added twenty third-party defendants.

In the proposed Partial Consent Decree, the generator defendants, the owner, and some of the third-party defendants agree to pay the United States $1.3 million in settlement of its past response cost claim. The defendants and participating third party defendants are not released from future costs nor is the United States settling its injunctive relief claim with regard to

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[1] Acquisition certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

future work at the site. Some of the third party defendants and defendants are presently performing a Remedial Investigation and Feasibility Study pursuant to an administrative order on consent.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Consolidated Rail Corporation*, Civil Action No. 85–502 MMS, DOJ Ref. No. 90–11–3–83. The proposed Partial Consent Decree may be examined at the office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Rm. 5110, Wilmington, Delaware 19801. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC, 20044. When requesting a copy, please present or enclose a check in the amount of $2.50 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR. Doc. 89–29308 Filed 12–14–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") on October 12, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CableLabs, Inc. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, CableLabs filed simultaneously with the Attorney General and the Federal Trade Commission its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) on September 7, 1988, (53 FR 34593). On November 7, 1988 and February 3, 1989, CableLabs filed additional written notifications. The Department published notices in response to the additional notifications on December 16, 1988 (58 FR 50590) and March 1, 1989 (54 FR 8608).

As of October 12, 1989, the following have become members of CableLabs: Apollo Cablevision, Inc., 13100 Alondra Boulevard, Suite 104, Cerritos, CA 90701.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–29309 Filed 12–14–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not provided for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT89-1 (Jan. 6, 1989) ..... p. 61, p. 64.

Florida:
FL89-13 (Jan. 6, 1989) ..... pp. 129-130.
FL89-35 (Jan. 6, 1989) ..... pp. 181-182.
FL89-37 (Jan. 6, 1989) ..... pp. 187-189.
FL89-39 (Jan. 6, 1989) ..... pp. 195-197.
FL89-40 (Jan. 6, 1989) ..... pp. 199-200.
FL89-43 (Jan. 6, 1989) ..... pp. 203-204.

Virginia:
VA89-18 (Jan. 6, 1989)..... pp. 1175-1176.

Volume II:

Illinois:
IL89-11 (Jan. 6, 1989) ..... pp. 161-163.
IL89-13 (Jan. 6, 1989) ..... pp. 179, p. 181.

Indiana:
IN89-6 (Jan. 6, 1989) ..... p. 313, pp. 318-319.

Wisconsin:
WI89-10 (Jan. 6, 1989) ..... p. 1187, pp. 1190-1191.

Volume III:

Hawaii:
HI89-1 (Jan. 6, 1989) ..... pp. 135-136.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of Dec. 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-29102 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 26, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 26, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Approved Fur Processing Inc. (Formerly Diamond-Alaska Fur Processing, Inc.) (FLM/FJC).	New York, NY	12/4/89	11/20/89	23,659	Dyeing and blending.
Coleman Products, Co. (workers)	Coleman, WI	12/4/89	11/21/89	23,660	Lead Wire for auto harness assembly.
Concord MFG (ILGWU)	Morrisville, VT	12/4/89	11/14/89	23,661	Mens' and womens' shorts and shirts.
Delmar Sportswear, Inc. (ILGWU)	Delmar, MD	12/4/89	11/21/89	23,662	Ladies' sportswear.
Dotson Wheels (workers)	Saltville, VA	12/4/89	11/20/89	23,663	Rims and wheels.
Eaton Corp. (workers)	Belmond, IA	12/4/89	11/20/89	23,664	Engine values.
End Devices, Inc. (Company)	Midland, TX	12/4/89	11/15/89	23,665	Electronic control devices.
Flock Industries, Inc. (Company)	Phillipsburg, NJ	12/4/89	11/21/89	23,666	Converts loose flock into materials.
General Electric Co. (workers)	Wilmington, MA	12/4/89	11/1/89	23,667	Flat panel display systems.
H.F. Sutton, Inc. (workers)	Oil City, LA	12/4/89	11/21/89	23,668	Oil and gas.
Health-Tex, Inc. (workers)	Centreville, AL	12/4/89	11/20/89	23,669	Childrens' clothing.
Interbake Foods, Inc. (UBWU)	Battle Creek, MI	12/4/89	11/23/89	23,670	Ice cream wafers for sandwiches and cookies.
Jeems Bayou Production Corp. (workers)	Oil City, LA	12/4/89	11/21/89	23,671	Oil and gas
June Sportswear Co., Inc. (ILGWU)	Boston, MA	12/4/89	11/21/89	23,672	Ladies' Sportswear.
Mettler Automation (Company)	Landing, NJ	12/4/89	11/15/89	23,673	Packaging equipment.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Northern Telecom (workers)	Nashville, TN	12/4/89	10/30/89	23,674	Telephone sets.
Orbit Drilling (workers)	Kimball, NE	12/4/89	11/20/89	23,675	Drilling contract services.
Picker International (IBEW)	Highland Hts., OH	12/4/89	11/16/89	23,676	Medical diagnostic equipment.
Quality Components, Inc.	St. Marys, PA	12/4/89	11/20/89	23,677	Capacitors and molded winding form.
R&K Originals, Inc. (ILGWU)	North Bergen, NJ	12/4/89	11/15/89	23,678	Ladies dresses.
Regnolds Metal-Bristol End Plant (workers)	Bristol, VA	12/4/89	11/22/89	23,679	Can ends.
Robert L. Krul General (workers)	Midland, PA	12/4/89	11/20/89	23,680	General contractor (moseleums).
Silla Lingerie (ILGWU)	Jersey City, NJ	12/4/89	7/25/89	23,681	Lingerie.
Stanley-Proto Tool (IAMAW)	Portland, OR	12/4/89	11/21/89	23,682	Hand tools, sockets and adaptors, etc.
Sunbeam Appliance Co. (workers)	Coushatta, LA	12/4/89	10/14/89	23,683	Clothes irons.
Star Fashion Coat Corp. (workers)	Patterson, NJ	12/4/89	11/16/89	23,684	Ladies' coats.
Villa Fashions (workers)	Shenandoah, PA	12/4/89	11/13/89	23,685	Ladies' blazers.

[FR Doc. 89-29303 Filed 12-14-89; 8:45 am]
BILLING CODE 1510-30-M

[TA-W-23,408]

AT&T, Inc., Material Management Systems Division, Arlington, Va; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 1989 applicable to all workers of AT&T, Inc., Material Management Systems, Arlington, Virginia. The notice was published in the **Federal Register** on November 15, 1989 (54 FR 47588).

Based on new information from the company, additional workers will be retained for close down operations beyond the December 31, 1989 termination date. The notice, therefore, is amended by deleting the December 31, 1989 termination date.

The amended notice applicable to TA-W-23,408 is hereby issued as follows:

"All workers of AT&T, Inc., Material Management Systems Division, Arlington, Virginia who became totally or partially separated from employment on or after September 8, 1988 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974."

Signed at Washington, DC, this 4th day of December 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29304 Filed 12-14-89; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or treat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,450; Palace Knitting Mills, Brooklyn, NY

TA-W-23,473; Kent Knitting Mills, Inc., Jersey City, NJ

TA-W-23,438; AT&T Microelectronics, Clark, NJ

TA-W-23,476; Rostra Engineered Components, Inc., Precision Metal Div., Waterbury, CT

TA-W-23,466; Dive-Ettes, Inc., Allentown, PA

TA-W-23,471; Joy Knitting, Allentown, PA

TA-W-23,465; Car-Mal Sportswear, Inc., South Boston, MA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,441; Commodore Semiconductor Group, Norristown, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,483; Ansewn Shoe Co., Eastport, ME

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,479; Taylor Diving, Inc., Belle Chase, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,468; Elco Dress Co., Inc., Holyoke, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,467; Ethicon, Inc., Somerville, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,474; Products Tooling, Inc., Corinth, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,469; Graphic Interprelations, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,522; Crescent Pipe & Supply Co., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,470; Honeywell, Inc., Fort Washington, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–23,472; Kalart Victor Corp., Plainville, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,525; Eason Oil Co., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,457; Arco Oil & Gas Co., Crane Field, Crane, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,458; Arco Oil & Gas Co., Crane Gas Plant, Crane, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,462; BHP Petroleum Snyder Gas Processing Plant, Snyder, TX

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–23,482; Alexander Well Service, Inc., Nowata, OK

A certification was issued covering all workers separated on or after September 30, 1988 and before August 1, 1989.

TA–W–23,454; Tubulart, Inc., Youngstown, OH

A certification was issued covering all workers separated on or after September 21, 1988.

TA–W–23,305; A.T.F. Davidson, Inc., Whitinsville, MA

A certification was issued covering all workers separated on or after February 12, 1989.

TA–W–23,444; General Motors Corp., BOC Janesville, Janesville, WI

A certification was issued covering all workers engaged in the production of medium weight truck assembly line & of the conventional pickup truck assembly line separated on or after September 18, 1988.

TA–W–23,549; Crystal Brands, Inc., Aston, PA

A certification was issued covering all workers separated on or after October 16, 1988.

TA–W–23,449; North American Cerutti Corp., Pittsburgh, PA

A certification was issued covering all workers separated on or after September 6, 1988.

TA–W–23,400; St. Raymond Corp., Peyepscot, ME

A certification was issued covering all workers separated on or after September 6, 1988.

TA–W–23,446; Kerr McGee Corp., Midland, TX & Operating at Various Locations in The Following States TA–W–23,446A OK, TA–W–23,446B TX, TA–W–23,446C OK, TA–W–23,446D LA

A certification was issued covering all workers separated on or after December 23, 1988.

TA–W–23,460; BHP Petroleum, Inc., Rocky Mountain Reg, Denver, CO & Operating at Various Locations in The Following States TA–W–23,460A CO (Exclu Denver); TA–W–23,460B NM; TA–W–23,460C UT, TA–W–23,460D WY

A certification was issued covering all workers separated on or after September 25, 1988.

TA–W–23,459; BHP Petroleum, Inc., Mid Continent Reg, Oklahoma City, OK & Operating at Various Locations in The Following States TA–W–23,459A KS; TA–W–23,459B OK (Exclu OKC)

A certification was issued covering all workers separated on or after March 14, 1989.

TA–W–23, 461; BHP Petroleum, Inc., Southwestern Reg., Midland, TX & Operating at Various Locations in The Following States TA–W–23, 461A NM, TA–W–23, 461B (Exclu Midland)

A certification was issued covering all workers separated on or after September 25, 1988.

TA–W–22, 031; Emphasis Oil Operations, Russell, KS

A separation was issued covering all workers separated on or after October 1, 1985.

TA–W–22, 263; Walters Drillings, Inc., Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1988.

TA–W–21, 210; Buckeye, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22, 162; Mayers & Co., Englewood, CO

A certifications was issued covering all workers separated on or after November 17, 1987.

TA–W–21, 937; RPI International, Inc., Austin, TX

A certification was issued covering all workers separated on or after January 1, 1986 and before November 30, 1986.

TA–W–21, 938; RPI International, Inc., Boulder, CO

A certification was issued covering all workers separated on or after January 1, 1986 and before January 1, 1987.

TA–W–22, 227; The Grove Co., Sikeston, MO

A certification was issued covering all workers separated on or after November 18, 1987.

TA–W–22, 213; Cheyenne Oil & Well Service, Inc. Ness City, KS & Operating at Various Locations in The Following States TA–W–22, 213A Utica, KS; TA–W–22, 213B Larned, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21, 955; Seiscom Delta United, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1989.

TA–W–22, 287; J & S Sewing Ridgefield, NJ

A certification was issued covering all workers separated on or after December 9, 1987 and before January 31, 1989.

TA–W–21, 948; S.W. Jack Drilling Co., Indiana, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21, 983; Texas Universal Petroleum Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21, 944; Renfro Fishing Service, Inc., Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–22, 257; Spartan Well Service, Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1988.

TA-W-21, 896; Mandarin Oil & Gas Co., Dallas, TX

A certification was issued covering all workers separated on or after February 1, 1986.

TA-W-22, 043; Harpel Drilling Co., Casper, WY & Operating at Various Locations in The Following States TA-W-22, 043A Co; TA-W-22, 043B WY

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21, 917; Nowsco Services, Houston, TX & Operating at Various Locations in The Following States TA-W-21, 917A TX; TA-W-21, 917B AL; TA-W-21, 917C AK; TA-W-21, 917D CA; TA-W-21, 917E CO; TA-W-21, 917F LA; TA-W-21, 917G MS; TA-W-21, 917H NM; TA-W-21, 917I OK; TA-W-21, 917J UT; TA-W-21, 917K WY

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-22, 216; Covington MDM Ltd, Covington, VA

A certification was issued covering all workers separated on or after November 15, 1987.

TA-W-21, 839; Fargo Trading Co., Corpus Christi, TX

A certification was issued covering all workers separated on or after November 1, 1987 and before September 30, 1988.

TA-W-22, 137 Fancy Stitchers, Inc., Lewiston, ME

A certification was issued covering all workers separated on or after November 15, 1987.

TA-W-21, 981; Woods Petroleum Corp., Formerly Texas Energies, Inc, Wichita, KS

A certification was issued covering all workers separated on or after November 17, 1987.

TA-W-22, 020; Commodore Oil & Gas, Inc., Burksville, KY

A certification was issued covering all worker separated on or after January 1, 1986 and before January 1, 1987.

TA-W-22, 149; Hilyard Drilling Co., El Dorado, AR

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-22, 149A; Hilyard Drilling Co., Fairfield, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-22, 150; Hilyard Drilling Co., Laurel, MS

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-21, 986; Transok, Inc., Exploration & Production Dept., Tulsa, OK

A certification was issued covering all workers separated on or after November 15, 1987.

TA-W-22, 097; Alliance Well Service, Inc., Liberty, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 098; Alliance Well Service, Inc., Lovington, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 099; Alliance Well Service, Inc., Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 100; Alliance Well Service, Inc., El Campo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 101; Alliance Well Service, Inc., El Reno, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21, 670; Teledyne Exploration Co., Midland, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-22, 418; Triangle Well Service, Ellis, KS

A certification was issued covering all workers separated on or after January 6, 1988.

TA-W-22, 050; Mid-Kansas Acid, Inc., Russell, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before October 16, 1988.

TA-W-22, 160; The Louisiana Land & Exploration Co., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 300; Penaljo Shoe Co., DeSoto, MO

A certification was issued covering all workers separated on or after November 19, 1987.

TA-W-22,158; Snyder Logging Services, Inc., Grayville, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-22,158A; Synder Drilling, Inc., Grayville, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,899; Marshall Oil Corp., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,899A; Marshall Oil Corp., Oklahoma City OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,899B; Dorchester Drilling, Oklahoma City OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,899C; Tash, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,077; Cypress Oilfield Contractors, Eunice, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before September 30, 1986.

TA-W-21,083; Dunncraft, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after September 12, 1987.

TA-W-21,005; General Well Service, Roosevelt, UT

A certification was issued covering all workers separated on or after August 2, 1986.

TA-W-21,140; Southern Well Surveys, Inc., Henderson, KY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,209; Missouri Valley Perforating, Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,153; Wright Drilling Co., Sunbright, TN

A certification was issued covering all workers separated on or after October 1, 1985 and before January 22, 1987.

TA-W-21,149; Western Sky Oil & Gas, Abilene, TX

A certification was issued covering all workers separated on or after August 1, 1986.

TA-W-21,158; Armadillo Roustabout Service, Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,148; West Sierra Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before May 31, 1987.

TA-W-21,175; Discovery Mud Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,058; Barad & Co., Salem, MI

A certification was issued covering all workers separated on or after August 30, 1988.

TA-W-21,059; Barad & Co., St. Louis, MO

A certification was issued covering all workers separated on or after November 15, 1987 and before October 31, 1988.

TA-W-21,147; The Lee Co., Stevenson, AL

A certification was issued covering all workers separated on or after September 9, 1987.

TA-W-21,097; Grant-Norpac, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,098; Grant-Norpac, Inc., Traverse City, MI

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,099; Grant-Norpac, Inc., New Iberia, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,100; Grant-Norpac, Inc., Bakersfield, CA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,101; Grant-Norpac, Inc., Denver CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,102; Grant-Norpac, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,102A; Grant-Norpac, Inc., Englewood, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,364; Kenting Drilling Service, Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before October 1, 1987.

TA-W-21,207; Midwest Equipment Co., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 1, 1987.

TA-W-21,543; Westburne Drilling, Inc., Denver CO

A certification was issued covering all workers separated on or after September 20, 1988.

TA-W-21,250; Wells Enterprises, Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1986.

TA-W-21,300; Pitman Casing, Williston, ND

A certification was issued covering all workers separated on or after October 1 1985.

TA-W-21,329; Burris Drilling Co., Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,256; Ausimont, Elizabeth, NJ

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-20,994; Eagle Oil and Gas Co., Wichita Falls, TX

A certification was issued covering all workers separated on or after September 9, 1987 and before January 31, 1988.

TA-W-21,303; Professional Geophysics, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,114; Lyons Petroleum, Inc., Shreveport, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,496; Von R. Frierson, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,196; Hydrocarb Well Logging, Florence, MS

A certification was issued covering all workers separated on or after January 1, 1986.

TA-W-21,465; Penrod Drilling Corp., Dallas, TX & at The Following Plant Locations: TA-W-21,465A Houma, LA; TA-W-21,465B Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,206; Mid-Coast Drilling, Inc., Victoria, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1986.

TA-W-21,237; Sundown Well Service, Formerly Cardinal Well Service, Andrews, TX

A certification was issued covering all workers separated on or after October 1, 1985.

I hereby certify that the aforementioned determinations were issued during the month of November 1989. Copies of these determinations are available for inspection in Room 6434. U.S. Department of Labor. 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 4, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-29305 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,270]

Parker Seal Company Berea, Kentucky; Negative Determination Regarding Application for Reconsideration

By an application dated October 21, 1989, a former worker requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 10, 1989 and published in the **Federal Register** on October 31, 1989 (54 FR 45812).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former worker claims that molds and other machines were shipped back and forth between Parker Seal's Mexican plants and the subject plant. It

is also claimed that Parker Seal loss in a government contract (Hyrdopact) was the result of company imports. The question is raised about the possibility of selling Mexican made parts as if they were made in Berea.

Investigation findings show that Parker Seal operates plants in Berea, Kentucky; McAllen, Texas and Matamoros and Reynosa, Mexico with the Berea plant producing sealing devices for automotive and aerospace applications. These seals are of a different product composition and are used for different applications than the seals produced in Mexico whose production is integrated with McAllen. The findings show that sales and production and average employment increased at Berea in FY 1989 compared to FY 1988. The production decrease in the first two months of FY 1990 (July-August 1990) at Berea is related to a decline in purchases from the subject firm's customers.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. A Departmental survey revealed that most customers did not import "O" ring sealing devices in 1987, 1988 and in the first eight months of 1989. The few customers reporting increased purchases of "O" ring sealing devices did not reduce purchases from the subject firm during the survey period.

The claim concerning the transfer of production equipment (molds, extruders and buffing machines) used in the production of sealing devices would not form a basis for certification. The articles produced at the workers' firm is sealing devices not production equipment.

With respect to the worker's claim concerning the loss in the Hydropact contract the findings show that Parker Seal did not lose the Hydropact contract with NASA, however, production has been scaled back somewhat because the number of launchings have been reduced. No part of the Hydropact was produced in Mexico during the period relevant to the petition.

Lastly, the Department found no merit in the worker's claim that Mexican made parts were being sold in the U.S. as made in Berea.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29306 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-171-C)]

Skyview Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Skyview Coal Company, R.D. No. 1, Box 526, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its 1½ Vein Slope (I.D. No. 36-07575) located in Schuylkill County, Pennsylvania. 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 the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line by 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. 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 January 16, 1990. Copies of the petition are available for inspection at that address.

Dated: November 30, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variance.

[FR Doc. 89-29307 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

ACTION: Notice of application.

SUMMARY: The National Credit Union Administration ("NCUA") will accept applications for participation in the Community Development Revolving Loan Program For Credit Unions through March 30, 1990. Application procedures are set forth in part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions") (12 CFR part 705).

ADDRESS: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert J. LaPorte, Central Liquidity Facility, at the above address or telephone (202) 682-8780.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations (12 CFR part 705) implements the Community

Development Revolving Loan Program for Credit Unions (the "Program"). The purpose of the Program is to make reduced rate loans to both federally- and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

This Notice is published pursuant to § 705.9 of NCUA's Regulations (12 CFR 705.9) stating that NCUA will provide notice in the **Federal Register** when funds in the Program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Program will be accepted through March 30, 1990. Credit unions wishing to participate in the Program should refer to part 705 of NCUA's Regulations for the application procedures and Program requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration on December 7, 1989.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 89-29312 Filed 12-14-89; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) a request for expedited clearance by January 22, 1990 of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.) chapter 35).

DATES: Comments on this information collection must be submitted on or before December 29, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h). Grantees of the National Endowment for the Humanities that award subgrants with NEH funds are required to forward lists of proposed subgrants to NEH for review and approval. The lists will be accompanied by a description for each project and a copy of the complete application from all persons proposed for awards.

Category: New Forms

Title: Oversight of subgrants.
Form Number: Not applicable.
Frequency of Collection: On occasion.
Respondents: NEH grantees that conduct subgranting.
Use: Grant administration and oversight.
Estimated Number of Respondents: 22.
Frequency of Response: On occasion.
Estimated Hours for Respondents to Provide Information: 3 per respondent.
Estimated Total Annual Reporting and Recording Burden: 66 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 89-29228 Filed 12-14-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Relgulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, Dc 20520.

In its review of the application for license to export special nuclear material for a nuclear reactor as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application no.	Material type	Material in Kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 12/1/89, 12/05/89, XSNM02492	93.45% enriched uranium	47.356	44.254	Fuel for Orphee Reactor	France.

Dated this 7th day of December 1989 at Rockvill, Maryland.

For the Nuclear Regulatory Commission.

C.N. (Mike) Smith,

Assistant Director for International Security, Exports and Materials Safety, International Programs Officer of Governmental and Public Affairs.

[FR Doc. 89–29257 Filed 12–14–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–255]

Consumers Power Co. (Palisades Plant); Exemption

I

Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR–20, which authorizes the licensee to operate the Palisades Plant at power levels up to 2530 megawatts thermal. The facility is a pressurized water reactor located on the licensee's site in Van Buren County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors, states that containment air locks that have been opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa. (Pa is the calculated peak containment pressure for design basis accidents.) Consumers Power Company has requested exemption from this requirement and proposes, in lieu of testing the air lock at Pa, to perform a between-the-seals leak test at a pressure of not less than 10 psig. Consumers Power Company proposes to apply this alternate testing only if no maintenance or modification has been performed on the air lock during the period that could affect the sealing capability; otherwise, the testing as required by Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50 would be performed. No other provisions of Appendix J to 10 CFR part 50 are affected by this Exemption.

III

Whenever the facility is in cold shutdown, defined as when the boron concentration is at shutdown concentration and the primary coolant temperature is less than 210 °F, containment integrity is not required. If during this time an air lock door is opened, an overall air lock test at Pa must be performed prior to leaving the cold shutdown condition to comply with Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50. The air lock door designs are such that a test at Pa of the entire air lock can be performed only with structural bracing (strongbacks) installed on the inner door. These strongbacks are needed because the pressure exerted on the inner door during the test is in the reverse direction to the pressure exerted during accidents. To conduct the leak test in compliance with Paragraph III.D.2.(b)(ii) requires approximately 24 hours, whereas only two to four hours are required for the alternate testing proposed.

Paragraph III.D.2.(b)(iii) of Appendix J to 10 CFR part 50 states that containment air locks that have been opened during periods when containment integrity is required by the technical specifications shall be tested within three days. This paragraph also provides that for doors with testable seals, seal testing fulfills this requirement, and further provides for reduced pressure testing of the seals. There is no reason to expect an air lock to leak excessively merely because a door was opened during cold shutdown or refueling vice during other operating conditions provided (1) there has been no maintenance, modification, or other activity that could affect the leak-tightness or sealing capability of the air lock, (2) the air lock doors are closed in accordance with applicable procedures, and (3) the periodic test at Pa required by Paragraph III.D.2.(b)(i) of Appendix J to 10 CFR part 50 has been performed within schedule.

The alternate testing proposed will prove air lock integrity following cold shutdown or refueling in the same manner that the air lock is proven during periods when containment integrity is required. Thus, the door seal leak test at reduced pressure (not less than 10 psig) is sufficient to demonstrate continuing integrity of the air locks.

Accordingly, we conclude that Consumers Power Company's proposed approach of substituting reduced-pressure seal leakage testing (at not less than 10 psig) per Paragraph III.D.2.(b)(iii) for the full-pressure testing per Paragraph III.D.2.(b)(ii) of Appendix J is acceptable provided (1) there has been no maintenance, modification, or other activity that could affect the leak tightness or sealing capability of the air lock, (2) the air lock doors are closed in accordance with applicable procedures, and (3) the periodic test at Pa required by Paragraph III.D.2.(b)(i) of Appendix J to 10 CFR part 50 has been performed within schedule. Whenever conditions (1), (2), or (3) are not met, the requirements of Paragraph III.D.2.(b)(ii) of Appendix J must be met.

The proposed alternative testing of the air locks is sufficient to achieve the underlying purpose of the prescribed Appendix J testing; viz, to verify air lock integrity after closure to assure that containment leakage is within specified technical specifications limits.

The Commission has granted previously this same exemption to other plants, and intends to revise appendix J to obviate the need for similar exemptions in the future. Consequently, the special circumstances described by 10 CFR 50.12 of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the regulation since the proposed alternative testing accomplishes the intent of the regulation.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a) this exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission determines further that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants the exemption to Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50 as discussed in section III except that air locks opened during periods when containment integrity is not required by the Technical Specifications shall be tested at the end of such periods at not less than Pa when maintenance, modification, or other activities that could affect air lock leak-tightness or sealing capability have been performed.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this Exemption will have no significant impacts on the environment (54 FR 50461 December 6, 1989).

For further details with respect to this action, see the request for exemption dated August 25, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

John Zwolinski,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-29258 Filed 12-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-362]

Southern California Edison Co., et al.; Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 69 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licenses), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 3, located in San Diego County California.

The amendment was effective as of the date of issuance. This amendment revises Technical Specification 3/4.7.6 "Snubbers," to permit at one-time extension of the inspection period from 12 months (± 25%) to 20 months (± 25%) for certain inaccessible snubbers in the containment. This amendment is in response to an application for amendment designated as PCN 294.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations, the Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 7, 1989 (54 FR 37171). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have significant adverse effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated July 26, 1989 (2) Amendment No. 69 to License No. NPF-15, (3) the Commisson's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's public Document Rooom, 1220 L Street NW., Washington. DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 4th day of December, 1989.

For the Nuclear Regulatory Commission

George W. Knighton,

Dirctor, Project Directorate V Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.

[FR Doc. 89-29259 Filed 12-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed of Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (the licensee), for operation of the Zion Station, Units 1 and 2 located in lake County, Illinois.

The proposed amendment would impose restrictions on containment purge and vent operations. When operating above Cold Shutdown conditions, the containment purge supply and exhaust isolation valves shall only be opened for safety related reasons. The valves will be limited to a maximum of 50 degrees opening.

Before 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 of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee originally proposed the amendment by letter dated February 21, 1986. It was noticed in **Federal Register** (51 FR 24251) on July 2, 1986. However, the licensee revised the original submittal on September 25 and 29, 1989, and November 21, 1989. The November 21, 1989 submittal supersedes all previous submittals, and it incorporates all of the staff's comments regading this issue.

The licensee provided the following discussion regarding the three criteria for no significant hazards consideration determination:

Discussion—Item #1

The imposition of these restrictions results in more conservative operation than was previsously allowed by the Zion Technical Specifications. The 50 degree maximum opening limit provided by a permanent mechanical stop results in more reliable containment isolation than a full open valve. Thus, the excessive release of radioactive material following a postulated LOCA is less likely with the valve opening limited to 50 degrees.

The additional restriction of only purging or venting the containment for safety related reasons will ensure that unnecessary operation of the system will not be performed. Thus, the potential consequences of any previsously evaluated accidents have been reduced. In addition, the imposition of these tighter controls over the purge and vent operations does not affect the probability of any previously evaluated accident.

Discussion—Item #2

As discussed above, the proposed amendment will impose tighter restrictions on purge and vent operations than the existing Technical Specifications. There have been no design changes as a result of this change. Thus, the imposition of limits on purge valve position and closure time as previously addressed in Specification 4.9.3.A.2.d per Amendments 105/95, will result in more conservative operation and will not create the possibility of a new or different kind of accident.

Discussion—Item #3

The imposition of the more conservative limits on purge valve position and reduced closure time of 7.0 seconds as addressed in Item #2 will increase the margin of safety. Also,

these new restrictions on valve opening, closure time, and only purging and venting for safety related reasons will reduce the likelihood of an excessive release of radioactive materials following a postulated LOCA. Thus, the margin of safety will be increased.

Note that the proposed amendment meets and exceeds the example (ii) of the Commissions guidance provided in 48 FR 14870:

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement.

Therefore, since the application for amendment satisfies the criteria in 10 CFR 50.92 and is similar to examples for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Therefore, based on the above considerations, the Commission has made a proposed determiantion that the amendment request involves no significant hazards consideration.

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 the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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 considerations. 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 a 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 considerations. 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, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John W. Craig: 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 Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.174(d).

For further details with respect to this action, see the application for amendment dated November 21, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of December 1989.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III–2, Division of Reactor Projects II, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–29357 Filed 12–14–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27524; SR–NSCC–89–18]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing of Proposed Rule Change Amending NSCC's Fee Structure

December 8, 1989

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 November 30, 1989, the National Securities Clearing Corporation, ("NSCC") 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 NSCC. 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 text of the proposed rule change is attached as Exhibit A.

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. Background

For over a year, NSCC conducted a comprehensive review of its services, present and projected revenue sources, as well as anticipated expenses in providing its services over the next three years. Based on that review, NSCC recognized that its revenue sources were dwindling due to a decrease in Members' use of services involving the processing of physical certificates and other services involving manual labor (e.g. Envelope Settlement, Direct Clearing, and Keypunch services). NSCC revenue sources have been further reduced by the industry's use of Locked-in Trades, which have resulted in a correlative reduction in the need for NSCC's more expensive comparison and correction functions. The review also included a comparison of current services and revenues against those in 1982, when NSCC last effected an overall pricing revision.

The comparison revealed that:

1. There has been a decrease of approximately 50 percent in physical activity services since 1982, with a corresponding 300 percent increase in the volume of shares processed.

2. In 1982, the ratio of revenue derived from physical activity to Comparison, Recording and Clearance was 22 to 78. In 1988, it was 10 to 90.

3. In 1982, 98 percent of NSCC's revenue was earned from traditional business (those products and services in place when NSCC became a Registered Clearing Agency). In 1988, 27 percent of revenue was derived from new sources, developed in response to the needs of the Members with corresponding increased expense for research, development and start-up.

II. Methodology

The methodology used in NSCC's review included allocating to each product pool its own primary and secondary costs. The product pools are: Equity Processing, Corporate Bond Processing, Municipal Bond Processing, Mutual Funds, ACATS, Envelopes, Direct Clearing and Other and DTC Pass Through. Primary costs are comprised of direct manpower and computer costs (which include office space and supervision). Secondary costs include such items as branch office costs, master file maintenance, keypunch, and overhead.

III. Projections

The study concluded that the decreasing use of traditional services by the industry will continue to erode the revenue base supporting the costs of providing services. New product development will also play a part in increasing NSCC's expenses, as the industry introduces new investment vehicles and requires NSCC's support. Finally, NSCC's investment in systems to support the industry's predicted "billion share day", the regulators' request to shorten settlement periods, and the relocation by SIAC to Metrotech, all make NSCC projected revenue based on current fees too little to support its operational requirements for the next three year period.

IV. Fee Structure Revision Objectives

When it was finally concluded that a general fee increase was required, the following objectives were used as guidelines in determining the new fees:

1. Maintain an adequate revenue base in order to liquidate current production costs, provide for a continuance of product enhancements and development, provide for a discount when volume levels equal or exceed projections and provide for retained earnings as directed by the NSCC Board.

2. Establish prices which, when aggregated at the "product pool" level, fully cover that product pool's production costs and contribute toward revenue margins which provide adequate funding of development, discounts, and retained earnings.

3. Establish prices which equitably distribute the costs of operations to the various Member constituencies when the underlying products are fully operational.

4. Introduce new products and enhancements at a price which will encourage participation by amortizing start-up costs either over a period of time or at a volume level which will not unduly burden initial participation.

5. Encourage systems compliance and efficient operations by awarding early, correct and automated submissions with relatively lower fees and by discouraging late, erroneous and manual submissions with relatively higher fees.

6. Recognize the administrative costs associated with providing services to low volume Members so that they pay a fair share of costs by the institution of or increase in "minimum" and/or "membership" type fees.

7. Continue "Geographic Price Mutualization" so as not to differentiate prices among services offered to "in town" and "out of town" Members.

V. Highlights of the Proposed Changes

The important features of the proposed fees are noted below: In an effort to move closer to a side charge and adjust to higher average share volumes, the concept of minimum and maximum (share quantity) transaction charges for equity trade comparison, T-contracts and trade recording have been retained but the fees and the share quantity have been adjusted. The $.033 fee per side per 100 shares for regular trade comparison will be reduced to $.025 which will result in a substantial savings to most firms. The minimum fees for trade comparison will change from $.066 to $.10 for a minimum of 400 shares (previously 200). The maximum fee will change from $1.65 to $1.875 for a maximum of 7500 shares (previously 5,000).

The fee for trade recording will remain at $.02 per 100 shares per side. The minimum fee for trade recording will change from $.04 to $.08. The maximum fee will change from $1.00 to $1.50. These adjustments (especially in minimum charges) were required to bring the fees more in line with costs.

Two additional clearance fees are being instituted:

(1) A fee for failing to deliver to CNS on settlement date (short positions in CNS); and,

(2) A trade clearance netting fee which will be applied to all trades.

In addition, new and revised fees will be established for those Members who use the services of NSCC's Broker Cashiering (Direct Clearing Operations). For example, NSCC has been performing the processing of daily settlement activity for Direct Clearing Members and not charging for such service. Fees for requesting NSCC to physically prepare and deliver envelopes have been increased to reflect the additional cost of physical labor. In certain instances, fees have been equalized in recognition of the same underlying costs despite a difference in the service performed, e.g., all fees for depository handling have been made equal regardless of the method of withdrawal. Trade correction fees will be increased to encourage timely and accurate submission.

Since its inception, NSCC has maintained a discount policy that returns excess revenues directly to Members. This has resulted in over $12 million being returned to Members over the past two years. Continuing that policy, the ACAT service will now be eligible for a discount; however, delivery services fees, trade correction fees, and certain other labor intensive or corrective services will no longer be discounted. In addition, all labor intensive services such as broker cashiering, which were previously half discounted, will no longer be discounted. NSCC believes that the volume discounts on these services are inappropriate because costs are not based on volume but on fixed costs for providing the basic services.

VI. Summary

It is NSCC's objective that the proposed Fee Schedule be applicable for at least the next three years without the necessity for or the disruption caused by annual price revisions except as explained in Section 5 below. Accordingly, the revised fee schedule has been developed to assist the Members in generally planning their minimum clearing costs on a long term basis, with the knowledge and expectation that discounts, if any, should be greatest in the first year. Chart I illustrates NSCC's projected revenues, expenses and discounts over the next three years.

CHART I—NATIONAL SECURITIES CLEARING CORPORATION PROPOSED PRICING PLAN COST AND REVENUE PROJECTED CHANGES

[Millions]

	1990 (proposed)	1991 (proposed)	1992 (proposed)
Revenue before Discount [1]	$91.3	$91.4 [2]	$91.5 [2]
Revenue erosion: [3]			
—Comparison to recording	(.5)	(.7)	(1.0)
—Correction		(.3)	(.5)
—Direct clearing	(.2)	(.3)	(.3)
—Sub revenue erosion	(.7)	(1.3)	(1.8)
—New revenue—gross	90.6	90.1	89.7
Expenses:			
Base budget	76.8	76.8	76.8
Inflation [3]	3.1	6.3	9.6
Metrotech	1.5	.4	2.6
Billion share day	.5	1.3	1.5
Total expenses	81.9	84.8	90.5
Discount (surcharge)	8.7	5.3	(.8)

CHART I—NATIONAL SECURITIES CLEARING CORPORATION PROPOSED PRICING PLAN COST AND REVENUE PROJECTED CHANGES—Continued

[Millions]

	1990 (proposed)	1991 (proposed)	1992 (proposed)
Percent discount	16	10	(2)

[1] Revenue based on 1988 volume.
[2] Increase in Revenue before Discount is attributed to phase in of Sponsored Account Fees.
[3] Revenue Erosion and Inflation numbers are cumulative.

(b) The proposed rule change equitably allocates reasonable fees among NSCC Members and other persons using its services and, therefore, is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder applicable to NSCC.

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

Comments on the proposed rule change were solicited from Members by an Important Notice dated September 6, 1989, which is contained in the filing on file with, and available from, the Commission. In addition, NSCC contacted by letter, telephone or in meeting, over 180 firms which NSCC determined would be most impacted by the fee changes and which firms' billings comprise 80 percent of NSCC's revenue base. In response to the Important Notice and these other contacts, NSCC received written responses from only ten firms. Of these, one was in support of the proposed changes. The comment letters are contained in the filing on file with, and available from, the Commission. After carefully analyzing the issues raised by the letters as well as verbal comments, and reviewing projected revenues based on such fees, NSCC determined that certain of the proposed fees could be revised without materially impairing NSCC's ability to cover its costs, but that the remaining fees had to be retained because they were economically necessary. Discussed below is a synopsis of the comments received and NSCC's action in response thereto.

A. 1. *CNS Short Fee:* Several objections were raised to the proposed fee for failing to deliver to CNS on Settlement date. NSCC incurs expenses in maintaining fails in the CNS system. Historically, NSCC has not segregated such expenses from CNS fees in general. This cost was picked up by the entire membership, including those who timely deliver securities. Given current market conditions, NSCC believes that it is appropriate to charge those Members who fail to deliver and cause NSCC to incur such expense of maintaining fails.

2. *Netting Fee:* Five firms objected in writing to the proposed $.04 netting fee. Netting is an integral part of the clearance and settlement systems. Currently, Members only pay for movements in CNS *after* netting and for the issuance of balance orders after netting. Therefore, if a Member nets out to a flat position, it receives the benefit of netting, but does not pay any share of the costs incurred.

The original proposed fees of $.50 for CNS shorts and $.04 for netting were expected to return to NSCC sufficient revenues to support NSCC's costs. These fees contemplated certain levels of discounts at certain volume levels. To meet Members' concerns, NSCC has determined to reduce the CNS short fee to $.35 and the netting fee to $.03. These fees, when aggregated with other fees at the currently projected volume levels will merely result in an overall decrease of the projected discount without impairing NSCC's ability to cover its costs. Should the projected volume levels vary adversely from current projections, NSCC contemplates that an increase in either or both fees may become necessary prior to 1992. If volume levels are greater than expectations, a change in the fees would not be expected, but would be reflected in the application of the discount.

B. *Trade Recording:* Two firms commented negatively on the increase to the minimum trade recording fee. NSCC's costs are based on the sides submitted, and not on the number of shares in each submission. In recognition of this fact, NSCC has not increased the per 100 share fee, but rather, has increased the minimum and maximum fees. This results in reducing the difference in charges between Members submitting small trades versus those submitting large trades, thus more closely approximating a "per side" fee. NSCC has determined that the proposed fee will allow NSCC to recover its true costs. NSCC believes that the corresponding reduction in trade comparison fees will result in a minimal impact on Members from this proposed fee. Accordingly, no changes to the proposed fee are being made.

C. *Print Discount:* One comment was received regarding the elimination of the print discount. Originally the discount was in the form of a credit of $.50 for each 1,000 lines not printed on paper report output. This discount was intended to encourage Members to develop the capabilities to receive NSCC reports in automated format. Since most Members have automated capabilities, the application of an incentive discount to this service is no longer necessary and accordingly, the proposal remains unchanged.

D. *DTC Sponsorship Fee:* Several sponsored accounts verbally expressed concern over the proposed DTC sponsored account fee. This fee was intended to be a pass-through of the DTC monthly membership fees which NSCC has picked up and has been absorbed by the membership at large. The net affect of this policy was that direct DTC Members were paying the DTC costs being incurred by sponsored Members. In keeping with its policy of allocating costs to those who incur them, NSCC determined that sponsored firms must bear this cost directly. Upon re-examination, NSCC recognized that the proposed change from the current practice of a "movement" fee structure to a pass-through fee structure could cause an undue burden on certain Members. NSCC determined, therefore, to phase in the fee by retaining the "movement" structure but raising the per side fee from $.75 to $1.00 and imposing a minimum charge of $200.00 per month and a maximum charge of $460.00 per month. These fees are based on DTC's current monthly charge of $460.00. If DTC's fees are changed during the phase-in period, NSCC will make proportional changes to these minimum and maximum fees. In January 1991, NSCC will increase the minimum

charge to 70 percent of DTC's then monthly fee, and in January 1992, the movement fee will be eliminated and DTC's monthly charge will be directly passed through at that time.

E. *Broker Cashiering Services:* Some broker cashiering firms questioned the increased broker cashiering charges for processing ESS receives and non-CNS Buy-Ins and the new charges for processing FOSS and DSS receives. Broker Cashiering services require NSCC, as agent for the Member, to receive and process envelopes containing securities, money only charges, dividend claims and buy-in notices. The fees which NSCC has proposed reflect NSCC's cost of processing such envelopes and notices.

1. *DSS:* Currently NSCC examines valued and non-valued DSS envelopes. To keep Members' costs down in respect of DSS envelopes, NSCC has determined to revise the procedure for these items. Rather than examining all DSS envelopes, NSCC will only examine envelopes containing the actual dividend charge (the valued envelope) and pass the non-valued envelope directly to the Member without examination. Accordingly, since physical activity will no longer be incurred for non-valued envelopes, NSCC has modified the proposed fee of $3.50 per envelope to $3.50 per valued envelope.

2. *Non-CNS Buy-ins:* Similar to other broker cashiering services, the processing of buy-ins involves manual labor, the cost of which has increased since NSCC instituted the current $5.00 fee. However, in revaluating the proposed increase to $12.00, NSCC recognized that out-of-town Members, who would bear the burden of such increase, should not be penalized for their geographic locations and, therefore, NSCC has determined to reduce the proposed charge from $12.00 to $10.00 with the net effect that the membership at large will continue to bear part of the burden of the remaining expenses.

F. *Trade Correction:* Due to verbal comments received from Members, NSCC has re-evaluated the proposed Trade Correction fee structure. NSCC had proposed an increase in the cost of timely input of "demand as of" and "demand withholds" from $.50 to $1.00 while only increasing the cost of late responses to $.60. The net effect of such proposal would have been to discourage timely input. Consequently, fees for late responses to "demand as of's" and "demand withhold's" have been raised to $1.00.

G. *Discount Policy:* The proposed fee structure was developed using 1988 volume figures. Based on the projected discount, some of the Members questioned the proposed fee increase generally. These Members believe that 1988 volume is not indicative of 1990–1992 volume projections and that if the proposed fees were applied to 1989 volume levels, the discount would be even greater. NSCC applied the revised fee structure to volume figures for the first nine months of 1989. Such application did not result in a statistically significant increase in the projected discount. It is uncertain whether volume levels in 1990 and thereafter will equal those of the first nine months of 1989. Since NSCC would prefer not to surcharge Members if fees are inadequate, NSCC has determined that fee decreases other than those indicated above are inappropriate. Because NSCC has decreased certain of the fees against which the discount is applied, it is expected that the overall discount rate will be reduced from the originally projected 20% to 16% for 1990 and 13% to 10% in 1991. Unless projected volume increases or NSCC raises certain fees, no discount is projected for 1992.

H. *Favorable Comments:* NSCC did receive many favorable verbal comments regarding the fee structure. Firms do realize that by automating their operations they could realize (or are realizing) overall savings. Members also recognize that NSCC is entitled to establish a fee structure which will enable it to recover its costs and plan for future enhancements and development. NSCC has had an exemplary record in reducing the per transaction cost, which is still less than before NSCC was organized in 1976. NSCC has not instituted a major revision to its fee structure in over seven years, and barring unforeseen circumstances and except as detailed above, does not expect to revise the general fee structure for the 1990–1992 period.

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 N.W., Washington, D.C. 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 N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to File No. SR-NSCC-89-18 and should be submitted by January 5, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

EXHIBIT A

Amend NSCC's Rules and Procedures as follows:

Italics Indicate additions

[Brackets] Indicate deletions

ADDENDUM A

NATIONAL SECURITIES CLEARING CORPORATION

Fee Structure

I. *Trade Comparison and Recording Service Fees*—represents the fees to enter and correct original trade data

A. Trade Comparison:

1. Each side of each stock, warrant or right trade submitted—$[.033]*.025* per 100 shares, with a minimum fee of $[.066]. *.10* and a maximum fee of $[1.65]*1.875* being applicable.

2. Each side of each bond trade submitted[, except municipal bond trades—$.30]—*$.50* per side.

[3. Each side of each municipal bond trade submitted—$.50 per side.]

[4]*3.* Each side of a compared trade in Foreign Securities—$2.00, in addition to the fees provided for in I.A.1. above.

b. Trade Correction Fees: (*FN* 1)

[1. Stamped advisory submitted on:

a. The first day the advisory appears on the contract sheet—$.20 per stamped advisory.

b. The second day the advisory appears on the contract sheet—$.35 per stamped advisory.

2. Trades deleted—$.20 both sides.

3. Add by Seller—$.20 both sides.

4. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:

a. The first day the QT/DK input can be entered into the system—$.35 per QT/DK.

b. The second day or thereafter the QT/DK input can be entered in the system—$.50 per QT/DK.

5. All other input (CHC, As Of, Demand As Of, Withhold, Demand Withhold):

a. The first day all other input can be entered into the system—$.20 per side

b. The second day all other input can be entered into the system—$.35 per side

c. The third day or thereafter all other input can be entered into the system—$.50 per side

6. Demand As Of Advisories:

a. DK'd (Don't Know) or Rejected:

(1) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(2) Response on the day after the Demand Advisory appears on the contract sheets (Day 2)—$.35 to the responder.

(3) Response on the second day after the Demand Advisory appears on the contract sheets (Day 3)—$.75 to the responder.

b. Accepted (Stamped):

(1) Response on Day 1—$.20 to the responder

(2) Response on Day 2—$.35 to the responder

(3) Response on Day 3—$.75 to the responder

c. Automatic Acceptance (No response by Day 3)—$4.00 to the participant that failed to respond.

7. Demand Withhold Advisories

a. DK'd (Don't Know)

(1) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(2) Response on the day after the Demand Advisory appears on the contract sheets (Day 2)—$.35 to the responder.

b. Accepted (Stamped):

(1) Response on Day 1—$.20 to the responder

(2) Response on Day 2—$.35 to the responder

c. Automatic Acceptance (No Response by Day 2)—$4.00 to the participant that failed to respond.]

1. OTC Equity System Correction Fees:

a. All supplemental input after the night of Trade Date (Advisory, As Of, Demand As Of, Withhold, Demand Withhold) except for Demand As Of Advisories and Demand Withhold Advisories:

(1) T+1—$.40 to the submitter
(2) T+2—$.60 to the submitter
(3) after T+2—$1.00 to the submitter

b. Demand Withhold Advisories:

(1) DK'd (Don't Know):

(a) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(b) Response on the day after the Demand Advisory first appears on the contract sheets (Day 2)—$1.00 to the responder.

(2) Accepted (Stamped): Response on Day 1 or Day 2—$1.00 to the responder.

(3) Automatic Acceptance (No Response on Day 1 or Day 2)—$5.00 to the participant that failed to respond.

2. Listed Equity System Correction Fees:

Suggested Name Deletes submitted to NSCC directly by participants on T+1—$.40 to both sides.

3. Bond System Correction Fees:

a. All supplemental input after T+1 (Advisory, As Of, Demand As Of, Withhold) except for Demand As Of Advisories; Trades Deleted, Add by Seller, OT and DK input.

(1) T+2—$.40 to the submitter
(2) T+3—$.60 to the submitter
(3) after T+3—$1.00 to the submitter

b. Trades Deleted:

(1) T+2—$.40 to both sides
(2) T+3—$.60 to both sides
(1) after T+3—$1.00 to both sides

c. Add by Seller—$.40 to both sides

d. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:

(1) T+3—$.60 per OT/DK
(2) after T+3—$1.00 per QT/DK

4. OTC Equity and Bond System Correction Fees:

Demand As Of Advisories:

(1) DK'd (Don't Know) or Rejected:

(a) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(b) Response on the second or third day after the Demand Advisory first appears on the contract sheets (Day 2 or Day 3)—$1.00 to the responder.

(2) Accepted (Stamped): Response on Day 1, Day 2 or Day 3—$1.00 to the responder.

(3) Automatic Acceptance (No Response on Day 1, Day 2 or Day 3)—$5.00 to the participant that failed to respond.

C. Trade recording fees will be charged as follows on those items originally compared by other parties, but cleared through NSCC: *(FN2)*

1. Each side of each stock, warrant or right item entered for settlement, but not compared by NSCC—$.02 per 100 shares, with a minimum fee of $[.04]*.08* and a maximum fee of $[1.00]*1.50* being applicable.

2. Each side of each bond item entered for settlement, but not compared by NSCC—$[.18]*.30* per side.

D. Recaps:

1. Submission for Pricing—$[.25]*.50* per submission.

2. Sides submitted for re-comparison—$[.50]*.75* per side.

II. *Trade Clearance Fees*—represents fees for netting, issuance of instructions to receive or deliver, effecting book-entry deliveries, and related activity

A. Receipts from CNS to satisfy a long valued position[(2)]*(FN 3)*—$[.45]*.50* per issue received.

B. Deliveries to CNS in the night processing cycle to cover a short valued position—$[.45]*.50* per delivery.

C. Deliveries to CNS in the day processing cycle to cover a short valued position—$[1.20]*1.25* per delivery.

D. Fails to Deliver to CNS (Short-In CNS)—$.35 per item.

E. Trade Clearance (netting)—$.03 per side.

[D]*F. Designated valued deliveries[(3)](FN 4)* (transaction processing) entered into the clearance system through special representative procedures—$.15 per side[, except for Flip Trades for which the charge is $.05 per side].

G. Flip Trades—$.05 per side.

[E]*H.* Security orders generated[(4)]*(FN 5)*—$.25 per item.

[F]*I. CNS* Buy-In[s submitted] *(long Broker and short Broker)*—$5.00 per item.

[G]*J.* Clearing Interface Exemption or Inclusion Instruction to NSCC—$.75 per item.

[H]*K.* Reorganizations.

1. Mandatory Reorganizations—Mergers, Redemptions and Liquidations.	$2.50 each.
2. Voluntary Reorganizations—	
a. Long Broker (per input)	
Automated Input	15.00 each.
Manual Input	20.00 each.
b. Short Broker (per reorganization).	15.00 each.

III. *Delivery Service Fees*

A. Envelope Settlement Service:	
1. Intra-city deliveries (EES)[(5)]*(FN 6)*	
Night zone, up to 9:15 a.m.	$[.75]*1.00* per envelope.
Early a.m. zone, 9:16 a.m. to 11:00 a.m.	$[1.25]*1.50* per envelope.
Late a.m. zone, 11:01 a.m. to 11:30 a.m.	$[2.00]*2.50* per envelope.
Reclamations, 11:31 a.m. to 2:00 p.m.	$[.75]*1.00* per envelope.
2. ESS Receives	*$1.00 per envelope.*
[2]*3.* Inter-City Deliveries *or Receives* (IESS).	$[2.75]*2.50* per envelope.
[3.] [Receives]	[$.75 per envelope].
B. Funds Only Settlement Service: [(5)]*(FN 6)*	
1. Deliveries *or*	$1.00 per envelope.
[2.] Reclamation (except for reclamations of original deliveries made in the reclaim zone, for which there is no charge to the reclaiming participant).	[$.50 per envelope].
[3]*2.* Receives	$[.50]*1.00* per envelope.
C. National Transfer Service (NTS)	$[1.25]*2.50* per envelope.
D. Dividend Settlement Service (DSS)	$[.25].*30* per envelope.
E. New York State Transfer Taxes	$[.20]*1.00* per item.

IV. *Other Service Fees*

A. Correspondent Delievery and Collection Service (CDCS):	
1. Deliveries [(6)] *(FN 7)* other than international deliveries through International Securities Clearing Corporation.	$18.00 per envelope plus pass-through cost to reach locations outside of immediate local delivery areas.
2. International receives through International Securities Clearing Corporation.	$.75 per envelope.
B. Receive—Physical: [(7)] *(FN 8).*	
1. Without collection (at other than primary receive location).	[.90] *7.00* per item.
2. Against payment	$[4.90]*7.00* per item.
3. Over the Window Receives.	*$10.00 per item.*
4. Other Envelopes	
a. FOSS Receives	*$7.00 per envelope.*
b. DSS Receives	*$3.50 per valued envelope.*
C. Underwriting Pick-Up	$22.50 per pick-up.
D. Customer Transfer in which the participant instructs NSCC to physically act on their behalf[:(8)].	*$2.70 per item plus pass-through of any direct charges.*
[1. Regular]	[$2.70 per item].
[2. Legal]	[$5.40 per item].
[3. Rush]	[$5.40 per item plus pass-through of any direct charges].
E. Remote Trade Comparison Handling in which the participant instructs NSCC to perform the local P&S function on behalf of the participant (*FN* 9).	$.50 per reported side.
F. Preparation of T+1 input	*$1.00 per trade.*
[F]*G.* Options Processing Fees in which the participant instructs NSCC to act on their behalf: (*FN* 10).	
1. Remote trade comparison handling (P+S).	$.60 per reported side.
2. Exercise processed for the participant.	$6.75 per item.
3. Exercise by exception processed for the participant.	$2.25 per item.
4. Assignment processed for the participant.	$2.25 per item.
[G]*H.* Depository Handling Fees in which the NSCC participant instructs NSCC to act on their behalf:.	
1. Each physical item withdrawn from a participant's account in a depository by NSCC at the participant's request[:].	*$3.00 per item.*
[a.] [Withdrawn by order-out for pick-up at primary receive location].	[$.90 per item].
[b.] [Withdrawn by order-out for pick-up at other branch location].	[$1.80 per item].
[c.] [Withdrawn by order-out for delivery through a delivery service].	$4.50 per item plus cost of delivery service (ESS, IESS, or CDCS)].
[d.] [Withdrawn by transfer for pick-up at primary receive location].	[$.65 per item].
[e.] [Withdrawn by transfer (abbreviated service, i.e., not including verification of registration and resubmission of erroneous items].	[$.45 per item].
[f.] [Withdrawn by transfer for pick-up at other than primary location].	[$1.55 per item].
2. Each physical item deposited to NSCC to a participant's account in a depository.	[$.45 per item plus any depository fees charged to NSCC.
3. Deposit Rejects by a Depository.	*$3.00 per item.*
[3.] [Each manual instruction submitted to a depository by NSCC for a participant:].	
[a.] [Pledge, release]	[$.90 per item].
[b.] [Book-entry movement, etc.].	[$.45 per item].
[H]*I.* Preparation Fees:.	
1. Preparing DTC forms [for deposits, CODs, DOs].	$1/80 per item.
2. Preparing securities *and other envelopes* for delivery [through a delivery service (ESS, IESS, CDCS)].	$3.60 per item plus cost of delivery service [(ESS, IESS or CDCS) (11)].
3. Preparing securities for physical transfer, physical collateral loan or drafting.	$3.60 per item.
4. Preparing DSS envelopes.	*$3.60 per item.*
[I]*J.* Reorganizations	$10.00 per item.
K. Non-CNS Buy-ins	*$10.00 per item.*
L. Check and Draft processing.	*$165.00 per month.*
M. Reconciliation and Proof of Settlement.	*$100 per month.*
N. Processing Daily Settlement activity entered on Settlement Statement.	*$1.00 per item (minimum $25.00; maximum $250.00 per month).*
[]*O* Special EDP Tape [and Card] Output.	$45.00 per report as requested by participant.
[K]*P.* Automated Customer Account Transfer Service.	
1. Transfer Initiation Form	$[1.00] *1.50* per submission.
2. Recording.	
a. Asset Delivers	$.12 per asset which is reported by the delivering firm.

b. Asset Receives	$.12 per asset which is received by the receiving firm.
3. Corrections—Asset additions, deletions, or changes.	$.12 per asset.
4. Non-CNS–Receive/Deliver Orders.	$.25 per order issued.
5. Adjustment of customer account number.	$.12 per adjustment.
[L]*O.* Mutual Fund Settlement, Entry and Registration Verification Service.	$.50 per side per settled transaction.
[M]*R.* NETWORKING.	
1. Membership Fee: for each participating Settling Member and Fund Member regardless of activity level.	$250.00 per month.
2. Monthly Account Base Fee:.	
a. for accounts with Funds paying dividends monthly.	$.06 per side per NETWORKING subaccount.
b. for accounts with Funds paying dividends less frequently than monthly.	$.04 per side per NETWORKING subaccount.
3. Position File Fee:.	
a. for two position files requested by broker/dealer per CUSIP per month.	No charge.
b. for more than two position files requested by broker/dealer per CUSIP per month.	$100.00 per CUSIP per each request payable only by broker/dealer.
[N]*S.* PC Data Entry. Either.	
(a)(i) The first application and,.	$50.00 per month.
(a)(ii) each subsequent application, or.	$30.00 per month.
(b) RECAPS application only.	$200.00 per year.

V. *Pass-Through and Other Fees*

A. Participant Fees—represents the monthly fee for each number assigned to a Member, Municipal Comparison Only Member or Fund Member for participation by each Member, Mubicipal Comparison Only Member or Fund Member under such number in one or more of the specified services provided by NSCC. The eight services and their related base fees are:

1. Trade Processing System	
a. For Members or Municipal Comparison Only Members with 10 or less assigned numbers.	$1.00 per side for the first [100]*150* sides compared per month under each assigned number with a minimum monthly fee of $50.00 [(12)] *(FN11).*
b. For Members or Municipal Comparison Only Members with 11 or more assigned numbers [(13)] *(FN 12).*	$100.00 per month for each of the first 10 assigned numbers and $25.00 per month for each number assigned thereafter.
2. Envelope Settlement System (ESS, IESS and FOSS).	$50.00 per month.
3. Correspondent Delivery and Collection Service (CDCS).	$50.00 per month.
4. National Transfer Service (NTS).	$50.00 per month.
5. Dividend Settlement Service (DSS).	$50.00 per month.
6. Fund/Serv Service	$50.000 per month.
7. Qualified Special Representative.	$250.00 per month.
8. Trade input, either (a) as a Service Bureau or (b) by an affiliated Service Bureau.	$250.00 per month.
The maximum cumulative charge per number for items 1 through 8:	
a. For Members or Municipal Comparison Only Members with ten or less assigned numbers. or	$[150]*200.00* per month.
b. For Members or Municipal Comparison Only Members with eleven or more assigned numbers [(14)] *(FN 13).*	$150.00 per month for each of the first ten assigned numbers and $75.00 per month for each number assigned thereafter.
The minimum Participant Fee per number:	$50.00 per month, (except for numbers in excess of ten assigned to Members of Municipal Comparison Only Members, where the minimum monthly Participant Fee is $25.00 per month).
B. Special Service Fees:	
1. Commission Billing:	
a. Debit	$[.25].*50* per item.
b. Credit	$[.25].*50* per item.
2. Options cage processing (daily settlement).	$300.00 per month.
3. DTC Sponsored Accounts—available to each NSCC/CNS particiapnt who is not also a particiapnt of DTC:	
[For each item delivered or received through DTC].	$[.75]*1.00* per item *with a minimum of $200.00 per month and a maximum of $460.00 per month* plus the pass-through of all normal DTC billings assessed the sponsored account, with the exception of the monthly DTC participant fee.
[*Maximum charge* for delivered or received items].	[$350.00 per month].
4. For each broker/dealer on whose behalf participants have indicated they will act as provided in NSCC Rule 3, Section 3.	$5.00 per month.
5. Output Fees	
a. Machine Readable Output [Fees].	$10.00 per tape.

[(1) Tape Output]	[$100.00 per month per tape plus $20.00 per month for each additional firm on a tape after the first].
[(2) Card Output]	[$.03 per card with a maximum of $200.00 per month for each type of output selected by a participant].
b. [(3)] Service Bureau Tapes.	[Cost prorated] *$250. per tape.*
[b. Hard Copy Output Fees and Credit]	
[(1) Credit for suppression of hard copy output].	[$.50 per each. 1,000 lines suppressed].
[(2) Fee for additional hard copy output].	[$.50 per each 1,000 lines printed].
c. Additional hard copy output.	*$1.25 per each. 1,000 lines printed.*
d. Magnetic Tape not returned.	$20.00 per tape.
6. Microfiche Reports	$3.00 per fiche.
[7. On-line Input to Service Bureaus].	[$.05 per line key-punched].
[8]*7.* Special Research	$[11]*25.*00] per hour.
[9. Processing cash or stock dividend claims made against the Corporation's NCC & Co. nominee by NSCC participants and others].	[$10.00 per record date].
[10]*8.* [Depository Handling] Fees in which the participant requests NSCC to receive and submit transactions [to DTC on a Bag-In and Bag-Out basis] *by courier.*	$25.00 per month [for each type of DTC transaction handled].
[11]*9.* Stock Loan Rebate Payment and Collection Service.	$[.50] *2.50* per rebate per side.
C. Pass-Through Expenses:	
1. Transportation and Insurance:	
a. Physical handling and envelope delivery service outside of New York City.	*Cost* [Fees imposed (if any) by bank receiving agent on valued deliveries and cost of transporting securities].
b. Identifiable insurance costs, if any, incurred in shipping securities between NSCC branch offices.	Cost.
2. Communications	
a. Communications Access.	Cost.
b. Telephone *toll calls*	Cost.
3. Forms	Cost [+ Handling].
4. Certificate Fees incurred by NSCC to process transfers.	Costs.
5. Postage Costs [incurred by NSCC].	Cost.
6. Miscellaneous Expenses Any other expense not specified above, whether one-time or recurring, which the Corporation may incur on behalf of a Member at a Member's request.	Cost.
D. Production of Clearing Data: [(15)] *(FN 14)*	
To provide a bi-monthly ranking within a pre-selected group of municipal bonds (not to exceed fifty in number), based upon NSCC's comparison activity..	$1,025 per month for the first twelve (12) months; $500 per month thereafter.
E. (1) Each item submitted in paper form (except Envelope Settlement Service, Funds Only Settlement Service, Dividend Settlement Service, Correspondent Delivery and Collection Service, and Automated Customer Account Transfer Service *Transfer Initiation Form*).	[.25].*50* per item.
(2) [(a)] Each ACAT Transfer Initiation Form submitted in paper form.	$1.00 per item.
[(b) Each other ACAT item submitted in paper form].	[$.40 per time.]

(1) [Trade Correction Fees will be applied in addition to the fees charged in I.A. above.] *Trade Submission Fees (see I.A. above) will be charged in addition to the Trade Correction Fees detailed in I.B. Trade Correction Fees will not be applied on OCS, IDC and ACT input.*

(2) Trade Recording Fees will be charged for all OCS and IDC input except for sides originally submitted correctly to NSCC's

[(2)] *(3))* Multiple receipts made in a depository during a daily period due to partial delivery procedures as a result of timing differences will be considered as a single receipt and counted on a per-issue basis.

[(3)][*(4)*] A designated valued delivery is an instruction from a Special Representative to CNS to transfer a valued position from one NSCC participant to another participant or to a nonparticipant through a clearing interface.

[(4)] *(5)*] A security order, or non-CNS settling item, is an instruction to deliver or receive securities outside of the CNS system. These instructions will be generated when cleared securities are not eligible for CNS or when both parties to a transaction wish to settle in this manner. Security orders may be issued on an item-by-item basis or netted through "balance order" procedures.

[(5)] *(6)*] At present, New York City and Jersey City only.

[(6)] *(7)*] Includes all physical deliveries, redeliveries and reclamations made outside of the envelope settlement system.

[(7)] *(8)*] Under instructions, NSCC will receive [securities] envelopes from third parties, at NSCC offices.

[(8) For transfers handled outside of the depository system (see IV.H.(d), (e) and (f) for depository transfers).]

(9) NYSE odd/lots are excluded from this charge.

(10) See also V.B.2. Options Cage Processing Fee.

[(11) The stated prices for IV.C.3. and IV.H.c. include security preparation fees.]

[(12)] *(11)* The first [100] *150* sides per month is based on total sides compared by NSCC, sides compared by other parites and forwarded to NSCC for settlement, and sides entered by special representatives through transactions processing procedures (see II.[D]*F. above).* It includes both stock and bond transactions and is applicable to sides settled through CNS, security order or interface processing.

[(13)] *(12)* This fee shall apply only for those members that do not require NSCC to provide training to the organizations or entities on whose behalf the Member has requested the additional numbers. If NSCC provides such training, then the fee provided for in subsection V.A.1.a. shall be applied and not this fee.

[(14)] *(13)* As with subsection V.A.1. above, this maximum charge shall apply only for those Members or Municipal Comparison Only Members that do not require NSCC to provide training to the organizations or entities on whose behalf the Member or Municipal Comparison Only Member has requested the additional numbers. If NSCC provides such training, then the maximum charge shall be $[150]*200* per number.

[(15)]*14* In establishing fees for the production of clearing data, NSCC will include its costs of developing requested programs, running such programs and any additional costs to distribute such data as produced, including an appropriate allocation of NSCC's general and administrative expenses and an appropriate allocation of NSCC's development costs of the system or service from which the data is developed provided, however, that such latter allocation shall not exceed 25% of the above combined NSCC costs.

VI. *Collection Charge*

The Corporation may, but shall not be obligated, to include from time to time on Settling Members' preliminary and/or final settlement statements, charges which may be imposed on such Settling Members by self-regulatory organizations, as defined in the Securities Exchange Act of 1934, as amended, or other security industry organizations or entities, with which the Corporation may enter into agreements. Any amounts so collected shall, in accordance with agreements between the Corporation and the respective organization or entity, be remitted to the appropriate organization or entity imposing the charge.

VII. *Application of Fees*

With the exception of certain registered clearing agencies, all fees will be charged uniformly to all participants and collected through the settlement system if possible. Charges will not be made to registered clearing agencies for inter-clearing corporation OTC trade comparison if the agency provides its own intra-clearing corporation OTC trade comparison, or for interface processing. Fees for other standard services provided to registered clearing agencies will be the same as those charged to other participants. Special services performed for other registered clearing agencies such as intra-clearing corporation OTC trade comparison, sharing of branches, CDCS handling, etc., will be contracted on an individual basis.

VIII. *NSCC Pricing Policy*

[NSCC's policy is to retain only those revenues which are required to support its operations. Since October of 1978, the date that NSCC installed its original Consolidated Rate Structure, gross billable revenues before adjustment (i.e., revenues before discount) have exceeded costs. In order to match actual revenues received to the approximate level of costs, NSCC has adjusted downward (i.e., discounted) participants' invoices every month since October 1978. If NSCC's gross billable revenues before adjustment do not equal the approximate level of costs, gross billable revenues will be adjusted upward (i.e., surcharged). Both the discount and the surcharge will be reflected on participants' monthly invoices. It is NSCC's existing policy to continue matching revenues to costs in the above manner.]

[NSCC's policy is to retain only those revenues which are required to maintain an adequate revenue base in order to liquidate current production costs, provide for a continuance of product enhancements and development, provide for a discount when volume levels equal or exceed projections and provide for retained earnings as directed by the NSCC Board. In order to meet such objectives NSCC will:

If NSCC's gross billable revenues before adjustment (i.e., revenues before discount) exceed the approximate level of costs, adjust downward (i.e., discount) participants' invoices.

If NSCC's gross billable revenues before adjustment (i.e., revenues before surcharge) are less than the approximate level of costs, adjust upward (i.e., surcharge) participants' invoices.

Both the discount and the surcharge when applicable will be reflected directly on participants' invocies.

[FR Doc. 89-29197 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application to Terminate Unlisted Trading Privileges; The American Stock Exchange, Inc. (West Texas Utilities Company) File No. 0-340

December 11, 1989.

WEST TEXAS UTILITIES COMPANY ("the Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f) of the Securities Exchange of 1934 ("Act") and Rule 12(f)(3) promulgated thereunder to withdraw its 4.40% Cumulative Preferred Stock, $100 Par Value from unlisted trading privileges on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for terminating unlisted trading privileges include the following:

West Texas Utilities Company has determined to terminate unlisted trading privileges in the above stock on the Amex because of a very nominal and adequate amount of trading that does not justify the expense of maintaining such unlisted trading privileges. The Amex has posed no objection in this matter.

Any interested person may, on or before (insert 10 days from date of publication) submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29208 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27505; SR-GSCC-89-10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Amending Various Rules

December 5, 1989.

The Government Securities Clearing Corporation ("GSCC") has filed, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change (File No. SR-GSCC-89-10) making various adjustments to GSCC's rules, including rules concerning funds-only settlement, hearing procedures and restrictions on member access to services. The Commission published notice of the proposal in the Federal Register.[2] No

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] See Securities Exchange Act Release No. 27334 (October 3, 1989), 54 FR 42122.

comments were received regarding the proposal. On November 7 and 30, 1989, GSCC filed in letter form minor amendments to the proposal, with the November 30, 1989 letter superceding the November 7, 1989 letter. This order approves the proposed rule change.

I. Description of the Proposal

On July 7, 1989, the Commission approved four proposed rule changes which established a netting and settlement system, along with membership and access restrictions and a system of safeguards designed to limit financial exposure to GSCC and its members of the risks inherent in a netting system ("Netting Order").[3] The proposals completed GSCC's basic core of services to provide comparison, clearance and settlement services to members for government and agency securities transactions. The present proposal amends various GSCC rules to eliminate unnecessary or duplicative rules that exist as a result of the changes approved in the Netting Order. The proposal also contains other changes regarding service of notices and the timing of fund-only settlement obligation payments.

The proposal deletes Rule 46 from GSCC rules and makes conforming changes to other rules.[4] GSCC Rules 46 contains provisions that allow the Board of Directors to suspend a member or limit or prohibit a member access to GSCC services in the event of certain situations, such as a member financial difficulty. Identical provisions appear in GSCC Rule 18 (Ceasing to Act for a Member) and GSCC Rule 20 (Insolvency of a Member).

The proposal also amends GSCC Rule 45 to allow to send written notices to its members or applicants, or vice versa, by means of a facsimile machine. Previously, such notice could be served only in writing through the mails to the member's or applicant's office or to GSCC at its principal place of business. The proposal makes acceptable the service of notice by either method.

The proposals revises GSCC Rule 26, which governs bills rendered to members for charges for GSCC services and any fines imposed by GSCC. Under the proposal, GSCC will render its bills on the fifth business day (instead of the tenth business day) of the succeeding month. For comparison-only members, payment is due upon receipt of the bill, while netting members are obligated to pay the bill on the tenth business day of the succeeding month as a part of their funds-only payment obligations. The rule previously did not distinguish netting members from comparison-only members.

The proposal also revises GSCC Rule 13, section 5, which covers the payment of funds-only settlement accounts. Currently, the rule specifies that a member must pay its funds-only settlement obligation to GSCC by the later of 10:00 a.m. or two hours after the report listing the obligation is made available to the member. The proposal revises the rules by requiring a member to pay its funds-only settlement obligation to GSCC no later than the latest of 10:00 a.m.; one and a half hours after the opening of the cash Fedwire operated by the Federal Reserve Bank of New York; or two hours after the report listing the obligation is made available to the member. Similarly, the proposal revises the time GSCC must pay members who are due to receive funds-only settlement amounts; GSCC will pay participants no later than the latest of 11:00 a.m.; two and a half hours after the opening of the cash Fedwire; or three hours after the report listing such obligation is made available to the member.

Finally, the proposal changes GSCC Rule 3, which covers lists of eligible securities and members maintained by GSCC and which are available to members. The reference to "cleared securities" is deleted, as it is no longer a defined term in the rules, and is replaced with the defined terms "eligible security" and "eligible netting security." The proposal also clarifies that members are entitled to a copy of the lists of eligible securities and eligible netting securities. The proposal also lists three types of members, clearing-agent bank, comparison-only, and netting, and states that lists maintained of each of these are available to members. Other language referred to a list of brokers and dealers on whose behalf members will act in comparing trades has been deleted because it is unnecessary.

II. Rationale for the Proposal

GSCC states that the proposal will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible, and is, therefore, consistent with the requirements of the Act, and the rules and regulations thereunder applicable to self-regulatory organizations.

III. Discussion

The purpose of the proposed rule change, in part, is to revise certain GSCC rules to reflect the existence of the recently-implemented netting and settlement system. The proposal also makes other changes designed to make GSCC systems operate more efficiently. As discussed below, the Commission believes the proposal will promote the prompt and accurate clearance and settlement of securities transactions and is in compliance with the Act.

The Commission believes the adjustment to the funds-only settlement payment deadlines is an important and sensible change. Funds-only settlement payments are made to and from GSCC clearing banks by members over the cash Fedwire. Although the cash Fedwire normally opens at 8:30 a.m., substantial delays in its opening can occur. Such a delay may make it difficult, if not impossible, for members to make their payments by 10 a.m. and for GSCC to turnaround the funds and make payments to members by 11 a.m. The proposal eliminates the possibility of such a situation and gives members and GSCC sufficient time to make their payments. The proposal also, in the event that the cash Fedwire opens earlier than 8:30 a.m., will not require members to make payments earlier than 10 a.m., giving them sufficient time to make their payments.

Each of the remaining changes serves to improve GSCC's services or operations in some way by eliminating the possibility of confusion or enhancing an existing service in a small way. First, the elimination of Rule 46 and the accompanying changes removes a redundancy in GSCC's rule caused by changes made in the rules to accommodate the addition of the netting and settlement system. Second, the use of a facsimile machine to serve written notices provide a safe and speedy alternative to the mails. Third, the use of the funds-only settlement payment to collect fees and fines from members eliminates a separate payment made by members and standardizes the date fees and fines are collected from netting members. Finally, the amendments to the rule regarding lists of eligible securities reflects changes resulting from the addition of the netting and settlement system and clarifies an already-existing member service.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that GSCC's proposed rule change (File No. SR-

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[3] See Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798.

[4] Such conforming changes are made in GSCC Rules 37 and 45. GSCC Rule 37 provides procedures for members to request a hearing in the event of the imposition of a fine or other action by GSCC. GSCC Rule 45 sets forth guidelines for GSCC to give notice to members in conjunction with certain actions taken by GSCC.

GSCC–89–10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29201 Filed 12–14–89; 8:45 am]

BILLING CODE 8010–01–m

[Release No. 34–27519; File No. SR–MSRB–89–11]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Disclosures in Connection with New Issues

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 November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission") a 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 people.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to Board rule G–32 regarding disclosures in connection with new issues to clarify that commercial paper, whether taxable or tax-exempt, is exempt from the rule G–32 definition of new issue municipal securities.

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 Board included statements concerning the purpose of and statutory 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 Board has prepared summaries, set forth in Sections I, II, and III 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

(a) Rule G–32 on disclosures in connection with new issues, requires a dealer that sells a new issue municipal security to deliver to the customer no later than the settlement of the transaction a copy of the official statement in final form prepared by or on behalf of the issuer, or if a final official statement is not being prepared by or on behalf of the issuer, a written notice to that effect. Rule G–32(c)(i) defines the term "new issue municipal securities" to mean:

> securities of an issue that are sold by a broker, dealer or municipal securities dealer during the underwriting period, but shall not include issues of tax-exempt commercial paper.

In 1985, the Board revised rule G–32 to delineate more clearly the responsibilities of dealers that sell new issue municipal securities, as well as to strengthen and facilitate enforcement of the rule. During its deliberation of these amendments, the Board determined to exclude short-term commercial paper from the definition of new issue securities because issuers of those securities typically provide investors with quarterly disclosure documents although an official statement may not be prepared to accompany any specific issue of these securities. The Board concluded that the disclosure process for these issues assures that investors receive material information pertaining to their investments in these securities and, given the differences between the disclosure practices for these issues and other types of municipal securities, it would not be appropriate to include these issues in the rule G–32 definition of new issue municipal securities.

Since the intent of the commercial paper exemption in rule G–32 was to exclude all short-term commercial paper, not just tax-exempt commercial paper, the proposed rule change clarifies this issue.

(b) The Board has adopted the proposed rule change pursuant to section 15B(2)(C) of the Act which directs the Board to propose and adopt rules which are:

> Designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * * *

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

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 people are invited to submit written data, views and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29198 Filed 12–14–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-27517; File No. SR-MCC-89-11]

Self Regulatory Organizations; The Midwest Clearing Corporation; Order Approving a Proposed Rule Change to Create a Midwest Clearing Corporation-Only Category of Participant and Impose a Revised Fee for Such Participants

December 7, 1989.

On August 24, 1989, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR-MCC-89-11) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change appeared in the Federal Register of September 14, 1989.[2] No comments were received. As discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal amends MCC's Rules, eliminating the requirement that limits MCC participation exclusively to firms who are also participants in the Midwest Securities Trust Company ("MSTC").[3] MCC's proposal does not alter any of the membership standards and obligations, therefore the new category of members (*i.e.*, "MCC-only" participants) will be bound by MCC's Rules and Procedures to the same extent as regular MCC participants.

The proposed rule change sets an additional fee for MCC-only participants. MCC will continue to charge the current account maintenance monthly fee of $170,[4] and, in addition, MCC-only participants will be assessed a settlement service fee of $200 per month.[5]

As required by MCC's Rules, MCC will compare trade data submitted by MCC-only participants and will subsequently record successfully compared contracts.[6] Once recorded, trades usually clear for settlement through MCC's Continuous Net Settlement ("CNS") or trade-by-trade accounting systems. While MCC guarantees trades to be settled through CNS, it does not guarantee trades settled through the trade-by-trade accounting system.[7]

Delivery and receipt obligations arising from transactions cleared through MCC may occur by book entry, through the Envelope Settlement Service ("ESS"),[8] the Special Security Movement ("SSM") delivery settlement service,[9] the Correspondent Delivery and Collection Service ("CDCS"),[10] or the Correspondent Receipt and Payment Service ("CRPS").[11] A MCC-only participant's settlement of receive and deliver obligations involving a physical movement (*i.e.*, ESS, SSM, CDCS and CRPS), will follow the procedures set forth in MCC's Rules for these settlement services. MCC will receive the MCC-only participant's instructions to receive or deliver securities and subsequently debit or credit the participant's account for the securities according to the rules of the service chosen by that participant. Likewise, MCC will follow these rules in order to process payment for the receipt or delivery of securities.

As a result of MCC's proposed rule change, however, MCC-only participants will not be able to perform intra-depository account movements within MSTC. For this reason, transactions involving book entry movements, credits through ESS or a delivery of securities to a MCC-only participant will be submitted for clearance through the Regional Interface Organization ("RIO") [12] for settlement through the clearing corporation where the participant maintains an account.[13]

The MCC-only participant's RIO designated trade is initially submitted for trade recording and reporting through MCC's trade processing facilities. This results in an initial settlement obligation at MCC. In order to transfer this settlement obligation, a corresponding trade ("RIO trade") is recorded between the MCC-only participant (*i.e.*, National Securities Clearing Corporation or Stock Clearing Corporation or Stock Clearing Corporation of Philadelphia) for subsequent settlement on the same day as the original MCC, RIO designated trade.[14]

As a result of this procedure, the MCC-only participant assumes a secondary obligation with its clearing corporation. This obligation settles at the clearing corporation chosen by the MCC-only participant. The obligation of the MCC-only participant's trading counterpart remains at MCC. This obligation settles between MCC and the trading participant at MCC.[15]

The clearing corporations settle the trading parties' (*i.e.*, the MCC-only participant and its trading counterpart) obligations based on an inter-clearing agency settlement obligation on behalf of their participants. Based on these obligations, MCC or the clearing agency chosen by the MCC-only participant will debit or credit settlement accounts maintained with one another. Underlying depository eligible and book-entry securities transfers occur through depository accounts held by MCC and the MCC-only participant's

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Securities Exchange Act Release No. 27214 (September 1, 1989), 54 FR 38021 (September 14, 1989).

[3] Midwest Clearing Corporation Rules, Art. VIII, R. 1, § 1 (1984).

[4] The account maintenance fee for specialists and market makers is one hundred and sixty dollars ($160.00) per month.

[5] Like other participants, MCC-only participants will be required to pay the regular fee corresponding to any additional services they use.

[6] Midwest Clearing Corporation Rules, Art. II, R. 1, § 1 (1984).

[7] Until MCC guarantees settlement of a trade, each side to the trade bears the risk of a default by its counterpart. Once MCC guarantees settlement, the original contractual obligations are discharged and replaced by contracts between MCC and each of the original parties (*i.e.*, MCC becomes the buyer to every seller and the seller to every buyer).

[8] ESS allows a participant to request MCC to deliver or otherwise make available to another participant an ESS envelope containing a list of securities to be credited to its account. MCC delivers this envelope and debits the account of the participant receiving the ESS envelope. MCC acts as an agent in this process and does not guarantee the contents of the ESS envelope. Midwest Clearing Corporation Rules, Art. V, R. 2 (1984).

[9] Through this system a participant may file a delivery ticket, instructing MCC to effect a physical security movement to another participant and to verify good delivery and number of shares. Upon delivery of the securities MCC debits the account of the participant receiving the securities for the value of the securities. *Id.* R. 3.

[10] CDCS allows a participant to authorize MCC to make physical delivery of securities to a non-participant prior to receiving payment. Upon delivery, MCC is authorized to receive payment for the delivered securities and credit the participant's account for their value. Under this service, MCC is not responsible for a non-participant's failure to make payment. *Id.* at R. 5, § 1.

[11] Through CRPS a participant may instruct MCC to make payment for and receive on behalf of the participant securities delivered by a non-participant. Upon receipt of securities, MCC is authorized to make payment for the securities, deliver the securities to the participant and debit its account accordingly. *Id.* at R. 5, § 2.

[12] RIO offers a participant the option of clearing and settling trades through the clearing facility of its choice, regardless of the market of execution. See Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654, 55655 n.9 (December 14, 1983).

[13] MCC's proposed rule change does not require MCC-only participants to maintain accounts at other clearing or depository institutions. MCC, however expects participants to maintain comparison and settlement accounts outside MCC and MSTC. Regardless of whether a participant maintains such accounts, a MCC-only participant will be bound by any action undertaken by MCC on its behalf. Midwest Clearing Corporation Rules, Art. VII, R. 1, § 5 (1984).

[14] If the MCC-only participant is unable to record the corresponding RIO trade at the clearing agency chosen for settlement because the clearing agency ceases to act for the participant, settlement will be effectuated through MCC pursuant to MCC's settlement rules. See *id.* at Arts. III, IV & V.

[15] Settlement will occur through MCC's CNS system if the trade security is CNS eligible at MCC, otherwise the trade will settle on a trade-by-trade basis, pursuant to MCC Rules, Art. IV.

clearing corporation at their corresponding depositories.[16]

II. MCC's Rationale

MCC believes that the proposed rule change is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.[17]

According to MCC, the purpose of the proposed additional fee is to cover "costs and associated expenses incurred by MCC in (i) facilitating settlement (including physical receipt and delivery), when necessary, and (ii) performing accounting and other administrative functions currently performed by MSTC on behalf of MCC and MCC participants." [18]

III. Discussion

The Commission believes that the proposed rule change is consistent with section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[19] The proposed rule change will expedite the reconciliation process of trades by allowing a MCC-only participant to settle its trades directly at the depository facility of its choice.

Under the proposed rule change, moreover, MCC will be required to direct settlement of trades through another clearing facility and, ultimately, to a depository other than MSTC. As such, the proposal encourages interface activity among depositories in order to allow consolidated settlement of the MCC-only member's RIO eligible trades outside of MSTC. As required by the Act, therefore, this proposal assists in the removal of impediments to, and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[20]

The Commission believes that MCC's proposal is consistent with section 17A(b)(3)(F) of the Act, which prohibits unfair discrimination in the admission of participants.[21] While a clearing agency may discriminate among potential participants, such discrimination should be based on standards of financial responsibility, operational capability, experience and competence.[22] The Commission believes that the proposal does not resort to any unfair discrimination or imposes any obstacles contrary to the public interest against the admission of participants to MCC. The proposal, instead, enables MCC to continue applying the capital, operational and experience membership requirements already embodied in MCC's Rules.[23] For this reason the Commission believes that MCC's proposal is consistent with section 17A(b)(3)(B) of the Act.

The Act requires that a clearing agency's rule be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. In order to comply with this requirement MCC must assess the impact that the participation of a new type of membership may have on the safety of the clearing agency and, provide safeguards to protect against such risk.[24] Like MCC, the Commission does not foresee any unreasonable financial risk stemming from the creation of a new MCC-only type of membership. For this reason the Commission agrees with MCC's decision not to alter any of the protective membership requirements contained in its Rules and currently in operation.[25]

In addition to the existing protective membership standards, MCC's proposal does not alter the financial protective measures contained in its Rules. MCC-only participants who fail to deliver eligible securities to the clearing corporation of their choice will be bound by the rules and regulations of that entity. Moreover, if a participant to whom the securities are to be delivered fails to receive said securities, MCC or the receiving participant, may cause the securities to be bought in or borrowed.[26]

In addition, a MCC-only participant will be required to contribute to the participant's fund to the same extent as prescribed by MCC's Rules for regular members.[27] For this reason, if a MCC-only participant fails to meet its obligations under the CNS settlement system,[28] MCC will be entitled to recover from the MCC-only participant itself or from its contribution to the participant's fund the amounts payable in its account.[29] The Commission, therefore believes that by not altering the financial protective measures contained in its Rules, MCC, as required by the Act, continues to assure the safeguarding of securities and funds which are in its custody or control.[30]

MCC, moreover, will charge MCC-only participants an additional monthly fee in order to satisfy any expenses incurred by MCC in the course of facilitating settlement and offering certain accounting services to these new members. The Commission believes that, as required by section 17A(b)(3)(D) of the Act,[31] the proposed fee is reasonable. The Commission also finds that the decision to charge the proposed fee to MCC-only members is equitable, since these members will be the beneficiaries of the services for which the proposed charge is being assessed

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR–MCC–89–11) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(12) (1988).

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29199 Filed 12–14–89; 8:45 am]

BILLING CODE 8010–01–M

[16] Securities Exchange Act Release No. 20461, *supra* note 12. Settlement of RIO ineligible trades will occur physically outside of the depository environment.

[17] Securities Exchange Act Release No. 27214, *supra* note 2 at 38022.

[18] MCC's Proposed Rule Change, Form 19b–4 at 2.

[19] 15 U.S.C. 78q–1(b)(3)(F) (1982).

[20] Securities Exchange Act of 1934 § 17A(b)(3)(F), 15 U.S.C. 78q–1(b)(3)(F) (1982).

[21] *Id.*

[22] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920, 41921 (June 23, 1980).

[23] See specifically Midwest Clearing Corporation Rules, *supra* note 3 at § 2.

[24] In the Release setting forth standards for the registration of clearing agencies, the Division of Market Regulation ("Division") espoused its belief that while a clearing agency could accept specific categories of persons other than those enumerated in section 17A(b)(3)(B) (15 U.S.C. 78q–1[b][3][B]), it must be cognizant of the impact that such new participation may have on the financial safety of the clearing agency. MCC's proposed rule change will not necessarily result in the admission of members outside of the categories specified in this secion of the Act, however, given MCC's obligation to safeguard securities and funds in its custody, the requirement to assess the financial effect of creating a new type of membership is necessary in order to comply with the statutory requirement of protection against unreasonable financial risks. See Securities Exchange Act Release No. 16900, *supra* note 22 at 41922.

[25] *E.g.*, Midwest Clearing Corporation Rules, *supra* note 3 at § 2 (admission requirements).

[26] If the trade is CNS eligible, MCC's Rules provide that MCC will issue the buy in or borrow order. *Id.* at Art. III, R. 4, § 1. If, however, the trade is due to settle through MCC's trade-by-trade accounting system the receiving participant may require its counterpart, MCC, to buy in the securities. *Id.* at Art. IV, R. 2, § 1.

[27] *Id.* at Art. IX, R. 2, § 1.

[28] While MCC guarantees CNS eligible trades, it does not guarantee trades to be settled through its trade-by-trade system.

[29] Midwest Clearing Corporation Rules, *supra* note 3 at R. 3, § 1(e).

[30] 15 U.S.C. 78q–1(b)(3)(F) (1982).

[31] 15 U.S.C. 78q–1(b)(3)(D) (1982).

[Release No. 34-27499; File No. SR-PSE-89-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc.; Relating to Market Maker Trading Requirements and Obligations.

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 October 10, 1989, the Pacific Stock Exchange, Inc. ("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 primarily 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 PSE Rule VI, Sections 75, 79 and 80, and delete Options Floor Procedure Advices B-1, B-3, B-5 and B-9. The purpose for the proposed changes is to increase the trading requirements and obligations of PSE market makers. Specifically, among other things, the PSE proposes to increase the percentage of trades that market makers are required to execute in their Primary Appointment Zones and increase the percentage of trades market makers are required to execute in-person while on the floor of the Exchange. In addition, the Exchange proposes to increase the sanctions imposed for violations of these trading requirements and restructure the Primary Appointment Zones. The full text of the proposed rule change is available at the PSE or the Commission.

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 PSE proposes to amend several rules which relate to the trading requirements and obligations of PSE market makers. In amending these rules, several of the Exchange's Options Floor Procedure Advices ("OFPA") have been amended and incorporated into the aforementioned rules, thereby deleting these OFPA's. The purpose for such deletions is to work toward the Exchange's eventual plan of eliminating the procedural advices entirely.

The first rule proposed to be amended is Rule VI, section 75, which governs the Primary Appointment Zones of market makers. Specifically, the amendment will incorporate OFPA B-9 and Commentary .04 of Rule VI, section 79 into section 75. As they presently exist, OFPA B-9 and section 79 require that at least 50% of the trading activity of a market maker be in classes of option contracts to which his Primary Appointment extends. As amended, section 75, Commentary .03, would require that at least 75 percent of a market maker's trading activity be in his Primary Appointment Zone. In addition, the proposed amendments to section 75 increase the sanctions for violations of this trading requirement, the existing sanctions of which are now delineated in OFPA B-9. The Exchange states that the purpose for increasing the in-zone trading requirement and the sanctions is to bring the PSE in line with the other options exchanges, and to provide increased liquidity to options traded on the PSE.

In addition to increasing the Primary Appointment Zone trading requirements, the PSE also proposes to modify section 75 to provide for certain exceptions to the 75 percent in-zone requirement. Specifically, trades effected through a floor broker and facilitation trades effected pursuant to an unsolicited order on behalf of an account other than that of another market maker will not count for or against the market maker's 75 percent in-zone requirement.

The proposed amendment to section 75 also alters the structure of Primary Appointment Zones. Whereas a Primary Appointment Zone is presently comprised of arrangements of classes of option contracts, the amended rule organizes the zones according to actual posts on the trading floor, and further requires that the Primary Appointment Zones be comprised of posts contiguous to each other. The PSE believes that such restructuring will narrow market makers' physical placement on the trading floor, thereby facilitating compliance with their Primary Appointment trading requirements One other proposed change to section 75, set out in the fourth paragraph of the Rule, codifies an existing procedure regarding the grace period and selection of Primary Appointment Zones for newly registered market makers.

The second rule proposed to be amended is Rule VI, section 79, which addresses the trading obligations of market makers. The primary change to this rule is the incorporation and modification of the in-person trading requirements currently delineated in OFPA B-5. At present, OFPA B-5 requires that 40 percent of a market maker's transactions be executed by the market maker in-person, while present on the trading floor. As amended, section 79 would increase the in-person trading requirement to 60 percent. In addition, the PSE proposes to increase the fine schedule for violations of this rule, which currently is set-out in OFPA B-5, and incorporate it into Section 79. The Exchange believes that such changes will bring the PSE in line with the other options exchanges, and contribute to a fair and orderly market by requiring the extended availability of market makers on the floor throughout each trading session.

Another proposed change to section 79 deals with the concept of Supplemental Appointments. As amended, the Rule gives all market makers supplemental obligations with respect to all securities traded on the floor, as mandated in OFPA B-3, which has now been deleted and incorporated into section 79.

The third and last rule proposed to be amended is rule VI, section 80, which places restrictions on PSE members from acting simultaneously as a market maker and floor broker. Specifically, the amended rule incorporates the language of OFPA B-1 which prohibits market makers from trading as floor brokers in options covering the same underlying security to which their Primary Appointments extend.

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

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 the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29202 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-27522; File No. SR-MSE-89-10]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Changes to its Certificate of Incorporation, Constitution, and Rules

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 December 4, 1989, the Midwest Stock Exchange, Inc. ("MSE" 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 the following changes to its Certificate of Incorporation, Constitution and Rules: (Italics indicate new language.)

Certificate of Incorporation, Article 11:

". . . best interests of the Corporation and its members." *To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Governors, no Governor of the Exchange shall be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Governor of the Exchange for or with respect to any acts or omissions of such Governor occurring prior to such amendment or repeal.*

Constitution, Article X, section 1:

". . . in connection with such action, suit or proceeding." *To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Governors, no Governor of the Exchange shall be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Governor of the Exchange for or with respect to any acts or omissions of such Governor occurring prior to such amendment or repeal.*

Rules, *Article XVIII, Rule 1:*

Indemnification of Board of Governors

Any provisions of the Certificate of Incorporation, the Constitution or the Rules of the Exchange which provides for the limitation or elimination of the liability of Governors of the Exchange to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor shall not apply in any instance where such liability arises directly or indirectly as a result of a violation of federal securities laws.

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

Rule filing SR-MSE-88-08 proposed an amendment to the MSE Certificate of Incorporation and Constitution which would exempt MSE Governors from monetary damages for breach of fiduciary duty to the Exchange or its members. This proposed rule change was withdrawn by the MSE, effective November 29, 1989, and is being resubmitted here.[1] In addition, the proposed amendment to the MSE Rules introducing the limitation language is being added pursuant to a recommendation by the Commission.

The proposed amendments to the Certificate of Incorporation and Constitution are based on section 102(b)(7) (added 1986) of the General Corporation Law of the State of Delaware, under which the Exchange is organized, which allows a corporation to adopt provisions in its Certificate of Incorporation limiting or eliminating a director's monetary liability to the corporation or its shareholders for breach of fiduciary duty.[2] Many Boards

[1] See letter from Daniel J. Liberti, Associate Counsel, MSE to Mary Revell, Branch Chief, Division of Market Regulation, SEC dated November 27, 1989.

[2] The Commission has approved a similar rule change proposed by the Pacific Stock Exchange, Inc.

Continued

of Delaware Corporations adopted similar provisions in 1987.

The proposed amendment does not eliminate a Governor's duty of care, which requires Governors to exercise informed business judgement in discharging their duties. Rather, the personal liability of the Exchange's Governors to the Exchange or its members will be limited should they fail, through negligence or gross negligence, to satisfy their duty. Such limitations do not apply in the following circumstances:

(1) Breach of the duty of loyalty to the Exchange or its members (*i.e.*, the responsibility to conduct business in good faith and in the honest belief that the action taken is in the best interest of the Exchange);

(2) Acts or omissions that are not performed in good faith, or which involve intentional misconduct or violation of law;

(3) Unlawful payment of dividends or unlawful purchase or redemption of stock; and

(4) Transactions from which the director derived improper personal benefits.

The amendment does not eliminate other equitable legal remedies, such as recission or injunctive actions, and in no way affects a Governor's liability under the federal securities laws. In addition, the proposed rule change does not eliminate the liability of officers of the Exchange for actions taken in that capacity, even if the officer is also a Governor. This amendment does not apply to the liability of a Governor for acts or omissions which may have occurred prior to its approval.

Lastly, the proposed rule change limits the applicability of the proposed amendment to the Certificate of Incorporation and Constitution to exclude from its coverage breaches of fiduciary duty which arise directly or indirectly as a result of a violation of the federal securities laws.

The Exchange believes that the amendment is a necessary measure in order to help assure its ability to recruit and retain competent Governors. Without the protections offered by the proposed rule change, the Exchange believes there will be a deterrent effect upon the entrepreneurial decision-making of its Governors. In addition, due to the increase numbers and magnitude of lawsuits against directors, many other Delaware corporations have already adopted similar provisions.

The proposed rule change is consistent with section 6(b) of the Act and furthers the objectives of section 6(b)(3) in that the protections offered by the amendment help to remove impediments to attracting competent Governors, which will thereby help to assure the fair representation of members in the selection of directors and administration of the affairs of the Exchange and will help attract directors who are representative of issuers and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 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 at 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 MSE. All submissions should refer to File No. SR-MSE-89-10 and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29206 Filed 12-14-89; 8:45 am]

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("PSE") which amended the PSE Certificate of Incorporation and Rules to eliminate the monetary liability of Governors for breach of fiduciary duty to the PSE or its members. See Securities Exchange Act Release No. 27466 (November 22, 1989), 54 FR 49380 (approving File No. SR-PSE-89-23).

[Release No. 34-27521; File No. SR-NYSE-89-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Proposed Decreases in Transaction Charges.

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 November 20, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed Rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to institute, as of January 1, 1990, a rate decrease affecting the Transaction Charges payable by Exchange members for public agency transactions. Transaction Charges payable for floor brokerage earned remains the same.

The Exchange proposes the following rate revisions to its transaction charges:

TABLE OF CHARGES [1]

[Payable Monthly]

Public agency transactions	1989 Price	1990 Price
Per Share Charge [2]—Equities		
First 5,000 shares	$.00265	$.00265
5,001-672,500 shares	.0001	.0001
Subsequent shares	.0001	

TABLE OF CHARGES [1]—Continued

[Payable Monthly]

Public agency transactions	1989 Price	1990 Price
Credit per eligible order placed through the Common Message Switch	(.25)	(.30)

[1] Does not apply to principal transactions by a member for his or her own account.
[2] Includes shares, rights and warrants.
Note—No individual firm's fee may increase more than 4 percent over the fee in effect in 1988. This limitation was in effect in 1989 and will be retained in 1990.
—In 1989, no individual firm's fee could decrease more than 5 percent of the fee effective in 1988. This downward limitation will be eliminated in 1990.
—1990 fee is subject to a maximum charge per transaction of $80.

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 changes 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 aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for a more equitable distribution of the Exchange's overall charges among its constituents and to respond to general market conditions.

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that any burden will be placed on competition as result of the proposed rule change.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Securities Exchange Act Rules 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. Section 552 will be available for inspection and copying at 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 NYSE.

All submissions should refer to File No. SR–NYSE–89–39 and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29207 Filed 12–14–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27520; File No. SR–NASD–89–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trade Reporting Requirements for the Automated Confirmation Transaction Service

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 November 30, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to request comments from interested persons, and is publishing an order granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to the Rules of Practice and Procedures for the Automated Confirmation Transaction Service ("ACT Rules"), section (d)(2) Trade Report Input.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to expand the time frame for submitting trade data into the ACT system and to make the time frame for accepting or declining trade reports using the Browse function consistent, regardless of the method of input used by the ACT participant. This action is taken partially in response to comments

received from a member firm concerning the short time frame initially proposed for data input (90 seconds for firms that reported to NASDAQ through a computer interface, and 6.5 minutes for firms reporting through NASDAQ terminals), and partially due to concerns with member firms' inexperience with the new ACT system. The NASD takes this action to allow participants longer periods of time to report executions to the systems while the ACT system is being fully implemented and all firms are becoming acclimated to the requirements of participation. Thereafter, the NASD anticipates that the trade reporting time frames will be reviewed and possibly shortened.

The time frame for reporting transactions in securities that are not tape reportable (*i.e.*, other than transactions in National Market System securities) will be extended to fifteen (15) minutes for the reporting side of the transaction. The contra side on any transaction, including tape reportable trades, will be allowed twenty (20) minutes to accept or decline the ACT report. The NASD believes that these longer time frames are responsive to concerns of lesser automated members that may have had difficulty meeting the original deadlines for reporting. The 15/20 minute time frames, however, still require trade reporting in close proximity to execution so that the primary purpose of the ACT system—to capture trade data as close to the trade as feasible to compare and lock-in the trade for clearing—is not compromised.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Act. Among other things, section 15A(b)(6) requires that the rulemaking initiatives of the NASD be designed to foster cooperation and coordination with people engaged in clearing, settling and facilitating transactions in securities. The ACT system will facilitate the prompt and accurate clearance and settlement of trades by performing the comparison function and transmitting locked-in trades to the clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** and in any event by December 15, 1989. The ACT Rules as they apply to self-clearing firms were approved by the Commission in Release No. 34–27229 on September 7, 1989. Following a brief testing period, seven self-clearing broker/dealers began participating in ACT on November 17, 1989, sending trade reports through ACT to clearing. By December 15, 1989, the NASD expects several of the larger self-clearing broker/dealers to begin comparing trades through ACT, and the NASD believes that approval of the proposed rule change modifying the trade reporting time frames on an accelerated basis will facilitate ACT's implementation.

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, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in that accelerated approval is appropriate to facilitate ACT's implementation.

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 theredof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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 52 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-89-56), 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: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29200 Filed 12–14–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17257; 812–6852]

Daily Money Fund, et al., Notice of Application

December 8, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("Act").

Applicants: Daily Money Fund; Daily Tax-Exempt Money Fund; Equity Portfolio: Growth; Equity Portfolio: Income; Fidelity California Tax-Free Fund; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Daily Income Trust; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund (a limited partnership); Fidelity High Income Fund (a limited partnership); Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Intermediate Bond Fund; Fidelity Investment Trust; Fidelity Limited Term Municipal; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Money Market Trust; Fidelity Municipal Trust; Fidelity New Jersey Tax-Free Portfolio, L.P.; Fidelity New York Tax-Free Fund; Fidelity Puritan Trust; Fidelity Qualified Dividend Fund; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Tax-Exempt Money Market Trust; Fidelity Trend Fund; Fidelity U.S. Investments: Government Securities Fund, L.P.; Fidelity U.S. Treasury Money Market Fund, L.P.;

Financial Reserves Fund; Income Portfolios; Plymouth Fund; Plymouth Investment Series; Plymouth Securities Trust; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Fidelity Yen Performance Portfolio, L.P.; Zero Coupon Bond Fund (together with other open-end management investment companies for which Fidelity Management & Research Company or an affiliate acts as investment adviser, the "Funds");[1] and Fidelity Management & Research Company ("FMR").

Relevant Act Sections: Order requested (i) under sections 6(c) and 17(b) that would exempt Applicants from the provisions of sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act and Rule 17d–1 thereunder to the extent necessary to engage in the activities described in the application, and (ii) under Rule 17d–1 to permit certain joint transactions.

Summary of Application: Applicants seek an order that would permit the Funds to borrow from and lend to each other through a proposed credit facility at interest rates that would be both higher for the lender and lower for the borrower than would otherwise be available, subject to the representations and conditions contained in the application.

Filing Date: The original application was filed on August 26, 1987, and was amended on January 25, 1989, August 29, 1989 and November 13, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

[1] Certain investment companies currently advised by FMR or an affiliate that do not presently intend to participate in the interfund lending facility have not executed the application. Any such investment company and any other investment company that may be advised by FMR or an afiliate in the future would be covered by any order if such company hereafter determines to participate in the facility.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272–2847 or Matthew A Chambers, Assistant Director, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or by contacting the SEC's commerical copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each of the Funds is organized as a business trust under the laws of the Commonwealth of Massachusetts or as a partnership under the laws of the State of Nebraska or Delaware. Each Fund has entered into a management or advisory and service contract with FMR. The principal underwriter for the Funds is Fidelity Distributors Corporation.

2. In 1981, the Funds and FMR obtained an order exempting them from the provisions of section 17(d) of the Act and Rule 17d–1 thereunder to the extent necessary to permit the Funds to establish a joint account ("FICASH") for investing in certain repurchase agreements. Investment Company Act Release No. 12061 (Nov. 27, 1981). During each trading day, the Funds' uninvested cash balances are deposited in FICASH. FICASH invests these cash balances in one or more large short—term repurchase agreements, each of which has a duration of no more than seven days. FMR invests these cash balances as part of its duties under its existing management or advisory service contract with each of the Funds, and does not charge any additional fee for this service.

3. At any particular time, while some Funds are lending money by entering into repurchase agreements (either directly or through FICASH) other Funds may be borrowing money to satisfy redemption requests. Currently, the Funds have bank credit arrangements available to them totaling more than $6 billion. Under volatile market conditions, short-term borrowings by the Funds from banks have reached as high as $900 million.

4. The interest rate paid by the Funds for bank borrowings is usually significantly higher (ranging between 125 and 40 basis points from July 1987 through December 1988) than the rate earned on investments in repurchase agreements. Applicants believe that the differential does not reflect a material difference in the quality or the risk of the respective transactions, but rather reflects the power of the banks to negotiate a higher rate of interest on Fund borrowings than they pay on repurchase agreements.

5. The Funds propose to enter into master loan agreements that would permit them to lend money to each other for temporary purposes through a proposed credit facility. The credit facility is intended to reduce substantially the Funds' borrowing costs and to enhance the ability of the Funds to earn higher rates of interest for their short-term lendings. Although the credit facility would substantially reduce the Funds' reliance on their bank credit arrangements, the Funds would continue to maintain existing loan agreements and to borrow money from banks. The terms and conditions of such unaffiliated bank transactions would serve as a guideline for interfund loan transactions.

6. The proposed transactions are likely to provide the Funds with significant savings at times when the cash position of a Fund is insufficient to meet temporary cash requirements. This situation generally arises when shareholder redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days (or longer for certain foreign transactions). However, shareholder redemption requests are normally effected immediately. Therefore, the Funds need a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. While bank borrowings will continue to be available to supply such liquidity, the rates charged under the proposed credit facility would be below those offered by banks on short-term loans. Likewise, Funds making cash loans to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term repurchase agreements. Thus, the credit facility would benefit both those Funds that are borrowers and those Funds that are lenders.

8. The interest rate to be charged to the Funds on any loan made pursuant to the credit facility would be the average of the current repurchase agreement rate available through FICASH and a single benchmark rate set for all Funds. The benchmark rate would be calculated each day by FMR according to a formula established by the Funds' boards of trustees to approximate the lowest interest rate at which bank loans are

available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates.

9. The Cash Management Department of Fidelity Service Co. (the transfer, pricing and bookkeeping agent for most of the Funds) would administer the credit facility together with the FICASH account and the Funds' bank loan arrangements.[2] On each business day, the Cash Mangement Department would compare the interfund loan rate for that day (which will reflect actual rates negotiated by the Cash Management Department that day for FICASH) and the available borrowing rates quoted by at least three of the lending banks with which the Funds have loan agreements. The Cash Management Department will make cash available to borrowing Funds only if the interfund loan rate is more favorable to the lending Fund than the FICASH rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

10. The Funds currently have loan agreements with seven banks, although no Fund has agreements with all seven banks. The agreements provide for extensions of credit of between $75 million and $2 billion. The lending banks are currently large banks of national standing. Generally, the size and prominence of banks able to make loans of this size ensure that the rates quoted to the Funds for loans will be representative of the available market rates. FMR currently solicits daily rate quotes from each bank with which the Funds have loan agreements. While Applicants anticipate that this practice will continue, FMR will obtain at least three such representative quotes on any day on which an interfund loan takes place. If quoes are solicited from fewer than all lending banks, FMR will solicit quotes from those banks which, on the basis of the facts and circumstances known at the time, it believes will offer loan interest rates as favorable to the borrowing Funds as comparable loans from the other banks with which one or more Funds have lending agreements. Applicants submit that these procedures provide a high level of assurance that quoted rates will be representative of the prevailing available bank loan rates.

11. Under the proposal, the portfolio managers for each participating Fund, other than the money market Funds, may provide the Cash Management Department with standing instructions to participate in the credit facility daily as a borrower or lender. A Fund would not participate in the credit facility as a lender unless it also elected to participate in FICASH or, in the case of money market Funds, unless the Fund would invent on any given day in FICASH. As in the case of FICASH, the Cash Management Department on each business day would collect data on the uninvested cash balances and borrowing requirements of all participating Funds, other than the money market Funds, from the Funds' custodians. With respect to the money market Funds, the portfolio managers would inform the Cash Management Department directly each day by a time or times specified by the Cash Management Department (initially mid-morning) of the amount of cash, if any, they wished to direct to the credit facility as a lender.[3] The money market Funds typically would not participate as a borrower because they rarely need to borrow cash to meet redemptions.

12. The Cash Management Department would allocate borrowing demand and cash available for lending among the Funds on an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to keep the number of transactions and associated administrative costs to a minimum. To reduce transaction costs, each single loan normally would be allocated in a manner that would minimize the number of participants necessary to complete the loan transaction.

13. Applicants expect that there typically would be far more available uninvested cash each day than borrowing demand.[4] Therefore, after the Cash Management Department has allocated cash for interfund loans, it would inform the money market Fund managers of the amount of loans, if any, made for each money market Fund so that the Fund managers may invest any remaining cash in FICASH or other available investments. With respect to other participating Funds, the Cash Management Department would follow standing instructions from the portfolio managers to invest the remaining amounts daily through FICASH.

14. No Fund would be permitted to participate in the proposed credit facility unless: (1) The Fund had obtained shareholder approval for its participation or, if such approval were not required by law, the Fund's prospectus and/or statement of additional information had disclosed at all times the possibility of the Fund's participation in the credit facility upon receipt of requisite regulatory approvals; (2) the Fund had fully disclosed all material information concerning the proposed credit facility in its prospectus and/or statement of additional information; and (3) the Fund's participation in the credit facility was consistent with its investment objective, fundamental investment limitations and/or Declaration of Trust or Partnership Agreement. Even if a Fund's participation in the credit facility were found not to require shareholder approval, each Fund would seek such approval unless it had previously obtained such approval or its prospectus and/or statement of additional information had at all times disclosed the possibility of its participation upon receipt of requisite regulatory approvals.

Applicant's Conditions

Applicants agree that any order granted on the application will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the current FICASH repurchase agreement rate and a benchmark rate established periodically to approximate the lowest rate available from banks on loans to the Funds.

2. The Cash Management Department on each business day will compare the interfund loan rate set pursuant to the formula calculated as provided in condition 1 with the FICASH repurchase agreement rate negotiated that day and all short-term borrowing rates quoted to any of the Funds by any bank with which any Fund has a loan agreement. At least three such quotations will be obtained each day in which any Fund borrows through the credit facility prior to such borrowing. The Cash Management Department will make cash available for interfund loans only if the interfund loan rate is more favorable to the lending Fund than the FICASH rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

[2] In the event of any future change in the organizational structure of Fidelity Service Co., the Cash Management Department will remain at all times under the direct or indirect control of FMR Corp., the parent of FMR and Fidelity Service Co.

[3] Money market Fund managers would not delegate investment of cash balances to the Cash Management Department under standing instructions because Applicant believe that the investment objective of such Funds and the unique requirements of Rule 2a–7 require their direct management of all money market Fund assets, including short-term cash positions.

[4] Applicants represents that, while short-term bank borrowing by the Funds has reached as high as $900 million, short-term investments of up to seven days directly and through FICASH by the Fidelity Funds, other than the tax-free Funds, has recently ranged between $3.3 billion and $3.8 billion.

3. If a Fund has outstanding borrowings from one or more banks, any interfund loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan, it will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be between 10% and 15% of its total assets, the Fund may borrow only on a secured basis through the credit facility. A Fund could not borrow through the credit facility if its total outstanding borrowings immediately after the interfund borrowing were more than 15% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (i) repay all its outstanding interfund loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's toal outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral as is necessary to maintain the market value of the collateral to market each day and will pledge such additional collateal that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond, or money market Fund may loan funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5%, and 10%, respectively, of its current net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund will be limited to 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed 125% of the Fund's total net cash redemptions for the preceding seven calendar days.

10. All loans may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and Declaration of Trust or Partnership Agreement.

12. The Cash Management Department will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Department will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Cash Management Department will invest amounts remaining after satisfaction of borrowing demand in FICASH in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the money market Funds.

13. FMR will monitor the interest rates charged and the other terms and conditions of the loans and will make a quarterly report to the Boards of Trustees of the Funds concerning their participation in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's Board of Trustees, including a majority of the Independent Trustees,

(a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions,

(b) Will establish the benchmark rate formula used to determine the interest rate on loans, and review no less frequently than annually the continuing appropriateness of such benchmark rate formula, and

(c) Will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an interfund loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, FMR will promptly refer such loan for arbitration to a retired Independent Trustee previously selected by the board of each Fund, who no longer has any fiduciary responsibilities to any Fund and who will serve as arbitrator of disputes concerning interfund loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase

agreements and commercial bank borrowings, and such other information presented to the Fund's boards of trustees in connection with the review required by the conditions 13 and 14.

17. FMR will prepare and submit to the Fund boards for review an initial special report on the "Design of a System" with respect to the operations of the interfund credit facility prior to the commencement of operations of the facility, including a report thereon of its independent public accountants. A test program of modest duration involving actual transactions may be conducted prior to submission of the initial report to the boards. An appropriate single Fund which next files its Form N–SAR after Board Review of the initial report will file the report with its Form N–SAR, and the other Funds will incorporate the report by reference in their next Form N–SAR filings. Thereafter, an annual report on the "Design of a System and Certain Compliance Tests" with respect to the accounting control procedures of the credit facility which includes an opinion of the independent public accountants will be filed for two years (measured from the commencement of operations of the facility subsequent to the test program) with the Form N–SAR of an appropriate single Fund which next files its Form N–SAR after the release of such annual report and opinion, and the other Funds will incorporate each such annual report by reference in their next subsequent Form N–SAR filings. A Form of the independent public accountants' opinion is attached as an exhibit to the application.

The initial "Design" report and the annual "Design and Compliance Tests" report will each be prepared in accordance with the requirements of Statement of Auditing Standards No. 44 ("SAS 44") as it may be amended from time to time or pursuant to similar auditing standards as may be adopted by the American Institute of Certified Public Accountants from time to time, including reports of independent accountants thereon. Each SAS 44 report will include a description of the principal procedures used by the Cash Management Department to monitor compliance with certain of the conditions the Funds have agreed to as part of the relief requested. The principal procedures described in the initial "Design" report and the annual "Design and Certain Compliance Tests" reports will include, at a minimum, procedures that are designed to achieve the following objectives:

a. The Funds are required to comply with the net redemption and percentage limitations on borrowing, and the percentage limitations on lending.

b. The Funds are required to make loans only at the interfund rate and such rate must be higher than the FICASH rate but lower than the lowest daily quote rate for available borrowing.

c. The Funds are required to allocate borrowing and lending demand in accordance with procedures established by the boards of trustees.

d. If a Fund, at the time of its borrowing from a Fund, also has outstanding third-party borrowings, the interest rate on such interfund borrowing cannot exceed the interest rate on third-party borrowings.

e. The Funds are required to pledge collateral for interfund loans when and to the extent provided by the conditions to any order issued on the application.

f. The Funds are required to follow established procedures for binding arbitrations in instances in which a payment delay or other loan controversy exists.

Each annual SAS 44 report will consider compliance with the procedures designed to achieve the foregoing objectives. After the final annual SAS 44 report, compliance with the conditions to any order issued on the application will be considered by the external auditors as part of their internal accounting control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N–SAR.

18. No Fund will be permitted to participate in the credit facility upon receipt of requisite regulatory approval unless the Fund has fully disclosed in its prospectus all material facts about its intended participation.

Applicants' Legal Analysis

1. Because of (i) the very high asset coverage requirement for all interfund loans, (ii) the high quality and liquidity of the assets covering the loans, (iii) the fact that all interfund loans having less than 1000% asset coverage will be fully collateralized, (iv) the requirement that if a lending bank requires collateral from a Fund, all interfund loans to the Fund will be similarly collateralized regardless of asset coverage level, (v) the ability to call interfund loans on any business day, and (vi) the fact that the Independent Trustees will exercise effective oversight of the interfund lending program as administered by FMR and its affiliates, the trustees consider that interfund loans would be equivalent in credit quality to other money-market instruments rated "high quality" by independent statistical rating organizations.

2. The trustees also consider that the program would involve no realistic risk resulting from potential conflicts of interest. FMR has no direct pecuniary interest in the administration of the program. FMR would administer the credit facility together with the Funds' existing bank loan agreements and the FICASH repurchase agreement facility as part of the Funds' overall cash management program. FMR administers this program under its existing management agreements with the Funds, and FMR would receive no additional compensation from its administration of the proposed credit facility.[5] Thus, FMR would administer the facility as a disinterested fiduciary.

3. The interfund lending program does not involve any potential that one Fund might receive a preferential rate to the disadvantage of another Fund. Under the credit facility, the Funds would neither negotiate interest rates between themselves, nor would FMR set rates in its discretion. Rather, rates would be set pursuant to a preestablished formula, approved by the trustees, which would be a function of the current rates quoted by independent third-parties for short-term bank borrowing and for short-term repurchase agreements. All Funds participating in the credit facility on any given day would receive the same rate.

4. The proposed credit facility is consistent with the overall purpose of sections 17(a)(3) and 21(b). These sections are intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. The proposed transactions do not raise such concerns because (i) FMR would administer the program as a disinterested fiduciary, (ii) all loans made by any Fund to another Fund would consist only of uninvested cash reserves that the Fund otherwise would

[5] FMR affiliated companies may collect standard pricing and bookkeeping fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Although current agreements with the Funds do not provide for transaction fees to FMR or its affiliates in connection with bank loans, such fees might be approved by the Funds' trustees at some future date. Should this occur, the fees for interfund loan transactions would be no higher than those applicable for comparable bank loan transactions and would not exceed $7.50 (as adjusted for inflation from 1989) per interfund transaction or service performed.

invest in short-term repurchase agreements or comparable short-term instruments either directly or through FICASH, (iii) the interfund loans would not involve a significantly greater risk than such other investments, (iv) the lending Fund would receive interest at a rate higher than it could obtain through such other investments, and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements. Moreover, the proposed conditions would effectively preclude the possibility of any undue advantage.

5. For the reasons discussed above, each Applicant's participation in the credit facility is consistent with the standards of section 17(d) and Rule 17d-1. Each Applicant's participation in the credit facility would not involve overreaching or unfair advantage over any other Applicant, would be consistent with the provisions, policies, and purposes of the Act, and participation by each Fund would be on terms that are no different from or less advantageous than that of other participating Funds.

6. Applicants submit that the credit facility would not involve the type of abuse at which section 12(d)(1) was directed. Section 12(d)(1) was intended to prevent the pyramiding of the purpose of the proposed credit facility is to save money for all participating Funds and there would be no duplicative costs to the Funds or their shareholders.

7. Applicants also submit that the credit facility would not involve the type of abuse that section 18(f)(1) was intended to prevent. Applicants seek relief from section 18(f)(1) to the limited extent necessary to allow a Fund to borrow from other Funds in amounts, as measured on the day when the most recent loan was made, not to exceed 125% of the borrowing Funds net cash redemptions for the preceding seven calendar days. Applicants would be subject to all of the proposed conditions, including the percentage and collateral limitations on interfund borrowings. The Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including interfund and bank borrowings, have at least 300% asset coverage.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29209 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24993]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 7, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70-6171)

Appalachian Power Company ("Appalachian"), 40 Franklin Road, SW., Roanoke, Virginia 24011, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a) and 10 of the Act.

By Commission order dated June 30, 1978 (HCAR No. 20610), Appalachian was authorized to enter into an agreement ("Agreement") with Mason County, West Virginia ("County") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Philip Sporn and Mountaineer plants. Under the Agreement the County is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series. The proceeds from such sales are to be deposited by the County with the trustee ("Trustee") under the indenture ("Indenture") entered into between County and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $120 million or, in the case of proceeds from the sale of refunding bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the County, which portion the County sold to Appalachian under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the County to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of June 30, 1978, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of Revenue Bonds to be issued and sold by the County.

By orders dated June 30, 1978, June 14, 1979, February 20, 1981, January 25, 1984, April 6, 1984 and March 14, 1985 (HCAR Nos. 20610, 21103, 21927, 23208, 23277, 23630), such jurisdiction was released concerning the sale of Revenue Bonds in the principal amounts of $40 million, $50 million, $40 million, $30 million, $30 million, and $30 million, respectively, as such sales affected the purchase price to Appalachian.

It is now stated that the County will issue and sell an additional series of Revenue Bonds in the aggregate principal amount of $30 million, the net proceeds from the sale of which will be used to provide for the principal payment required for the refunding, prior to their stated maturity, of $30 million principal amount of Pollution Control Revenue Bonds (Appalachian Power Company Project), Series F, 8¾% maturing on March 1, 2014. The Revenue Bonds will be issued under and secured by the Indenture and a sixth supplemental indenture, will bear interest semi-annually and will mature at a date or dates not more than thirty years from the date of issuance. Appalachian states that it will not agree to the issuance of any Series G Bond by the County if the rate of interest to be borne by any such Revenue Bonds shall exceed 8% per annum. It is contemplated that the Revenue Bonds will be sold by

the County pursuant to arrangements with Goldman Sachs & Co. as underwriter. Appalachian requests authority to alter the terms of its payments of the purchase price of the Facilities insofar as such payments will reflect the new terms of the Revenue Bonds.

Consolidated Natural Gas Company, et al. (70–7567)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiary, CNG Financial Services, Inc. ("Financial"), both located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199 have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rule 45 thereunder.

By prior Commission order in this matter, Consolidated was authorized to form Financial to engage in the investment in leverage leases (HCAR No. 24805, January 12, 1989). The order authorized Financial to seek one or more investment firms for the purpose of together acquiring an interest in one or more joint ventures ("Joint Ventures") to invest as equity participants in leverage issues. The order further authorized Consolidated to provide financing up to an aggregate of $100 million to Financial through December 31, 1989 to fund the leverage leasing activities of Financial. The Commission reserved jurisdiction over the terms and conditions of the debt and equity components of the leverage leasing transactions and over the fees to be charged by any advisor or partner in such transactions. Financial states that to date, it has not engaged in any leverage lease transactions.

Consolidated and Financial now propose to allow Financial to engage in certain preliminary leverage leasing activities through December 31, 1991. Financial states that authorization to consummate the formation of specific Joint Ventures with investment firms (on such terms as defined in the January 12, 1989 Order) and to engage in specific leverage leasing transactions, including the terms and conditions of the debt and equity components thereof and related fees, will be the subject of one or more subsequent post-effective amendments to this filing.

It is proposed that Financial will from time to time, through December 31, 1991 obtain necessary funding from Consolidated for leveraged lease financings through: (a) The sale of Financial common stock, 10,000 par value; (b) open account advances; or (c) long-term loans, in any combination of the foregoing and in such amounts that the aggregate amounts so obtained from Consolidated for financing leveraged leasing will not at any time exceed $100 million. Financial also proposes to, from time to time, purchase from Consolidated shares of Financial's common stock, $10,000 par value, hold such acquired shares as treasury shares, and resell such shares to Consolidated.

The open account advances and long-term loans will have the same effective terms and interest rates as related borrowings from Consolidated. Consolidated and Financial state that open account balances made to Financial will bear the same interest rate as open account balances made to participants in the Consolidated System Money Pool authorized by the Commission (HCAR No. 24128, June 12, 1986). If there are no corresponding outstanding borrowings of Consolidated, such borrowings by Financial would carry the following interest rates: open account advances—the federal funds' effective rate as quoted daily by the Federal Reserve Bank of New York; and long-term loans—the indicative rate for comparable debt issuances published in "Salomon Brothers Inc. Bond Market Roundup" dated nearest to the time of takedown.

AEP Generating Company; Indiana Michigan Power Company (70–7621)

AEP Generating Company ("AEGCo") and Indiana Michigan Power Company ("I&M") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, subsidiary companies of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10, 12(b), 12(c) and 12(d) of the Act and Rules 44, 45 and 46 thereunder.

By prior Commission orders dated April 25, 1989, June 22, 1989 and November 21, 1989 (HCAR Nos. 24872, 24910 and 24989), Applicants were authorized to enter into one or more transactions involving the sale and leaseback pursuant to a net lease or leases (collectively, "Lease") of their respective 50% undivided ownership interests ("Undivided Interests") in Rockport Generating Station Unit No. 2 ("Rockport 2") located in Spencer County, Indiana. Applicants expect that the maximum aggregate fair market value of their Undivided Interests in Rockport 2 will not exceed $1.7 billion. To effectuate this transaction, Applicants will enter into participation agreements providing for the sale of their Undivided Interests to Wilmington Trust Company ("Owner Trustee" or "Lessor"), trustee under one or more trust agreements (collectively, "Owner Trust") between the Owner Trustee and five or more institutional equity investors ("Owner Participants"), and simultaneously Applicants will lease their Undivided Interests back from the Owner Trustee pursuant to the Lease which will not exceed a term of 33 years. It was proposed that approximately 15–25% of the Lessor's cost would be provided by the Owner Participants through their equity investment in the Owner Trust and 75–85% would be borrowed by the Owner Trustee.

With respect to that portion of the Lessor's cost to be borrowed, approximately $937 million of interim financing will be provided by one or more domestic or foreign financial institutions in return for nonrecourse notes ("Initial Series Notes") of the Lessor. Long-term financing of up to $750 million of privately-placed bonds was also authorized of which approximately $468 million will be issued. Jurisdiction was reserved over the terms of any additional long-term financing insofar as the Lease payments by the Applicants would be affected.

In order to refund the Initial Series Notes, Applicants now propose that authorization be given allowing the public offering of up to an aggregate amount of $950 million principal amount of long-term bonds ("Public Bonds"), by RGS (I&M) Funding Corporation and RGS (AEGCo) Funding Corporation, non-affiliates of Applicants. The Public Bonds will be issued by each funding corporation in one or more series. The maturity of any series of Public Bonds will not exceed thirty-three years nor will any such series of Public Bonds bear interest at a rate in excess of 11.1%. Interest on all Public Bonds will be payable semi-annually in arrears. Applicants state that in no event will any borrowings incurred in connection with the proposed transaction or in connection with those heretofore approved, in the aggregate, exceed 85% of the $1.7 billion purchase price of Rockport 2 or $1.445 billion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29205 Filed 12–14–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500-1]

Tzaar Corp. and Simco Data Group, Inc.; Order of Suspension of Trading

December 11, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Tzaar Corporation and Simco Data Group, Inc., and that questions have been raised about the adequacy and accuracy of the publicly disseminated information concerning, among other things, the identities of shareholders, the corporate history and the claims for exemption from the registration provisions of the Securities Act of 1933 made by these companies and pursuant to which their securities are trading. Among other things, substantial questions have been raised about the true ownership of shares in these corporations, and whether the issuers have distributed or are distributing securities in violation of the registration provisions of the Securities Act of 1933. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EST, December 11, 1989 through 11:59 p.m. EST, on December 20, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29204 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27510; File No. S7-30-89]

Request for Comments on Self-Evaluation Study conducted under Section 504 of the Rehabilitation Act of 1973

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: On July 8, 1988, the Commission participated with other Federal agencies by issuing final rules in the **Federal Register**, 53 FR 25872, to implement section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Section 504, as amended, prohibits discrimination on the basis of handicap in programs or activities conducted by federal executive agencies. The Commission's rules became effective on September 6, 1988, and are incorporated in 17 CFR part 200. Also, source documentation is contained in SECR 6-23, dated July 19, 1988.

17 CFR 200.610 requires the Commission to conduct a self-evaluation of its compliance with section 504 and to provide interested persons with an opportunity to participate in the process by submitting oral or written comments. As part of the evaluation process, the staff has prepared a written review of its compliance efforts. Interested persons may obtain access to the self-evaluation file.

DATE: Comments must be submitted on or before January 5, 1990.

ADDRESSES: Written comments should be sent to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549. Comments should be filed in triplicate and refer to File No. S7-30-89. Verbal comments may be submitted to Nancy A. Wolynetz, Selective Placement Coordinator, 202-272-2550 (voice) or 202-272-2552 (TDD).

FOR FURTHER INFORMATION CONTACT: Nancy A. Wolynetz, Selective Placement Coordinator, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 202-272-2550 (voice) or 202-272-2552(TDD).

The Commission was established in 1934. The Commission's principal principal responsibilities are the administration and enforcement of the Federal Securities Laws.

SUPPLEMENTARY INFORMATION: The Commission was established in 1934. The Commission's principal responsibilities are the administration and enforcement of the Federal Securities Laws.

On July 8, 1988 the Commission joined with other federal agencies in issuing final rules to implement section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in executive agency programs or activities. *See* 53 FR 25872. These rules were based on a prototype developed by the Department of Justice and were adopted by the Commission as part 200 of its regulations. 17 CFR 200, subpart L. 17 CFR 200.610 requires that the Commission evaluate its policies and practices in light of Section 504 and provide an opportunity to interested persons, including those with handicaps or organizations representing persons with handicaps, to participate in this self-evaluation by submitting oral or written comments. Oral comments received will be converted into a written record for public inspection. Comments received will be kept for three years following the completion of the self-evaluation and will be open to public inspection, along with the Commission's own description of areas examined, any problems identified and any modifications made.

The Commission has conducted its review and is now requesting comments to complete the self-evaluation. A brief summary of some of the Commission's implementation efforts follows: An accessibility study of the Headquarters Office and regional offices was completed and is presently being evaluated. Every hearing-impaired employee either has his/her own TDD or immediate access to a TDD. Additionally, there are TDD's in the Office of Personnel (receptionist area), and in the Office of Selective Placement Coordinator who is located in the Office of Personnel. The Office of Consumer Affairs and Office of Public Affairs also have TDD's for communication with employees and the general public. The location and telephone numbers of these devices are listed in the SEC telephone directory with instructions for their use. Also, the SEC Employee Newsletter periodically contains articles illustrating the use of these devices. The Commission has a contract with a sign language association to ensure that employees and the general public who are hearing impaired will be able to communicate in day to day activities. The contract includes scheduled times each week and also is available on an as-needed basis.

Reading materials also are available in alternate forms. A pamphlet, SEC 1678 (3/89), lists publications available to the public which includes a statement that these publications can be requested in other than a written mode. Also, written notices of public meetings include a statement that auxiliary aids will be available to persons who are handicapped so that they will be able to fully participate in the meetings.

Interested persons may obtain access to the Commission's self-evaluation file by contacting Nancy A. Wolynetz, Selective Placement Coordinator, Office of Personnel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, telephone number 202-272-2550 (voice) 202-272-2552 (TDD).

Dated: December 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29203 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 89–10–5 set the currently effective two-month SFFL applicable through November 30, 1989.

In establishing the SFFL for the two-month period beginning December 1, 1989, we have projected nonfuel costs based on the year ended September 30, 1989 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 89–12–17 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2563
Latin America	1.2829
Pacific	1.6050
Canada	1.3879

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: December 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–29183 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD8–89–15]

Eighth Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 10 January 1990, the Commander, Eighth Coast Guard District will sponsor an Industry Day program to provide for an exchange of ideas, opinions and information concerning developments affecting the Coast Guard and the maritime community as well as related industries. The Industry Day program will be held at the Sheraton-New Orleans in New Orleans, LA.

The format for the day will be as follows:

7:15 am Registration begins
8:00 am General session; greeting, opening remarks
8:30 am Group discussions; four separate, small group discussions focusing on the Deep Sea Industry, Offshore Oil/Support Industry, Towing Industry and Shore Side Facilities.
11:00 am No host cocktails
12:00 am No host lunch (cost $20.00)
1:30 am General Session
3:00 am Break
3:30 am Reconvene General Session
5:00 am Adjourn

Persons desiring to attend the program are encouraged to provide additional topics for consideration. Preregistration for the program is required. Contact the below named officer to submit topics for discussion and to obtain registration forms. Topic suggestions and lunch reservations must be received by 27 December 1989.

DATE: 10 January 1990, 8:00 am to 5:00 p.m.

ADDRESS: Sheraton-New Orleans Hotel, 500 Canal Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: LCDR Robert L. Knapp, USCG, c/o Commander (mvs), Eighth Coast Guard District, Hale Boggs Federal Building, Room 1341, 501 Magazine Street, New Orleans, LA 70130–3396; telephone number (504) 589–6271.

Dated: December 5, 1989.

W. F. Merlin,

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

[FR Doc. 89–29261 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 90–01–EX–N01]

Receipt of Petition for Temporary Exemption From Standard No. 208

Officine Alfieri Maserati S.p.A. of Modena, Italy, through Maserati Automobiles Incorporated of Baltimore, MD, has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The exemption would cover its convertible models, and expire May 31, 1991. The basis of the petition is that compliance would cause the petitioner substantial economic hardship, and that it has, in good faith, attempted to comply with Standard No. 208, as required by 15 U.S.C. 1410(a)(1)(A).

This notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration (49 CFR Part 555), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (Section 1410(d)(1)). During the 12-month period ending July 31, 1989, Maserati produced a total of 3,155 passenger cars. Although two other motor vehicle manufacturers, Chrysler Corporation and G.B.M. S.p.A. (Benelli motorcycles), hold interests in Maserati, NHTSA has previously determined that neither manufacturer can be considered the manufacturer of Maserati passenger cars by virtue of being a sponsor, and that Maserati is eligible to apply for a hardship exemption (53 FR 28324, at 28325).

Maserati's long-term goal is to develop an air bag system for use in all models. Following NHTSA's denial of its previous petition in August 1988 (53 FR 34629) for an exemption from Standard No. 208 until September 1, 1989, Maserati developed an automatic belt system for its closed vehicles. This system could not be installed in convertibles, and the effort expended in its development delayed Maserati's efforts to achieve compliance through an air bag system. However, it believes that it will be able to install an air bag system in its convertibles by June 1991. In the meantime, however, it will be unable to sell convertibles in the U.S. market absent an exemption. The convertible presently accounts for 40 to 50 percent of the company's sales in the United States, and Maserati estimates that it may rise to 60 to 70 percent of its U.S. volume as demand for its closed cars lessens. Maserati further estimates that a total of approximately 350 convertibles would be covered by an exemption if granted for the period of time requested.

In addition to the potential loss of sales, and in further support of its hardship argument, Maserati calls NHTSA's attention to its declining production over the past few years, from a high of approximately 5000 cars in 1985, to a low of about 3000 in 1988, the U.S. sales portion of that figure declining from 2000 to 650 units respectively. The petitioner's cumulative losses for 1987 and 1988 exceed $44,000,000, and those of its U.S. sales representative, $11,600,000.

Notwithstanding these losses, in those years Maserati expended $10,600,000

"on research and development in good faith effort to build a product in compliance with required standards." Between $500,000 and $600,000 of this has been expended in the past year on passive belt development. Future costs to be incurred in air bag development are expected to total an additional $1,100,000.

The company also argued that an exemption would be consistent with the public interest and the objectives of the Vehicle Safety Act. A denial would mean a cessation of importation depriving the U.S. market "of the products of one of the last small independent automobile manufacturers", one which has a 70-year history. It does not believe that the number of vehicles to be exempted will have a material effect upon motor vehicle safety, as they will be equipped with 3-point restraint systems acceptable until September 1 of this year. Most importantly, granting the petition will allow Maserati to offer air bags sooner and in more vehicles than if the petition is denied. The economic benefits of continued sales will allow greater research and development. Once the air bag is installed in convertibles, its installation in closed cars will follow shortly thereafter. With an exemption, Maserati hopes to provide a passenger side air bag by December 1991, "some 2 years before they are required."

Interested persons are invited to submit comments on the petition of Maserati described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 4, 1990.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on December 11, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29184 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting (1) to exchange views on proposals submitted to the second session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods and (2) to report the results of the 12th session of the International Civil Aviation Organization's Dangerous Goods Panel.

DATE: January 4, 1990 at 9:30 a.m.

ADDRESS: Room 8334, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Mateials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will in part be held in preparation for the second session of the Sub-committee of Experts on the Transport of Dangerous Goods to be held 15 to 26 January 1990 in Geneva. During ths meeting the U.S. position on proposals submitted to the second session of the Sub-Committee will be discussed. Topics to be covered include classification and grouping criteria for self-reactive substances; application of performance packaging test requirements to minor variations of previously tested combination packages; requirements for infectious substances; revision of the classification and grouping criteria for gases; adoption of a generic classification system for all classes of dangerous goods and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods. A second purpose for the meeting will be to review the results of the 12th session of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel. Agreed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air will be discussed.

Issued in Washington, DC, on December 11, 1989.

Elaine Economides Joost,

Deputy Director, Office of Hazardous Materials, Transportation

[FR Doc. 89-29215 Filed 12-14-89; 8:45 am]

BILLING CODE 9910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirments Submitted to OMB for Review

December 11, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: Reinstatement.
Title: Records (26 CFR 1.6001-1).
Description: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. These records are needed to ensure proper compliance with the Code.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW, Washington, DC 2024.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-29256 Filed 12-14-89; 8:45 am]

BILLING CODE 9810-25-M

Fiscal Service

1990 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury has determined that the schedule of fees to be used in 1990 for assessing charges on the transfer of book-entry Treasury securities between accounts of depository institutions maintained at Federal Reserve Banks and Branches will remain unchanged from the levels effective in 1989.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT:

Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001 (202) 376-4350.

William A. Saunders, Government Securities Specialist, Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001 (202) 376-4350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between accounts of depository institutions maintained at Federal Reserve Banks and Branches. The Treasury fee schedule was revised effective January 3, 1989, to include certain previously excluded securities transfers in the fee structure and to increase the Treasury portion of the fees to offset the anticipated increase in the cost of providing the Treasury transfer service.

Based on the latest review of book-entry costs and volumes, the Treasury has determined that the fees for securities transfers in 1990 should remain virtually unchanged from the levels currently in effect. There will be one change in the fee structure, to eliminate the fee currently charged for the received portion (deposit) of an off-line account switch. An account switch is the transfer of a security from one book-entry sub-account to another book-entry sub-account of the same depository institution.

Although Treasury has decided to maintain the same level of fees for book-entry transfers for 1990, the Department has also stipulated the need for making an extensive evaluation of costs and fees in 1990 due to several important factors affecting the book-entry environment, such as the Government Securities Clearing Corporation ("GSCC") netting program which will likely reduce the volume of Treasury security transfers processed, and the development costs of a future book-entry system.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies. The Federal Reserve fees for those services are set out in a separate notice published November 7, 1989, by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will be effective January 2, 1990, for the Treasury book-entry transfer service:

1990 Fee Schedule

	Cost per transfer
On-line transfers originated	$1.65
On-line reversal transfers received	$1.65
Off-line transfers originated	$6.40
Off-line transfers received	$6.40
Off-line reversal transfers received	$6.40

Dated: _____.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-29237 Filed 12-14-89; 8:45 am]

BILLING CODE 4810-10-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held December 20, 1989 in Room 600, 301 4th Street, SW., Washington, DC from 10:15 a.m. to 11:15 a.m.

The Commission will meet with Mr. Michael Pistor, Counselor, USIA; Mr. Dell Pendergrast, Deputy Director for Eastern Europe and the Soviet Union, USIA; Mr. Csaba Chikes, Deputy Director-designate for Eastern Europe and the Soviet Union, USIA; and Ms. Carol Ludwig, Director, Foreign Press Centers, for a discussion of USIA's role at the Malta summit and the public diplomacy outlook in the Soviet Union and Eastern Europe.

Please Call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: December 11, 1989.

Ledra L. Dildy,

Management Analyst, Federal Register Liaison.

[FR Doc. 29314 Filed 12-14-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 240
Friday, December 15, 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).

COMMISSION ON CIVIL RIGHTS

December 12, 1989.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 50682 (Friday, December 8, 1989).

PLACE: 1121 Vermont Avenue, NW., Washington, DC 20425.

TIME AND DATE: Friday, December 15, 1989, 9:00 a.m.–12:00 Noon.

STATUS: The meeting, scheduled for the place, time, and date shown above, has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Jeffrey P. O'Connell,

Acting Solicitor (202) 376–8514.

[FR Doc. 89–29333 Filed 12–12–89; 4:27 pm]

BILLING CODE 6335–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on December 4, 1989, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for January 8, 1990, in Washington, DC. The members will discuss (1) Preparations for the rate case filing and (2) possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Cox.

As to the first item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

As to the second item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(3) and (4) of title 39, United States Code; and § 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

Paul J. Kemp,

Certifying Officer.

[FR Doc. 89–29343 Filed 12–13–89; 10:33 am]

BILLING CODE 7710–12–M

RESOLUTION TRUST CORPORATION

Notice of changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 3:35 p.m. on Tuesday, December 12, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the withdrawal of the following item from the "*Discussion Agenda*" on less than seven days' notice to the public:

Item A: Resolution Programs for Minority Institutions

The Board further determined, by the same majority vote, that Corporation business required the addition of the following item to the "*Discussion Agenda*" for consideration at the meeting on less than seven days' notice to the public:

Item E: Policy Statement Regarding Qualified Financial Contracts.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 13, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89–29352 Filed 12–13–89; 11:48 am]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 54, No. 240
Friday, December 15, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 90764-9261]

Atlantic Mackerel, Squid, and Butterfish Fisheries

Correction

In proposed rule document 89-27074 beginning on page 47799 in the issue of Friday, November 17, 1989, make the following correction:

The table appearing on pages 47799 and 47800 was incorrectly published and is republished below.

TABLE—PRELIMINARY INITIAL ANNUAL SPCIFICATIONS FOR ATLANTIC SQUIDS AND BUTTERFISH FOR THE 1990 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1990

[in metric tons (mt)]

Specifications	Squid		Butterfish
	Loligo	Illex	
Max OY [a]	44,000	30,000	16,000
ABC [b]	37,000	22,500	16,000
IOY	26,010	15,000	10,019
DAH	26,000	15,000	10,000
DAP	26,000	12,000	10,000
JVP	0	3,000	0
TALFF	10	0	19

[a] Max OY as sated in the FMP.
[b] IOY can rise to this amount.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90363-9221]

RIN 0651-AA40

Patent and Trademark Automated Search System Fees

Correction

In rule document 89-28791 beginning on page 50942 in the issue of Monday, December 11, 1989, make the following corrections:

1. On page 50944, in the first column, in paragraph 1., in the fifth line, insert "available" following "commercially".

2. On page 50946, in the third column, directly below the table, in the second line, insert "usage" following "projected".

§ 1.21 [Corrected]

3. On page 50949, in the second column, in § 1.21(o), in the eighth line, "Patient" should read "Patent".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3615-9]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendments to Methods 15 and 16

Correction

In rule document 89-23963 beginning on page 46236 in the issue of Thursday, November 2, 1989, make the following corrections:

1. On page 46239, in the second column, in paragraph 3., in the fifth line, "=" should read "—".

2. On page 46241, in the second column, in paragraph 5.2 *Dilution System.*, the text of the paragraph should be in roman type.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1

[PR Docket No. 88-567; FCC 89-301]

Private Land Mobile Radio Service Stations

Correction

In rule document 89-28208 beginning on page 50237 in the issue of Tuesday, December 5, 1989, make the following correction:

On page 50238, in the third column, amendatory instruction 3. should read "3. Section 1.925 is amended by redesignating current paragraph (i) as paragraph (j) and revising it and by adding new paragraph (i) to read as follows:".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-65, RM-6188, 6342, 6343 6344]

Radio Broadcasting Services; East Hemet, Indio, Rancho California, Sun City, and Temecula, CA

Correction

In rule document 89-26640 appearing on page 47362 in the issue of Tuesday, November 14, 1989, make the following correction:

§ 73.202 [Corrected]

In the second column, in amendatory instruction 2, in the sixth line, "Channel 223A" should read "Channel 233A".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on Occupational Cumulative Trauma Disorders of the Upper Extremities

Correction

In notice document 89-27296 beginning on page 48154 in the issue of Tuesday,

November 21, 1989, make the following correction:

On page 48154, in the third column, under **SUPPLEMENTARY INFORMATION:**, in the third line, "1977" should read "1970", and in the fifth line, "1970" should read "1977".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Animal Drugs, Feeds, and Related Products; Detomidine Hydrochloride Injection

Correction

In rule document 89-28390 beginning on page 50364 in the issue of Wednesday, December 6, 1989, make the following corrections:

§ 522.536 [Corrected]

1. On page 50365, in the second column, in the heading, § **522.536 DETOMIDINE HYDROCHLORIDE INJECTION**, "hydrocholoride" should read "hydrochloride".

2. On the same page, in the same column, in § 522.536(a), in the fourth line, "hydrocholoride" should read "hydrochloride".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0503]

Drug Export; Once-a-day Benylin Cold Controlled Release Capsule (Pseudoephedrine Hydrochloride 240 mg., USP and Chlorpheniramine Maleate 24 mg., USP)

Correction

In notice document 89-28169 appearing on page 49817 in the issue of Friday, December 1, 1989, make the following corrections:

In the first column, under **ADDRESS:**, in the 6th and 11th lines, , "contract" should read "contact".

BILLING CODE 1505-01-D

Federal Register

Friday
December 15, 1989

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Radionuclides; Final Rule and Notice of Reconsideration

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3657-4]

RIN 2060-AC47

National Emission Standards for Hazardous Air Pollutants; Radionuclides

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule and notice of reconsideration.

SUMMARY: This final rule announces the Administrator's final decisions on National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the Clean Air Act for emissions of radionuclides from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Coal-Fired Boilers, High-level Nuclear Waste Disposal Facilities, Phosphogypsum Stacks, Underground and Surface Uranium Mines, and the operation and disposal of Uranium Mill Tailings Piles. The final rule also responds to the major public comments on the March 7, 1989 proposed decisions for these categories (54 FR 9612). EPA is conducting this rulemaking pursuant to a voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit which requires final action by October 31, 1989. In addition EPA is granting a reconsideration of the standards of 40 CFR part 61, subpart I concerning emissions from facilities licensed by the Nuclear Regulatory Commission, with respect to the issues of duplicative regulation and possible effects on medical treatment.

DATES: Effective Date: December 15, 1989. Subpart I is stayed until March 15, 1990. Comments on subpart I may be submitted on or before February 13, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1989. Under section 307(b)(1) of the CAA, judicial review of decisions under section 112 is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these rules. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Comments on subpart I should be submitted (in duplicate if possible) to: Central Docket (A-130), Environmental Protection Agency, Attn: Docket No. A-79-11, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James M. Hardin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

Motion for Reconsideration

For any party who wishes to present new information to EPA, regarding the appropriateness of these rules, a Petition for Reconsideration may be filed under section 307(d)(7)(B).

Docket

The rulemaking record is contained in Docket No. A-79-11 and contains information considered in determining health effects, listing radionuclides as hazardous air pollutants, and setting standards. It also contains all comments received from the public during the comment period. This docket is available for public inspection and copying between 8:00 a.m. and 3:00 p.m. on weekdays. A reasonable fee may be charged for copying.

A single copy of the Background Information Document and Economic Assessment (which, combined, form the final Environmental Impact Statement (EIS)) have been placed in the docket. Other documents available include: A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions from NRC-Licensed and Non-DOE Federal Facilities (October 1989); Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I (October 1989); and User's Guide for the COMPLY Code (October 1989). Copies of these documents may be obtained by writing to: Director, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460.

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I. Definitions

A. Terms

Activity—The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is 3.7×10^{10} nuclear transformations per second.

Agreement State—Any state with which the Nuclear Regulatory Commission or the former Atomic Energy Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act.

Annualized Cost—A stream of annual payments for a determined time period, equal in value to a one-time payment based on a selected rate of interest.

By-product Material—Any radioactive material (except source material and special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear

material and wastes from the processing of ores primarily to recover their source material content.

Dose Standard—A regulatory standard that requires a regulated facility to limit its emissions to the level necessary to ensure that no individual receives an effective dose equivalent greater than the specified level.

Effective Dose Equivalent (EDE)—The sum of the risk-weighted organ dose equivalent commitments. The effective dose equivalent has the same risk (for the model used to derive the weighting factors) as a uniform dose equivalent to all organs and tissues. For the purposes of these standards, "effective dose equivalent" means the result of the calculation used to determine the dose equivalent to the whole body, by taking into account the specific organs receiving radiation, the dose each organ receives, and the risk per unit dose to that organ. A description of the weighting factors used in the calculation of the EDE is described in detail in the International Commission on Radiological Protection's Publication No. 26, Pergamon Press, New York (1982).

Flux standard—A regulatory standard that limits the amount of radon that can emanate per square meter of regulated material per second, averaged over a single source.

Half-Life—The time in which half the atoms of a particular radioactive substance transform, or decay, to another nuclear form.

Incidence—This term denotes the predicted number of fatal cancers in a population from exposure to a pollutant. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

Maximum Individual Risk—The maximum additional cancer risk of a person due to exposure to an emitted pollutant for a 70-year lifetime.

Pathway—A way that radionuclides might contaminate the environment or reach people, e.g. air, water, food.

Radionuclide—A type of atom which spontaneously undergoes radioactive decay.

Source Term—The amount of radioactive material emitted to the atmosphere from a source, either estimated, measured or reported, that is used in the risk assessment.

Transuranic—An element with an atomic number greater than the atomic number of uranium.

Uranium Fuel Cycle—The operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy. This definition does not include mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, or the reuse of recovered non-uranium special nuclear and by-product materials from the cycle.

B. Acronyms

AEA—Atomic Energy Act, 42 U.S.C. 2011 *et seq.*
ALARA—As low as reasonably achievable
AMC—American Mining Congress
ANPR—Advanced Notice of Proposed Rulemaking
CAA—The Clean Air Act, 42 U.S.C. 7401 *et seq.*
CAP-88—Clean Air Act Assessment Package-1988
CERCLA—Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*
CFR—Code of Federal Regulations
BID—The Background Information Document prepared in support of this rulemaking (Volume 1 of the EIS)
EIA—The Economic Impact Assessment prepared in support of this rulemaking (Volume 2 of the EIS)
EIS—Environmental Impact Statement
DOE—United States Department of Energy
EDF—Environmental Defense Fund
EPA—United States Environmental Protection Agency
HLW—High-Level Radioactive Waste
ICRP—International Commission on Radiological Protection
MSHA—Mine Safety and Health Administration
mrem—millirem, 1×10^{-3} rem
NAAQS—National Ambient Air Quality Standards
NESHAP—National Emission Standard for Hazardous Air Pollutants
NCRP—National Council on Radiation Protection and Measurements
NRC—United States Nuclear Regulatory Commission
NRDC—Natural Resources Defense Council, Inc.
pCi—picocurie, 1×10^{-12} curie
UFC—Uranium Fuel Cycle
UMTRCA—Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901, *et seq.*

II. EPA NESHAPs Policy

This section provides a description of the EPA's approach for the protection of public health under section 112. In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the maximum estimated risk that a person living near a plant would have if he or she were exposed to the emitted pollutant for 70 years. Implementation of these goals is by means of a two-step standard-setting approach, with an analytical first step to determine an "acceptable risk" that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime risk (MIR) of approximately 1 in 10 thousand. A second step follows in which the actual standard is set at a level that provides "an ample margin of safety" in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision. Applying this approach to the radionuclide source categories in today's notice results in controls that protect over 90 percent of the persons within 80 kilometers (km) of these sources at risk levels no higher than approximately 1 in 1 million.

A principle that accompanies these numerical goals is that the state of the art of risk assessment does not enable numerical risk estimates to be made with comparable confidence. Therefore, judgment must be used in deciding how numerical risk estimates are considered with respect to these goals. As discussed below, uncertainties arising from such factors as the lack of knowledge about the biology of cancer causation and gaps in data must be weighed along with other public health considerations. Many of the factors are not the same for different pollutants, or for different source categories.

A. Background

On March 7, 1989, EPA proposed decisions on standards under section 112 for twelve source categories of radionuclides. A principal aspect of the proposal, and the basis for the proposed decisions on the source categories, were four proposed approaches for decisions under section 112 as mandated by the D.C. Circuit's decision in *NRDC* v. *EPA*, 824 F.2d at 1146 (1987) (the *Vinyl Chloride* decision). The *Vinyl Chloride* decision required the Administrator to exercise his judgment under section 112 in two steps: first, a determination of a "safe" or "acceptable" level of risk

considering only health factors, followed by a second step to set a standard that provides an "ample margin of safety", in which costs, feasibility, and other relevant factors in addition to health may be considered.

The four proposed approaches were designed to provide for consideration of a variety of health risk measures and information in the first step analysis under the *Vinyl Chloride* decision—the determination of "acceptable risk." Included in the alternative approaches were three that consider only a single health risk measure in the first step: (1) Approach B, which considers only total cancer incidence with 1 case per year as the limit for acceptability; (2) Approach C, which considers only the maximum individual risk ("MIR") with a limit of 1 in 10 thousand for acceptability; and (3) Approach D, which considers only the maximum individual risk with 1 in 1 million as the limit. The fourth approach, Approach A, was a case-by-case approach that considers all health risk measures, the uncertainties associated with them, and other health information.

In the second step, setting an "ample margin of safety", each of the four approaches considers all health risk and other information, uncertainties associated with the health estimates, as well as costs, feasibility, and other factors which may be relevant in particular cases. The proposal solicited comment on each of the approaches for implementing the *Vinyl Chloride* decision. The Agency received many public comments on the approaches from citizen's groups, companies and industry trade groups, state and local governments, and individuals.

B. General NESHAP Policy Considerations

The purpose of this section is to discuss the appropriate criteria for determining an "acceptable risk" and an "ample margin of safety". In its determination, EPA will consider measures of health risk, and limitations and uncertainties of the risk estimation methods and basic data. A discussion of these factors follows. The framework adopted in this proceeding has already been selected in the Benzene NESHAP and will also become the policies for decisions on future NESHAPs but will not apply to other Agency programs or other sections of the Clean Air Act.

1. Selection of Approach

Based on the comments and the record developed in the rulemaking, EPA selected an approach announced in the notice on benzene standards published on September 14, 1989 (54 FR 38044), based on Approaches A and C but also incorporating consideration of incidence from Approach B and consideration of health protection for the general population on the order of 1 in 1 million from Approach D. Thus, in the first step of the *Vinyl Chloride* inquiry, EPA will consider the extent of the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime. The EPA will generally presume that if the risk to that individual is no higher than approximately 1 in 10 thousand, that risk level is considered acceptable and EPA then considers the other health and risk factors to complete an overall judgment on acceptability. The presumptive level provides a benchmark for judging the acceptability of maximum individual risk, but does not constitute a rigid line for making that determination.

The Agency recognizes that consideration of maximum individual risk—the maximum estimated risk of contracting cancer following a lifetime of exposure to the emitted pollutant—must take into account the strengths and weaknesses of this measure of risk. It is estimated based on the assumption of continuous exposure for 24 hours per day for 70 years. As such, it does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded. The Administrator believes that an MIR of approximately 1 in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under section 112. They then would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.

In establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within a radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, and other quantified or unquantified health effects.

The EPA also considers incidence to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population. The EPA believes that even if the MIR is low, the overall risk may be unacceptable if significant numbers of persons are exposed to a hazardous air pollutant, resulting in a significant estimated incidence. Consideration of this factor would not be reduced to a specific limit or range, such as the 1 case per year limit included in proposed Approach B, but estimated incidence would be weighed along with other health risk information in judging acceptability.

The limitation of MIR and incidence are put into perspective by considering how these risks are distributed within the exposed population. This information includes both individual risk, including the number of persons exposed within each risk range, as well as the incidence associated with the persons exposed within each risk range. In this manner, the distribution provides an array of information on individual risk and incidence for the exposed population.

Particular attention will also be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.

In the *Vinyl Chloride* decision, the Administrator is directed to determine a "safe" or "acceptable" risk level, based on a judgment of "what risks are acceptable in the world in which we live." 824 F.2d at 1165. To aid in this inquiry, the Agency compiled and presented a "Survey of Societal Risk" in its March 1989 proposal (54 FR 9621-22). As described there, the survey developed information to place risk estimates in perspective and to provide background and context for the Administrator's judgment on the acceptability of risks "in the world in which we live." Individual risk levels in

the survey ranged from 10^{-1} to 10^{-7} (that is, the lifetime risk of premature death ranged from 1 in 10 to 1 in 10 million), and incidence levels ranged from less than 1 case per year to estimates as high as 5,000 to 20,000 cases/year. Everyday risks include risks from natural background radiation as well as risks from home accidents. Natural background radiation (excluding radon) at sea level creates individual lifetime cancer risks in the range of 3 in 1,000 and an estimated 10,000 cancer cases per year. Naturally occurring radon in homes poses an additional source of radiation risk, and these risks can be as high as 1 in 100 to 1 in 10. EPA estimates that this causes an estimated 8,000 to 40,000 cancer cases per year. In the U.S., accidents, natural disasters, and rare diseases pose individual risks of death from 1 in 10,000 (e.g., tripping and falling which cause approximately 470 deaths per year) to 1 in 10,000,000 (e.g., rabies, which causes an average of 1.5 deaths per year).

Judgments on risks have also spanned a broad range of risk levels. The NCRP, following recommendations of the International Commission on Radiological Protection, has recommended that maximum individual exposures from non-medical, manmade radiation be limited to an amount corresponding to risks of 3 in 1,000. It is important to note that the recommendations of national and international bodies are coupled with recommendations that radiation doses should be "as low as reasonably achievable" (ALARA). The implementation of ALARA requires a site-specific consideration of the cost effectiveness of controls that could be added to reduce radiation doses.

The EPA concluded from the survey that no specific factor in isolation could be identified as defining acceptability under all circumstances, and that the acceptability of a risk depends on consideration of a variety of factors and conditions. However, the presumptive level established for MIR of approximately 1 in 10 thousand is within the range for individual risk in the survey, and provides health protection at a level lower than many other risks common "in the world in which we live." And, this presumptive level also comports with many previous health risk decisions by EPA premised on controlling maximum individual risks to approximately 1 in 10 thousand and below.

In today's decisions, EPA is using this approach based on the judgment that the first step judgment on acceptability cannot be reduced to any single factor. The EPA believes that the level of the MIR, the distribution of risks in the exposed population, incidence, the science policy assumptions and uncertainties associated with the risk measures, and the weight of evidence that a pollutant is harmful to health are all important factors to be considered in the acceptability judgment. The EPA concluded that this approach best incorporates all vital health information and enables the Agency to weigh it appropriately in making a judgment. In contrast, the single measure Approaches B, C, and D, while providing simple decisionmaking criteria, provide an incomplete set of health information for decisions under section 112. The Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information. As applied in practice, the EPA's approach is more protective of public health than any single factor approach. In the case of the radionuclide sources regulated here, more than 90 percent of the population living within 80 km would be exposed to risks no greater than approximately 1 in 1 million and, the total number of cases of death or disease estimated to result would be kept low.

Under the two-step process specified in the *Vinyl Chloride* decision, the second step determines an "ample margin of safety," the level at which the standard is set. This is the important step of the standard-setting process at which the actual level of public health protection is established. The first step consideration of acceptability is only a starting point for the analysis, in which a ceiling for the ultimate standard is set. The standard set at the second step is the legally enforceable limit that must be met by a regulated facility.

Even though the risks judged "acceptable" by EPA in the first step of the *Vinyl Chloride* inquiry are already low, the second step of the inquiry, determining an "ample margin of safety," again includes consideration of all of the health factors, and whether to reduce the risks even further. In the second step, EPA strives to provide protection to the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million. In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. After considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112. The Agency terms its approach the "multifactor approach."

2. Format of Standards

The format of the standards for the various source categories varies because of the differing properties of the sources and the radionuclides they emit. Area sources emitting radon are best monitored by flux measurements. Thus, flux standards are most appropriate. For other categories, mixtures of radionuclides are best related to public health through the use of the concept of dose. EPA has promulgated dose standards to limit emissions in those cases where it is appropriate. Where a single radionuclide is emitted or a single radionuclide emission limit would serve to limit all others, EPA has promulgated an emission limit for that radionuclide. All standards include releases from accidents and accidental releases can result in a violation of the standard. However, releases from accidents shall not be considered when determining whether or not a facility should be granted permission to construct or modify under §§ 61.07 and 61.08. Releases that are not routine but are more likely than not to occur are included in determining whether such approval shall be granted.

Plants are required to monitor their operations continuously and keep records of the results of their monitoring onsite for five years. Plant owners will have to certify on a semiannual basis that no changes in operations that would require new testing have occurred. Although the report is based on a calendar year, the emission limit applies to any year, i.e. any period of 12 consecutive months.

III. Historical Background of Radionuclide NESHAPs

On December 27, 1979, EPA listed radionuclides as a hazardous air pollutant under section 112 of the CAA (44 FR 76738, December 27, 1979). EPA determined that radionuclides are a known cause of cancer and genetic damage and that radionuclides cause or contribute to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, and therefore constitute a hazardous air pollutant within the meaning of section 112(a)(1).

EPA then determined that radionuclides presented a risk warranting regulation under Section 112, and listed the pollutant under that section. Once listed, radionuclides became subject to the requirement of section 112(b)(1)(B) that EPA establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) at a "level which (in the judgment of the Administrator) provides an ample margin of safety to protect the public health from such hazardous air pollutant," or find that they are not hazardous and delist them.

On April 6, 1983, EPA proposed standards regulating radionuclide emissions from four source categories: (1) Elemental phosphorus plants, (2) DOE facilities, (3) NRC-licensed facilities and non-DOE federal facilities (NRC-licensees), and (4) underground uranium mines. The Agency simultaneously proposed decisions not to regulate several other categories: (1) Coal-fired boilers, (2) the phosphate industry, (3) other extraction industries, (4) uranium fuel cycle facilities, (5) uranium mill tailings, (6) high level radioactive waste facilities, and (7) low energy accelerators (48 FR 15076, April 6, 1983). In February 1984, the Sierra Club filed suit in the U.S. District Court for the Northern District of California to compel EPA to take final action on the proposed standards. *Sierra Club* v. *Ruckelshaus,* No. 84–0656. EPA was subsequently ordered by the Court to promulgate final standards or make a finding that radionuclides are not hazardous air pollutants and delist them.

In October 1984, EPA withdrew the proposed emission standards for elemental phosphorus plants, DOE facilities, and NRC licensees, finding that the control practices already in effect for those categories protected the public from exposure to radionuclides with an ample margin of safety. EPA, therefore, concluded that no additional requirements were necessary (49 FR 43906, October 31, 1984). In the notice, EPA also withdrew proposed standards for underground uranium mines but stated its intention to promulgate a different standard for that category and simultaneously published an Advance Notice of Proposed Rulemaking (ANPR) for radon-222 emissions from underground uranium mines to solicit additional information on control methods. EPA also published an ANPR for radon-222 emissions from licensed uranium mills. EPA affirmed its decision not to regulate the other categories: coal-fired boilers, the phosphate industry, other extraction industries, uranium fuel cycle facilities, and high level radioactive waste. The Agency also decided to study further the category of phosphogypsum stacks to determine the need for a standard.

On December 11, 1984, the U.S. District Court for the Northern District of California found EPA in contempt of its order to promulgate final standards and again directed that EPA issue final radionuclide emission standards for the original four categories or make a finding that radionuclides are not hazardous air pollutants. EPA complied with the court order by promulgating standards for radionuclides emissions from elemental phosphorus plants, DOE facilities, and NRC-licensees (50 FR 7280, February 6, 1985) and a work practice standard for radon-222 emissions from underground uranium mines (50 FR 15385, April 17, 1985). On September 24, 1986, EPA promulgated a final rule regulating radon-222 emissions from licensed uranium mill processing sites by establishing work practices for new tailings (51 FR 34056, September 24, 1986).

The Environmental Defense Fund (EDF), the Natural Resources Defense Council (NRDC), and the Sierra Club filed petitions for review of the October 1984 withdrawals and final decisions not to regulate, the February 1985 standards for the three source categories and the April 1985 standard for underground uranium mines. The April 1985 standard for underground uranium mines was also challenged by the American Mining Congress (AMC). In November 1986, AMC and EDF filed petitions challenging the standard for licensed uranium mill processing sites.

On July 28, 1987, the U.S. Court of Appeals for the D.C. Circuit remanded to the Agency an emissions standard for vinyl chloride which had also been promulgated under Section 112 of the CAA. *Natural Resources Defense Council, Inc.* v. *EPA,* 824 F.2d 1146 (D.C. Cir. 1987) (*Vinyl Chloride*). The Court in *Vinyl Chloride* concluded that the Agency improperly considered cost and technological feasibility without first making a determination based exclusively on risk to health.

In light of that decision, EPA concluded that the standards for elemental phosphorus plants, DOE facilities, NRC-licensees, and underground uranium mines should be reconsidered and on November 16, 1987, moved the D.C. Circuit Court for a voluntary remand of the challenged decisions. EPA also agreed to reexamine all issues raised by the parties to the litigation. On December 8, 1987, the Court granted EPA's motion for voluntary remand and established a time schedule for EPA to propose regulatory decisions for all radionuclide source categories within 180 days and finalize them within 360 days. On March 17, 1988, the Court granted a subsequent EPA motion and modified the order to require proposed regulatory decisions by February 28, 1989 and final action by August 31, 1989.

On April 1, 1988, EPA also requested a remand for its standard for licensed uranium mill tailings. On August 3, 1988 the Court granted EPA's motion and put the uranium mill tailings NESHAP on the same schedule as the other radionuclide NESHAPs.

On March 7, 1989, EPA published a proposed NESHAP which described four possible policy approaches for regulating emissions of radionuclides. Public hearings were held on April 10, 11, 13, and 14, 1989.

On July 14, 1989, the court granted EPA's request for an extension until October 31, 1989 for final action.

IV. Characterization of the Risks of Radiation

A. Sources of Radiation

Every day each person is exposed to radiation from a variety of natural and manmade sources. Natural sources of radiation include cosmic rays, radon, and other terrestrial sources. Manmade radiation includes medical and dental X-rays, fallout from above ground nuclear weapons testing and industrial sources.

The earth's atmosphere acts as a shield to cosmic rays, absorbing much of the radiation. People receive a higher dose of cosmic rays at higher altitudes because there is less atmosphere to shield them from cosmic rays. For example, people living in the mountains receive a higher dose than people living at sea level, and people are exposed to even higher levels when flying in an airplane. Terrestrial radiation comes from the small amount of radionuclides that are naturally present in all matter: soil, air, food, clothes, and even our bodies.

Radon is a radionuclide that is produced as a radioactive decay product of the radium which is naturally found in soil. Radon is always present in the ambient air at levels which are estimated to pose some health risk. In addition, radon often gets trapped in homes, leading to even higher estimated health risks. EPA has issued recommendations to homeowners for reducing these risks.

This rulemaking deals with sources of radionuclide emissions, including radon, from industrial sources. Although the amount of radiation dose that most

people receive as a result of these emissions is typically lower than their natural background dose, the resulting risk can still be significant. A source does not present an acceptable risk simply by being less than natural background. It is important to note that total background radiation from all sources, including naturally occurring radon, results in a calculated individual lifetime risk of fatal cancer of approximately one in one hundred. In most cases, little can be done to reduce most of this radiation exposure which people receive from natural background.

Industrial sources of radionuclide emissions in the air include a wide variety of facilities, ranging from nuclear power facilities to hospitals to uranium mill tailing piles. Industry uses hundreds of different radionuclides in solid, liquid, and gaseous forms, emitting different types of radiation (alpha, beta, gamma) at various energy levels. Industrial sources of radionuclide emissions fall into two major categories. The first include industries that use radioactive materials and have emissions as a result of an inability to completely contain the materials they use. For example, hospitals use radionuclides as part of their radiology departments. Since many of the radionuclides they use are gases, liquids capable of evaporation, or solids capable of sublimation, some radionuclides inevitably are released into the environment. The other type of source is that which releases radionuclides (usually radon) as an unintended consequence of another activity, such as mining or milling. An example of this is phosphogypsum stacks (piles). These piles of waste material emit radon because radium (from which radon is produced by radioactive decay) is found naturally in the same soils that are the source of phosphate rock.

B. Health Effects of Radiation

The level and type of hazard posed by radionuclides vary, depending on such characteristics as the radionuclide's radioactive half-life, the type of radiation it emits, the energy level of the emission(s), and its ability to concentrate in the body. Different radionuclides will irradiate different parts of the body causing different types of cancers.

There are three major types of long-term health impacts from exposure to radiation: Cancer, hereditary effects, and developmental effects on fetuses such as mental retardation. Since there is such a strong foundation for quantifying the risk of fatal cancer, EPA's consideration of fatal cancers is the principal health consideration in this rulemaking. However, it is important to note that other health effects have also been considered in the rulemaking. The other effects are not specifically addressed in this discussion because none of them pose a more severe risk to health. In addition, risk distribution of health effects from radiation from most of the sources considered for regulation show that fatal cancers occur much more frequently than non-fatal cancers and cancers generally occur more often than genetic or developmental effects. For sources that emit radon, no genetic or developmental effects, and very few non-fatal cancers are expected.

Numerous studies have demonstrated that radiation is a carcinogen. It is assumed that there is no completely risk-free level of exposure to radiation to cause cancer. Health effects from radiation have been observed in studies of occupationally exposed workers and of the survivors of the Hiroshima and Nagasaki atomic bombs. This information has been verified with studies of animals in laboratories. However, the effects of radiation doses at low levels of exposure can only be predicted by extrapolating from the observed effects at higher doses since we do not have direct evidence of cancer causation at low exposure levels. Some pollutants cause diseases that are unique to the pollutant; for example, asbestos causes asbestosis. Radiation, however, causes some of the same types of cancers, e.g. leukemia and lung and liver cancer, that are caused by other factors. Since these cancers are not uniquely associated with radiation, it is not possible to differentiate cancers caused by radiation from other cancers.

The second type of effect is the induction of hereditary effects in descendants of exposed persons, which vary in degree and effect and may even be fatal. It is assumed that there is no completely risk-free level of exposure for hereditary effects. Although hereditary effects have been observed in experimental animals at high doses, they have not been confirmed at low doses in studies of humans.

Based on extensive scientific evidence, EPA believes it prudent to assume that carcinogens, including radionuclides, pose a risk of health effects even at low levels of exposure. Based on this science policy judgment, EPA calculates health risk estimates assuming that the risk of incurring either cancer or hereditary effects is linearly proportional to the dose received in the relevant tissue. However, the severity of either effect is not related to the amount of dose received. That is, once a cancer or an hereditary effect has been induced, its severity is independent of the dose.

Regarding cancer, there continues to be divided opinion on how to interpolate between the absence of radiation effect at zero dose and the observed effects of radiation (mostly at high doses) in order to estimate the most probable effects at doses that represent small increases above natural background radiation. Most scientists believe that available data best support use of a linear model for estimating such effects. Others, however, believe that other models, which usually predict somewhat lower risk, provide better estimates. These differences of opinion have not been resolved to date by studies of the effects of radiation in humans, the most important of which are those of the survivors of the Hiroshima and Nagasaki atomic bombs.

Some studies have recently been completed, and others are now underway to reassess radiation dose calculations for the survivors of the Hiroshima and Nagasaki atomic bombs and to provide improved estimates of risk. These studies may reduce the uncertainty associated with extrapolation from high doses to low doses. These studies may also result in an increase of the estimated risk per unit dose. But they will not address the question of whether a threshold exists. EPA is monitoring the progress of this work and will initiate reviews of the risks of exposure to low levels of radiation upon its completion.

C. Risk Assessment

1. Risk Measures Considered in NESHAP Policy

In decisions on cancer risks from stationary sources of hazardous air pollutants, the Agency has estimated three measures of health risk. These are termed "maximum individual risk", "risk distribution", and "incidence". Each of these combines an estimate of the dose/response for a pollutant with estimates of exposure to the pollutant. The response estimated is the pollutant-related increase in the probability that an individual will contract fatal cancer in his or her lifetime. The exposure estimated is the average daily exposure assuming exposure for 70 years.

a. *Maximum Individual Risk.* Individual risk is expressed as an estimated probability, e.g., 1 in 100 (10^{-2}), 1 in 1,000 (10^{-3}), 1 in 10,000 (10^{-4}). Thus, a 1×10^{-3} individual risk is an added "chance" of 1 in 1,000 of contracting fatal cancer sometime in the individual's lifetime.

In this discussion, the maximum individual lifetime risk is the maximum additional cancer risk of any person due to exposure to an emitted pollutant for a 70-year lifetime. The maximum individual risk is sometimes called the maximum exposed individual risk. This estimate is based on the fact that the concentration of an emission, and the consequent risk, diminishes with distance from its source. For radionuclide NESHAP decisions, the practice has been to estimate exposure according to census data on residence locations. It has also been estimated in some other Agency decisions as the maximum at the source perimeter.

The maximum individual lifetime risk is different from average individual risk which is sometimes estimated for sources like public drinking water systems or food in which the concentration of a pollutant and other factors are assumed to be equal at all distribution locations. This distinction is particularly relevant when considering the maximum risk one might find acceptable from different sources. In using the maximum individual risk in acceptable risk decisions for hazardous air pollutants, its limitations should be considered. Used alone, the measure does not tell how many people may be so affected; it relates only to the risk to the most exposed individual(s).

b. *Risk Distribution.* A risk distribution estimates how many persons within a certain distance (e.g. 80 km) of a source of pollutant emissions are at what level of individual risk. Typically, the distribution is given for 10-fold increments of individual risk. Such a distribution provides the decisionmaker with information on both the individual risk level for those exposed and the number of persons exposed at each level. For NESHAP and other decisions, the Agency has examined risk distributions both as measures of risk and to compare the effects of various strategies for risk reductions across a source category.

In making an acceptable risk decision, one relevant consideration is how many people are exposed at each risk level, e.g. a 10^{-2} risk might be acceptable if only one person were at that level, but not if 1,000 people were subject to it. Similarly, the numbers of persons exposed at various individual risk levels could be an important element in deciding on acceptable risk. The risk distribution could be used in similar ways to consider whether an ample margin of safety exists.

c. *Incidence.* Incidence is an estimate of population, rather than individual, risk. It is derived by multiplying individual risk by the estimate of the number of persons at that level of risk and summing the results over all risk levels. This number, which provides a lifetime population risk figure, is then divided by 70 (years) to give an annual fatal cancer incidence estimate. The incidence parameter can be used as an estimate of impact on the entire exposed population within a given area by totalling the incidence associated with each increment of individual risk. Incidence can also be portrayed along with individual risk and population numbers in a risk distribution. Typically, the Agency weighs incidence estimates in conjunction with maximum individual risk or average individual risk estimates. Estimated incidence generally is a particularly informative parameter when looking at aggregate risk from a category of like sources. One feature to take into account whenever it is used is its dependence on the size of the source category.

2. Uncertainties in Risk Measures

Each of the three risk parameters defined above has three elements. These are the estimated response per unit of pollutant concentration (e.g. pCi/l in air), the estimated exposure concentration, and the estimation of the number and location of the population residing in the area of the sources (usually taken from census data).

Uncertainties exist in estimating each of these elements for a variety of reasons including the fact that the relevant data and our understanding of the biological events involved are not complete. Where data gaps exist, qualitative and quantitative assumptions are made based on our present understanding of the biological mechanisms of cancer causation, estimates of air dispersion, engineering estimates, and other factors. Selection of certain assumptions to be used is a policy decision. The Agency has published guidelines covering many of these for both cancer risk assessment and exposure assessment ("Final Guidelines for Carcinogen Risk Assessment," (51 FR 33992, September 24, 1986) and "Final Guidelines for Estimating Exposures," (51 FR 33042, September 24, 1986)).

The following is a discussion of methods used to calculate the three parameters, together with a few examples of the uncertainties.

Risk assessment, under EPA guidelines, takes into account the nature and amount of evidence that the agent will cause the effect of concern in humans as well as the uncertainties of interpretation of data and its quantification. When the toxicity data from human studies are available, as in the case of radionuclides (which is a known human carcinogen), there is less uncertainty about the hazard of dose/response than when the data is solely from animal studies. Nevertheless, important uncertainties enter into the analysis even when human data is available. Examples include the fact that human epidemiological studies are often retrospective and measure effects of exposure that occurred many years in the past. The level of exposure to the agent at that time usually must be estimated and cannot be verified. Also, in certain categories of human studies, the studies are often of workers exposed to the pollutant. Worker populations are not representative of the general population with respect to age or sex. Workers are also generally the healthier segment of the population. These factors can lead to over- or underestimation of risk.

When data from animal studies are used, uncertainties about exposure can be experimentally controlled, but other uncertainties arise. Many of these concern the extrapolation from data collected in animal tests to estimate effects on humans. The extrapolation has to try to account for many factors, such as the equivalent dose for humans and laboratory animals given the size differences and the potential differences in metabolism and excretion of a chemical pollutant.

In addition, uncertainties arise in extrapolating the observed dose/response relationship from either workplace or animal test exposures to the usually lower dose levels of the general population.

In estimating exposure, the dispersion of a pollutant from a source is usually quantified by a predictive mathematical model using a known or model source emission rate, temperature and velocity characteristics, and weather patterns at a nearby recording weather station. The model predicts the concentration of the dispersed pollutant at various distances from the source. Standard assumptions are that the population around the source resides there for a 70-year lifetime and is continuously exposed to the modeled concentrations. The amount of emissions can be derived from sampling and analysis of emissions at the source or from engineering estimates, with more or less uncertainty associated with each method according to the type of emission. There are varying degrees of accuracy and precision in sampling, analysis, or estimates of emissions. Therefore, the uncertainties involved in the method of estimating individual exposure and the number of individuals exposed are

numerous. Thus, it is evident that uncertainty is difficult to quantify. However, the Agency has completed a preliminary uncertainty analysis of risk from radionuclide emissions from a limited number of facilities using Monte Carlo simulation techniques. Instead of discreet values, distributions were used for factors having a significant effect on outcome. The results suggest that the risks calculated represent essentially median values if the receptor remains at that location for 70 years.

3. Methodology

To take into account the buildup of radioactivity in the body and the environment, the risk assessment models incorporate the concepts of committed dose and the dose committed by an annual release into the environment or, equivalently, the annual dose received at equilibrium as a result of constant annual releases over long periods of time.

In attempting to make these estimates, EPA has tried at all times to give "best estimates" of the radionuclide concentrations in the environment and individual and population risks. Wherever possible, measured or reported data of emissions, meteorology and population were used. Where estimates were used, EPA has tried to use the most likely numbers in its assessments. When model facilities were used, they were designed to be representative of actual facilities. EPA's risk assessments are based on a current "snapshot" of each industrial source category as it now stands. EPA has not estimated the maximum conceivable risks that may result from the facilities analyzed at some point in the future. Future risks may be higher or lower depending on whether people move closer to, or further away from, the facilities studied and whether the emissions from those facilities increase or decrease. This is not to say that there is little or no uncertainty in the final results. As in all such assessments, the analyses have considerable uncertainty. EPA's analyses are not designed to consistently overestimate or underestimate risks.

The level of uncertainty is greater in the estimate of the maximum individual risk than in the estimate of population risk. Many possible errors in the analysis can cancel out in assessments of populations. For example, local meteorological conditions may cause more radionuclides to go in one direction than another. This effect may cause an overestimate or underestimate of the maximum individual risk, depending on where the most exposed individual is located. However, this source of error tends to be less important in population estimates, since the analysis integrates individual doses to a large number of people. If one person gets a larger risk due to local dispersion effects, it means that another person is getting less. Consequently, when the individual risks are summed, local conditions will not cause a serious error in the value for total population risk.

In estimating the radiation exposure to the most exposed individual, EPA assumes that the person receiving the maximum individual risk lives for a 70-year lifetime at the same site. EPA then makes its best estimate of the risks to that individual.

EPA recognizes that most people will not actually live their entire life in the same location. Nevertheless, EPA makes this assumption as a matter of policy and does not believe that it diminishes the validity of its risk assessments. EPA has made this assumption for several reasons. First, EPA is attempting to estimate the maximum individual risk, and it is completely possible that an individual could live in the same place for his or her entire life. Use of different assumptions could lead, in some cases, to underestimating the actual maximum risk.

Second, a large fraction of the risk can occur in less than the same fraction of the 70 years. Risk is not independent of age. Children appear to be more susceptible to the effects of radiation than adults. In addition, due to their youth, they generally have a longer time in which to develop the cancer caused by the radiation (and they are less likely to die of something else before they contract and die of the cancer). Due to these two factors, younger people are at a greater risk from the same dose than older people. (See Table 1). If EPA were to reduce the number of years of assumed exposure to less than a lifetime, it is unclear what number of years should be used or where to place those years within a lifetime. For example, should EPA assume that a person lives in the same place from birth to age 19 or from age 35 to 50? Generally, in the first case, the risk is 6 times greater than in the second case. Finally, the difference that would be caused by assuming a shorter period of exposure is not very significant. For an assumed constant rate of exposure, people receive over 60% of their total lifetime risk during their first nineteen years. To change the period of exposure from 70 years to the first 19 years of life would change the final result by less than a factor of 2.

Many commenters, including the SAB, disagreed with EPA's decision to use 70 year exposures in calculating maximum individual risk. However, as stated above, EPA believes that this is the correct method for doing risk assessments for NESHAPs. Had EPA used another method of calculating the maximum individual risk, it might have found it necessary to find a different, possibly more stringent benchmark for determining acceptable risk.

Third, the conservatism of this assumption counters two important and unknown uncertainties that can lead to an underestimation of risk. The first is the susceptibility of some members of the population to radiation. Scientific studies have shown that not all people respond in the same way to the same biological insult; some members of the population are more susceptible than the population as a whole. This problem is especially acute for the radon sources. Estimates of the risk of exposure to radon are largely based on epidemiological studies of miners, i.e. adult males. It is known that children seem to be more susceptible to radiation than adults. In addition, for some cancers, women are more susceptible than men; this may be true for lung cancer.

The second factor that EPA has been unable to quantify, but which would lead to an underestimation of the risk, is the synergistic effects of radiation with other pollutants. Radiation is not the only carcinogen in the environment. There are large numbers of carcinogens and potential carcinogens in the environment. Radionuclides are not the only carcinogens that cause cancer by first causing genetic damage. In addition, some chemicals may disrupt or stop the body's natural repair mechanisms. It is possible that some of these pollutants work synergistically with radiation to increase the effect of radiation above what it would be otherwise. While EPA's relative risk model takes into account the effect of chemicals that are widely distributed in the environment, there are hundreds of chemicals that are concentrated in local areas, and the effects of these chemicals are not and can not be taken into account. However, EPA's inability to quantify this potential increase in risk does not mean that this effect does not exist or that it should not be considered.

TABLE 1— AGE DEPENDENCE OF RISK DUE TO WHOLE BODY RADIATION

Assumed Percentage of Total Lifetime Risk As A Function Of Ages At Which Radiation Exposure Occurs [1]

Period of exposure (ages)	Percentage of lifetime risk	Cumulative percentage of lifetime risk [1]
0 to 9	30	30
10 to 19	30	60
20 to 34	20	80
35 to 50	10	90
50 +	10	100

[1] Exposure is at a constant rate for a lifetime.

4. Technology Availability and Plant Closure Considerations

In the benzene NESHAP, as well as in this NESHAP for radionuclides, EPA has considered only factors relating to risks to public health in deriving alternative "acceptable" levels of risk. However, in evaluating whether to further reduce the risk to provide for an ample margin of safety, EPA has also considered the extent to which plants would be forced to: (a) Install control technologies which are not cost effective or fully demonstrated and/or (b) curtail or stop production. These considerations are reflected in today's proposal to the extent that they apply to affected radionuclide sources.

With regard to the availability of technology to control air pollutants, EPA has in this case considered a technology available if it has been installed on a commercial scale in the United States and adequate data have been collected on plant and control equipment characteristics and performance. However, at various times in the past, EPA has considered emission standards which force plants to install technologies which do not meet these current "availability" criteria or cause facilities to curtail production or shut down. For example, EPA has in the past considered a technology "available" if it has been commercially demonstrated in other countries, even if no units have been installed in the United States. Also, EPA has considered bench- or pilot-scale demonstrations in order to judge reasonableness of expenditures for commercial demonstration of a given technology.

D. Effective Dose Equivalent

Since 1985, when EPA proposed dose standards regulating NRC-licensees and DOE facilities, a different methodology for calculating dose has come into widespread use, the effective dose equivalent (EDE). In 1987, EPA, in recommending to the President new guidance for workers occupationally exposed to radiation, accepted this methodology for the regulation of risks from radiation. This method, which was originally developed by the International Commission on Radiological Protection, will be used in all the dose standards promulgated by EPA in this notice. In the past, EPA dose standards were specified in terms of limits for specific organ doses and the "whole body dose", a methodology which is no longer consistent with current practices of radiation protection.

The EDE is simple, is more closely related to risk, and is recommended by the leading national and international advisory bodies. By changing to this new methodology, EPA will be converting to the commonly accepted international method for calculating dose. This will make it easier for the regulated community to understand and comply with our standards.

The EDE is the weighted sum of the doses to the individual organs of the body. The dose to each organ is weighted according to the risk that dose represents. These organ doses are then added together, and that total is the effective dose equivalent. In this manner, the risk from different sources of radiation can be controlled by a single standard. The weighting factors for the individual organs are listed in Table 2.

TABLE 2—WEIGHTING FACTORS FOR INDIVIDUAL ORGANS

Organ	Factor
Lung	.12
Breast	.15
Thyroid	.03
Gonads	.25
Bone Surface	.03
Red Bone Marrow	.12
Remainder	.30

EPA's risk models differ from those underlying the ICRP recommendations, primarily due to advances in the field of radiation risk estimation since the ICRP recommendations were published. As a result, the risks calculated by EPA are not strictly proportional to the EDE derived using ICRP quality factors and organ weighting factors. While the risk methodology underlying the ICRP EDE differs from that used by EPA, the widespread acceptance of the EDE approach make it a reasonable basis for regulation under the CAA.

E. Science Advisory Board Review

Beginning in 1984, EPA's Science Advisory Board (SAB) has conducted reviews of the risk assessment methods used in this rulemaking. EPA has worked closely with the SAB with respect to their comments and findings and believes it has been responsive to them.

In 1984, the SAB recommended that available scientific information be integrated into an assessment document that would lead from identification of emission sources through calculation of radiation dose and health risk and the associated degrees of uncertainty. This has been done in the Environmental Impact Statement accompanying this rulemaking.

In 1988 and again in 1989, the SAB considered the scientific merits of the EIS prepared by the Agency in support of this rulemaking. Estimates of health risk factors were found to be acceptable. Given below are some important specific SAB comments and the Agency's responses.

SAB Comment: EPA should use the effective dose equivalent concept for regulations protecting people from exposure to radiation.

EPA Response: This has been done in the final rules.

SAB Comment: EPA should use simple screening methods in implementation procedures such that only the largest users of radionuclides are required to report annually to EPA.

EPA Response: A simple screening procedure has been made part of the final rule.

SAB Comment: EPA should be certain that the data used to derive its estimates of risk are the most current available, and wherever practicable to base their assessments on consensus documents.

EPA Response: EPA agrees. The SAB has given specific advice on risk factors for low-LET radiation and for radon. The SAB approaches to these risk factors have been used in the risk assessments supporting this rulemaking. The Agency acknowledges that the BEIR–III report on which some of the risk factors are based may become out of date due to new data that are becoming available. EPA's risk factors will be revised to reflect these recent developments and to incorporate this newer data as soon as it is practical to do so. Preliminary information indicates that the most probable effect of this new information will be to increase somewhat the estimate of the number of health effects due to a unit dose of radiation. The size of this increase is not likely to be large enough to affect the decisions made under this rulemaking.

SAB Comment: The actual objective of the risk assessment should be made clear.

EPA Response: EPA has improved the presentation of risk in the EIS by more clearly stating overall assessment objectives. In particular, assessment objectives are carefully defined in terms of the individual and populations at risk. The number of people at risk and incidence is presented by range of risk. Radiation risks are compared with other risks and other radiation control recommendations. The objective of obtaining a best estimate of the dose and health implications for real persons and for populations is now explained in more detail together with explanations of how these groups are to be defined.

SAB Comment: EPA should use best estimates and ranges in the specification of risk and provide a detailed explanation of the uncertainties in the estimates themselves.

EPA Response: EPA agrees, but this is a large task. For the short term, we have performed a sensitivity analysis of the most important parameters using simplifying assumptions and have performed preliminary uncertainty analyses using a Monte Carlo simulation. These analyses have been presented in support of the final rule. For the long term, an Agency task group has been formed to plan and conduct more complete studies of the uncertainty question. This longer term effort will take a number of years to complete and will be dependent on the resources available.

EPA acknowledges the uncertainty in risk estimates, considers them when making risk management decisions and recognizes that a more complete quantitative analysis of uncertainty would be an improvement. However, it does not believe that such a complete analysis would change the decisions made in this rulemaking. A more complete discussion of uncertainty is to be found in chapter 7, volume 1 of the EIS.

V. Decision to List Under Section 112

Section 122(a) of the CAA required EPA to determine whether or not "emissions of radioactive pollutants * * * will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health." Once an affirmative determination is made, that section requires EPA to list the substance under section 108(a)(1), governing National Ambient Air Quality Standards (NAAQS), 111(b)(1)(A), governing New Source Performance Standards, or 112(b)(1)(A), governing NESHAPs. The initial decision to list a substance does not constitute a decision to regulate any particular source category. EPA analyzed numerous studies which indicated that exposure to radionuclides can cause three major types of health effects: cancer, genetic damage, and developmental effects. After considering these health effects, EPA judged that radionuclides cause or contribute to air pollution which "may reasonably be anticipated to endanger public health" and that they should be listed under section 112(b)(1)(A) (44 FR 76738, Dec. 27, 1979). That decision was the first step in the regulatory process, and it was challenged in the current litigation. As a result, EPA has reevaluated the decision and the comments from the public during this rulemaking and has come to the conclusion that the original listing under section 112 is correct.

The first part of the listing decision, the "hazardousness" of radionuclides, is unchallenged. The evidence that radionuclides can cause cancer has, if anything, increased since 1979; see Volume 1 of the BID. The evidence now suggests that the risks from radiation exposure are higher than was believed at that time. While some people have expressed the view that, even though radiation can cause cancer, the amount of radionuclides that are released from a given source or industry is insignificant and do not present a risk, EPA believes that the results of the risk assessments for the source categories demonstrate the risk to public health that results from radionuclide emissions from industrial sources. Furthermore, as already discussed, EPA assumes radiation to be a non-threshold pollutant. This assumption, and EPA's risk assessments, support the listing decision.

Section 112(b)(1)(A) applies not merely to any "air pollutant" as do sections 108 and 111, but to a "hazardous air pollutant" that is defined as a pollutant that "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness." Once a pollutant is determined to be a hazardous air pollutant, the only remaining step is for the Administrator to determine whether emissions of the pollutant present a risk warranting regulation under section 112—that is, whether it is a hazardous air pollutant "for which he intends to establish an emission standard" under that section. EPA has determined that radionuclides not only pose a risk of carcinogenicity and mutagenicity when emitted into the air (see, National Academy of Sciences, Commission on Biological Effects of Ionizing Radiation, Reports Number 3 and 4) but also are emitted in sufficient quantities as to create a risk warranting listing under section 112. Therefore, EPA reaffirms its prior conclusion that radionuclides should be listed for regulation under section 112.

EPA notes that several sources included among the source categories addressed by this rulemaking present very small risks when viewed individually. Several are predicted to emit a level resulting in an incidence of less than one case of cancer every 1000 years, and an associated MIR well below 1×10^{-4}, or even 1×10^{-6}. Based on this, it has been suggested that EPA should apply a significance test to these sources, and determine that they do not warrant regulation based on the insignificance of the risks presented.

EPA considers it unnecessary to reach that argument here. EPA applied the significance test of the Supreme Court's OSHA benzene opinion in its prior rulemakings on radionuclides to determine whether each source category warranted regulation. See *Industrial Union Dept., AFL-CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) (interpreting the Occupational Safety and Health Act of 1970 as requiring that benzene sources be regulated only if they present "significant" risks); see also 50 FR 5189–5194 (Feb. 6, 1985), 49 FR 43905–43915 (Oct. 31, 1984) (discussing the requirement that risks from radionuclide air emission sources be significant in order to be regulated under Clean Air Act Section 112); Memorandum of A. James Barnes, General Counsel, to the Administrator of EPA entitled "Final Action on Radionuclides" (Oct. 23, 1984) (same); but see *Sierra Club* v. *Ruckelshaus*, 602 F. Supp. 892 (N.D. Cal. 1984). However, EPA believes it is unnecessary to reach this issue at this time since EPA believes that its standards should have no practical effect on the facilities to which such a test might have applicability. But see CAA section 307(d)(7)(B). Based on the record, EPA judges that the facilities that might be deemed to pose insignificant risks individually already emit radionuclides at levels well below the final standard. And, implementation of a significance test to each individual source would, for some source categories such as the NRC licensee category which contains several thousand sources, present huge implementation and resource problems for the Agency to examine each source individually.

The standards would have no practical impact on operations of sources that might be deemed to pose insignificant risks, other than to assure that emissions from these sources could not increase so as to exceed the

standard. Moreover, imposition of standards assure that EPA would be notified of significant increases in emissions at these sources, or other relevant changes in circumstances, such as changes in the location or exposure of the most exposed individual, that might require additional regulatory attention.

VI. Discussion of Source Categories

The regulatory decisions reached today are based on the risk assessments and other factors available in the rulemaking record. This rule is also based on consideration of information received during the comment period to the rulemaking.

A. Department of Energy Facilities

1. Introduction

The DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some facilities conduct nuclear energy and weapons research and development, some enrich uranium and produce plutonium for nuclear weapons and reactors, and some process, store and dispose of radioactive wastes. These facilities contain significant amounts of radioactive material and emit radionuclides into the air. Other facilities contain large stockpiles of waste ore which emit large quantities of radon. A discussion of those DOE facilities appears as a separate section later in this Preamble. EPA is considering the two categories separately in this rulemaking because the two categories employ different control methods. Some of the DOE facilities emitting radionuclides are on large sites covering hundreds of square miles in remote locations. Some of the smaller sites resemble typical industrial facilities and are located in suburban areas.

In total, DOE has approximately 30 major sites that emit radionuclides. These facilities emit a wide variety of radionuclides in various physical and chemical states. Emissions from various DOE facilities represent many types of radionuclides and both internal and external dose pathways (although specific facilities may emit only one or two radionuclides affecting only one pathway).

DOE facilities are presently covered by a radionuclide NESHAP which limits emissions such that no individual receives a whole body dose of 25 mrem/y or receives a dose of 75 mrem/y to any organ. DOE also controls releases from these facilities under DOE orders which limit calculated doses to the general public to less than 100 mrem/y from all sources and pathways. By incorporating the ALARA concept into its Orders, DOE has kept the dose to the public well below 100 mrem/y. The NESHAP also mandates that DOE send annual reports of emissions to EPA. The information gathered from these reports contributed to EPA's risk assessment of DOE facilities.

2. Estimates of Exposure and Risk

EPA's risk assessment of DOE facilities is a site-by-site assessment. Emissions are based on DOE's 1986 report of emissions, meteorological data are from on-site towers or from nearby weather stations, and population distributions within 80 km are based on U.S. census tract data. EPA has updated its risk assessment with information received during the comment period. EPA has a high degree of confidence in the results of this risk assessment.

According to EPA's analysis, all DOE facilities are in compliance with the current NESHAP. The risk to the most exposed individual is approximately 2.0×10^{-4}. DOE facilities are estimated to cause 0.28 fatal cancers per year to the exposed populations within 80 km of all DOE facilities. Most of the exposed population has a lifetime fatal cancer risk of less than 1×10^{-6}.

Table 3 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the DOE Facilities Source Category

The decision that results from the application of the multifactor policy approach to the DOE source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 2.0×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance, sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the MIR of 2.0×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to determine whether the baseline level is acceptable.

The estimated annual incidence is 0.28 fatal cancers per year, or 1 case every 4 years; in addition, there would be an approximately equal number of non-fatal cancers per year. Very few people are at risks greater than 1.0×10^{-4}, and approximately 98% of people within 80 km of DOE facilities receive risks of less than 1×10^{-6}.

After examining these factors, the Administrator has determined that the baseline emission levels and risks from DOE facilities are acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from DOE facilities. The results of this analysis may be seen in Table 4. Alternative I, a standard of 10 mrem/y, representing the current baseline emissions, was compared with alternative II, a standard of 3 mrem/y a standard, equivalent to 1×10^{-4}.

A comparison of the two alternatives indicates that only a very small reduction in incidence would occur, from 0.28 to 0.25, or 1 case every 33 years, with a concommitant reduction in MIR from 2×10^{-4} to 1×10^{-4}. Based on this very small reduction in incidence, the small decrease in individual risk that would result, and on the costs of achieving Alternative II, EPA has determined that a 10 mrem standard provides an ample margin of safety by continuing regulation of this category to insure that the current levels of emissions are not increased. Requirements of the rule, such as the submission of yearly reports and obtaining prior approval of new construction or modification, assure that DOE facilities will keep emissions at or below an acceptable level insuring an ample margin of safety. Moreover,

because each facility subject to this rule must demonstrate compliance with the 10 mrem/y ede emissions standard, it is likely that most, if not all, exposed individuals will receive a dose significantly less than 10 mrem/y ede. Therefore, EPA believes that limiting emissions to their current level by imposition of a standard of 10 mrem/y EDE to replace the previous standard, will protect public health with an ample margin of safety. EPA is promulgating a NESHAP mandating that radionuclide emissions from DOE facilities shall not cause any individual to receive a dose of greater than 10 mrem/y ede.

TABLE 3.—DOE FACILITIES

[*Description:* The facilities owned and controlled by DOE. These include nuclear weapons production, testing and research facilities and other nuclear research and production facilities. There are 30 major DOE facilities that release radionuclides into the air.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	2.0×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.28	0.25
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	590,000	560,000
E-6 to E-5	1M	250,000
less E-6	65M	66M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	0.23	0.22
E-6 to E-5	0.032	0.0074
less E-6	0.010	0.014

Other Health Impacts: Total cancers no more than twice fatal cancers.

* There are fewer than 25 people at this risk. However, we cannot quantify the number because detailed demographics have not been obtained.

TABLE 4.—DOE FACILITIES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	2.0×10^{-4}	0.28					
II	1.0×10^{-4}	0.25	0.03	0.03	$ 5.9M	$ 0.2M	$ 0.2M

Comments: Alternative I: Baseline rule, emission limit of 10 mrem/y ede—highest emissions are from Los Alamos and Oak Ridge.
Alternative II: Emission limit of 3 mrem/y ede (equivalent to a MIR of 1×10^{-4})—the following controls are needed: Los Alamos—beam stops and delay lines; Oak Ridge—HEPA filters, particulate scrubbers, and tritiated water capture.

4. Implementation

a. *Introduction.* ORP's experience in implementing the existing radionuclide NESHAP covering DOE facilities has shown that implementation of the current standard has several problems. EPA has developed a new system for implementing the NESHAP designed to overcome the limitations in the present standard.

b. *Yearly Reports.* The implementation system for the NESHAP is designed to provide EPA with yearly reports on the levels of emissions from regulated facilities and resulting doses. Presently, DOE facilities monitor their emissions and make annual reports to EPA. These reports shall continue under the new NESHAP. Although the report is based on a calendar year the dose standard applies to any year, i.e. any period of 12 consecutive months. Since these reports provide EPA with the information it needs, DOE facilities are exempted from the requirements of 61.10.

c. *Methods of Measurement.* Because the thresholds for measurement are much lower than the standard, under certain circumstances the concentration and potential doses associated with release points that are above the threshold may be so low that direct measurement may not be practical. With prior EPA approval, DOE may determine these emissions through alternate procedures.

d. *Definition of a Facility.* A problem in implementing the current standard is the ambiguity associated with the present definition of a facility. To resolve this ambiguity, the new rule specifies that all the buildings, structures and operations within one contiguous site shall be considered a single facility. For example, the entire DOE facility at Oak Ridge, Tennessee must meet the current standard of 10 mrem/y ede, instead of each individual building meeting the 10 mrem/y ede standard.

e. *Distinction Between Construction and Modification.* A potential problem resulting from EPA's definition of a facility as all the buildings, structures and operations within a given plant site, is confusion over whether the construction of a new building is part of an existing facility, is new construction, or is a modification of an existing facility. This rule specifies that the construction of a new building is new construction at the facility and not a modification of the facility. This distinction is important because all new construction needs to be checked to see whether or not it needs prior approval but modifications which do not cause a net increase in the rate of emissions from the facility do not need prior approval.

f. *Prior Approval of New Construction or Modification.* EPA will not change the basic definition of modification that exists at 40 CFR 61.15. A change that will result in any increase in the rate of emissions is a modification, no matter how small that increase is. This includes cases where the modification has the potential to increase emissions above prior actual emissions. However, to reduce unnecessary paperwork, it is appropriate to avoid applications for approval in cases of small changes.

Therefore, EPA is promulgating a system under which DOE facilities will use CAP–88 to determine the dose to the most exposed individual due to the modification or new construction. If the estimated maximum individual dose added by the new construction or modification is less than 1% of the standard, then the modification or new construction does not need prior approval.

In making the determination of dose for this purpose, DOE must use the emission factors and source term determination from "BID: Procedures Approved for Demonstrating Compliance with the Dose Limits Established by 40 CFR part 61, subpart I." (BID: Compliance) or other procedures for which EPA has granted prior approval.

B. Nuclear Regulatory Commission Licensed and Non-DOE Federal Facilities

1. Introduction

NRC-licensed, Agreement state-licensed, and non-DOE federal facilities include over 6,000 different facilities. These facilities include research and test reactors, hospitals, clinics, the radiopharmaceutical industry, low level nuclear waste disposal facilities, and other research and industrial facilities. These facilities are located in all fifty states. EPA estimates that virtually every American lives within 80 km of an NRC licensee.

The facilities in this category emit a large number of radionuclides. These radionuclides affect individuals by inhalation, ingestion, ground deposition and immersion pathways. Individual facilities may emit only one or two radionuclides affecting only one or two pathways.

Emissions from this source category are presently covered by a radionuclide NESHAP which mandates that emissions do not cause any individual to receive a whole body dose of more than 25 mrem/y or receive a dose of 75 mrem/y to any organ. Two categories of NRC-licensees have been exempted from coverage by the existing NESHAP: High-level nuclear waste (HLW) facilities and uranium fuel cycle (UFC) facilities. There are two types of HLW facilities, management and disposal facilities. The disposal of HLW, which occurs at a few unique facilities, is considered as a separate source category. The management, processing and storage of HLW that occurs at a NRC-licensee is included in the estimate of emissions of the licensee used in the analysis that underlies the rule for this category. UFC facilities, which are distinctly different facilities, are being analyzed as a separate source category.

2. Estimates of Exposure and Risk

EPA's risk assessment of this category combined an analysis of the nine sub-categories that make up this category. Due to the wide scope of this category, EPA's risk assessment of this source category includes both the largest known emitters and model facilities with model populations. The estimates of maximum individual risk are based on the assessment of the largest known emitters.

The analysis of the largest sources was based on information compiled from previously existing databases and information received from some of the sources themselves. The model facilities were developed after reviewing data from surveys conducted by the NRC and the Conference of Radiation Control Program Directors. The use of model facilities increases the uncertainty of the risk assessment. Especially uncertain are estimates of the population within given risk ranges.

The estimates of population risks are based on extrapolations from model facilities using census tract data. Frequency distributions do not take into account overlapping sources.

The results of this analysis show a maximum individual risk of 1.6×10^{-4}. EPA estimates that this category results in 0.16 fatal cancers per year. Although virtually the entire U.S. population is exposed to emissions from this category, EPA's analysis shows that less than 0.5% of the U.S. population receives a lifetime fatal cancer risk greater than 1×10^{-6}. Some of the larger NRC-licensees release small amounts of iodine-125 and iodine-131; these radionuclides can cause thyroid cancer, which is usually non-fatal.

Table 5 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of the Decision Methodology to the NRC Licensees and non-DOE Federal Facilities Source Category

The decision that results from the application of the multifactor approach to the NRC-licensees and non-DOE Federal facilities source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 1.6×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure a buffer exists below the actual level of a standard, EPA judges that the MIR of 1.6×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to make an overall determination on acceptability.

Very few people are at risks greater than 1.0×10^{-4} and approximately 99% of people within 80 km of NRC licensees are at risk levels of less than 1×10^{-6}. The estimated annual incidence is 0.16 fatal cancers per year, or 1 case every 6 years. In addition, there would be an estimated annual incidence of approximately 0.8 non-fatal cancers per year, most of which is attributable to thyroid cancer caused by emissions of radioactive iodine from hospitals and radiopharmaceutical manufacturers (thyroid cancer is also treated with iodine treatments).

After examining these factors, the Administrator concludes that baseline emissions are acceptable for this source category.

Decision on Ample Margin of Safety. In addition to re-examining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emission from NRC facilities. The results of this analysis may be seen in Table 6. Due to a lack of detailed information on all NRC licensees, EPA has analyzed model facilities. Alternative I, a standard of 10 mrem/y representing the current baseline emissions, was compared with Alternative II, a standard of 3 mrem/y, a standard equivalent to 1×10^{-4}.

EPA's risk assessment indicates that no reduction in incidence would occur and only a small reduction of the MIR would occur if reduction of current emissions to Alternative II levels were required. In this source category almost all the incidence comes from people whose risk level is less than 1×10^{-6}. This means that small reductions in the emissions of a few licensees have little, if any, effect on the number of health effects, both fatal and non-fatal, in the population. The costs associated with these reductions are $5,000,000 with an annualized cost of $2,400,000 for compliance with Alternative II. Based on the very small reductions in the risks to public health and the costs of achieving Alternative II, EPA has determined that Alternative I protects the public health with an ample margin of safety.

EPA has decided to continue regulation of this category to insure that the current levels of emissions are not increased. Requirements of the rule, such as the submission of yearly reports and obtaining prior approval of new construction or modification, will assure

that NRC licensees will keep emissions at or below levels insuring an ample margin of safety. Moreover, because each facility subject to this rule must demonstrate compliance with the 10 mrem/y ede emissions standard, it is likely that most, if not all, exposed individuals will receive a dose significantly less than 10 mrem/y ede. EPA believes that limiting emissions with a baseline standard, represented by a level of 10 mrem/y ede, will therefore protect public health with an ample margin of safety. Furthermore, to insure that the risk of nonfatal thyroid cancer does not increase, the standard further provides that no more than 3 mrem/y ede out of the 10 mrem/y ede can come from any of the isotopes of iodine. Therefore, EPA is promulgating a NESHAP mandating that radionuclide emissions from NRC licensees shall not cause any individual to receive a dose of greater than 10 mrem/y ede, of which no more than 3 mrem/y ede can come from isotopes of iodine.

TABLE 5—NRC LICENSEES

[*Description:* There are about 6,000 NRC material licensees: Radiopharmaceutical manufacturers and users, sealed sources manufacturers, research reactors, industrial and university laboratories, and low-level waste disposal facilities.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	1.6×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.16	0.16
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	5,000	5,000
E-6 to E-5	780,000	780,000
less E-6	240M	240M
Risk incidence:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	0.0024	0.0024
E-6 to E-5	0.027	0.027
less E-6	0.13	0.13

* There are fewer than 25 people at this risk. However, we cannot quantify the number because detailed demographics have not been obtained.

Other Health Impacts: Total cancers are approximately 5 times higher than the number of fatal cancers because risks from some of the largest facilities in this source category are caused predominately by iodine which causes thyroid cancer.

TABLE 6—NRC LICENSEES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.6×10^{-4}	0.16					
II	1.0×10^{-4}	0.16	<0.01	<0.01	$5M	$2.4M	$2.4M

Comments: For this category, non-fatal cancer risk is appreciably higher than the fatal cancer risk because most of the risk is due to I-131 and I-125 exposure (thyroid).

Alternative I: Baseline rule, 10 mrem/y ede—As a practical matter, this alternative is the same as the current NESHAP.

Alternative II: Emission limit of 3 mrem/y ede (equivalent to a MIR of 1×10^{-4})—cost estimates are very uncertain. Several hundred facilities would install controls or measure emissions to demonstrate compliance. Thousands would have to report to EPA.

4. Implementation

a. *Introduction.* The system for implementing this NESHAP is described in "A Guide for Determining Compliance with Clean Air Act Standards for Radionuclide Emissions From NRC-Licensed and Non-DOE Federal Facilities." The Agency has also developed the COMPLY Computer Code, for use with "MS-DOS" or "PC-DOS," computers to assist the regulated community in determining compliance with the standard. For more information, see "Draft User's Guide for the COMPLY Code" and "Background Information Document—Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I."

b. *Yearly Reports.* The implementation system for the NESHAP is designed to provide EPA with yearly reports on the levels of emissions and the dose caused by those emissions from regulated facilities. There are over 6,000 NRC-licensees, many of which possess very small amounts of radionuclides. EPA considers that the emissions from most sources in this category are so low that reporting should not be necessary. EPA has developed a system to determine whether or not reporting is required by estimating the dose caused by a facility's emissions. As long as the dose to the maximum individual is 10% of the standard or less, the facility does not have to report. With this provision, EPA currently estimates that less than 300 facilities would have to report to EPA.

The Agency has developed a system for dose determination that is based on screening models originally developed by the NCRP. This system is a series of screening tests each more complicated and more realistic than the previous one. Using this system, each affected facility will, annually, have to check to see whether or not it needs to report to EPA. Even if it does not have to report, it must keep records of the results for 5 years to demonstrate that it has checked to see whether or not it needs to report. Although the report is based on a calendar year, the dose standard applies to any year, i.e. any period of 12 consecutive months.

In order to simplify calculation of the source term, the Agency will allow the use of EPA-approved emission factors. The derivation of these emission factors is explained in "BID: Compliance." These factors are applied to the quantity of radionuclides used annually at the facility. Radionuclides in sealed containers are excluded. The results of these calculations are used as the input of emissions for the screening model mentioned above.

For the calculation of dose from low level radioactive waste, facilities must use CAPP-88 or another model which has prior approval from EPA.

Since these reports will provide EPA with the information it needs, NRC-licensees are exempted from the requirements of § 61.10.

c. *Prior Approval for Modification or New Construction.* EPA has decided that the system discussed for DOE facilities also be used for this source category except that the sources will not use CAP-88 to calculate the doses. Instead they will use the screening models (COMPLY code) described in the BID.

5. Reconsideration of NRC Licensee Category

Late in the rulemaking, issues related to the application of the standard in Subpart I to NRC licensees were presented to EPA which raised serious concerns about possible effects of

duplicative, and perhaps conflicting, standards on NRC-licensees, including, for example, the use of radioisotope therapies by the National Institutes of Health (NIH) and other medical facilities. The concerns arise from the fact that these licensees would be regulated by both a Clean Air Act standard under Subpart I and an existing NRC standard under 10 CFR part 20. While the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements. The basic issue is whether these different regulatory requirements will discourage the use of radioisotopes in medical and experimental therapies. In addition, NRC has raised the issue of whether regulation of its licensees under a Clean Air Act standard provides any additional public health benefits.

EPA has expressed similar concerns in past proceedings on this regulation. In its **Federal Register** notice of October 31, 1984, EPA stated, with respect to NRC-licensed facilities, that the record "does not support the conclusion that regulation of (these) * * * facilities is necessary to protect public health with an ample margin of safety." 49 **Federal Register** at 43912. In its **Federal Register** notice of February 6, 1985 (50 FR 5190) EPA stated that:

> EPA continues to believe existing emissions from these sources are already so low that the public health is already protected with an ample margin of safety * * *

Nevertheless, due to the court-ordered deadline for completion of the rulemaking by October 31, EPA has determined that it must promulgate the final standard under Subpart I at this time. However, in recognition of the serious nature of these concerns, and the need to further investigate and resolve these matters, EPA has concluded that it should treat the comments and information filed by NIH and NRC as petitions for reconsideration of the standard with respect to the range of issues raised by NRC and NIH, and EPA is granting reconsideration. For this purpose, a comment period of 60 days from the date of publication of this notice is hereby established for the purpose of receiving further information and comments on these issues, and a 3 month stay of subpart I, as provided for under 307(d)(7)(B), shall commence on the [date of publication]. Comments should be submitted (in duplicate if possible) to: Central Docket (A–130), Environmental Protection Agency, Attn: Docket No. A–79–11, Washington, DC 20460. After considering the information received, and other available information pertaining to these issues, EPA will issue a decision on the need for further rulemaking on the standard in subpart I.

C. Uranium Fuel Cycle Facilities

1. Introduction

Uranium Fuel Cycle (UFC) facilities are the facilities used in the conversion of uranium ore to electric power. They include uranium mills and tailings (non-radon emissions), uranium hexafloride conversion plants, light-water uranium fuel fabrication plants, commercial light-water nuclear power plants, and fuel reprocessing plants. These facilities are licensed by the NRC. (Uranium fuel enrichment facilities are not included in this category because they are included in the DOE facilities source category. Reprocessing plants are not included since the only one ever operated is being decommissioned and no reprocessing can occur under current policies. If a new one were to be opened in the future, it would be covered by the rule.) These facilities involve operations with the potential for large releases of radionuclides.

These facilities are not currently covered by a NESHAP. However, all releases from these facilities (air, water and direct gamma radiation) are covered under the Uranium Fuel Cycle Standard, 40 CFR part 190. This standard was promulgated by EPA under the authority of the AEA and is implemented and enforced by NRC. Under the standard, the combined releases of all UFC facilities must not cause any member of the public to receive a dose of more than 25 mrem/y to the whole body or to any organ except the thyroid (which can receive 75 mrem/y). In the past, the Administrator decided not to regulate this category under section 112, because he determined that the AEA standard protected public health with an ample margin of safety. EPA's decision not to regulate this category is one of the issues in the current litigation.

2. Estimates of Exposure and Risk

EPA's risk assessment for this category is the combination of the results of the assessments of the different types of facilities included in this category. The source term for emissions from uranium mill tailing piles is estimated for operable mills using NRC's methodology. Fugitive dust emissions from a tailing pile are assumed to be a function of meteorological conditions (wind, rainfall, temperature), ore composition, particle size and other factors. The estimate does not include radon releases which are covered by a separate NESHAP. Meteorological and population data are based on actual mill sites. The assessment of the two uranium hexafluoride conversion plants is based on reported emissions and census population distributions and meteorological data from nearby airports.

The assessment for fuel fabrication plants is based on reported emissions and census population distributions from the largest facility. The emission estimate for nuclear power plants is based on actual releases from operating plants. Population data is taken from NRC reference populations. Assessments consider effects of multiple reactors at a site, but not the overlap of multiple sites. The results of the analysis show that the most exposed individual receives a dose associated with an increased risk of fatal cancer of 1.5×10^{-4}. There is a predicted incidence of 0.1 fatal cancer per year in the population, with almost all the population risk received by people with a lifetime risk of less than 1×10^{-6}. Virtually the entire U.S. population lives within 80 km of at least one UFC facility.

Table 7 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the Uranium Fuel Cycle Source Category

The decision that results from the application of the multifactor approach to the UFC facilities source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is approximately 1.5×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk

assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance, sources will generally control so as to ensure a buffer exists below the actual level of a standard, EPA judges that the MIR of 1.5×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to make an overall decision on acceptability. The estimated annual incidence is 0.1 fatal cancer per year, and approximately 99% of that risk is borne by people whose risk is less than 1×10^{-6}. Only 60 individuals incur a risk greater than 1×10^{-4}, and the incidence in the level greater than 1×10^{-4} is only 0.00093.

After examining these factors, the Administrator has determined that the baseline risks from UFC facilities are acceptable.

TABLE 7—URANIUM FUEL CYCLE FACILITIES

[Description: The facilities that convert uranium ore into electric power. They include operating uranium mills (nonradon emissions), uranium hexafluoride conversion plants, fuel fabrication plants, nuclear power reactors. About 135 facilities make up this category.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	1.5×10^{-4}	3.0×10^{-5}
Incidence within 80 km (death/y)	0.1	0.1
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	80	0
E-5 to E-4	6,600	4,000
E-6 to E-5	42,000	20,000
less E-6	240M	240M
Risk incidence:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0.0002	0
E-5 to E-4	0.0012	0.001
E-6 to E-5	0.0002	0.0006
less E-6	0.094	0.094

Other Health Impacts: Total cancers no more than twice fatal cancers.

TABLE 8—URANIUM FUEL CYCLE FACILITIES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.5×10^{-4}	0.1					
II	3.0×10^{-5}	0.1	<0.01	<0.01	$75M	$31M	$31M

Comments:
Alternative I: Baseline rule, 10 mrem/y ede—the dose from one uranium mill is of this magnitude.
Alternative II: Emission limit of 1 mrem/y ede (equivalent to a MIR of 3×10^{-5})—Most of the incidence is due to power reactors and only a few are affected by this alternative, so there is little reduction in incidence. Additional controls are required for uranium mills and uranium conversion plants.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from UFC facilities. The results of this analysis may be seen in Table 8. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. Alternative I, a standard of 10 mrem/y representing the current baseline emissions, was compared with Alternative II, a standard of 1 mrem/y, equivalent to 3×10^{-5}.

EPA's risk assessment indicates that a small reduction in the MIR and an estimated reduction of incidence by less than one case every 100 years would occur by reducing emissions from their present levels to a level equivalent to 1×10^{-4}. This occurs because the incidence from this source category is caused by the large number of people, each of whom is at very low risk levels. This results in a situation where small reductions in emissions from a couple of facilities that are above the level of Alternative II, achieve effectively no reduction in the public health impact from the source category. Based on these factors and on the costs of achieving Alternative II (Table 8), EPA has determined that the current emission level provides an ample margin of safety. Therefore, EPA believes that limiting emissions to their current level by imposition of a standard of 10 mrem/y ede, will protect public health with an ample margin of safety.

EPA has decided to regulate this category to insure that the current levels of emissions are not increased. The requirements of the rule assure that UFC facilities will keep emissions at or below the level of the standard, thereby insuring an ample margin of safety. The reporting provisions also provide the public with information on the emissions from the facility and provides them with assurance that the emissions will remain safe with an ample margin of safety, regardless of changes in the facility or the local population. Moreover, because each facility subject to this rule must demonstrate compliance with the 10 mrem/y ede emissions standard, it is likely that most, if not all, exposed individuals will receive a dose significantly less than 10 mrem/y ede. Therefore, EPA is promulgating a NESHAP mandating that radionuclide emissions from UFC facilities shall not cause any individual to receive a dose greater than 10 mrem/y ede.

4. Implementation

EPA has determined that the same level of regulation is appropriate for both UFC facilities and NRC-licensees. Therefore, EPA has removed the exemption for UFC facilities in the NRC-licensee NESHAP and will regulate them exactly the same as other licensees, including reporting and recordkeeping requirements.

EPA approves the use of the current version of NRC regulatory guidances for use in determining the emissions from UFC facilities and will consider making a technical change to this rule to allow use of updated versions when they become available.

D. Elemental Phosphorus Plants

1. Introduction

Elemental phosphorus plants extract pure phosphorus from ore for use in the chemical industry. These facilities emit radionuclides into the air because phosphate ore is high in uranium and its decay products. These decay products, especially polonium-210 and lead-210, become volatilized during the extraction process and are released into the

atmosphere. There are eight (5 operational, 3 standby) elemental phosphorus plants located in four different states. However, most of the emissions come from two plants in Idaho.

Due to the types of radionuclides emitted by these plants, virtually all the dose is received by the lung through the inhalation pathway causing an increased risk of lung cancer. This risk can be controlled through the use of a standard which directly limits emissions of polonium-210 (control measures which limit polonium-210 also limit emissions of lead-210). There is no need to write dose standards.

Elemental phosphorus plants are currently regulated by a NESHAP that limits their emissions to no more than 21 curies of polonium-210 annually.

2. Estimates of Exposure and Risk

EPA's risk assessment of elemental phosphorus plants is a site-by-site assessment of operating and standby plants, based on monitored data and throughput. Changes in the risk assessment since the proposal are the result of corrected meteorological data. Maximum individual risks were assessed at actual residences or at a location 1500 m in the predominant wind direction. The location of nearby populations was taken from census tract data.

According to the assessment, EPA estimates that the most exposed individual receives a lifetime fatal cancer risk of 5.7×10^{-4}. There is an increased incidence of 0.072 fatal cancer per year in the nearby (within 80 km) population, or 1 case every 14 years. Over 75% of the exposed population receives risks of less than 1×10^{-6}.

Table 9 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the Elemental Phosphorus Plants Source Category

The decision that results from the application of the multifactor approach to the elemental phosphorus plants source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 5.7×10^{-4}. This is higher than the presumptively safe level. The estimated annual incidence is 0.072 fatal cancer per year. There are an estimated 5000 people that are exposed to risk levels greater than 1×10^{-4}, and an estimated 365,000 people that are exposed to risk levels greater than 1×10^{-6}. After examining these factors, the Administrator has determined that the risk level represented by the baseline is unacceptable. EPA then considered Alternatives II and III to determine an acceptable risk level. A reduction in emissions to 2 curies/y Po-210 would reduce the incidence to 0.024, or 1 case every 40 years and expose no one to a risk level greater than 1×10^{-4}. This equals the level that is presumptively safe. Therefore, the acceptable level of emissions of polonium-210 is a level that limits the maximum individual risk to any individual of 1×10^{-4}, represented by an emissions level of 2 curies/y Po-210.

TABLE 9—ELEMENTAL PHOSPHORUS PLANTS

[Description: These plants extract pure phosphorus for use in the chemical industry. They emit polonium-210 and lead-210 because these materials are present in phosphate ore and are vaporized by the high temperature in the process. There are 8 elemental phosphorus plants, of which 5 are currently operating. The majority of emissions come from 2 plants in Idaho.]

	Alternative I (baseline)	Alternative II	Alternative III
Maximum individual risk (lifetime)	5.7×10^{-4}	1×10^{-4}	1×10^{-5}
Incidence within 80 km (death/y)	0.072	0.024	0.0022
Risk individual:			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	5,000	0	0
E-5 to E-4	110,000	20,000	0
E-6 to E-5	250,000	330,000	17,000
less E-6	1.5M	1.5M	1.8M
Risk incidence:			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	0.010	0	0
E-5 to E-4	0.040	0.0051	0
E-6 to E-5	0.016	0.013	0.00040
less E-6	0.0058	0.0059	0.0018

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 10—ELEMENTAL PHOSPHORUS PLANTS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	5.7×10^{-4}	0.072					
II	1×10^{-4}	0.024	0.048	0.048	$8.5M	$2.4M	$2.4M
III	$1\times10^{9-5}$	10.0022	0.022	0.070	$35M	$18M	$20M

Comments:
Alternative I: Baseline rule, emission limit of 10 Ci/y Po-210—highest current emission rate is 10 curies/y Po-210.
Alternative II: Emission limit of 2 Ci/y Po-210, high energy scrubbers on the two largest plants.
Alternative III: Fabric filters on the two largest plants. High energy scrubbers on all other plants.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from elemental phosphorus plants. The results of this analysis may be seen in Table 10. Alternative II, a standard of 2 curies/y of polonium-210 representing the acceptable level, was compared with Alternative III, which would require a collection of work practices.

A comparison of the two alternatives indicates that in absolute terms, a very small reduction in incidence would occur, from 0.024 to 0.0022, representing an estimated savings of 1 life every 45 years. Level III would also lower the MIR by one order of magnitude to 1×10^{-5}. EPA examined these very small reductions in risks, and the relatively large costs of achieving Alternative III, and has determined that Alternative II protects the public health with an ample margin of safety. Therefore, EPA is establishing a NESHAP limiting emissions from elemental phosphorus plants to 2 curies/y of polonium-210, as compared to the existing standard of 21 curies/y.

4. Implementation

The current NESHAP for elemental phosphorus plants required each plant to either conduct an initial test on its emissions or get a waiver from testing. After this original report no further testing was required, unless plant operations were changed significantly. EPA plans to continue this system, without the waiver provisions. Tests conducted under the current NESHAP are still valid if conditions have not changed.

Plants will be required to monitor their operations continuously and keep records of the results of their monitoring onsite for five years. Plant owners will have to certify on a semiannual basis that no changes in operations that would require new testing have occurred. Although the report is based on a calendar year the emission limit applies to any year, i.e. any period of 12 consecutive months.

Since the reports provide EPA with the information it needs, elemental phosphorous plants are exempted from the requirements of § 61.10.

E. Coal-Fired Utility and Industrial Boilers

1. Introduction

This category covers electrical utility and industrial boilers which emit the radionuclides naturally present in coal. Coal contains only minute amounts of radionuclides. This category is being considered because large boilers burn large quantities of coal and are so widely dispersed throughout the nation that the radionuclide emissions are estimated to cause 0.8 fatal cancer a year among the U.S. population.

Emissions from coal-fired boilers are presently regulated under National Ambient Air Quality Standards for particulate matter. In addition, the larger new coal-fired boilers have to meet New Source Performance Standards (NSPS). Coal-fired boilers are regulated for the other pollutants they emit including SO_2 and particulates.

2. Estimates of Exposure and Risk

EPA's risk assessment of coal-fired boilers is based on extrapolations of estimated radionuclide emissions based on actual particulate emissions with model populations. Estimates of emissions are from the reference facilities with the largest emissions. Population risks are based on emissions from typical plants. These emissions were analyzed on four sites: urban, suburban, rural and remote. Further information was received from a recent study of emissions from coal-fired boilers done by the Office of Air Quality, Planning and Standards. EPA assumed that the entire U.S. population lives within 80 km of at least one coal fired boiler.

EPA estimates that the maximum individual risk is 2.5×10^{-5} and that there are 0.8 fatal cancer a year caused by radionuclide emissions from both utility and industrial coal fired boilers. Virtually all the fatal cancer risk is borne by individuals whose lifetime fatal cancer risk is less than 1×10^{-6}.

Table 11 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to Coal-Fired Boilers Source Category

The decision that results from the application of the multifactor approach to the coal-fired boilers source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 2.5×10^{-5} which is below the presumptively safe level. The estimated annual incidence within 80 km is 0.8 fatal cancer per year. Over 99% of the incidence comes from people whose individual risk is less than 1×10^{-6}. Almost everyone in the U.S. lives within 80 kilometers of a coal-fired boiler, which results in a risk which is very evenly and equitably distributed. Therefore, EPA concludes that the baseline risk level is acceptable.

TABLE 11—COAL-FIRED BOILERS

[Description: Over 1,500 electrical utility and large industrial boilers release the small amounts of radionuclides naturally found in coal along with the non-radioactive particulates.]

	Alternative I (Baseline)	Alternative II
Maximum individual risk (lifetime)	2.5×10^{-5}	1×10^{-6}
Incidence within 80 km (death/y)	0.8	0.4
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	(*)	0
E-6 to E-5	130,000	(*)
less E-6	240M	240M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	(*)	0
E-6 to E-5	0.001	(*)
less E-6	0.8	0.4

* We believe that people are at this risk level but all 1,500 facilities in this category have not been characterized.

Other Health Impacts: Total cancers no more than twice fatal cancers.

TABLE 12—COAL-FIRED BOILERS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline): (util)	2.5×10^{-5}	0.4					

TABLE 12—COAL-FIRED BOILERS—Continued

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
(inds)	*7×10^{-6}	*0.4					
Alternative II:							
(util)	1×10^{-7}	0.2	0.2	0.2	$13B	$4.4B	$4.4B
(inds)	*1×10^{-6}	*0.2	*0.2	*0.2		*$1.7B	*$1.7B

*Office of Air Quality Planning and Standards values (Draft—Coal and Oil Combustion Study, 1988).

Comments:
Alternative I: Baseline, no rule—utility boilers: current emissions as controlled by NSPS, PSD, and SIP; industrial boilers: current emissions as controlled by SIP.
Alternative II: Utility boilers: retrofit of all sources to meet NSPS (particulate standard). Assumes ESPs are used to retrofit to an emission limit of 13 ng/joule (NSPS revised). Retrofit would yield additional health benefits due to reductions in particulate emissions.
Industrial boilers: retrofit all units >2MM Btu/h with ESPs.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from coal-fired boilers. The results of this analysis may be seen in Table 12. Alternative I, baseline emissions, was compared with Alternative II, which would require retrofitting existing sources to meet the NSPS. EPA's risk assessment indicates that the baseline MIR from coal-fired boilers, 2.5×10^{-5}, is very low, well below the presumptively safe level of approximately 1×10^{-4}. The risk is very evenly distributed among the population. The costs of Alternative II are extremely large. EPA examined the small risks presented by coal-fired boilers and the very large costs of achieving Alternative II, and determined that the current level of emissions represents an ample margin of safety. In addition, since all new facilities will have to meet NSPS, the effect of the NESHAP would solely be to require retrofitting of existing boilers. The NSPS provides assurance that the risks from coal-fired boilers will be reduced over time.

Therefore, EPA has determined that current levels of radionuclide emissions from coal-fired boilers represent a level of risk that protects the public health with an ample margin of safety.

F. High-Level Nuclear Waste Disposal Facilities

1. Introduction

Management and storage operations for high-level nuclear waste, spent fuel and transuranic waste are addressed in the categories for DOE facilities and NRC-licensed and non-DOE Federal facilities described above. This category addresses facilities constructed and dedicated to long term disposal of such materials pursuant to regulations to be promulgated at 40 CFR 191. Site characterization studies for the first such repository are being conducted by DOE and currently center on Yucca Mountain, Nevada. In addition, DOE is constructing an experimental Waste Isolation Pilot Plant (WIPP) which may be dedicated as a disposal facility.

2. Estimates of Exposure and Risk

EPA's risk assessment of HLW disposal facilities is based upon DOE engineering estimates for conceptual designs for the WIPP in New Mexico, and a permanent repository at Yucca Mountain. They were analyzed by EPA and are believed to be reasonable. Population data was taken from U.S. census data at these sites. Although the decision on Yucca Mountain's acceptability as a disposal site has not yet been made, EPA has analyzed the Yucca Mountain site in order to incorporate site specific information into the analysis.

EPA estimates that the maximum individual risk is 7×10^{-8} and that there would be 0.0000043 fatal cancers a year caused by radionuclide emissions from HLW disposal facilities to less than 1 million people within 80 km of these facilities. All the fatal cancer risk is borne by individuals whose total fatal cancer risk is less than 1×10^{-6}.

The reason that the emissions and risks are so low is the nature of the disposal operations. Most material will be brought to the site already sealed and buried below ground. Normal operations preclude any significant air emissions.

Table 14 presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level.

3. Application of Decision Methodology to the High Level Waste Source Category

The decision that results from the application of the multifactor approach to the HLW disposal facilities source category is described below.

Decision on Safe With an Ample Margin of Safety. As stated above, the individual risks from HLW disposal facilities are very small, 7×10^{-8}, much less than the 1×10^{-4} benchmark. In addition, there would be 0.0000043 fatal cancer a year from radionuclide emissions from disposal of HLW, see Table 13. The emissions and risk levels are so low that it was not necessary to evaluate any alternatives. The Administrator determines that the estimate of emissions from disposal of HLW represents a level that will protect public health with an ample margin of safety.

Operations involving the management, processing or storage of high-level waste, the operations from which an increase in emissions are more likely to occur, are regulated under NESHAPS controlling emissions from NRC-licensees, uranium fuel cycle facilities and DOE facilities. Disposal operations involve burying sealed containers of radioactive material, operations from which emissions are unlikely to occur. Therefore, EPA believes that there is no reason to expect that emissions to air would significantly increase, and, since the expected emissions are so low, no NESHAP is needed.

TABLE 13—HIGH LEVEL NUCLEAR WASTE DISPOSAL FACILITIES

[Description: Facilities designed to dispose of high level nuclear waste. There are no currently operating facilities. A geological repository is being considered for Yucca Mountain, Nevada. The Waste Isolation Pilot Plant now under construction in New Mexico, may also become a disposal facility. Baseline emissions are estimates of expected emissions. No alternatives are given due to expected risks well below 1×10^{-6}.]

	Alternative I (Baseline)
Maximum individual risk (lifetime)	7.0×10^{-8}
Incidence within 80 km (death/y)	0.0000043
Risk individual:	
E-2 to E-1	0
E-3 to E-2	0

TABLE 13—HIGH LEVEL NUCLEAR WASTE DISPOSAL FACILITIES—Continued

[Description: Facilities designed to dispose of high level nuclear waste. There are no currently operating facilities. A geological repository is being considered for Yucca Mountain, Nevada. The Waste Isolation Pilot Plant now under construction in New Mexico, may also become a disposal facility. Baseline emissions are estimates of expected emissions. No alternatives are given due to expected risks well below 1×10^{-6}.]

	Alternative I (Baseline)
E-4 to E-3	0
E-5 to E-4	0
E-6 to E-5	0
less E-6	101,000
Risk incidence:	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	0
E-6 to E-5	0
less E-6	0.0000043

Other Health Impacts: Total cancers no more than twice fatal cancers.

G. Radon Releases from Department of Energy Facilities

1. Introduction

The DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some of these facilities have large stockpiles of radium-containing material. Because this material has a high radium content it emits large quantities of radon. This material is stored in at least six different sites (at five locations) owned or controlled by DOE in Missouri, New Jersey, New York, Ohio and Utah. DOE is presently in the process of taking remedial action at these sites to dispose of the material on a long-term basis under procedures defined by Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or has completed required action and placed residues in interim storage. DOE has entered into or is negotiating a CERCLA compliance agreement for these remedial actions in accordance with CERCLA requirements, EPA policy and Executive Order 12580. The agreement for the DOE Monticello site has incorporated a 20 pCi/m^2-s flux standard through reference to DOE guidelines and 40 CFR 192.

The current NESHAP covering DOE facilities does not regulate radon emissions. Environmental groups challenged EPA in court to address the problem of radon emissions from DOE facilities. In March, EPA proposed that these facilities be regulated under a NESHAP; one option in that proposal would have limited emissions of radon from DOE facilities to no more than 20 pCi/m^2-s.

2. Estimates of Exposure and Risk

EPA's risk assessment of DOE facilities is a site-by-site assessment of current emissions. Radon emission estimates were mostly measured values provided by DOE or estimated from measured radium-226 concentrations in the wastes. The meteorological data were taken from nearby stations and populations are based on U.S. census tract data.

According to EPA's analysis, lifetime fatal cancer risk to the most exposed individual is 1.4×10^{-3}. DOE facilities cause an estimated 0.08 fatal cancer per year, or approximately 1 case every 12 years to the 28 million persons within 80 km of the DOE facilities. Approximately 75% of the risk to that population comes from individuals whose risk is over 1×10^{-6}. It is noted that this analysis does not consider the planned remedial actions which will be implemented under CERCLA, as amended, in conjunction with either Interagency Agreements or Federal Facilities Agreements with EPA.

Table 14 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for lower emission levels identified as Alternatives II, and III.

3. Application of Decision Methodology to the Radon Emissions From DOE Facilities Source Category

The decision that results from the application of the multifactor approach to the DOE radon source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 1.4×10^{-3} which is higher than the presumptively safe level. EPA has considered other risk factors to determine whether the baseline risk is acceptable. The estimated annual incidence is approximately 0.072 fatal cancers per year, and approximately 75% of that risk is borne by people whose risk is over 1×10^{-6}. Over 2,000 people are exposed to risks greater that 1×10^{-4}. Considering all of these factors, especially the high level of maximum individual risk, the baseline is unacceptable.

EPA next examined several alternatives before determining the acceptable level; those alternatives and the risks they present are presented in Table 14. After examining these different options, the Agency determined that Alternative II, setting a NESHAP limiting radon emissions to 20 pCi/m^2-s, is acceptable. The maximum individual risk that results from this alternative, 1.8×10^{-4}, which in light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. Over 99% of the population would be exposed to risks of less than 1×10^{-6}. In addition, the incidence level is only 0.040 fatal cancers per year and 0.0021 non-fatal cancers annually. Only a few people (approximately 100) would be exposed to risks greater than 1×10^{-4}; the predicted rate of fatal cancer among this group is less than 1 every 5,000 years.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from DOE facilities. The results of this analysis can be seen in Table 15. When EPA examined the control technology necessary to lower radon emissions from DOE facilities it concluded that the only technologically feasible control is burying the sources of radon emissions. The examined options Alternative II, and Alternative III, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of controlling emissions to various levels can be seen in Table 15.

A comparison of the two alternatives indicates that a very small reduction in incidence of 0.009, would result from imposing Alternative III, representing an estimated savings of 1 life every 111 years; the change in maximum individual risk would also be very small. EPA examined this very small reduction in incidence and maximum individual risk and the costs of achieving Alternative III and has determined that Alternative II provides an ample margin of safety. Therefore, EPA has decided to regulate this category by setting a

NESHAP limiting emissions from these sources to 20 pCi/m²-s. This rule will assure that all DOE radon sites (radium-226 byproduct material disposal and storage sites) resulting from DOE cleanup and restoration under CERCLA will be covered by the rule. This standard will protect public health with an ample margin of safety.

TABLE 14—RADON FROM DOE FACILITIES

[Description: Radon released from waste materials left behind from the Manhattan project and the early days of the Atomic Energy Commission. These wastes are currently stored at six facilities controlled by DOE.]

	Alternative I (baseline)	Alternative II	Alternative III
Maximum individual risk (lifetime)	1.4×10^{-3}	1.8×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.072	0.040	0.012
Risk individual:			
E-2 to E-1	0	0	0
E-3 to E-2	30	0	0
E-4 to E-3	2,000	100	0
E-5 to E-4	8,200	3,800	470
E-6 to E-5	360,000	92,000	19,000
less E-6	28M	28M	28M
Risk incidence:			
E-2 to E-1	0	0	0
E-3 to E-2	0.00056	0	0
E-4 to E-3	0.0058	0.00019	0
E-5 to E-4	0.0031	0.0014	0.00015
E-6 to E-5	0.0087	0.0026	0.00052
less E-6	0.054	0.036	0.011

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 15—RADON FROM DOE FACILITIES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.4×10^{-3}	0.072	—	—	—	—	—
II	1.8×10^{-4}	0.040	0.032	0.032	$29M	$1.5M	1.5M
III	1.0×10^{-4}	0.012	0.028	0.060	$26M	$1.3M	$2.8M

Comments:
Alternative I: Baseline, no rule—Self-regulated by DOE.
Alternative II: Cover source to limit emissions to 20 pCi/m²-s—This is the same level as the current AEA rule set by EPA for uranium mill tailings.
Alternative III: Cover source to limit emissions to 2 pCi/m²-s—Most of the cost is to control emissions from the Monticello tailings pile.

4. Implementation

This NESHAP is a flux standard that limits the emission of radon from DOE facilities. The standard limits the amount of radon that can be emitted per unit area (m²) per unit of time (s). This standard is not an average per facility but is an average per radon source. This will require that all radon sources must be disposed of in a manner that will reduce the radon flux to meet the standard.

Currently, all DOE radon sites have completed construction of interim storage facilities or have signed or are negotiating cleanup agreements under CERCLA with EPA regional offices. All existing agreements require that the waste be covered to reduce the radon flux to 20 pCi/m²-s. This rule will assure that all future agreements will require that the radon flux be reduced to at least this level.

While EPA believes that DOE will be able to meet this standard, EPA recognizes that in some cases DOE may need some time to perform all the actions necessary to reduce radon emissions to the required levels. In such a case, DOE may request a waiver of the compliance deadline of up to two years, under section 112(c)(1)(b)(ii) of the CAA. If two years is not sufficient time to complete remediation of the sites, EPA is prepared to discuss extended schedules for compliance. EPA recognizes that the requirements of CERCLA and other environmental laws will have to be considered in these discussions. This process will ensure that these sites are cleaned up as quickly as possible.

EPA believes that the existing oversight of DOE sites through the CERCLA program is sufficient to protect the public health, therefore, EPA is requiring no additional reporting or implementation requirements for this source category. Unlike the other categories that may be regulated by other laws, these sites are reporting and will continue to report to EPA regional offices, providing EPA with all the information it needs to assure compliance with this standard. Therefore, these DOE facilities are exempted from the requirements of § 61.10.

H. Phosphogypsum Stacks

1. Introduction

Phosphogypsum stacks are large piles of waste from wet acid phosphorus fertilizer production. Phosphogypsum stacks are found at 41 different sites in 12 states. Because phosphate ore contains a relatively high concentration of uranium and radium, phosphogypsum stacks are also high in these elements. The presence of radium in the stacks causes them to release radon into the atmosphere.

2. Estimates of Exposure and Risk

EPA has performed a pile-by-pile assessment of radon releases at 58 phosphogypsum stacks at 41 sites. Radon emissions are based on measured radon fluxes at stacks in Florida and Idaho which, combined with the radium content of the phosphate rock, allowed EPA to estimate emissions from the other stacks. The maximum individual risks estimates are based on the

locations of nearby residents obtained from industry or topographical maps. Where information was unavailable, people were assumed to be 800 meters from the site boundary. Populations within 80 km were taken from census tract data. The risk assessment presented with the proposal has been updated in response to new information provided from the comments.

The estimated maximum individual risk of fatal cancer from radon emissions from phosphogypsum stacks is 9×10^{-5}. The radon emissions are estimated to cause 0.95 fatal cancers and 0.047 non-fatal cancers per year to the 95 million people within 80 km. Approximately 90% of the risk to the population is borne by people whose risk is less than 1×10^{-6}, and 33% of the risk is borne by people whose risk is less than 1×10^{-6}.

Table 16 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Alternative II.

3. Application of Decision Methodology to Phosphogypsum Source Category

The decision that results from the application of the multifactor approach to the phosphogypsum source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 9×10^{-5} which is less than the benchmark of approximately 1×10^{-4} and is, therefore, presumptively safe. While the incidence is 0.95, it results from the low levels of risk to the millions of persons included within the modelling radius, with the bulk of the incidence from people whose individual risk is less than 1×10^{-5}. Over 77% of the population is exposed to risks of less than 1×10^{-6}. EPA has concluded that the baseline risk is acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from phosphogypsum stacks. The results of this analysis can be seen in Table 17. The examined options, Alternative I and Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of controlling emissions to various levels can be seen in Table 17.

A comparison of the two alternatives indicates that a small reduction in incidence would occur from imposing Alternative II, 0.16; this represents an estimated incidence reduction of 1 life every 6 years. Simultaneously the maximum individual risk would be reduced only marginally, from 9.1×10^{-5} to 8.2×10^{-5}. EPA examined this small reduction in incidence and maximum individual risk and the relatively large costs to achieve these small reductions in risks and determined that Alternative I provides an ample margin of safety. EPA has concluded that a standard is warranted for this category. Setting a standard will treat phosphogypsum stacks the same way that other radium bearing wastes (uranium mill tailings) are being treated. A standard will also ensure that the public will be protected with an ample margin of safety in all cases. Therefore, EPA has decided to regulate this category by setting a NESHAP limiting emissions from these sources to no more than 20 pCi/m^2-s.

4. Implementation

This standard is in the form of a work practice standard that initially directs that the phosphogypsum by-product be disposed into stacks or old phosphate mines, and imposes on those stacks or mines a standard to ensure that they do not emit radon into the ambient air in an amount greater than a flux of 20 pCi/m^2-s. EPA has settled on this form of a standard pursuant to its authority under CAA section 112(e) to set a work practice standard when it is "not feasible to prescribe or enforce an emission standard" because the hazardous air pollutant cannot be emitted through a conveyance designed or constructed to emit or capture such air pollutant. Given the size of the stacks, use of a conveyance to capture the radon emitted by the stacks is utterly impractical. Without requiring the radium-rich phosphogypsum be first disposed into large, manageable stacks or mines, which is generally what has been done with the existing phosphogypsum, the phosphogypsum may be incorporated into other products or otherwise diffused throughout the country, such that the Agency will be unable to ensure that the phosphogypsum's radon emissions do not present an unacceptable risk to public health.

Once the phosphogypsum is deposited in stacks, an additional requirement of 20 pCi/m^2-s is sufficient to ensure the continued safety of the public with an ample margin of safety. This numerical standard simply ensures maintenance of the status quo as EPA believes all existing phosphogypsum stacks meet these requirements without the need for additional control technology.

Under this NESHAP, all phosphogypsum stacks will be limited in the amount of radon they may release. The standard limits the amount of radon that can be emitted per unit area (m^2) per unit of time (s). This standard is an average per stack.

Ninety days after the effective date of this rule or sixty days after the stack becomes inactive, whichever is later, the operator must test the stack to determine whether or not the stack is in compliance with the flux standard. The stack is considered inactive if it is no longer being used for the disposal of phosphogypsum or for waste water management operations associated with the mining and milling of phosphogypsum. If a stack has not been used for two years, it is presumed to be inactive.

Once testing demonstrates that the stack is in compliance, it does not have to be tested again. EPA expects that few, if any, stacks will be used after they are tested; however, if the stack is used again, it ceases to be inactive. When it ceases to be used subsequently, it again becomes inactive and must be retested.

Since EPA has all the current information it needs on phosphogypsum stacks, they are exempted from the requirements of § 61.10.

TABLE 16—DISPOSAL OF PHOSPHOGYPSUM STACKS

[Description: Large piles of waste from wet acid phosphorous fertilizer production. Radon is released from the uranium decay product found in phosphate ore. There are about 60 stacks on 40 sites.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	9.1×10^{-5}	8.2×10^{-5}
Incidence within 80 km (death/y)	0.95	0.79
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	400,000	250,000
E-6 to E-5	17M	14M
less E-6	77M	81M
Risk incidence:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	0.092	0.055
E-6 to E-5	0.54	0.41
less E-6	0.32	0.33

Other Health Impacts: Non-fatal cancers no more than 5% deaths.

TABLE 17—DISPOSAL OF PHOSPHOGYPSUM STACKS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	9.1×10^{-5}	0.95					
II	8.2×10^{-5}	0.79	0.16	0.16	$450M	$43M	$43M

Comments:
Alternative I: Baseline rule, cover source to limit emissions to 20 pCi/m²-s—Stacks have emissions of 4 to 15 pCi/m²-s; no cover would be needed. This rule would be equivalent to the current AEA rule set by EPA for uranium mill tailings.
Alternative II: Cover source to limit emissions to 6 pCi/m²-s—Stacks are covered with 0.5 meters of dirt. Usually dirt is not locally available and must be hauled to the site.

I. Underground Uranium Mines

1. Introduction

When these mines are operating, their ventilation systems emit large amounts of radon into the atmosphere. The levels of radon in an unventilated mine are a hazard to the miners. Ventilating to reduce radon exposure to the miners increases exposure to the general population.

Underground uranium mines are regulated by an existing NESHAP. This NESHAP requires bulkheading of unused portions of the mines in an effort to reduce the internal wall surface area of the mine and thereby reduce radon emissions into the mine air. EPA has found that this system is unworkable for existing mines, and it is unproven for new mines. The interiors of existing mines are so extensively interconnected that any attempt at bulkheading either produces no results or prevents fresh air from getting to the miners.

2. Estimates of Exposure and Risk

EPA's risk assessment of underground uranium mines is a site-by-site assessment of all operating or operable mines. Emission estimates were based on radon concentration or working level measurements and ventilation rates provided by mine operators. The meteorological data were taken from nearby stations and populations from 5 to 80 km are based on U.S. census tract data. Population distributions within 5 km were taken from site visits or obtained from mine owners.

The maximum individual risk of fatal cancer from radon emissions from underground uranium mines is 4×10^{-3}. The radon emissions are estimated to cause 0.79 fatal cancers per year to the population within 80 km.

Table 18 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for lower emission levels identified as alternatives II and III.

Unlike other tables in this notice, Table 18 includes two different estimates of risks for each option. The reason for the two calculations is the large uncertainty of how the regulated community would comply with a standard at the level represented by the alternative. Options available include bulkheading, reducing their hours of operation, or shutting down. The wide range of options available to mine owners greatly increases the difficulty of predicting what will be the impacts of the various regulatory options.

EPA has calculated the possible risks resulting from the regulatory options using two different methods. The first method assumes that all mines whose emissions result in doses higher than the standard will reduce their emissions sufficiently to meet the standard. EPA then uses these reduced emissions to calculate the new health impacts. This method creates what EPA considers to be the expected risks associated with that option.

However, to achieve the standard by reducing emissions, some mines will have to make very dramatic reductions in emissions, reductions that may be too costly for the mine to remain in operation. The second method used to calculate risks (marked with a + on the tables) assumes that all mines causing doses in excess of the standard simply shut down, except in those cases where the mine owner could meet the standard by reducing their emissions by less than 25%. EPA believes that this method will calculate the maximum health benefit that could occur as a result of this rulemaking. This second method of calculating risks shows a lower figure for the total population exposed because the mines which are assumed to be shut down would expose no one.

TABLE 18—UNDERGROUND URANIUM MINES

[Description: Underground mines used to produce uranium ore. Only 15 are still operating. Emissions come from operations when mines are ventilated to reduce radon exposure to miners.]

	Alternative I (baseline)	Alternative II	Alternative II+	Alternative III	Alternative III+
Maximum individual risk (lifetime)	4.4×10^{-3}	3×10^{-4}	3×10^{-4}	1×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.79	0.24	0.05	0.09	0.009
Risk individual:					
E-2 to E-1	0	0	0	0	0
E-3 to E-2	(*)	0	0	0	0
E-4 to E-3	90,000	3,500	3,500	0	0
E-5 to E-4	1.6M	330,000	76,000	120,000	11,000
E-6 to E-5	450,000	1.8M	240,000	1.5M	110,000
less E-6	51,000	100,000	26,000	600,000	20,000

TABLE 18—UNDERGROUND URANIUM MINES—Continued

[Description: Underground mines used to produce uranium ore. Only 15 are still operating. Emissions come from operations when mines are ventilated to reduce radon exposure to miners.]

	Alternative I (baseline)	Alternative II	Alternative II+	Alternative III	Alternative III+
Risk incidence:					
E-2 to E-1	0	0	0	0	0
E-3 to E-2	(*)	0	0	0	0
E-4 to E-3	0.21	0.008	0.008	0	0
E-5 to E-4	0.55	0.13	0.037	0.032	0.0038
E-6 to E-5	0.030	0.11	0.011	0.055	0.0047
less E-6	0.00040	0.0006	0.0002	0.0060	0.00017

+ Analysis assumes closure of all mines that do not meet the standard, if the mines operate in such a way that they meet the standard population risks will increase.

* Less than 25 people at this risk. However, we cannot quantify the number because detailed demographics have not been obtained.

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 19—UNDERGROUND URANIUM MINES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (baseline)	4.4×10^{-3}	0.79					
II	3.0×10^{-4}	0.24	0.55	0.55	$0	$0.4M	$0.4M
II+	3.0×10^{-4}	0.05	0.74	0.74	(1)	(1)	(1)
III	1.0×10^{-4}	0.09	0.15	0.70	$0	$0.4M	$0.8M
III+	1.0×10^{-4}	0.009	0.04	0.78	(1)	(1)	(1)

[1] Costs not calculated.

Comments:

Alternative I: Baseline, no rule.

Alternative II: 10 mrem/y ede. Affects 9 mines, estimates assume all mines over the standard reduce emissions by a sufficient amount to meet the standard. This is assumed to be equivalent to the expected results of the standard.

Alternative II+: 10 mrem/y ede. Affects 9 mines, estimates assume that 5 mines that exceed the standard by more than 25% close down, the other 4 mines reduce emissions. This represents the maximum reduction in health effects to be expected.

Alternative III: 3 mrem/y ede. Affects 9 mines, estimates assume all 9 mines over the standard reduce emissions by a sufficient amount to meet the standard. This is assumed to be equivalent to the expected results of the standard.

Alternative III+: 3 mrem/y ede. Affects 9 mines, estimates assume that all 9 mines that exceed the standard close down. This represents the maximum reduction in health effects to be expected.

3. Application of Decision Methodology to the Underground Uranium Mine Source Category

The decision that results from the application of the multifactor approach to the underground uranium mines source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 4×10^{-3} which is much higher than the presumptively safe level. Considering the high level of individual risk, the presumption is very strong that the baseline is unacceptable. The estimated annual incidence is approximately 0.79 fatal cancers per year, and over 90 percent of that risk is borne by people whose risk is over 1×10^{-5}. Over 90,000 people are exposed to risks greater than 1×10^{-4}. These factors support the judgment that the risk level represented by the baseline is unacceptable.

EPA examined several alternatives before determining the acceptable level; those alternatives and the risks they present are illustrated in Table 18. After examining these different Alternatives, the Agency determined that Alternative II, setting a NESHAP limiting emissions from underground uranium mines to 10 mrem/y ede which results in a maximum individual risk of 3×10^{-4} less than 10 percent of the population exposed to risks less than 1×10^{-4} (this is due to the unusual demographics of the risk assessment area, which contains unevenly distributed population centers as opposed to the more normal situation where the population is more evenly distributed), and an incidence of 0.24 fatal cancers per year is acceptable.

In establishing the policy for setting NESHAPS in the context of the earlier benzene decision, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the MIR of 3×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. Next, EPA examined the other risk information on this category. Radon causes only lung cancer, which means that emissions from underground uranium mines will cause only 0.012 non-fatal cancers a year. In addition, it must be noted that for most of the people whose risks are above 1×10^{-4}, very few, if any, would receive risks as high as 3×10^{-4}, the risk level equivalent to 10 mrem/y. Only the few individuals who are closest to the mines would receive a dose approaching 10 mrem/y. Everyone else would receive progressively smaller doses and risks as distance from the mine increases. For the vast majority of people whose risk is above 1×10^{-4}, their dose will be much closer to 3 mrem/y than it will be to 10 mrem/y.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from underground uranium mines. The results of this analysis can be seen in Table 19. EPA has considered Alternatives II and III for underground uranium mines. Since different mine owners may use

different methods to reduce the risk to the maximum individual, there is a great deal of uncertainty in assessing the costs and the benefits going from Alternative II to Alternative III. The range of the benefits of controlling emissions to various levels can be seen in Table 19.

A comparison of the two alternatives indicates that a small reduction in incidence would occur, from a range of 0.24 to 0.05 (approximately 1 every 4 to 20 years), to a range of 0.09 to 0.009 (approximately 1 every 11 to 111 years). This reduction must be compared to the increased difficulty and expense that would be incurred by 9 of the 15 underground uranium mines in further reducing the dose to the maximum individual by a factor of 3 and the questionable feasibility of the control technology. EPA has determined that the level of Alternative II protects public health with an ample margin of safety. Therefore, EPA is setting a NESHAP limiting the dose to the maximally exposed individual to 10 mrem/y ede.

4. Implementation

This standard is an effective dose equivalent standard. Mines are limited in the amount of dose their radon emissions can cause to the nearby population. Due to Mine Safety and Health Administration (MSHA) regulations, which are designed to protect the miners from high levels of radon in the mine, the exhaust fans must be operating whenever there are miners working in the mine. This limits EPA flexibility in developing other types of standards to control radon emissions.

Under this rule, uranium mine owners will have to measure their emissions of radon, find the location of the maximally exposed individual, use that information as input into the COMPLY computer code, calculate the dose to the maximum exposed individual, and report the results to EPA. Since enforcement of the standard will be based on the results of these calculations, mine owners can comply with the new limit by whatever method or combinations of methods they choose.

J. Surface Uranium Mines

1. Introduction

Surface mining is accomplished by the excavation of one or more pits to expose uranium ore for removal. This technique accounted for about 45 percent, on average, of the uranium ore tonnage produced in this country between 1956 and 1985. However, much of today's uranium production is from underground mines and other sources.

In the past, annual production from surface mines ranged from a few hundred tons of ore to 100,000 tons or more from as many as 1200 mines. Due to the dramatic decline in the uranium industry since 1981, the number of surface mines in operation in the U.S. has dropped from 50 in 1981 to just 2 in 1987; one of these is scheduled to close in 1993.

During surface mining, topsoil (called overburden) may be segregated and saved for reclamation; overburden is piled on land beside the pit. The pit and overburden represent a large surface area from which radon can escape into the atmosphere. Radon emissions from the pit and overburden are higher than normal soil because the rock surrounding uranium deposits has higher radium concentrations than normal soil.

Health, safety and environmental hazards associated with uranium mining are regulated by a variety of Federal and State laws. As a result of the laws and regulations, many of the inactive uranium mines, are in various stages of reclamation by the placement of an earthen cover over the pit and the overburden. This reclamation of the mines significantly reduces radon emissions. In the past, EPA decided not to promulgate a NESHAP for this category. That decision was challenged in litigation and is being reexamined in this rulemaking.

2. Estimates of Exposure and Risk

EPA conducted a field study during the summer of 1988 to obtain information with which to model the surface mining industry so that estimates of risk from surface mining could be made. Radiometric surveys were conducted of the two active mines, located in Texas and Wyoming, and 25 inactive mines located in Arizona, New Mexico, Colorado, South Dakota, Texas and Wyoming. In addition, the demographic and meteorologic data were gathered in and around each mining site.

The maximum individual risk of fatal cancer from radon emissions from surface uranium mines is 5×10^{-5}. The radon emissions are estimated to cause 0.026 fatal cancers per year to the population within 80 km. Over 95 percent of the risk to the population is borne by people whose risk is less than 1×10^{-5}, and over 75 percent of the risk is borne by people whose risk is less than 1×10^{-6}.

Table 20 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Alternative II.

3. Application of Decision Methodology to Surface Uranium Mine Source Category

The decision that results from the application of the multifactor approach to the surface uranium mine source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 5×10^{-5} which is lower than the benchmark of approximately 1×10^{-4}. The estimated annual incidence within 80 km is 0.026 fatal cancers per year. In addition, only 24,000 people out of 30 million (<0.1 percent) are exposed to risks greater than 1×10^{-6}. Based on these factors EPA concludes that the baseline risk is acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from surface uranium mines. The results of this analysis can be seen in Table 21. The examined options, Alternative I and Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of controlling emissions to various levels can be seen in Table 21.

A comparison of the two alternatives indicates that a very small reduction in incidence would occur from moving to Alternative II, 0.022, representing an estimated incidence reduction of 1 life every 45 years. In addition, a small reduction in maximum individual risk would result, from 4.8×10^{-5} to 2.4×10^{-5}. EPA examined these small reductions in incidence, and maximum individual risk and the costs of achieving Alternative II and has determined that Alternative I would provide an ample margin of safety to protect public health.

In addition, this source category is already regulated by a host of state and federal mine reclamation laws. Due to the depressed state of the uranium mining industry, there is no reason to believe that new surface mines will be constructed. The presence of these laws, the very low maximum individual risk and incidence level associated with this

category, and the depressed nature of the industry lead EPA to the decision that it is unnecessary for EPA to set a NESHAP for this source category. Therefore, no standard is promulgated regulating emissions from surface uranium mines.

TABLE 20.—SURFACE URANIUM MINES

[Description: Open pit mines excavations to unearth uranium ore. Only two are operating (one of which will close in 1993); about twelve hundred are closed and will not reopen.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	4.8×10^{-5}	2.4×10^{-5}
Incidence within 80 km (death/y)	0.026	0.0038
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	4,000	3,000
E-6 to E-5	200,000	80,000
less E-6	30M	30M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	0.001	0.0008
E-6 to E-5	0.005	0.0020
less E-6	0.020	0.0010

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 21.—SURFACE URANIUM MINES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	4.8×10^{-5}	0.026					
II	2.4×10^{-5}	0.0038	0.022	0.022	$15M	$0.8M	$0.8M

Comments:

Alternative I: Baseline, no rule—State reclamation rules apply. Analysis assumes larger production mines characterize the risk associated with surface uranium mining. Analysis is based on 25 mines. States with reclamation requirements included Colorado, Texas, Utah, Wyoming and South Dakota.

Alternative II: Cover source to limit emissions to 40 pCi/m²-s—Assumes 0.2 meters of dirt cover.

K. Operating Uranium Mill Tailings Piles

I. Introduction

The process of separating uranium from its ore creates waste material called uranium mill tailings. Since uranium ore generally contains less than 1 percent uranium, uranium milling produces large quantities of tailings. These tailings are collected in impoundments that vary in size from 20 to 400 acres. The tailings contain large amounts of radium, and, therefore, they emit large quantities of radon. There are 26 NRC-licensed uranium mills in the western United States. Due to the depressed state of the uranium industry, most of these mills are not currently operating.

The Uranium Fuel Cycle standard, 40 CFR part 190, does not regulate radon emissions from the tailings piles. Radon emissions during operations are currently regulated by a NESHAP 40 CFR part 61, subpart W, which is a work practice standard specifying two methods, one of which must be used in the construction of any new tailings impoundment. The piles must ultimately be disposed of in accordance with an EPA Atomic Energy Act regulation, 40 CFR part 192, which is implemented by the NRC.

For the current radionuclides NESHAP rulemaking, EPA is promulgating rules for three different subcategories that deal with mill tailings: operating mill tailings—existing piles, operating mill tailings—new technology, and disposal of uranium mill tailings (as a separate source category; see section VII.L of this notice).

This source category, operating mill tailings, has two subcategories because existing and future mill tailings piles present different problems. Existing mill tailings piles are large piles of wastes that emit radon. Radon emissions from these piles are retarded by the presence of water. However, if operations cease, and the pit is allowed to dry out, emissions can increase significantly.

New piles can be designed to overcome this problem in one of two ways: (1) Limit the size of the pile, which limits the radon source; or (2) utilize a disposal system, continuous disposal, that does not allow large piles to accumulate. The new technology is not feasible for old piles, as it is easier and cheaper and releases less radon to simply cover up the existing piles, rather than to break them up into a series of smaller piles and dispose of them separately.

2. Estimates of Exposure and Risk

EPA's risk assessment of operating uranium mill tailings is a site-by-site assessment of all 12 licensed mills that are either currently operating or on standby. Emissions were estimated from the radium-226 concentrations in the tailings, the amount of tailings, and the assumption that 1 pCi/g of radium-226 in the tailings produces 1 pCi/m²-s of radon. The meteorological data was taken from nearby stations and populations from 5 to 80 km are based on U.S. census tract data. Populations within 5 km were counted at each of the sites. EPA analyzed current emissions and the emissions that would be expected when new tailings impoundments are created in the future.

EPA estimates that the lifetime fatal cancer risk to the most exposed individual is 3×10^{-5} from the twelve licensed piles that are either operating or on standby. Uranium mill tailings are estimated to cause 0.004 fatal cancers per year, approximately 1 case every 250 years to the 2 million persons within 80 km of the tailings piles. This risk is much lower than the estimated risks presented in the proposed rule. The reason for the great reduction in the risk calculated is that EPA has received and confirmed information during the comment period that these piles are mostly wet or covered with clay. This greatly reduces the rate of radon emissions from the

piles, greatly reducing the risks that they pose.

EPA's analysis of new technologies is based on one set of model mills. By creating a set of model mills the analysis provides a meaningful comparison of the different technological alternatives, unaffected by assumptions about the number and locations where new mills and new piles might be constructed. However, this may understate the incidence from these piles if more mills are constructed, than are included in this analysis.

Tables 22, 23, 24 and 25 present example scenarios to show how different emission levels would result in different health risk profiles. Tables 22 and 23 provide information on existing piles; Tables 24 and 25 provide information on the options for new piles. The tables present the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level.

3. Application of Decision Methodology to the Operating Mill Tailings Piles Source Category

The decisions that result from the application of the multifactor approach to the operating uranium mill tailings piles source category is described below. Two separate decisions were made: one for existing piles and the other for new piles.

a. *Existing Mill Tailings Piles.* Decision on Acceptable Risk. As stated earlier, the maximum individual risk is 3×10^{-5} which is clearly below the benchmark level of approximately 1×10^{-4} and is, therefore, presumptively safe. The estimated annual incidence within 80 km is 0.0043 fatal cancers per year, which is less than one case every 200 years. Only 240 people are exposed to risks greater than 1×10^{-5} and 97 percent of the people exposed have risks less than 1×10^{-6}. Based on these factors, EPA has concluded that the baseline risks are acceptable.

Decision on Ample Margin of Safety. In addition to re-examining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from operating uranium mill tailings piles. The results of this analysis can be seen in Table 23. As explained above, the risks from current emissions are very low. A NESHAP requiring that emissions from operating mill tailings piles limit their emissions to no more than 20 pCi/m^2-s represents current emissions. EPA has determined that the risks are low enough that it is unnecessary to reduce the already low risks from the tailings piles further.

However, EPA recognizes that the risks from mill tailings piles can increase dramatically if they are allowed to dry and remain uncovered. An example of how high the risks can rise if the piles are dry and uncovered can be seen in the proposed rule, 54 FR 9645. That analysis assumed that the piles were dry and uncovered and the risks were as high as 3×10^{-3} with 1.6 fatal cancers per year. Therefore, EPA is promulgating a standard that will limit radon emissions to an average of 20 pCi/m^2-s. This rule will have the practical effect of requiring the mill operators to keep their piles wet or covered. At the point that a mill decides to no longer keep the piles emissions below the standard, the pile should be disposed of, otherwise the piles increased radon emissions are likely to present unacceptably high risks.

EPA recognizes that in the case of a tailings pile which is not synthetically or clay lined (the clay lining can be the result of natural conditions at the site) water placed on the tailings in an amount necessary to reduce radon levels, can result in ground water contamination. In addition, in certain situations the water can run off and contaminate surface water. EPA cannot allow a situation where the reduction of radon emissions comes at the expense of increased pollution of the ground or surface water. Therefore, all piles will be required to meet the requirements of 40 CFR 192.32(a) which protects water supplies from contamination. Under the current rules, existing piles are exempt from these provisions, this rule will end that exemption.

b. *New Mill Tailing Impoundments.* Decision on Acceptable Risk. In establishing the policy for setting NESHAPS in the context of the earlier benzene decision, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the maximum individual risk to any individual from Alternative I, which represents a continuation of current practice, is 1.6×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. The estimated annual incidence is 0.014 fatal cancers per year or approximately 1 case every 70 years. In addition there would be an estimated 0.0007 non-fatal cancers per year. Only 20 people are at risks greater than 1.0×10^{-4} and approximately 18 percent of people within 80 km of mill tailings piles receive risks of less than 1×10^{-6}. After examining these factors, the Administrator has determined that the baseline risks from new uranium mill tailings impoundments are acceptable.

Decision on Ample Margin of Safety. In addition to re-examining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from new uranium mill tailings impoundments. The results of this analysis can be seen in Table 25. The examined options, Alternative I, Alternative II, and Alternative III, represent different methods of disposal. Alternative I is the use of one large impoundment, Alternative II is the use of phased disposal, and Alternative III is the use of continuous disposal.

A comparison of the alternatives indicates that very small reductions in incidence would occur, 0.005 in going from Alternative I to Alternative II, and 0.008 in going from Alternative I to Alternative III. In addition, the maximum individual risk would be reduced from 1.6×10^{-4} to 9×10^{-5} or 6×10^{-5}. In addition both Alternatives II and III will assure that over 97 percent of the population will be exposed to risks less than 1×10^{-6}. EPA examined this small reduction in incidence and maximum individual risk and the small costs of changing work practices, but also considered the uncertainties in this analysis. EPA believes that for this category, the economic assessment is especially uncertain. This uncertainty make this analysis different from the other analyses conducted by EPA in this rulemaking.

The uncertainty arises because it assumes a steady state industry over time. If the uranium market once again booms there would be increased risks associated with Alternative I. If the industry then experienced another economic downturn, the costs of Alternative I would increase because of the economic waste that occurs when a large impoundment is constructed and not filled. The risks can also increase if a company goes bankrupt and cannot afford the increased costs of closing a large impoundment and the pile sits uncovered emitting radon. The risks can

also increase if many new piles are constructed, creating the potential for the population and individual risks to be higher than EPA has calculated.

These uncertainties significantly affect the accuracy of the analysis and given the small cost of going to Alternatives II and III, EPA has determined that in order to protect the public with an ample margin of safety, both now and in the future, new mill tailings impoundments must use phased or continuous disposal.

EPA believes that in the long run mill owners will save money using continuous disposal, however, this technology has not been used in uranium operations in this country. Given the resulting uncertainty about the technological feasibility of this disposal method, EPA is also allowing them to use Alternative II which is phased disposal, since it also protects public health with an ample margin of safety. Either one of these technologies will assure that future risks will be kept under control by assuring that only small amounts of tailings are uncovered at any time. This will prevent mill tailings from becoming a large problem in the future.

TABLE 22.—OPERATING URANIUM MILL TAILINGS PILES—EXISTING PILES

[Description: Piles of uranium mill tailings at the 11 licensed operating uranium mill sites.]

	Alternative I (baseline)
Maximum individual risk (<lifetime exposure)	2.9×10^{-5}
Incidence within 80 km	0.0043
Risk individual	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	240
E-6 to E-5	60,000
less E-6	1.9M
Risk incidence	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	0.000057
E-6 to E-5	0.0023
less E-6	0.0020

Other Health Impacts: Non-fatal cancers no more than 5 percent deaths.

TABLE 23.—OPERATING URANIUM MILL TAILINGS—EXISTING PILES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	2.9×10^{-5}	0.0043					

Comments:
Alternative I: Baseline rule—Flux standard for operating piles of 20 pCi/m^2–s.

TABLE 24.—OPERATING URANIUM MILL TAILINGS PILES—NEW TECHNOLOGIES [1]

[Description: The different methods of disposal that can be used for the construction of new uranium mill tailings piles by uranium milling companies.]

	Alternative I (baseline)	Alternative II	Alternative III
Maximum individual risk (lifetime)	1.6×10^{-4}	9×10^{-5}	6×10^{-5}
Incidence within 80 km (death/y)	0.014	0.009	0.006
Risk individual			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	20	0	0
E-5 to E-4	6,800	100	100
E-6 to E-5	680,000	20,000	20,000
less E-6	120,000	780,000	780,000
Risk incidence			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	0.00009	0	0
E-5 to E-4	0.0014	0.00009	0.00005
E-6 to E-5	0.012	0.0001	0.0005
less E-6	0.001	0.009	0.0055

[1] Risks are for only one model mill. Numbers should be used for comparison purposes only.

Other Health Impacts: Non-fatal cancers no more than 5 percent of deaths

TABLE 25.—OPERATING URANIUM MILL TAILINGS—NEW TECHNOLOGIES [1]

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.6×10^{-4}	0.014					
II	9.0×10^{-5}	0.009	0.005	0.005	$ 6.3M	$ 0.5M	$ 0.5M
III	6.0×10^{-5}	0.006	0.008	0.008	<$ 1.0M>	<$ 0.08M>	<$ 0.08M>

[1] All estimates for a single model mill Alternative II and III are each compared to Alternative I.

Comments:

Alternative I: Baseline, no rule—current technology is used. Single large impoundment.

Alternative II: Current NESHAP—several small impoundments with 40 acre limit (phased disposal).

Alternative III: Current NESHAP—tailings are dried and disposed of immediately (continuous disposal). Total capital cost is less than other two alternatives. Costs and incidence reductions are compared to baseline alternative.

4. Implementation

The NESHAP for existing mill tailings piles is a flux standard that limits the emission of radon from the piles. The standard limits the amount of radon that can be emitted per unit area (m^2) per unit of time (s). This standard is not an average per facility but is an average per radon source. The mill will annually test its impoundments and report the results to EPA.

The NESHAP for new impoundments is a work practice standard that requires mill operators to manage their tailings in a way that will reduce radon emissions. Mill operators will not be allowed to build any new mill tailings impoundment which does not meet this work practice standard. EPA will receive information on the construction of new impoundments through the requirements for EPA to approve of new construction under 40 CFR part 61, subpart A.

Since EPA already has or will receive through these reports the information it needs, uranium mill tailings are exempted from the requirements of § 61.10.

L. Disposal of Uranium Mill Tailings Piles

1. Introduction

After uranium mill tailings impoundments can no longer be used, they must be disposed of. In addition to the fourteen licensed piles that commercial licensees are decommissioning, DOE controls 24 abandoned uranium mill tailings piles. The 1978 Uranium Mill Tailings Radiation Control Act (UMTRCA) gave DOE responsibility for remedial actions at these latter sites. This Act also required EPA to set environmental standards to control releases from uranium mill tailings impoundments. EPA promulgated standards for both types of sites at 40 CFR part 192. That regulation limits post-closure radon releases to 20 pCi/m^2-s from the tailings piles.

In the past, EPA decided not to regulate under the CAA the disposal of uranium mill tailing impoundments which are regulated under UMTRCA. That decision was challenged in the litigation, so EPA is reexamining it.

2. Estimates of Exposure and Risk

EPA's risk assessment of uranium mill tailings is a site-by-site assessment of all 24 inactive piles and the 14 licensed piles that are being decommissioned. An uncertainty in this risk assessment occurs because DOE currently has plans to relocate eleven of the inactive mill tailings piles to unpopulated areas; in addition, DOE plans to stabilize the remaining 13 piles pursuant to the 40 CFR part 192 standards. EPA has considered information in the rulemaking record concerning DOE's plans in its determination on this category.

Emissions were estimated from the area of each tailings pile and an assumed radon flux of 20 pCi/m^2-s for reclaimed piles unless information existed which demonstrated that the radon flux would be less, and 1 pCi/m^2-s per pCi/g of radium for unreclaimed piles. Where specific documentation existed, such as contracts or agreements with regulatory agencies, EPA assumed that piles would be disposed of according to existing plans at the time scheduled. Meteorological data were taken from nearby stations, and populations from 5 to 80 km are based on U.S. census tract data. Populations within 5 km were measured at the sites. According to EPA's analysis, the lifetime fatal cancer risk to the most exposed individual is 3×10^{-4}. These tailings piles are estimated to cause 0.070 fatal cancers per year or approximately 1 case every 14 years, to the 9.4 million persons within 80 km.

Table 26 presents two alternative scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline, Alternative I, in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Alternative II.

3. Application of Decision Methodology to the Disposal of Uranium Mill Tailings Category

The decision that results from the application of the multifactor approach to the disposed uranium mill tailings source category is described below.

Decision on Acceptable Risk. In establishing the policy for setting NESHAPS in the context of the earlier benzene decision, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the maximum individual risk of 3×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. The estimated annual incidence is 0.070 fatal cancers per year or 1 case every 14 years; in addition, there would be 0.0035 non-fatal cancers per year. Only 200 people are at risks greater than 1.0×10^{-4}, and approximately 86 percent of the people within 80 km are at risk levels of less than 1×10^{-6}.

After examining these factors, the Administrator has determined that the baseline risks from the disposal of uranium mill tailings impoundments are acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from the disposal of uranium mill tailings piles. The results of this analysis can be seen in Table 27. The examined options, Alternative I and Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste.

A comparison of the two alternatives indicates that a small reductions in incidence would occur, 0.044; this represents an estimated incidence reduction of 1 life every 23 years. In addition, the maximum individual risk is reduced from 3.0×10^{-4} to 8.7×10^{-5}. EPA examined these small reduction in incidence and maximum individual risk and the relatively large costs of achieving Alternative II, $158 million in capital costs and $13 million in annualized costs and determined that

Alternative I protects public health with an ample margin of safety.

Although this category is already regulated under 40 CFR part 192, EPA believes that a NESHAP would still serve a useful purpose. The existing UMTRCA regulations set no time limits for the disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years. In addition, a rule would assure that piles which are not ready for disposal at this time will be disposed of in a timely manner after they are removed from service. As a result, this NESHAP would reduce radon emissions from uncovered piles and assure that the public will be protected. Therefore, EPA has decided to regulate this category by setting a NESHAP limiting emissions from these sources to no more than 20 pCi/m^2-s.

TABLE 26.—DISPOSAL OF URANIUM MILL TAILINGS

[Description: The disposal of uranium mill tailings piles when they are no longer used for the disposition of new tailings. Twenty-four piles are controlled by DOE; 26 piles are controlled by individual uranium milling companies.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	3.0×10^{-4}	8.7×10^{-5}
Incidence within 80 km (death/y)	0.070	0.026
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	200	0
E-5 to E-4	33,000	3,000
E-6 to E-5	1.3M	138,000
less E-6	8.1M	9.3M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0.00052	0
E-5 to E-4	0.0089	0.0014
E-6 to E-5	0.030	0.0049
less E-6	0.031	0.020

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 27.—DISPOSAL OF URANIUM MILL TAILINGS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	3.0×10^{-4}	0.070					
II	8.7×10^{-5}	0.026	0.044	0.044	$200M	$16M	$16M

Comments:

Alternative I: Baseline rule: Cover source to limit emissions to 20 pCi/m^2-s—the same level as the current AEA rule set by EPA.

Alternative II: Cover source to limit emissions to 6 pCi/m^2-s.

4. Implementation

Under this NESHAP, all uranium mill tailings will have to be covered to reduce the amount of radon they release. The standard limits the amount of radon that can be emitted per unit area (m^2) per unit of time (s). This standard is an average per mill tailings pile.

Piles must be tested when disposal operations are completed but before the disposed pile is turned over to a government organization charged with long term ownership. Since these reports of the testing will provide EPA with the additional information it needs, uranium mill tailings are exempted from the requirements of § 61.10.

This standard, like all NESHAPs, requires compliance by existing sources within 90 days after the effective date in accordance with the CAA, 42 U.S.C. 7412(c)(1)(B)(i). However, EPA is aware that many sources covered by this subpart will not be able to come into compliance that quickly. EPA is making a generic finding that at least two years is required for the disposal of uranium mill tailings and that during that period all persons will be protected from imminent endangerment from uranium mill tailings piles. This finding also applies to piles that are not yet ready for disposal but will cease to be operational at some point in the future.

If the two year period is not enough time for these piles to dry out and be covered and disposed of then EPA is prepared to develop expeditious compliance schedules in consultation with affected parties within the framework of the enforcement mechanisms of 42 U.S.C. 7413, as appropriate. In these discussions with DOE, EPA will consider the restraints on DOE discussed in Senate Report No. 100-543, accompanying Pub. L. 100-616, 100th Congress, 2nd Sess., reprinted in 1988 U.S. Code Cong. & Ad. News, 4329 *et seq.* EPA recognizes that the requirements of CERCLA and other environmental laws will also have to be considered in these consultations.

VII. Responses to Legal and Policy Comments

On March 7, 1989, the EPA published in the **Federal Register** proposed National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides emitted to ambient air from 12 source categories. The **Federal Register** notice requested public comments on the proposed NESHAPs, and the specific risk management approaches that were used to develop the standards. Informal public hearings were held in Washington DC and Las Vegas, NV., to give interested parties an opportunity to present their views, and

written comments were solicited. Comments were received from almost 300 individuals and organizations representing government agencies, industry and other members of the regulated community, environmental and public interest groups, and the general public. This section of the preamble discusses the legal and policy-related comments received during the comment period. A separate Response to Comments Document was prepared which addresses comments relating to modeling and compliance procedures, as well as comments particular to each source category.

1. Interpretation of Vinyl Chloride Decision

Comment: Several commenters discussed the fact that the D.C. Circuit decision in *Natural Resources Def. Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987) (*Vinyl Chloride*) recognizes that EPA may deem some level of cancer risk as acceptable, in light of the fact that many carcinogenic substances are assumed not to have a threshold value below which they pose no risk. The issue raised by these commenters is what level of risk from radionuclide emissions could be characterized as "acceptable" under the Court of Appeals' ruling, particularly in light of such court decisions as *Alabama Power Co.* v. *Costle*, 636 F.2d at 323 (D.C. Cir. 1979) and *Public Citizen* v. *Young*, 831 F.2d at 1108 (D.C. Cir. 1987).

In the context of the *Vinyl Chloride* decision, the issue is whether the "acceptable" risk is equated with *de minimis* risk, and is thereby defined as "trivial" or "of no value," or whether some higher level of risk is considered acceptable under the court's ruling.

It was argued that the *Alabama Power* and *Public Citizen* cases support the contention that acceptable risk and *de minimis* risk are synonymous, and that, consequently, only "trivial" risk "of no value" can be interpreted as "acceptable risk" under the *Vinyl Chloride* decision. Moreover, the risk cannot be dismissed as "trivial" unless EPA demonstrates a public consensus that the risk levels are unworthy of preventive response. Hazardous air pollutant-induced cancer risks of 6×10^{-3}, 1×10^{-3}, or 1×10^{-4} are not in this category, and EPA may not be able to show such consensus even for risks of 1×10^{-6}. Similarly, it was posited that *Public Citizen* and *Vinyl Chloride* support the position that only a *de minimis* level of risk (e.g., 1×10^{-6} or lower) can be considered acceptable, and that this position is consistent with the CAA focus on public health and providing an ample margin of safety.

Several commenters disagreed with the previous comments. These commenters argued that a safe level is not the equivalent of a *de minimis* risk level and distinguished between *de minimis* risks, which are too trivial to warrant regulation, and a broad zone of higher risks that may still satisfy the court's definition of "acceptable risk." The commenters pointed to the fact that the court used the latter term intentionally in the *Vinyl Chloride* decision, and was aware of the differing legal meaning of *de minimis*. The commenters also cited the *Alabama Power* and *Public Citizen* cases, stating that those decisions held *de minimis* risk to be applicable except for those instances where Congress had already been "extraordinarily rigid" in establishing regulatory requirements.

Commenters also pointed out that the court in the *Vinyl Chloride* decision specifically stated that "acceptable risk" does not necessarily mean risk free. They argued that the court defined something as "unsafe" when it exposes humans to a "significant risk of harm." The fact that a risk is not *de minimis* does not mean that it poses a "significant risk of harm." For instance, the examples of "acceptable risk" cited by the court, such as driving a car or breathing city air have a higher than *de minimis* risk. Therefore, using this example as a guide, there is no basis for regulation of certain categories of sources since risks significantly above this level may be judged "acceptable" under the *Vinyl Chloride* decision.

Some commenters stated that the "acceptable risk" finding derives directly from the text and legislative history of Section 112 of the CAA, while the *de minimis* concept is a nonstatutory doctrine identified as a risk test by the court in the *Alabama Power* and *Public Citizen* cases. Thus, the "acceptable" and *de minimis* risk test serve much different functions in public health regulation.

Response: As the commenters acknowledge, the *Vinyl Chloride* decision recognizes that EPA may find some level of cancer risk to be "acceptable." In its explanation of the term, the court cited the preamble to the **Federal Register** notice announcing the final *Vinyl Chloride* regulations:

> Scientific uncertainty, due to the unavailability of dose/response data and the 20-year latency period between initial exposure to vinyl chloride and the occurrence of disease, makes it impossible to establish any definite threshold below which there are no adverse effects to human health." [citation omitted] 824 F.2d 1146, (D.C. Cir. 1987).

The court explained that "the Congressional mandate to provide "an ample margin of safety" to "protect the public health" requires the Administrator to make an initial determination of what is "safe." This determination must be based exclusively upon the Administrator's determination of the risk to health at a particular emission level. The Administrator's decision does not require a finding that "safe" means "risk free." 824 F.2d at 1164.

Where the commenters differ is over what level of risk from radionuclides emissions can be considered an "acceptable risk" within the meaning of the *Vinyl Chloride* decision. Some argue that in order to be "acceptable", the risk must be no more than *de minimis* within the meaning of *Alabama Power* and *Public Citizen*, while others dispute this position.

The EPA does not interpret "acceptable risk", for purposes of Section 112, as synonymous with or limited to *de minimis* risk as described in *Alabama Power* and *Public Citizen*. The *Vinyl Chloride* decision, while going into great detail in discussing the concepts of both "acceptable risk," and "ample margin of safety," never mentioned the concept of *de minimis* risk. What the court did say was that Congress exhibited no intent to require EPA to prohibit emissions of all nonthreshold pollutants, and, citing the Supreme Court decision in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) stated that "safe does not mean risk free." 824 F.2d at 1153.

The court declined to restrict the Administrator to any particular method of determining what constitutes an acceptable risk but explained simply that "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." 824 F.2d at 1166.

By way of example, the court referred to language in the Supreme Court's *Industrial Union* decision, to the effect that driving a car or breathing city air are risk-laden activities that society does not consider "unsafe." 824 F.2d at 1165. Thus, the determination of what is an "acceptable risk" is discretionary with the Administrator, and involves evaluation of existing scientific data and uncertainties concerning that data.

The EPA disagrees with the commenters' contention that *Public Citizen* demonstrates that "acceptable risk" is limited to *de minimis* risk. *Public Citizen* involved a Food and Drug Administration (FDA) statute

prohibiting use of any food coloring additive "found * * * to induce cancer in man or animal." 831 F.2d at 1109. The FDA in that case argued that a *de minimis* exception, allowing use of the challenged additives when the cancer risks involved are trivial, could properly be interpreted into the statute. The court however, while acknowledging that the cancer risks were indeed trivial, held that the statute imposed an absolute ban once a finding of carcinogenicity had been made, and therefore no *de minimis* exception could be employed.

The situation in *Public Citizen* involving a "no-risk" statute is markedly different from the facts of the *Vinyl Chloride* case. In the *Vinyl Chloride* case the court interpreted the Clean Air Act as *not* equating "safe" with "risk free." 824 F.2d at 1153 [citations omitted]. Indeed, as explained above, the *Vinyl Chloride* court specifically used examples of activities having acceptable levels of risk "in the world in which we live" 824 F.2d at 1165 [citations omitted], but which exceed the *de minimis* concept described in *Alabama Power*. Thus, unless the *Vinyl Chloride* decision is read to broaden the *de minimis* concept from triviality to a level which is acceptable in the world in which we live, the dicta in *Public Citizen* is an apparent misconstruction of the *en banc Vinyl Chloride* opinion. Furthermore, *Public Citizen* did not deal with a statute requiring a determination of a "safe" level, and therefore cannot reasonably be compared to Section 112 of the CAA, and the court's analysis of risk in the *Vinyl Chloride* opinion.

Finally, the *Vinyl Chloride* court's citation of *Alabama Power* does not constitute adoption of the *de minimis* concept. As stated above, the *Vinyl Chloride* decision makes no mention of the *de minimis* concept, and cites *Alabama Power* following a discussion of risks found acceptable by the Supreme Court in *Industrial Union* which clearly exceed *de minimis*. Therefore, at most, *Alabama Power* was apparently cited as *an example* of a risk level, which would, of course, be considered "acceptable." Obviously, the enumeration of other, higher, risks precludes the interpretation that the court was equating the *de minimis* concept and "safe" or "acceptable risk" in *Vinyl Chloride*. In conclusion, EPA does not believe that the terms *de minimis* and "acceptable risk" are synonymous. Further, EPA believes that it is not required by *Vinyl Chloride* to reduce risk to a *de minimis* level.

Comment: One commenter argued that EPA has ignored the precedent established in the D.C. Circuit decision in *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (1976) (*en banc*). This commenter argued that the decision established a "significant increment" test that must be satisfied before EPA can set a standard under section 112, a test that Congress adopted in amending section 112 in 1977.

Response: The commenter has misconstrued not only the teaching of the D.C. Circuit in *Ethyl*, but the Congressional intent in modifying section 112 to follow the court's ruling. First, the *Ethyl* decision does not apply directly to section 112, as the court was construing the language of section 211(c)(1)(A) as it then existed in that case; in addition, the decision involved lead, which unlike radionuclides, is a threshold pollutant. Second, while the court did describe a portion of its reasoning by using the phrase "significant increment", that was not the basic holding of the case. In fact, the court rejected exclusive use of such a test, in stating that Congress " * * * did not mean for 'endanger' to be measured only in incremental terms." 541 F2d. at 30–31. Third, while Congress did adopt language for section 112(a)(1) prescribing the definition of a "hazardous air pollutant" ("an air pollutant * * * which in the judgment of the Administrator causes or contributes to air pollution which may reasonably be anticipated to result in") from the reasoning of the *Ethyl* court, its purpose was to emphasize the preventive or precautionary nature of the Act. *1977 Legislative History*, 2516. In adopting this approach, the House Report stated that the " * * * language is intended to emphasize the necessarily judgmental element in the task of predicting future health risks of present action and to confer upon the Administrator the requisite authority to exercise such judgment." *Id.* at 2518. Finally, the Administrator has, in this rulemaking, used a significance test in its decisions on listing radionuclides and on standards for each of the source categories, as described in the Federal Register notice. But, it has not used it in the manner that the commenter has urged, which would eviscerate the true meaning of the *Ethyl* decision and Congressional endorsement of it. EPA believes that its use of a "significance" test here is fully consistent with the statute, its legislative history, and applicable case law, including the Supreme Court's decision in the OSHA benzene case.

Comment: Several commenters addressed the *Vinyl Chloride* court's finding on acceptable risk versus zero risk. Several commenters felt that "acceptable" risk which the court equated with being "safe" is not zero risk; while the scientific approach can reduce uncertainty, life cannot be risk free.

Response: The D.C. Circuit Court in *Vinyl Chloride* held that the Administrator is required, under section 112, to make an initial determination of what is "safe." 824 F.2d 1164. The court went on to state specifically that the "Administrator's decision does not require a finding that "safe" means "risk free" *Id.*, and further stated that the Administrator must decide "what risks are acceptable in the world in which we live." 824 F.2d at 1165. Thus, the *Vinyl Chloride* court made it clear that "safety" or "acceptable risk" is not to be equated with zero risk. The *Vinyl Chloride* court cites the Supreme Court decision in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) as support for the proposition that zero risk is not mandated, stating that *Industrial Union* holds that "something is 'unsafe' only when it threatens humans with a 'significant risk of harm'." 824 F.2d at 1153. *Industrial Union* is clearly an appropriate precedent here.

Comment: The EPA's proposed approaches were based on a two-step decision process, and some commenters also interpreted the *Vinyl Chloride* decision as requiring a two-step process. Other commenters disagreed, stating that the the *Vinyl Chloride* decision does not mandate a two-step procedure for making section 112 decisions, but made clear that an integrated, single-step procedure could be used as long as the decision satisfied both the "acceptable risk" and the "ample margin of safety" criteria. Thus, for example, if existing emissions pose risks that are well below the acceptable risk, the Administrator could determine that both the acceptable risk criterion and the reasonable degree of protection criterion are satisfied in one step.

Response: The court in *Vinyl Chloride* specifically addressed the one or two-step process question, stating as follows:

> In response to the facts presented in this case we have analyzed this issue by using a two-step process. We do not mean to indicate that the Administrator is bound to employ this two-step process in setting every emission standard under section 112. If the Administrator finds that some statistical methodology removes sufficiently the scientific uncertainty present in this case, then the Administrator could conceivably find that a certain statistically determined level of emissions will provide an ample margin of safety. If the Administrator uses this methodology, he cannot consider cost and technological feasibility: these factors are no longer relevant because the

Administrator has found another method to provide an "ample margin" of safety. 824 F.2d at 1165 n. 11.

Thus, *Vinyl Chloride* does not mandate a two-step process in all cases. However, if a one-step process were utilized, the Administrator could not consider cost or technological feasibility.

Comment: One commenter wrote that the *Vinyl Chloride* opinion states that "the Administrator 'may, and perhaps must' include additional control measures where technologically feasible, in order to reduce public exposure by a cancer-causing chemical 'to the lowest feasible level'." The commenter therefore believed the correct interpretation of section 112 of the CAA according to *Vinyl Chloride* is that "EPA must provide such additional protection as is feasible at the second-step 'ample margin of safety' determination."

Response: In the March 7, 1989, notice proposing emission standards for radionuclides, EPA raised the question of whether to require all technically feasible controls for which costs are reasonable no matter how small the risk reduction. The *Vinyl Chloride* case provided that technological feasibility can be considered under section 112, so long as it is not considered in the "acceptable risk" determination, but only in the "ample margin of safety" determination. ("Since we cannot discern clear Congressional intent to preclude consideration of cost and technological feasibility in setting emission standards under section 112, we necessarily find that the Administrator may consider these factors." 824 F.2d at 1163.) The court explained that "it is not the court's intention to bind the Administrator to any specific method of determining what is 'safe' or what constitutes an 'ample margin'." 824 F.2d at 1166. Thus, the court provided that technological feasibility may be considered under section 112, at the "ample margin of safety" step in the analysis, and that it is within the discretion of the Administrator to determine what weight it is to be given, along with other relevant considerations such as the cost of additional controls. Because the court has specifically sanctioned the consideration of costs as well as feasibility of controls, it is clear that *Vinyl Chloride* does not require imposition of the maximum feasible controls without regard to cost or effectiveness: "Section 112(b)(1)'s command to provide an ample margin of safety to protect public health is self-contained, and the absence of enumerated criteria may well evince a Congressional intent for the Administrator to supply reasonable ones." 824 F.2d at 1159.

2. Regulatory Approaches

The comments on the four approaches proposed by EPA for making the acceptable risk decision and for providing an ample margin of safety were generally polarized: Approach A was favored largely by industry; Approach D was favored by many private citizens, State regulatory agencies, and public interest groups; Approach B received essentially no support; and, while approach C was criticized by many industries, private citizens, State regulatory agencies and public interest groups, it received some support from other commenters within these groups. In addition, alternative approaches were suggested by several commenters with some favoring a higher acceptable risk level and others a zero emissions approach.

The EPA considered all of these comments in selecting the final policy for setting standards under section 112. This was done in light of the *Vinyl Chloride* decision; the final policy is described above in this **Federal Register** notice. The EPA response to these comments are presented below.

In considering the comments on the proposed approaches and alternative suggestion for a policy under section 112, EPA viewed the comments in the context that some positions and concerns expressed by the commenters were diametrically opposed to one another. Thus, EPA realized that no response could completely resolve these positions and concerns. Accordingly, after thoroughly viewing and considering these comments, EPA selected a final policy for setting standards under section 112.

The following sections are split into discussions of the four alternative approaches presented in the March 7, 1989 **Federal Register** notice and by ancillary issues that were relevant to selecting the final policy for setting NESHAPs. The main position and concerns presented by commenters are followed by an EPA response to the comments in the context of the final policy.

Approach A Comments: Many commenters favored Approach A on the basis that it would be flexible, not overly simplistic nor based on a single risk measure, that it would take into account all relevant health information and uncertainties in risk estimation, and it would be a more balanced and rational approach than the other approaches. Many commenters rejected Approach A because they did not find it stringent enough. On the other hand, some commenters felt the preferred level for the MIR of 10^{-4} or less was unnecessarily restrictive. One commenter suggested that Approach A should be modified to increase the maximum lifetime risk limit to 25 mrem/y ede. Several commenters found Approach A unacceptable because it does not establish a consistent and equitable policy, thereby allowing different acceptable risk decisions for different pollutants and source categories.

Response: The EPA agrees with many of these comments and, thus, the final policy, like proposed Approach A, is flexible, provides an equitable response to regulation of air toxics under section 112, and takes into account all the relevant health information and uncertainty in the risk assessment. The final policy is not overly simplistic (that is, based on a single risk measure) and is clearly consistent with the EPA's guidelines for cancer risk assessment for full disclosure of risk uncertainties and quantitative range of risks. The EPA appreciates the position of commenters who supported the EPA's concern that risk estimates less than 1×10^{-5} should be given less weight than risk estimates greater than 1×10^{-4}. The EPA believes, though, that it should reduce risks to less than 1×10^{-6} for as many exposed people as reasonably possible. The EPA also agrees with commenters that proposed Approach A may not be stringent enough, and, therefore, even though the final policy is similar to proposed Approach A, the application to the final policy results in lower levels of emissions. Regarding the maximum lifetime risk limit, the EPA has considered the recommendation of the NCRP, ICRP, and other expert advisory committees and in the context of the source categories herein considered, has concluded that individual dose levels greater than 10 mrem/y ede are inconsistent with the requirements of section 112.

The EPA also does not agree with commenters who said that several aspects of Approach A (e.g., its flexibility and consideration of uncertainty) would lead to an inconsistent policy allowing different acceptable risk decisions for different pollutants and source categories. The EPA believes that the uncertainties within different risk assessments can appropriately result in different acceptable risk decisions. For example, while EPA believes that the risk assessment may be overstated or understated in certain cases, there is no

specific way to account for this belief other than to qualitatively consider it in the acceptable risk decision; EPA sees this as an appropriate use of its expert judgment. In addition, EPA does not agree with commenters who said that the uncertainty of a risk assessment should only be considered in the ample margin of safety decision. Risk assessments are only as good as the weakest information and modeling tools used in the assessments, and the value of the results of these assessments must be considered every time they are used; to ignore the uncertainty of these assessments is scientifically unsound and could result in similarly unsound decisions that may be viewed as inconsistent.

Approach B Comments: No commenters favored Approach B. The commenters who opposed this approach generally fell into two groups: industries, who generally felt that Approach B was too conservative and narrow; and State governments, private citizens, and public interest groups, who felt that Approach B was not stringent enough.

Many commenters rejected Approach B (also C and D) because it is based on a single measure of acceptable risk (incidence in Approach B) and does not allow EPA to consider the full range of available health information. Some commenters opposed Approach B because the incidence is often greatly dependent on the definition of the source category. Most of these commenters felt that Approach B did not consider the maximum exposed individual and did not protect smaller populations from high risk when total incidence is low.

Response: The EPA agrees with most of these comments. The final policy, unlike proposed Approach B, provides an equitable response to regulation of air toxics under section 112 by providing for the consideration of the MIR, yet takes into account all the other relevant health information and uncertainty in the risk assessment, including incidence. The final policy is not overly simplistic (that is, based on a single risk measure) and is clearly consistent with the EPA's guidelines for cancer risk assessment for full disclosure of risk uncertainties and quantitative range of risks. The EPA appreciates the concern of commenters that incidence is often greatly dependent on the definition of the source category.

Approach C Comments: Approach C was supported by several commenters as being a straight-forward, bright-line approach. In contrast, some commenters found Approach C too conservative, inflexible, and limiting of the information which could be considered by the Administrator in making the acceptable risk decision. Many other commenters rejected Approach C because they did not find it stringent enough.

Response: The EPA agrees with many of these comments. The EPA utilizes a level of approximately 1×10^{-4} as an appropriate presumptive benchmark of acceptability in employing its selected policy approach. At the same time, EPA agrees with commenters that Approach C was inflexible and did not consider all the relevant health information and uncertainty in the risk assessment. Accordingly, as indicated in the discussion of the final policy, EPA believes that MIR levels greater than approximately 1×10^{-4} are presumptively unacceptable, but that the risk estimates must be considered in light of all the relevant health information and the uncertainties in the risk assessment. As part of this perspective, EPA agrees that exposures to background concentrations and multiple sources of a pollutant may be considered to the extent that it is practical and reasonable to do so.

Approach D Comments: A large group of public interest groups, and private citizens supported this approach. Their primary reason for support was because this was the most stringent approach, but other reasons included consistency with existing State air toxics programs and Federal regulations and accounting for underestimation of risk. A few commenters favored Approach D in order to protect public health in a multiple carcinogen environment.

The commenters who rejected Approach D did so for a variety of reasons. Some found Approach D too conservative, inflexible, and limiting in the information which could be considered in the acceptable risk decision. Several commenters disagreed with those who argue that a 1×10^{-6} acceptable risk level is justified due to concern about exposure to multiple chemicals; these commenters said that section 112 regulatory decisions should not be based on concerns about chemical exposures that have little relevance to the pollutant and source category being regulated.

Many commenters felt either that even the risk level of 1×10^{-6} given in Approach D was unacceptable or not protective enough of public health, or that "acceptable" risk should mean zero risk.

Response: The EPA agrees with commenters that felt that Approach D was too conservative, inflexible, and limiting of the information which could be considered in the acceptable risk decision. However, much of the intent of Approach D has been incorporated in the methodology adopted which seeks to protect as large a portion of the exposed population as possible to risks no higher than approximately 1×10^{-6}. The EPA also agrees with commenters who stated that consistency with State and Federal regulations must be viewed in light of the purpose and actual implementation of those regulations and, specifically, agrees that comparing NESHAP requirements with State programs (many of which are guidelines and contain waivers or flexibility if technology cannot achieve the programs' stated goals) is inappropriate. Also, EPA finds the comment that there is a public consensus that only an MIR of 1×10^{-6} or less is acceptable to be difficult to support given the wide range of positions expressed in this rulemaking.

While EPA agrees that multiple exposures to hazardous air pollutants are important to understand and consider in the EPA's overall implementation of its public health mandates, EPA disagrees that these exposures should be routinely evaluated and considered in selecting standards under section 112. In taking this position, EPA is agreeing with commenters who said using these exposures explicitly in selecting standards would be very difficult and possibly impractical. The EPA also disagrees with commenters who said that even the risk level of 1×10^{-6} given in Approach D was unacceptable or not protective enough of public health, or that "acceptable" risk is zero risk.

Alternative Acceptable Risk Approaches: Several commenters proposed variations on, or alternatives to, the EPA's four proposed approaches for determining acceptable risk. Several of these were modifications to the case-by-case approach. Another group argued for more stringent criteria than Approach D, with a ultimate goal of zero risk. A third group provided various other alternative acceptable risk levels.

Comment: Several commenters advocated higher levels of acceptable risk than those proposed in any of the EPA's approaches. Some did so by explicitly referencing guidance issued by the ICRP, the NCRP, or other groups involved with radiation health protection that sanction greater risks than those proposed by EPA.

Response: The EPA does not agree with the commenters who advocated higher levels of risk than any considered in the March 7, 1989, Federal Register notice. While some commenters interpreted the *Vinyl Chloride* decision to mandate these high risk levels, EPA believes that the *Vinyl Chloride* decision requires EPA to consider

societal risks in making an expert judgment on acceptability. The EPA completed such considerations, made an expert judgment and, consequently, selected a presumptive MIR level of approximately 1×10^{-4}. For the sources considered in this notice, EPA believes that associated risks in the range of 1×10^{-2} and 1×10^{-3} are too high, and presumptively unacceptable.

3. *Risk Comparisons in the Acceptable Risk Decision:* Several commenters expressed positions on whether comparison of hazardous air pollutant risk with other risks encountered by society should be considered in making the acceptable risk decision. Some commenters thought comparisons were appropriate while others did not.

Comment: Several commenters thought that as part of the acceptable risk decision, EPA should compare risks from radiation with other risks that are encountered in ordinary life and accepted by society. They generally used comparative risks as an argument in favor of Approach A and as evidence that risks of 1×10^{-4}, or even higher, could be considered acceptable. The commenters said such comparisons are consistent with the *Vinyl Chloride* decision's reference to consider the acceptability of risk in "the world in which we live." Many commenters listed several activities encountered in daily life which entail lifetime risks in the 1×10^{-3} to 1×10^{-4} range as evidence that this level of risk could be considered acceptable.

Others said the comparison is not valid because risks such as driving a car are voluntary, whereas pollutant exposures are involuntary.

Response: The *Vinyl Chloride* decision provides for such comparisons and for EPA to make an expert judgment of the acceptability of the risks for sources of hazardous air pollutants. However, EPA believes that it is prudent to view such comparisons cautiously and to reflect the uncertainty in such comparisons in the EPA's decisions on the acceptability of the risks for sources of hazardous air pollutants. Factors, such as whether the risks are voluntary, controllable, man-made, and uncertain, lead EPA to be cautious in making such comparisons. After considering these risks, EPA has determined that MIR's greater than approximately 1×10^{-4} are presumptively unacceptable and are considered in making an overall judgment on acceptability along with other relevant health and risk factors, including uncertainty.

However, in this regard, it is important to point out that MIR estimates are based on a different and, more conservative, concept than average risk expressions such as the risks associated with motor vehicles, or the risk of being killed by lightning. Average risks generally apply to the total population and do not reflect the distribution of risks across a population. For example, the average lifetime risk of death due to motor vehicle accidents is about 5×10^{-3}. A city with a population of 2 million might, therefore, expect about 150 traffic-related deaths every year even though some members of this population are at greater risk. On average, this 150 deaths every year does not express the incidence rate for those members of the population. In contrast, if the MIR at a typical industrial facility located in a city of 2 million population is 5×10^{-3}, the annual estimated incidence would only be about 1 death in 20 years (0.05 cases/year). And, the "average" individual risk to the exposed population is typically much lower, by orders of magnitude, than the MIR. Thus, while EPA believes that MIR risks greater than approximately 1×10^{-4} are presumptively not acceptable, EPA maintains that commenters who apply the MIR to entire populations are improperly characterizing population risks as well as the MIR.

Comment: Several commenters said that if levels of exposure are within the bounds of variation in ambient background levels, the activity should not be regulated. In addition, an annual dose of 10 mrem/y ede is probably within the normal variations seen in natural background; therefore, a cumulative dose of this magnitude from all man-made sources and pathways appears to be acceptable when considering risks if the ALARA principal is followed and enforced.

Response: The EPA believes that comparison of estimated MIR levels to natural background risk levels is irrelevant. What EPA considers important is the incremental risk associated with a particular activity. Reference to natural background risk levels is only acceptable in deciding what benchmark society deems acceptable.

4. *Ample Margin of Safety Decision:* Some commenters expressed opinions on what factors should be considered in the decision on what level of regulation provides an "ample margin of safety" as required by section 112 of the CAA and the *Vinyl Chloride* decision. Some commenters argued for strong consideration of health effects and uncertainties, while others emphasized consideration of economic impacts or a balancing of multiple factors.

Comment: Several commenters suggested that in the ample margin of safety decision, EPA should give greater consideration to health effects, noncancer effects, alternative exposure pathways, co-emitted pollutant risks, nonquantified health effects, interactions among pollutants, and uncertainties not taken into account in the EPA's risk estimates. It was also suggested that an "ample margin of safety" means no less than elimination of all avoidable risks.

Some commenters identified additional economic factors that they thought should be considered and that would lead to more stringent regulatory decisions. For instance, there are many costs to society associated with the deaths and illnesses associated with pollution, such as emotional costs to families, medical costs of treatment and institutionalization, and weakening of the gene pool.

Response: EPA disagrees with the comment that an "ample margin of safety" requires the elimination of all avoidable risks. The *Vinyl Chloride* decision does not require this degree of stringency. EPA did consider non-fatal cancers and genetic effects in developing this rule; additional health and economic information was considered to the extent that it exists in the rulemaking record. EPA will continue to endeavor to consider fully all relevant factors in the selection of final standards under section 112.

5. *Risk Assessment and Treatment of Uncertainty:* The response to the EPA's solicitation of comment regarding the treatment of uncertainty varied from approval of the EPA's position to suggestions that uncertainty should force stricter standards, or conversely, prohibit restrictive standards. One group of commenters stated that EPA had shown a good appreciation of the uncertainty associated with the scientific evaluation of health data and the exposure data used in estimating risk. Commenters also provided recommendations on which step of the decision process was the appropriate place for the consideration of uncertainty.

Comment: Some commenters favored consideration of uncertainties in the acceptable risk step of the decision process, while others felt it is more appropriate to consider uncertainties only in the ample margin of safety step, and still others advocated consideration during both steps. Some stated that questions of uncertainty and conservatism cannot be separated or deferred from the determination of acceptable risk, while others felt that consideration of uncertainty should be deferred until the ample margin of safety

step. Most of these latter commenters believed that the MIR should be the sole criterion for making the acceptable risk decision, and that uncertainties and other factors are best considered in the ample margin of safety step. In so doing, some added that these uncertainties should not be addressed by incorporating unscientific, over-conservative assumptions into the risk assessments.

Response: The EPA believes that it is essential to consider the quality of the information it uses to make decisions when the decisions are being made. Thus, EPA agrees with commenters that stated that it would be inappropriate to evaluate the "safe" level and the "margin of safety" without taking the uncertainties (both scientific and technological) into account. Because EPA has concluded that many factors should be considered in making the acceptable risk decision, the EPA disagrees with commenters who believed that MIR should be the sole criterion for making the acceptable risk decision and that uncertainties and other factors are best considered in the ample margin of safety step.

Comment: When estimates are imprecise, accurate quantified statements of uncertainty are essential; these factors must be actively involved in the decision-making process both for regulations and site-specific permitting decisions.

Response: The EPA has initiated a substantial effort to quantify the uncertainty in its radiation risk estimates. However, until quantitative uncertainty estimates are available, the Agency must base its decisions on the current measures of uncertainty at its disposal.

Comment: It would be inconsistent with the EPA's distinction between risk assessment and risk management for the Agency to deal with bona fide scientific questions at the stage of deciding what probability of contracting cancer is "acceptable." Risk considerations alone should be dealt with in this first step. Moreover, an adequate data base must be established for technical, scientific, and economic considerations before these can be balanced with acceptable risks.

Response: The EPA disagrees that bona fide scientific questions are inappropriate at the risk management step. The EPA's risk assessments are based on what it considers the best available scientific evidence, with conservative but reasonable assumptions made when necessary. At the risk management step, the decisionmakers need to know the uncertainties associated with the risk estimates and the range of scientific opinion regarding the assumptions that have been included in the assessment.

Comment: Some commenters suggested that the proposed rules are improperly based on incomplete technical analyses.

Response: The final rules are the result of extensive research and technical analysis conducted over a period of several years, and, thus, the record underlying the rules is reasonably complete and accurate. Commenters' technical comments, as well as those of other commenters, are incorporated into the record to the extent they proved pertinent. In arriving at the acceptable risk decisions under CAA section 112 for these rules, costs and technological feasibility were not considered. Such were considered along with the health-related factors, however, in determining whether more stringent rules were needed in arriving at the statutorily required ample margin of safety.

Comment: Several commenters have asserted that EPA's risk assessments are not realistic but are worst case estimates. Some commenters objected to EPA's assumption that people living in the vicinity of radionuclide sources were exposed continuously, for a 24 hours per day 70-year lifetime, to predicted long-term ambient radionuclide levels. Commenters maintained that the average lifetime of an industrial facility is considerably less than 70 years, and that few individuals would be expected to live in the same location for their entire lives.

Response: The EPA recognizes that the assumption of 70 years of continuous exposure constitutes a simplification of actual conditions and represents, in part, a policy judgment by EPA, but feels that this assumption is preferable to other alternatives. Although emissions of radionuclides from industrial sources would reasonably be expected to change over time, such changes cannot be predicted with any certainty. In lieu of closing, plants may elect to replace or even expand their operations and subsequently increase their emissions. The 70-year exposure duration represents a steady-state emissions assumption that is consistent with the way in which the measure of carcinogenic strength is expressed (i.e., as the probability of contracting cancer based upon a lifetime [70 year] exposure to a unit concentration). Constraining the analysis to an "average" plant lifetime carries the implication that no one could be exposed for a period longer than the average. Since by definition, some plants would be expected to emit longer than the average, this assumption would tend to underestimate the possible MIR. The EPA agrees that the U.S. population is highly mobile. However, adjusting the exposure assumptions to constrain the possibility of exposure to emissions implies that exposure during the periods away from the residence are zero. In addition, a less-than-lifetime assumption would also have a proportional impact on the estimated MIR, suggesting that no individual could be exposed for 70 years. On balance, EPA believes that the present assumption of continuous exposure is consistent with the steady-state nature of the analysis and with the stated purpose of making plausible, if conservative, estimates of the potential health risks. It is the EPA's opinion that this assumption, while representing in part a policy judgment by EPA, continues to be preferable to adopting a shorter lifetime figure, both in view of the shortcomings of such alternatives and in the absence of compelling evidence to the contrary.

Comment: The EPA should measure the gain in risk reduction made against the costs to reach such gain and compare the benefits against the increased risk borne by workers.

Response: The EPA does consider both the incremental reduction in risk and the costs at the ample margin of safety step. The EPA is unaware of any increase in worker exposure that will be caused by the promulgated NESHAPs.

6. Scope of the Regulations

Comment: Several commenters stated that NESHAPS should be developed for other sources or categories of radionuclide emissions including that from Naturally Occurring Radioactive Materials (NORM) contamination of oil and gas production equipment and in construction materials, and also from naturally occurring radon in the soil that underly residences, schools, businesses and offices. They questioned whether emanation rates of radon (222 and 220) from coal stockpiles, boilers, fly ash, and bottom ash significant for regulation under the NESHAP program.

Response: The EPA believes that the source categories evaluated in this rulemaking represent the sources with the greatest potential for causing unacceptable risks from radionuclide emissions to ambient air. The Agency has examined the potential problem of radon in natural gas provided to homes and found that the transit times allow for the decay of the radon to acceptable levels. Emissions of radon from coal piles and coal ash piles has also been examined, as part of the CERCLA rulemaking on Reportable Quantities,

with similar results. EPA will continue to look at these and other potential sources to see if they are appropriate sources for regulation under section 112. Finally, it must be noted that EPA's authority under CAA Section 112 is limited to the regulation of source categories of toxics to ambient air and, thus, lacks authority to regulate or control naturally ocurring radon in soils that underly homes or businesses under this code section.

Comment: Consideration should be given to the problems presented by overlapping sources, any increase in the number of facilities within each category over time, and the goal of controlling the total incremental pollution for all radionuclide emissions from all source points in all twelve source categories.

Response: The Agency agrees and its policies on acceptable risk levels are based, in part, on assuring that risks caused by overlapping and multiple sources do not result in individuals receiving an unacceptable level of exposure and risk. Explicitly accounting for overlapping and multiple sources of exposure greatly complicates the calculation of exposures and risks. Since concentrations of radionuclides decline rapidly with distance from a source, however, it is highly unlikely that any individual could be the most exposed individual for more than one source. In most cases, members of the public will receive risks less than 1×10^{-6} from more than one source.

Comment: The standards should address cumulative health impacts resulting from exposures to multiple radiological and nonradiological pollutants emitted by the same or multiple sources located in relative proximity to one another.

Response: Although EPA has been unable to quantify cumulative and synergistic health impacts for multiple hazardous materials and sources have not been accurately qualified, it is our judgment that if such effects could be accurately quantified, they would not substantially alter EPA's conclusions in this rulemaking.

Comment: The standards consider only fatal cancers and fail to take into account the entire range of chronic debilitating and incapacitating diseases that may result from radionuclide emissions.

Response: EPA has taken into account the entire range of chronic debilitating and incapacitating diseases that may result from radionuclide emissions.

Comment: Proposed standards are based on what the EPA perceives as achievable rather than a safe level of airborne radioactivity emissions; this is not an appropriate basis for setting air emission standards under the Act.

Response: The EPA believes that its standards ensure an acceptable level of risk to public health with an ample margin of safety as required by the Clean Air Act and the decision in *Vinyl Chloride*. The Agency has established a threshold presumption that lifetime fatal cancer risks to individuals of approximately 1×10^{-4} are acceptable under the *Vinyl Chloride* decision, and has attempted to assure that as many persons as possible do not receive lifetime risks greater than 1×10^{-6}.

Comment: The potential effect of the proposed rule on Federal preemption in the area of regulation of facilities needs to be carefully considered. Nuclear facilities are unique and complex, and consistent regulation is in the best interest of the public. Congress determined that national regulation of nuclear power plants is appropriate in establishing the Atomic Energy Act.

Response: The Agency agrees that consistent regulation is in the interest of the public and has promulgated national emissions standards that apply to nuclear power plants. However, the Clean Air Act does not preempt state standards that are at least as stringent as those set by the Federal Government.

Comment: The consistency of these standards with other existing and proposed radiation standards, for air pathways and other pathways, should be discussed.

Response: As noted in the March 7, 1989 **Federal Register** notice for the proposed standards, the statutory requirements of CAA section 112 differ from the requirements of other authorities under which the EPA and other regulatory bodies set radiation standards. Therefore, the first priority for EPA is to assure that the regulations promulgated are in accordance with its statutory mandate.

Comment: All facilities that emit similar radionuclides should be held to the same emission standards; a remote facility should not be allowed higher emission rates than an urban facility, nor should a government or municipal facility be allowed higher emission rates than a private or industrial facility.

Response: The EPA's decisionmaking approach in setting final rules assures that all members of the public are adequately protected, regardless of the source of their exposure or their choice of residence in an urban, suburban, rural, or remote area of the country. The EPA believes that different source categories may be treated differently even if they emit similar pollutants, so long as the final standard protects public health with an ample margin of safety.

Comment: The Clean Air Act does not allow for dose standards.

Response: We disagree with those commenters stating that Congress in directing the Agency to set emission standards did not authorize that those standards be set in terms of dose to an individual. CAA section 302(k) defines the term "emission standard" to include limits on the quantity, rate, or concentration of an air pollutant and the Agency views dose standards fully consistent with that definition. In many cases, because there are over two hundred known radionuclides, numerous different ones are emitted from an individual source. In addition, the risk due to each is a further function of many factors such as particle size and exact chemical state. An emission standard for radionuclides based on quantity at the stack would often be complex to the point of impracticality. A dose standard provides a better approach to protecting the public since it allows the establishment of a uniform limit based on consideration of all of the factors related to the particular mix of radionuclides emitted from each source. Moreover, this approach is supported by radiation protection experts and the regulated community.

Comment: Some commenters posit that Clean Air Act Section 112 does not, or should not, authorize EPA to regulate radionuclide air emissions from those sources, or categories of sources, that are already regulated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. No. 95–604, 92 Stat. 3021 (codified in scattered sections of 42 U.S.C.) ("UMTRCA"). These commenters reason that because UMTRCA was promulgated subsequent to the last comprehensive revisions to the Clean Air Act, and, because UMTRCA's statutory scheme is more specifically focused upon the sources to which it applies than is the Clean Air Act, EPA's authority under CAA Section 112 is, in effect, preempted.

Response: EPA disagrees that it lacks authority to regulate, under CAA Section 112, the radionuclide air emissions of sources also regulated under UMTRCA. Indeed, UMTRCA itself resolves this issue by quite explicitly stating that "[n]othing in this chapter applicable to byproduct material * * * shall affect the authority of the [EPA] under the Clean Air Act of 1970, as amended * * * " 42 U.S.C. section 2022(e). The legislative history is similar: "Authorities of the EPA under other laws would not be abridged by the new requirements." H. Rep. No. 1480,

95th Cong., 2d Sess. 6, reprinted in, 1978 U.S. Code Cong. & Admin. News 7433, 7444. In other words, there is no indication that Congress intended UMTRCA to preempt EPA's regulatory authority under the Clean Air Act; rather Congress expressly contemplated EPA authority to simultaneously regulate under both legislative schemes.

7. Procedural

Comment: Many commenters felt that the affected parties familiar with the proposed standards have not had adequate time to thoroughly review available documents, and many stated that many supporting documents were not available until mid-April. In addition, several stated that the material contained significant errors.

Response: The EPA made every effort to notify affected parties of the rulemaking action, and it timely prepared and distributed the background materials supporting the proposed rules. However, the court order under which this rulemaking has been conducted necessitated strict adherence to the schedule for public comments and hearings. The Agency is not aware of any significant errors in the risk assessment. Where additional or new information was provided or developed during the comment period, it has been incorporated into the Final Environmental Impact Statement (FEIS), also referred to as the Background Information Document (BID).

Comment: The Proposed Rulemaking Notice, published in the **Federal Register** on March 7, 1989, does not identify those who participated in its preparation. The authors of the Draft Environmental Impact Statement (DEIS) do not appear to represent the kinds of knowledge, experience, and expertise necessary for the task.

Response: The DEIS does identify the ORP staff members who contributed to the development of the background material and indicates that S. Cohen and Associates, Inc., the Office's Technical Support Contractor, provided considerable technical support and analysis. The Agency disagrees strongly that the participants in this effort lack the necessary knowledge, experience, and expertise to prepare the proposal or final rulemaking packages.

Comment: The conclusion of the Regulatory Flexibility Act analysis that this rule will have little or no impact on small businesses because virtually all small businesses regulated under this rule already comply with the proposed standards is unsupported.

Response: The final rule for NRC-Licensed and Non-DOE Federal facilities is the only NESHAP with the potential to affect small businesses. That standard is a baseline standard, which indicates that EPA is unaware of any particular facility that does not comply with the final rule. In doing its risk assessment, EPA looked at model facilities with relatively large emissions for that class of facility to ensure that the risk was not underestimated. Therefore, EPA believes that it is highly unlikely that any small business would have emissions which would exceed the standard.

Comment: An international panel of recognized health professionals and epidemiologist should review and comment on the health effects of these very low levels of proposed radiation protection standards.

Response: The Agency invited comments from all interested parties during the public comment period. Further, it has reviewed and considered the findings and recommendations of the NCRP, the ICRP, UNSCEAR, and the NAS in developing its risk coefficients. Finally, the risk coefficients used in this risk assessment were reviewed and approved by the Agency's Science Advisory Board.

Comment: Even among the various sources proposed for regulation in this rulemaking there does not appear to be an even handed application of the EPA's own analysis. The different regulatory standards proposed by the EPA for the various sources are irrational.

Response: The EPA disagrees. The proposed regulations were developed on a consistent basis for each of the four approaches. For the final rule, the EPA used a single approach to determine the level of each standard it set. The EPA believes that consistency among the standards has been achieved.

Comment: The EPA should defer final action in this rulemaking to permit public comment on the Science Advisory Board's Review of EPA's proposal.

Response: The court imposed schedule for this rulemaking does not permit the Agency to extend the public comment period.

Comment: The EPA should propose its enforcement policy for public review and comment.

Response: The EPA does not plan at this time to create a specific enforcement policy for these rules, but instead currently intends to enforce them in the same manner that it enforces other Clean Air Act standards.

8. Decision to List Under Section 112

The FR notice requested comments on the appropriateness of listing radionuclides as hazardous air pollutants under section 112 of the Act. Comments on this issue ranged from unequivocal support for listing to questions as to the justification for listing under this section of the Act. Many, while not necessarily opposing listing, stated that their particular source or source category should not be regulated under the Act due to the insignificant risks to public health presented, or, in light of the existence of other regulations.

Comment: Several commenters stated that the listing under section 112 is appropriate because a hazardous air pollutant includes those substances that may result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness. The EPA should apply the same risk assessment criteria to radionuclides that are applied to other toxic air pollutants regulated under section 112. Such an approach is the only way that the health protection goals will be achieved.

Response: The EPA agrees that listing under section 112 is appropriate, and it does apply the same approach and criteria to all risk assessments and standard setting under section 112. However, differences in our knowledge about different hazardous materials, differences in the modes of exposure (pathways), and differences in the assessment of exposure lead to different risk assessment methods.

Comment: Many oppose the listing of radionuclides for three main reasons: (1) Radionuclide emissions from all source categories constitute only 1/30th of natural background, which is an insignificant amount; (2) concentrations released into the general environment as a matter of routine emissions do not constitute the degree of hazard which section 112 was meant to regulate; and (3) there is no evidence with respect to the health effects of low level radionuclide emissions.

Response: The EPA believes that its listing of radionuclides as hazardous air pollutants under section 112 is proper and is compelled by both the weight of the scientific evidence and the Administrator's statutory duties under the Act. While the EPA agrees that there is no conclusive human epidemiological data demonstrating health effects at low levels of exposure, we believe that the preponderance of the scientific evidence (both human epidemiology at higher levels of exposure and the data from non-human sources) indicates that the linear non-threshold dose response model is consistent with the available data and its utilization for regulatory purposes is appropriate. The EPA disagrees that the levels of risks posed by releases of radioactive materials into

the air are below those the Congress intended to regulate under section 112. Finally, the EPA does not consider the comparison of the risks posed by man-made sources to the risks from background to be relevant. The level of exposure corresponding to safe with an ample margin of safety, not background, is the appropriate criterion for regulation under section 112. Many risks associated with natural background radiation are relatively high and, thus, are not appropriate as a benchmark for evaluating the need for regulation.

Comment: Some commenters felt that regulation of radionuclides under section 112 is appropriate but that EPA should exempt some categories of industries that are regulated under other authorities, unless the current emissions within the source category can be shown to be unsafe.

Response: The Agency has concluded that for source categories where emissions present or potentially present unacceptable risks, it should not defer to other regulatory authorities.

9. Technological and Economic Factors

Comment: The EPA should not be concerned with availability or feasibility of controls. It should simply establish the requirement and let industry determine how it will meet it.

Response: In determining the safe level, EPA agrees. Thus, at that stage it does not consider either the availability or feasibility of controls. These are considered, however, at the second step ample margin of safety determination. Moreover, where possible, such as with the NESHAP for underground uranium mines, the regulated community is given wide latitude in selecting the combination of controls and/or work practices that will allow them to meet the mandated level of the standard.

Comment: The factors the EPA should consider before requiring control technology include: commercial vendor availability, adaptability from other uses, readily understood and applicable operating principles, costs and health benefits. Availability to U.S. industry should not be based on foreign commercialization.

Response: In general, these are the factors that the EPA considers. However, the EPA sees no reason to automatically preclude a technology solely because it has been developed and commercialized only outside of the U.S.

Comment: A technological development that has been demonstrated to reduce emissions and is in use in or outside the U.S. should be considered available and required.

Response: The EPA agrees that the availability of demonstrated control technology should be considered. However, the requirement of additional controls, at the ample margin of safety step, rests also on consideration of costs and other factors.

Comment: Because of the existing regulatory framework that forces the use of control technology pursuant to the ALARA principle, the nuclear industry is already at a very low level of emissions and further regulation is merely duplicative.

Response: The EPA agrees that the emissions from many segments of the nuclear industry are at low levels. The EPA does not anticipate that facilities with state-of-the art control systems will need additional controls to comply with the limits of the NESHAP. However, EPA does not agree that in all circumstances regulation under CAA section 112 is unnecessary and indeed has determined that final rules are needed for the radionuclide source categories identified.

Comment: The EPA should not promulgate additional radionuclide emission regulations for the uranium fuel cycle (UFC) including nuclear power plants. The industry has a proven record of protecting the public health and safety from airborne radioactive emissions. This results from the conservative design of the facilities, the careful operating philosophy employed in these facilities, and the existing framework of EPA and NRC regulations. The public already enjoys better protection from UFC radionuclide emissions than from almost any other industry's emissions.

Response: As stated in the FR notice, the Administrator has determined that regulation of potentially significant risks should not be deferred to other regulatory authorities. Based on its evaluation of the doses and risks caused by UFC facilities, the EPA does not believe that non-milling facilities will have to modify their operations to comply with the NESHAP. However, EPA has agreed to reconsider the issue of duplication of regulation as described in the discussion on subpart I.

Comment: The DOE is concerned that the EPA has proposed an outdoor radon concentration standard that is far below the level the EPA is willing to allow indoors.

Response: The authorities under which the NESHAPs and indoor radon guidance are promulgated are entirely different. The EPA does not have the authority to mandate indoor radon levels. Its guidance to homeowners is based on a single screening measurement, the protocols for which are designed not to provide an average exposure level but a maximum exposure level. Therefore, comparison with the limits established by the NESHAP is invalid.

Comment: Regulations that have the effect of forcing use of control technology are clearly inappropriate where the technology has not been shown to be currently available.

Response: CAA section 112 requires EPA to set a safe or acceptable level without regard to the availability of control technology. Nevertheless, as a practical matter, while NESHAPs allow for use of new technologies, none of the promulgated NESHAPs requires the development of new technologies.

Comment: A strong regulatory stance by the EPA in requiring pollution controls will act to stimulate innovation, reduce prices via increased sales of control technologies and processes, and reduce risk.

Response: This stimulation of innovation and price competition in the effluent control industry, while a laudable public goal, is not a requirement under section 112 of the Act. Rather, the purpose and focus of NESHAPs is to protect public health with an ample margin of safety.

Comment: EPA should include avoided costs, e.g. possible tort judgments, including punitive damages, in determining the level of the final standard at the ample margin of safety step of the decision-making process.

Response: In theory, the EPA agrees. However, as a practical matter, it is often difficult to arrive at even an approximation of avoided costs when dealing with specific source categories. They are simply too speculative, especially given that the source categories are often comprised of thousands of individual facilities.

Comment: Cost as used in the ample margin of safety discussion should include all of the costs identifiable with the decision; this would include value of the facility, economic effects on the community, and social effects of labor force dislocation.

Response: To the extent that the EPA is able to develop quantitative estimates of these costs they are considered pursuant to the decision-making process. However, as already noted, such costs are often only available, if at all, as rough, qualitative estimates.

Comment: Industry should meet the criteria irrespective of costs or technological feasibility.

Response: The EPA agrees with respect to meeting the levels determined to be "safe." The EPA disagrees with

respect to the determination of the needed ample margin of safety.

Comment: Fundamental fairness prohibits the EPA from imposing controls that cost more than some ceiling amount per estimated death prevented.

Response: Since the *Vinyl Chloride* decision precludes consideration of cost when determining what constitutes "safe," all sources must meet the standards or utilize controls to the degree necessary to bring their emissions into compliance, regardless of the cost.

Comment: EPA has not explained the basis for abandoning the existing regulatory program for uranium mill tailings disposal in favor of regulation under the CAA. The UMTRCA, passed subsequent to the CAA, provides flexibility.

Response: The Administrator has determined not to defer to other regulatory authorities when the risk merits issuance of a NESHAP under section 112 of the Act. However, the requirements of the other regulations must still be met.

Comment: If post-closure emissions are to be actively regulated under the standard, the EPA should address financial assurances for evaluation, monitoring, reporting, facility modification request, and remedial actions.

Response: Given the one-time nature of the post-closure monitoring requirements for phosphogypsum stacks and uranium mill tailings disposal sites, the EPA does not believe that the small financial burden requires specific financial assurance requirements. Details of monitoring and reporting requirements are included in the appropriate Subparts.

Comment: The proposal fails to address the occupational dose increment resulting from the installation, operation, and maintenance of the additional equipment and systems required for compliance; the collective occupational exposures required for some of these additions will be at higher individual doses and of significantly more consequence than the questionable savings in public risk.

Response: The lack of specific instances makes it impossible to fully address this concern. The EPA is not aware of any instance where a NESHAP will require emission controls that will result in a significant occupational exposure. Where controls may be required, for example at elemental phosphorus plants, they supplement or replace existing, less effective, controls. The exposure resulting from installation should be minimal since the process will be shut down, and exposures received during maintenance should be comparable.

Comment: Consideration should be given to whether public welfare would not be improved by diverting moneys from regulatory procedures with no measurable effect on human health, to research efforts, which have resulted in considerable advantages to the public health and well being. Human costs to those dependent on the industry as well as other adverse environmental repercussions caused by a shift away from nuclear power toward more polluting technologies, will far outweigh any theoretical public health benefit.

Response: The suggested cost-benefit determination is outside the purview of the Agency. However, given the concerns of the National Institutes of Health that health care may be affected, EPA has agreed to reconsider this issue.

Comment: The statement that demand for nuclear energy is on the decline due to reduced demand for nuclear generated electricity is fallacious. Also, while the analysis recognizes that these regulations will worsen the already weak position of the domestic uranium industry, it does not examine the adverse effects that will have on the national trade deficit.

Response: Imported uranium is a trivial component of the United States trade deficit.

Comment: The EPA estimates costs associated with the alternative regulatory approaches for each source category but the total fuel cycle cost will be passed through to nuclear utilities and should be assessed on that basis. This includes sources under subparts B, H, I, K, R, S, T, and W.

Response: Costs associated with the final rule are not significant compared with the total fuel cycle costs. There would be no significant impacts.

VIII. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of the standards. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents have been placed in the docket and are available for inspection and copying during normal working hours.

B. General Provisions

Except where otherwise specifically stated, the general provisions of 40 CFR part 61, subpart A apply to all sources regulated by this rule.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0191.

D. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that regulations promulgated today will result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." These regulations are not major because (1) nationwide annual compliance costs do not meet the $100 million threshold; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

All of the final regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments has been included in the docket.

E. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed . . . rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that virtually all small businesses are currently in compliance with these rules. In addition, EPA has placed reporting exemptions in the rule

for NRC-licensees to limit the amount of paperwork that would be required by the smaller operators. Therefore, this rule will have little or no impact on small businesses. A small business is one that has 750 employees or fewer.

For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Beryllium, Benzene, Incorporation by reference, Mercury, Radionuclides, Vinyl chloride.

Dated: October 31, 1989.

William G. Rosenberg,

Acting Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Part 61 is amended by revising subparts B, H, I, K and W and by adding subparts R and T to read as follows. These subparts are effective December 15, 1989. Subpart I is stayed until March 15, 1989.

Subpart B—National Emission Standards for Radon Emissions From Underground Uranium Mines

Sec.

61.20 Designation of facilities.
61.21 Definitions
61.22 Standard.
61.23 Determining compliance.
61.24 Annual reporting requirements.
61.25 Recordkeeping requirements.
61.26 Exemption from the reporting and testing requirements of 40 CFR 61.10

§ 61.20 Designation of facilities.

The provisions of this subpart are applicable to the owner or operator of an active underground uranium mine which:

(a) Has mined, will mine or is designed to mine over 100,000 tons of ore during the life of the mine; or

(b) Has had or will have an annual ore production rate greater than 10,000 tons, unless it can be demonstrated to EPA that the mine will not exceed total ore production of 100,000 tons during the life of the mine.

§ 61.21 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Active mine* means an underground uranium mine which is being ventilated to allow workers to enter the mine for any purpose.

(b) *Effective dose equivalent* means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. The method for calculating effective dose equivalent and the definition of reference man are outlined in the International Commission on Radiological Protection's Publication No. 26.

(c) *Underground uranium mine* means a man-made underground excavation made for the purpose of removing material containing uranium for the principal purpose of recovering uranium.

§ 61.22 Standard.

Emissions of radon-222 to the ambient air from an underground uranium mine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/y.

§ 61.23 Determining compliance.

(a) Compliance with the emission standard in this subpart shall be determined and the effective dose equivalent calculated by the EPA computer code COMPLY–R. An underground uranium mine owner or operator shall calculate the source terms to be used for input into COMPLY–R by conducting testing in accordance with the procedures described in Appendix B, Method 115, or

(b) Owners or operators may demonstrate compliance with the emission standard in this subpart through the use of computer models that are equivalent to COMPLY–R provided that the model has received prior approval from EPA headquarters. EPA may approve a model in whole or in part and may limit its use to specific circumstances.

§ 61.24 Annual Reporting Requirements.

(a) The mine owner or operator shall annually calculate and report the results of the compliance calculations in section 61.23 and the input parameters used in making the calculation. Such report shall cover the emissions of a calendar year and shall be sent to EPA by March 31 of the following year. Each report shall also include the following information:

(1) The name and location of the mine.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) The results of the emissions testing conducted and the dose calculated using the procedures in § 61.23.

(4) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere, including their location, diameter, flow rate, effluent temperature and release height.

(5) A description of the effluent controls that are used on each stack, vent, or other release point and the effluent controls used inside the mine, and an estimate of the efficiency of each control method or device.

(6) Distances from the points of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(7) The values used for all other user-supplied input parameters for the computer models (e.g., meteorological data) and the source of these data.

(8) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(b) If the facility is not in compliance with the emission standard of § 61.22 in the calendar year covered by the report, the facility must then commence reporting to the Administrator on a monthly basis the information listed in paragraph (a) of this section for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facilities performance under the terms of the decree.

(c) The first report will cover the emissions of calendar year 1990.

(Approved by the Office of Management and Budget under Control Number 2060–0191.)

§ 61.25 Recordkeeping requirements.

The owner or operator of a mine must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the mine or by the owner or operator for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.26 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart H—National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities

Sec.

61.90 Designation of facilities.
61.91 Definitions.
61.92 Standard.
61.93 Emissions monitoring and test procedures.
61.94 Compliance and reporting.
61.95 Recordkeeping requirements.
61.96 Applications to construct or modify.
61.97 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.90 Designation of facilities.

The provisions of this subpart apply to operations at any facility owned or operated by the Department of Energy that emits any radionuclide other than radon-222 and radon-220 into the air, except that this subpart does not apply to disposal at facilities subject to 40 CFR part 191, subpart B or 40 CFR part 192.

§ 61.91 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or 40 CFR part 61, subpart A. The following terms shall have the following specific meanings:

(a) *Effective dose equivalent* means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. For purposes of this subpart, doses caused by radon-222 and its respective decay products formed after the radon is released from the facility are not included. The method for calculating effective dose equivalent and the definition of reference man are outlined in the International Commission on Radiological Protection's Publication No. 26.

(b) *Facility* means all buildings, structures and operations on one contiguous site.

(c) *Radionuclide* means a type of atom which spontaneously undergoes radioactive decay.

(d) *Residence* means any home, house, apartment building, or other place of dwelling which is occupied during any portion of the relevant year.

§ 61.92 Standard.

Emissions of radionuclides to the ambient air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr.

§ 61.93 Emission monitoring and test procedures.

(a) To determine compliance with the standard, radionuclide emissions shall be determined and effective dose equivalent values to members of the public calculated using EPA approved sampling procedures, computer models CAP–88 or AIRDOS–PC, or other procedures for which EPA has granted prior approval. DOE facilities for which the maximally exposed individual lives within 3 kilometers of all sources of emissions in the facility, may use EPA's COMPLY model and associated procedures for determining dose for purposes of compliance.

(b) Radionuclide emission rates from point sources (stacks or vents) shall be measured in accordance with the following requirements or other procedures for which EPA has granted prior approval:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) Reference Method 2 of Appendix A to part 60 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of Appendix A to part 60 shall be used to measure flow rates through pipes and small vents.

(iii) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates only periodic measurements are necessary.

(2) Radionuclides shall be directly monitored or extracted, collected and measured using the following methods:

(i) Reference Method 1 of Appendix A part 60 shall be used to select monitoring or sampling sites.

(ii) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSIN13.1–1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in Appendix A of ANSIN13.1) (incorporated by reference—see § 61.18) The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in Appendix B, Method 114. Use of methods based on principles of measurement different from those described in Appendix B, Method 114 must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(3) When it is impractical to measure the effluent flow rate at an existing source in accordance with the requirements of paragraph (b)(1) of this section or to monitor or sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site

selection and sample extraction procedures provided that:

(i) It can be shown that the requirements of paragraph (b) (1) or (2) of this section are impractical for the effluent stream.

(ii) The alternative procedure will not significantly underestimate the emissions.

(iii) The alternative procedure is fully documented.

(iv) The owner or operator has received prior approval from EPA.

(4)(i) Radionuclide emission measurements in conformance with the requirements of paragraph (b) of this section shall be made at all release points which have a potential to discharge radionuclides into the air in quantities which could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured. With prior EPA approval, DOE may determine these emissions through alternative procedures. For other release points which have a potential to release radionuclides into the air, periodic confirmatory measurements shall be made to verify the low emissions.

(ii) To determine whether a release point is subject to the emission measurement requirements of paragraph (b) of this section, it is necessary to evaluate the potential for radionuclide emissions for that release point. In evaluating the potential of a release point to discharge radionuclides into the air for the purposes of this section, the estimated radionuclide release rates shall be based on the discharge of the effluent stream that would result if all pollution control equipment did not exist, but the facilities operations were otherwise normal.

(5) Environmental measurements of radionuclide air concentrations at critical receptor locations may be used as an alternative to air dispersion calculations in demonstrating compliance with the standard if the owner or operator meets the following criteria:

(i) The air at the point of measurement shall be continuously sampled for collection of radionuclides.

(ii) Those radionuclides released from the facility, which are the major contributors to the effective dose equivalent must be collected and measured as part of the environmental measurement program.

(iii) Radionuclide concentrations which would cause an effective dose equivalent of 10% of the standard shall be readily detectable and distinguishable from background.

(iv) Net measured radionuclide concentrations shall be compared to the concentration levels in Table 2 of Appendix E to determine compliance with the standard. In the case of multiple radionuclides being released from a facility, compliance shall be demonstrated if the value for all radionuclides is less than the concentration level in Table 2, and the sum of the fractions that result when each measured concentration value is divided by the value in Table 2 for each radionuclide is less than 1.

(v) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(vi) Use of environmental measurements to demonstrate compliance with the standard is subject to prior approval of EPA. Applications for approval shall include a detailed description of the sampling and analytical methodology and show how the above criteria will be met.

§ 61.94 Compliance and reporting.

(a) Compliance with this standard shall be determined by calculating the highest effective dose equivalent to any member of the public at any offsite point where there is a residence, school, business or office. The owners or operators of each facility shall submit an annual report to both EPA headquarters and the appropriate regional office by June 30 which includes the results of the monitoring as recorded in DOE's Effluent Information System and the dose calculations required by § 61.93(a) for the previous calendar year.

(b) In addition to the requirements of paragraph (a) of this section, an annual report shall include the following information:

(1) The name and location of the facility.

(2) A list of the radioactive materials used at the facility.

(3) A description of the handling and processing that the radioactive materials undergo at the facility.

(4) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere.

(5) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each control device.

(6) Distances from the points of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(7) The values used for all other user-supplied input parameters for the computer models (e.g., meteorological data) and the source of these data.

(8) A brief description of all construction and modifications which were completed in the calendar year for which the report is prepared, but for which the requirement to apply for approval to construct or modify was waived under § 61.96 and associated documentation developed by DOE to support the waiver. EPA reserves the right to require that DOE send to EPA all the information that normally would be required in an application to construct or modify, following receipt of the description and supporting documentation.

(9) Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If the facility is not in compliance with the emission limits of § 61.92 in the calendar year covered by the report, then the facility must commence reporting to the Administrator on a monthly basis the information listed in paragraph (b) of this section, for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (b) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree, the report will describe the facilities performance under the terms of the decree.

(d) In those instances where the information requested is classified, such information will be made available to EPA separate from the report and will be handled and controlled according to

applicable security and classification regulations and requirements.

(Approved by the Office of Management and Budget under Control Number 2060-0191.)

§ 61.95 Recordkeeping requirements.

All facilities must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine effective dose equivalent. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the site of the facility for at least five years and, upon request, be made available for inspection by the Administrator, or his authorized representative.

§ 61.96 Applications to construct or modify.

In addition to any activity that is defined as construction under 40 CFR part 61, subpart A, any fabrication, erection or installation of a new building or structure within a facility that emits radionuclides is also defined as new construction for purposes of 40 CFR part 61, subpart A.

(b) An application for approval under § 61.07 or notification of startup under § 61.09 does not need to be filed for any new construction of or modification within an existing facility if the effective dose equivalent, caused by all emissions from the new construction or modification, is less than 1% of the standard prescribed in § 61.92. For purposes of this paragraph the effective dose equivalent shall be calculated using the source term derived using Appendix D as input to the dispersion and other computer models described in § 61.93. DOE may, with prior approval from EPA, use another procedure for estimating the source term for use in this paragraph. A facility is eligible for this exemption only if, based on its last annual report, the facility is in compliance with this subpart.

(c) Conditions to approvals granted under § 61.08 will not contain requirements for post approval reporting on operating conditions beyond those specified in § 61.94.

§ 61.97 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart I—National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H

Sec.

61.100 Applicability.
61.101 Definitions.
61.102 Standard.
61.103 Determining compliance.
61.104 Reporting requirements.
61.105 Recordkeeping requirements.
61.106 Applications to construct or modify.
61.107 Emission determination.
61.108 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.100 Applicability.

The provisions of this subpart apply to Nuclear Regulatory Commission-licensed facilities and to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities regulated under 40 CFR part 191, subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR part 192, or to low energy accelerators, or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

§ 61.101 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Agreement State* means a State with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act of 1954, as amended.

(b) *Effective dose equivalent* means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. For purposes of this subpart doses caused by radon-222 and its decay products formed after the radon is released from the facility are not included. The method for calculating effective dose equivalent and the definition of reference man are outlined in the International Commission on Radiological Protection's Publication No. 26.

(c) *Facility* means all buildings, structures and operations on one contiguous site.

(d) *Federal facility* means any facility owned or operated by any department, commission, agency, office, bureau or other unit of the government of the United States of America except for facilities owned or operated by the Department of Energy.

(e) *NRC-licensed facility* means any facility licensed by the Nuclear Regulatory Commission or any Agreement State to receive title to, receive, possess, use, transfer, or deliver any source, by-product, or special nuclear material.

(f) *Radionuclide* means a type of atom which spontaneously undergoes radioactive decay.

§ 61.102 Standard.

(a) Emissions of radionuclides, including iodine, to the ambient air from a facility regulated under this subpart shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr.

(b) Emissions of iodine to the ambient air from a facility regulated under this subpart shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr.

§ 61.103 Determining compliance.

(a) Compliance with the emission standard in this subpart shall be determined through the use of either the EPA computer code COMPLY or the alternative requirements of Appendix E. Facilities emitting radionuclides not listed in COMPLY or Appendix E shall contact EPA to receive the information needed to determine dose. The source terms to be used for input into COMPLY shall be determined through the use of the measurement procedures listed in § 61.107 or the emission factors in Appendix D or through alternative procedures for which EPA has granted prior approval; or,

(b) Facilities may demonstrate compliance with the emission standard in this subpart through the use of computer models that are equivalent to COMPLY, provided that the model has received prior approval from EPA headquarters. Any facility using a model other than COMPLY must file an annual report. EPA may approve an alternative model in whole or in part and may limit its use to specific circumstances.

§ 61.104 Reporting requirements.

(a) The owner or operator of a facility subject to this subpart must submit an annual report to the EPA covering the emissions of a calendar year by March 31 of the following year.

(1) The report or application for approval to construct or modify as

required by 40 CFR part 61, subpart A and § 61.106, must provide the following information:

(i) The name of the facility.

(ii) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(iii) The location of the facility, including suite and/or building number, street, city, county, state, and zip code.

(iv) The mailing address of the facility, if different from item (iii).

(v) A list of the radioactive materials used at the facility.

(vi) A description of the handling and processing that the radioactive materials undergo at the facility.

(vii) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere.

(viii) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each device.

(ix) Distances from the point of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(x) The effective dose equivalent calculated using the compliance procedures in § 61.103.

(xi) The physical form and quantity of each radionuclide emitted from each stack, vent or other release point, and the method(s) by which these quantities were determined.

(xii) The volumetric flow, diameter, effluent temperature, and release height for each stack, vent or other release point where radioactive materials are emitted, the method(s) by which these were determined.

(xiii) The height and width of each building from which radionuclides are emitted.

(xiv) The values used for all other user-supplied input parameters (e.g., meteorological data) and the source of these data.

(xv) A brief description of all construction and modifications which were completed in the calendar year for which the report is prepared, but for which the requirement to apply for approval to construct or modify was waived under section 61.106, and associated documentation developed by the licensee to support the waiver. EPA reserves the right to require that the licensee send to EPA all the information that normally would be required in an application to construct or modify, following receipt of the description and supporting documentation.

(xvi) Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(b) Facilities emitting radionuclides in an amount that would cause less than 10% of the dose standard in § 61.102, as determined by the compliance procedures from § 61.103(a), are exempt from the reporting requirements of § 61.104(a). Facilities shall annually make a new determination whether they are exempt from reporting.

(c) If the facility is not in compliance with the emission limits of § 61.102 in the calendar year covered by the report, the facility must report to the Administrator on a monthly basis the information listed in paragraph (a) of this section, for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facilities performance under the terms of the decree.

(d) The first report will cover the emissions of calendar year 1990.

§ 61.105 Recordkeeping requirements.

The owner or operator of any facility must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard, and, if claimed, qualification for exemption from reporting. These records must be kept at the site of the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.106 Applications to construct or modify.

(a) In addition to any activity that is defined as construction under 40 CFR part 61, subpart A, any fabrication, erection or installation of a new building or structure within a facility is also defined as new construction for purposes of 40 CFR part 61, subpart A.

(b) An application under § 61.07 does not need to be filed for any new construction of or modification within an existing facility if one of the following conditions is met:

(1) The effective dose equivalent calculated by using methods described in § 61.103, that is caused by all emissions from the facility including those potentially emitted by the proposed new construction or modification, is less than 10% of the standard prescribed in § 61.102.

(2) The effective dose equivalent calculated by using methods described in § 61.103, that is caused by all emissions from the new construction or modification, is less than 1% of the limit prescribed in § 61.102. A facility is eligible for this exemption only if the facility, based on its last annual report, is in compliance with this subpart.

§ 61.107 Emission determination.

(a) Facility owners or operators may, in lieu of monitoring, estimate radionuclide emissions in accordance with Appendix D, or other procedure for which EPA has granted prior approval.

(b) Radionuclide emission rates from point sources (e.g. stacks or vents) shall be measured in accordance with the following requirements:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) Reference Method 2 of Appendix A to part 60 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of Appendix A to part 60 shall be used to measure flow rates through pipes and small vents.

(iii) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates only periodic measurements are necessary.

(2) Radionuclides shall be directly monitored or extracted, collected, and measured using the following methods:

(i) Reference Method 1 of Appendix A part 60 shall be used to select monitoring or sampling sites.

(ii) The effluent stream shall be directly monitored continuously using an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSIN13.1–1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in Appendix A of ANSIN13.1) (incorporated by reference—see § 61.18). The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in Appendix B, Method 114. Use of methods based on principles of measurement different from those described in Appendix B, Method 114 must have prior approval from the Administrator. EPA reserves the right to approve alternative measurement procedures in whole or in part.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(3) When it is impractical to measure the effluent flow rate at an existing source in accordance with the requirements of paragraph (b)(1) of this section or to monitor or sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site selection and sample extraction procedures provided that:

(i) It can be shown that the requirements of paragraphs (b) (1) and (2) of this section are impractical for the effluent stream.

(ii) The alternative procedure will not significantly underestimate the emissions.

(iii) The alternative procedure is fully documented

(iv) The owner or operator has received prior approval from EPA.

(4)(i) Radionuclide emission measurements in conformance with the requirements of paragraph (b) of this section shall be made at all release points which have a potential to discharge radionuclides into the air in quantities which could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured. For other release points which have a potential to release radionuclides into the air, periodic confirmatory measurements should be made to verify the low emissions.

(ii) To determine whether a release point is subject to the emission measurement requirements of paragraph (b) of this section, it is necessary to evaluate the potential for radionuclide emissions for that release point. In evaluating the potential of a release point to discharge radionuclides into the air, the estimated radionuclide release rates shall be based on the discharge of the uncontrolled effluent stream into the air.

(5) Environmental measurements of radionuclide air concentrations at critical receptor locations may be used as an alternative to air dispersion calculations in demonstrating compliance with the standards if the owner or operator meets the following criteria:

(i) The air at the point of measurement shall be continuously sampled for collection of radionuclides.

(ii) Those radionuclides released from the facility, which are the major contributors to the effective dose equivalent must be collected and measured as part of the environmental measurements program.

(iii) Radionuclide concentrations which would cause an effective dose equivalent greater than or equal to 10% of the standard shall be readily detectable and distinguishable from background.

(iv) Net measured radionuclide concentrations shall be compared to the concentration levels in Table 2 of Appendix E to determine compliance with the standard. In the case of multiple radionuclides being released from a facility, compliance shall be demonstrated if the value for all radionuclides is less than the concentration level in Table 2 and the sum of the fractions that result when each measured concentration value is divided by the value in Table 2 for each radionuclide is less than 1.

(v) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(vi) Use of environmental measurements to demonstrate compliance with the standard is subject to prior approval of EPA. Applications for approval shall include a detailed description of the sampling and analytical methodology and show how the above criteria will be met.

(c) The following facilities may use either the methodologies and quality assurance programs described in paragraph (b) of this section or may use the following:

(1) Nuclear power reactors may determine their radionuclide emissions in conformance with the Effluent Technical Specifications contained in their Operating License issued by the Nuclear Regulatory Commission. In addition, they may conduct a quality assurance program as described in the Nuclear Regulatory Commission's Regulatory Guide 4.15 dated February 1979.

(2) Fuel processing and fabrication plants and uranium hexafluoride plants may determine their emissions in conformance with the Nuclear Regulatory Commission's Regulatory Guide 4.16 dated December 1985. In addition, they may conduct a quality assurance program as described in the Nuclear Regulatory Commission's Regulatory Guide 4.15 dated February 1979.

(3) Uranium mills may determine their emissions in conformance with the Nuclear Regulatory Commission's Regulatory Guide 4.14 dated April 1980. In addition, they may conduct a quality assurance program as described in the Nuclear Regulatory Commission's Regulatory Guide 4.15 dated February 1979.

61.108 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

Sec.

61.120 Applicability.
61.121 Definitions.
61.122 Emissions standard.
61.123 Emission testing.
61.124 Recordkeeping requirements.
61.125 Test methods and procedures.
61.126 Monitoring of operations.
61.127 Exemption from the reporting and testing requirements of 40 CFR 61.10

§ 61.120 Applicability.

The provisions of this subpart are applicable to owners or operators of calciners and nodulizing kilns at elemental phosphorus plants.

§61.121 Definitions.

(a) *Elemental phosphorus plant* or *plant* means any facility that processes phosphate rock to produce elemental phosphorus. A plant includes all buildings, structures, operations, calciners and nodulizing kilns on one contiguous site.

(b) *Calciner* or *Nodulizing kiln* means a unit in which phosphate rock is heated to high temperatures to remove organic material and/or to convert it to a nodular form. For the purpose of this subpart, calciners and nodulizing kilns are considered to be similar units.

§ 61.122 Emission standard.

Emissions of polonium-210 to the ambient air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 2 curies a year.

§ 61.123 Emission testing.

(a) Each owner or operator of an elemental phosphorus plant shall test emissions from the plant within 90 days of the effective date of this standard and annually thereafter. The Administrator may temporarily or permanently waive the annual testing requirement or increase the frequency of testing, if the Administrator determines that more testing is required.

(b) The Administrator shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test.

(c) An emission test shall be conducted at each operational calciner or nodulizing kiln. If emissions from a calciner or nodulizing kiln are discharged through more than one stack, then an emission test shall be conducted at each stack and the total emission rate from the calciner or kiln shall be the sum of the emission rates from each of the stacks.

(d) Each emission test shall consist of three sampling runs that meet the requirements of § 61.125. The phosphate rock processing rate during each run shall be recorded. An emission rate in curies per metric ton of phosphate rock processed shall be calculated for each run. The average of all three runs shall apply in computing the emission rate for the test. The annual polonium-210 emission rate from a calciner or nodulizing kiln shall be determined by multiplying the measured polonium-210 emission rate in curies per metric ton of phosphate rock processed by the annual phosphate rock processing rate in metric tons. In determining the annual phosphate rock processing rate, the values used for operating hours and operating capacity shall be values that will maximize the expected processing rate. For determining compliance with the emission standard of § 61.122, the total annual emission rate is the sum of the annual emission rates for all operating calciners and nodulizing kilns.

(e) If the owner or operator changes his operation in such a way as to increase his emissions of polonium-210, such as changing the type of rock processed, the temperature of the calciners or kilns, or increasing the annual phosphate rock processing rate, then a new emission test, meeting the requirements of this section, shall be conducted within 45 days under these conditions.

(f) Each owner or operator of an elemental phosphorus plant shall furnish the Administrator with a written report of the results of the emission test within 60 days of conducting the test. The report must provide the following information:

(1) The name and location of the facility.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each device.

(4) The results of the testing, including the results of each sampling run completed.

(5) The values used in calculating the emissions and the source of these data.

(6) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

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§ 61.124 Recordkeeping requirements.

The owner or operator of any plant must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used in emission testing. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the results of the emission testing. These records must be kept at the site of the plant for at least five years and, upon request, be made available for inspection by the Administrator, or his authorized representative.

§ 61.125 Test methods and procedures.

(a) Each owner or operator of a source required to test emissions under § 61.123, unless an equivalent or alternate method has been approved by the Administrator, shall use the following test methods:

(1) Test Method 1 of Appendix A to 40 CFR part 60 shall be used to determine sample and velocity traverses;

(2) Test Method 2 of Appendix A to 40 CFR part 60 shall be used to determine velocity and volumetric flow rate;

(3) Test Method 3 of Appendix A to 40 CFR part 60 shall be used for gas analysis;

(4) Test Method 5 of Appendix A to 40 CFR part 60 shall be used to collect particulate matter containing the polonium-210; and

(5) Test Method 111 of Appendix B to 40 CFR part 61 shall be used to determine the polonium-210 emissions.

§ 61.126 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascal (±1 inch of water). Records of these measurements shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the primary and secondary current and the voltage in each electric field. Records of these measurements shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative for a minimum of 5 years.

(c) For the purpose of conducting an emission test under § 61.123, the owner or operator of any source subject to the provisions of this subpart shall install, calibrate, maintain, and operate a device for measuring the phosphate rock feed to any affected calciner or nodulizing kiln. The measuring device used must be accurate to within ±5 percent of the mass rate over its operating range. Records of these measurements shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative for a minimum of 5 years.

§ 61.127 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart Q—National Emission Standards for Radon Emissions From Department of Energy Facilities

Sec.
61.190 Designation of facilities.
61.191 Definitions.
61.192 Standard.
61.193 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.190 Designation of facilities.

The provisions of this subpart apply to the design and operation of all storage and disposal facilities for radium-containing material (i.e., byproduct material as defined under section 11.e(2) of the Atomic Energy Act of 1954 (as amended)) that are owned or operated by the Department of Energy that emit radon-222 into air, including these facilities: The Feed Materials Production Center, Fernald, Ohio; the Niagara Falls Storage Site, Lewiston, New York; the Weldon Spring Site, Weldon Spring, Missouri; the Middlesex Sampling Plant, Middlesex, New Jersey; the Monticello Uranium Mill Tailings Pile, Monticello, Utah. This subpart does not apply to facilities listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Control Act of 1978.

§ 61.191 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Facility* means all buildings, structures and operations on one contiguous site.

(b) *Source* means any building, structure, pile, impoundment or area used for interim storage or disposal that is or contains waste material containing radium in sufficient concentration to emit radon-222 in excess of this standard prior to remedial action.

§ 61.192 Standard.

No source at a Department of Energy facility shall emit more than 20 pCi/-m^2–s of radon-222 as an average for the entire source, into the air. This requirement will be part of any Federal Facilities Agreement reached between Environmental Protection Agency and Department of Energy.

§ 61.193 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

Sec.
61.200 Designation of facilities.
61.201 Definitions.
61.202 Standard.
61.203 Radon monitoring and compliance procedures.
61.204 Recordkeeping requirements.
61.205 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.200 Designation of facilities.

The provisions of this subpart apply to the owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks.

§ 61.201 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Inactive stack* means a stack to which no further routine additions of phosphogypsum will be made and which is no longer used for water management associated with the production of phosphogypsum. If a stack has not been used for either purpose for two years it is presumed to be inactive.

(b) *Phosphogypsum stacks* or *stacks* are piles of waste from phosphorus fertilizer production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum.

§ 61.202 Standard.

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m^2–s of radon-222 into the air.

§ 61.203 Radon monitoring and compliance procedures.

(a) Sixty days following the date at which a stack becomes an inactive stack, or ninety days after the effective date of this rule if the stack is already inactive, the owners or operators of inactive phosphogypsum stacks shall test the stacks in accordance with the procedures described in 40 CFR part 61, Appendix B, Method 115. EPA shall be notified at least 30 days prior to an emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit.

(b) Ninety days after the testing is required, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each report shall also include the following information:

(1) The name and location of the facility,

(2) A list of the stacks at the facility including the size and dimensions of the stack,

(3) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different),

(4) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures, and

(5) The results of the testing conducted, including the results of each measurement.

(6) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If year-long measurements are made in accordance with Method 115 Appendix B to part 61 this report shall include the results of the first measurement period and provide a schedule for the measurement frequency to be used. An additional report containing all the information in

paragraph (b) of this section shall be submitted ninety days after completion of the final measurements.

(d) If at any point an owner or operator once again uses a stack for the disposal of phosphogypsum or for water management, the stack ceases to be in inactive status and the owner or operator must notify EPA in writing within 45 days. When the owner or operator ceases to use the stack it will once again become inactive and require retesting and reporting.

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§ 61.204 Recordkeeping requirements.

An owner or operator subject to this subpart must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept by the owner or operator for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.205 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart T—National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings

Sec.

61.220 Designation of facilities.
61.221 Definitions.
61.222 Standard.
61.223 Compliance procedures.
61.224 Recordkeeping requirements.
61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.220 Designation of facilities.

The provisions of this subpart apply to the owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material or uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Control Act of 1978 or regulated under Title II of the Uranium Mill Tailings Control Act of 1978.

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for purpose of ensuring compliance with the requirements of 40 CFR 192.02(a) or 192.32(b)(i). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) or 192.32(b)(i) have been met.

(b) *Operational* means a uranium mill tailings pile that is licensed to accept additional tailings, and those tailings can be added without violating subpart W or any other Federal, state or local rule or law. A pile cannot be considered operational if it is filled to capacity or the mill it accepts tailings from has been dismantled or otherwise decommissioned.

(c) *Uranium byproduct material* or *tailings* means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction and which remain underground do not constitute byproduct material for the purposes of this subpart.

§ 61.222 Standard.

(a) Radon-222 emissions to the ambient air from uranium mill tailings pile that are no longer operational shall not exceed 20 pCi/m^2-s of radon-222.

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date or within two years of the day it ceases to be operational whichever is later. If it is not physically possible for a mill owner or operator to complete disposal within that time, EPA shall, after consultation with the mill owner or operator, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

§ 61.223 Compliance procedures.

(a) Sixty days following the completion of covering the pile to limit radon emissions but prior to the long term stabilization of the pile, the owners or operators of uranium mill tailings shall conduct testing for all piles within the facility in accordance with the procedures described in 40 CFR part 61, Appendix B, Method 115, or other procedures for which EPA has granted prior approval.

(b) Ninety days after the testing is required, each facility shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. EPA shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit. Each report shall also include the following information:

(1) The name and location of the facility.

(2) A list of the piles at the facility.

(3) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.

(4) The results of the testing conducted, including the results of each measurement.

(5) Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If year long measurements are made in accordance with Method 115 of Appendix B of part 61, this report shall include the results of the first measurement period and provide a schedule for the measurement frequency to be used. An additional report shall be submitted ninety days after completion of the final measurements.

(d) If long term stabilization has begun before the effective date of the rule then testing may be conducted at any time, up to 60 days after the long term stabilization is completed.

(e) If the testing demonstrates that the pile meets the requirement of § 61.222(a) and long term stabilization has been completed then the pile is considered disposed for purposes of this rule.

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§ 61.224 Recordkeeping requirements.

The owner or operator must maintain records documenting the source of input

parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. The Administrator shall be kept apprised of the location of these records and the records must be kept for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart W—National Emission Standards for Radon Emissions From Operating Mill Tailings

Sec.
61.250 Designation of facilities.
61.251 Definitions.
61.252 Standard.
61.253 Determining compliance.
61.254 Annual reporting requirements.
61.255 Recordkeeping requirements.
61.256 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.250 Designation of facilities.

The provisions of this subpart apply to owners or operators of facilities licensed to manage uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings. This subpart does not apply to the disposal of tailings.

§ 61.251 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or 40 CFR part 61, subpart A. The following terms shall have the following specific meanings:

(a) *Area* means the vertical projection of the pile upon the earth's surface.

(b) *Continuous disposal* means a method of tailings management and disposal in which tailings are dewatered by mechanical methods immediately after generation. The dried tailings are then placed in trenches or other disposal areas and immediately covered to limit emissions consistent with applicable Federal standards.

(c) *Dewatered* means to remove the water from recently produced tailings by mechanical or evaporative methods such that the water content of the tailings does not exceed 30 percent by weight.

(d) *Existing impoundment* means any uranium mill tailings impoundment which is licensed to accept additional tailings and is in existence as of December 15, 1989.

(e) *Operation* means that an impoundment is being used for the continued placement of new tailings or is in standby status for such placement. An impoundment is in operation from the day that tailings are first placed in the impoundment until the day that final closure begins.

(f) *Phased disposal* means a method of tailings management and disposal which uses lined impoundments which are filled and then immediately dried and covered to meet all applicable Federal standards.

(g) *Uranium byproduct material or tailings* means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction and which remain underground do not constitute byproduct material for the purposes of this subpart.

§ 61.252 Standard.

(a) Radon-222 emissions to the ambient air from an existing uranium mill tailings pile shall not exceed 20 pCi/m^2-s of radon-222.

(b) After December 15, 1989, no new tailings impoundment can be built unless it is designed, constructed and operated to meet one of the two following work practices:

(1) Phased disposal in lined tailings impoundments that are no more than 40 acres in area and meet the requirements of 40 CFR 192.32(a) as determined by the Nuclear Regulatory Commission. The owner or operator shall have no more than two impoundments, including existing impoundments, in operation at any one time.

(2) Continuous disposal of tailings such that tailings are dewatered and immediately disposed with no more than 10 acres uncovered at any time and operated in accordance with § 192.32(a) as determined by the Nuclear Regulatory Commission.

(c) All mill owners or operators shall comply with the provisions of 40 CFR 192.32(a) in the operation of tailings piles, the exemption for existing piles in 40 CFR 192.32(a) notwithstanding.

§ 61.253 Determining compliance.

Compliance with the emission standard in this subpart shall be determined annually through the use of Method 115 of Appendix B. When measurements are to be made over a one year period, EPA shall be provided with a schedule of the measurement frequency to be used. The schedule may be submitted to EPA prior to or after the first measurement period. EPA shall be notified 30 days prior to any emissions test so that EPA may, at its option, observe the test.

§ 61.254 Annual reporting requirements.

(a) The owners or operators of operating existing mill impoundments shall report the results of the compliance calculations required in § 61.253 and the input parameters used in making the calculation for each calendar year shall be sent to EPA by March 31 of the following year. Each report shall also include the following information:

(1) The name and location of the mill.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) The results of the testing conducted, including the results of each measurement.

(4) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(b) If the facility is not in compliance with the emission limits of § 61.252 in the calendar year covered by the report, then the facility must commence reporting to the Administrator on a monthly basis the information listed in paragraph (a) of this section, for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree, the report will describe the facilities performance under the terms of the decree.

(c) The first report will cover the emissions of calendar year 1990.

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§ 61.255 Recordkeeping requirements.

The owner or operator of the mill must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the mill for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.256 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

§ 61.03 [Amended]

3. By adding to the list of System International units of measure in § 61.03(a) an entry for "m^2" following "m = meter" to read as follows:

m^2 = square meter

4. By adding to the list of other units of measure in § 61.03(b) an entry for "Ci" following "cc"; an entry for "pC;" following "oz"; and an entry for "mrem" following "ml" to read as follows:

Ci = curie

* * * * *

mrem = millirem = 10^{-3} rem

* * * * *

pCi = picocurie = 10^{-12} curie

5. Section 61.18 is amended by adding paragraph (c) to read as follows:

§ 61.18 Incorporations by reference.

* * * * *

(c) The following material is available for purchase from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(1) ANSI N13.1—1969, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities." IBR approved for §§ 61.93(b)(2)(ii); 61.107(b)(2)(ii); and Method 114, par. 2.1 of Appendix B to part 61.

Appendix B to Part 61—[Amended]

6. By amending Method 111 of Appendix B as follows:

a. Section 4.1 is revised to read as follows:

4.1 Sample Preparation.

The glass fiber filter and acetone rinse from Method 5 of Appendix A to 40 CFR part 60 are combined and dissolved as described below.

4.1.1 Add polonium-209 tracer to the acetone rinse in the glass beaker from Method 5 in an amount approximately equal to the amount of polonium-210 expected in the total particulate sample. Add 16 M nitric acid to the beaker to digest and loosen the residue.

4.1.2 Transfer the residue from the glass beaker to a teflon beaker containing the glass fiber filter. Rinse the glass beaker with 16 M nitric acid. If necessary reduce the volume in the beaker by evaporation until all of the nitric acid from the glass beaker has been transferred to the teflon beaker.

4.1.3 Add 30 ml of 29 M hydrofluoric acid to the teflon beaker and evaporate to near dryness on a hot plate in a properly operating hood. Caution: Do not allow the residue to go to dryness and overheat; this will result in loss of polonium.

4.1.4 Repeat step 4.1.3 until filter is dissolved.

4.1.5 Add 100 ml of 16 M nitric acid to the residue in the teflon beaker and evaporate to near dryness. Caution: Do not allow the residue to go to dryness.

4.1.6 Add 50 ml of 16 M nitric acid and 10 ml of 12 M perchloric acid to the teflon beaker and heat until dense fumes of perchloric acid are evolved.

4.1.7 Repeat steps 4.1.3 to 4.1.6 as necessary until sample is completely dissolved.

4.1.8 Add 10 ml of 12 M hydrochloric acid and evaporate to dryness. Repeat additions and evaporations several times.

4.1.9 Transfer the sample to a 250 ml volumetric flask and dilute to volume with 3 M hydrochloric acid.

b. Section 4.4.2 is removed and sections 4.4.3 through 4.4.8 are redesignated as sections 4.4.2 through 4.4.7 respectively.

c. In section 5.1, Equation 111–3 is amended by removing "A = picocuries of polonium-210 per filter" and adding "A = picocuries of polonium-210 in the particulate sample".

d. In section 5.2, Equation 111–4 is amended by revising the entry for "A =" to read "A = picocuries of polonium-210 in the particulate sample as determined by A in Equation 111–3".

e. Section 9.1.2 is removed.

7. By adding Method 114 to the methods in Appendix B to part 61 to read as follows:

Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources

1. Purpose and Background

This method provides the requirements for: (1) Stack monitoring and sample collection methods appropriate for radionuclides; (2) radiochemical methods which are used in determining the amounts of radionuclides collected by the stack sampling and; (3) quality assurance methods which are conducted in conjunction with these measurements. These methods are appropriate for emissions for stationary sources. A list of references is provided.

Many different types of facilities release radionuclides into air. These radionuclides differ in the chemical and physical forms, half-lives and type of radiation emitted. The appropriate combination of sample extraction, collection and analysis for an individual radionuclide is dependent upon many interrelated factors including the mixture of other radionuclides present. Because of this wide range of conditions, no single method for monitoring or sample collection and analysis of a radionuclide is applicable to all types of facilities. Therefore, a series of methods based on "principles of measurement" are described for monitoring and sample collection and analysis which are applicable to the measurement of radionuclides found in effluent streams at stationary sources. This approach provides the user with the flexibility to choose the most appropriate combination of monitoring and sample collection and analysis methods which are applicable to the effluent stream to be measured.

2. Stack Monitoring and Sample Collection Methods

Monitoring and sample collection methods are described based on "principles of monitoring and sample collection" which are applicable to the measurement of radionuclides from effluent streams at stationary sources. Radionuclides of most elements will be in the particulate form in these effluent streams and can be readily collected using a suitable filter media. Radionuclides of hydrogen, oxygen, carbon, nitrogen, the noble gases and in some circumstances iodine will be in the gaseous form. Radionuclides of these elements will require either the use of an in-line or off-line monitor to directly measure the radionuclides, or suitable sorbers, condensers or bubblers to collect the radionuclides.

2.1 Radionuclides as Particulates. The extracted effluent stream is passed through a filter media to remove the particulates. The filter must have a high efficiency for removal of sub-micron particles. The guidance in ANSI N13.1—1969 shall be followed in using filter media to collect particulates (incorporated by reference–see § 61.18).

2.2 Radionuclides as Gases.

2.2.1 The Radionuclide Tritium (H–3). Tritium in the form of water vapor is collected from the extracted effluent sample by sorption, condensation or dissolution techniques. Appropriate collectors may include silica gel, molecular sieves, and ethylene glycol or water bubblers.

Tritium in the gaseous form may be measured directly in the sample stream using Method B–1, collected as a gas sample or may be oxidized using a metal catalyst to tritiated water and collected as described above.

2.2.2 Radionuclides of Iodine. Iodine is collected from an extracted sample by sorption or dissolution techniques. Appropriate collectors may include charcoal, impregnated charcoal, metal zeolite and caustic solutions.

2.2.3 Radionuclides of Argon, Krypton and Xenon. Radionuclides of these elements are either measured directly by an in-line or off-line monitor, or are collected from the extracted sample by low temperature sorption techniques. Appropriate sorbers may include charcoal or metal zeolite.

2.2.4 Radionuclides of Oxygen, Carbon, Nitrogen and Radon. Radionuclides of these elements are measured directly using an in-line or off-line monitor. Radionuclides of carbon in the form of carbon dioxide may be collected by dissolution in caustic solutions.

2.3 Definition of Terms

In-line monitor means a continuous measurement system in which the detector is placed directly in or adjacent to the effluent stream. This may involve either gross radioactivity measurements or specific radionuclide measurements. Gross measurements shall be made in conformance with the conditions specified in Methods A–4, B–2 and G–4.

Off-line monitor means a measurement system in which the detector is used to continuously measure an extracted sample of the effluent stream. This may involve either gross radioactivity measurements or specific radionuclide measurements. Gross measurements shall be made in conformance with the conditions specified in Methods A–4, B–2 and G–4.

Sample collection means a procedure in which the radionuclides are removed from an extracted sample of the effluent using a collection media. These collection media include filters, absorbers, bubblers and condensers. The collected sample is analyzed using the methods described in Section 3.

3. Radionuclide Analysis Methods

A series of methods based on "principles of measurement" are described which are applicable to the analysis of radionuclides collected from airborne effluent streams at stationary sources. These methods are applicable only under the conditions stated and within the limitations described. Some methods specify that only a single radionuclide be present in the sample or the chemically separated sample. This condition should be interpreted to mean that no other radionuclides are present in quantities which would interfere with the measurement.

Also identified (Table 1) are methods for a selected list of radionuclides. The listed radionuclides are those which are most commonly used and which have the greatest potential for causing dose to members of the public. Use of methods based on principles of measurement other than those described in this section must be approved in advance of use by the Administrator. For radionuclides not listed in Table 1, any of the described methods may be used provided the user can demonstrate that the applicability conditions of the method have been met.

The type of method applicable to the analysis of a radionuclide is dependent upon the type of radiation emitted, i.e., alpha, beta or gamma. Therefore, the methods described below are grouped according to principles of measurements for the analysis of alpha, beta and gamma emitting radionuclides.

3.1 Methods for Alpha Emitting Radionuclides

3.1.1 Method A–1, Radiochemistry-Alpha Spectrometry.

Principle: The element of interest is separated from other elements, and from the sample matrix using radiochemical techniques. The procedure may involve precipitation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet in a very thin film by electrodeposition or by coprecipitation on a very small amount of carrier, such as lanthanum fluoride. The deposited element is then counted with an alpha spectrometer. The activity of the nuclide of interest is measured by the number of alpha counts in the appropriate energy region. A correction for chemical yield and counting efficiency is made using a standardized radioactive nuclide (tracer) of the same element. If a radioactive tracer is not available for the element of interest, a predetermined chemical yield factor may be used.

Applicability: This method is applicable for determining the activity of any alpha-emitting radionuclide, regardless of what other radionuclides are present in the sample provided the chemical separation step produces a very thin sample and removes all other radionuclides which could interfere in the spectral region of interest. APHA–605(2), ASTM–D–3972(13).

3.1.2 Method A–2, Radiochemistry-Alpha Counting.

Principle: The element of interest is separated from other elements, and from the sample matrix using radiochemistry. The procedure may involve precipitation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet in a thin film and counted with a alpha counter. A correction for chemical yield (if necessary) is made. The alpha count rate measures the total activity of all emitting radionuclides of the separated element.

Applicability: This method is applicable for the measurement of any alpha-emitting radionuclide, provided no other alpha emitting radionuclide is present in the separated sample. It may also be applicable for determining compliance, when other radionuclides of the separated element are present, provided that the calculated emission rate is assigned to the radionuclide which could be present in the sample that has the highest dose conversion factor. IDO–12096(18).

3.1.3 Method A–3, Direct Alpha Spectrometry.

Principle: The sample, collected on a suitable filter, is counted directly on an alpha spectrometer. The sample must be thin enough and collected on the surface of the filter so that any absorption of alpha particle energy in the sample or the filter, which would degrade the spectrum, is minimal.

Applicability: This method is applicable to simple mixtures of alpha emitting radionuclides and only when the amount of particulates collected on the filter paper are relatively small and the alpha spectra is adequately resolved. Resolutions should be 50 keV (FWHM) or better, ASTM–D–3084(16).

3.1.4 Method A–4, Direct Alpha Counting (Gross alpha determination).

Principle: The sample, collected on a suitable filter, is counted with an alpha counter. The sample must be thin enough so that self-absorption is not significant and the filter must be of such a nature that the particles are retained on the surface.

Applicability: Gross alpha determinations may be used to measure emissions of specific radionuclides only (1) when it is known that the sample contains only a single radionuclide, or the identity and isotopic ratio of the radionuclides in the sample are well-known, and (2) measurements using either Method A–1, A–2 or A–5 have shown that this method provides a reasonably accurate measurement of the emission rate. Gross alpha measurements are applicable to unidentified mixtures of radionuclides only for the purposes and under the conditions described in section 3.7. APHA–601(3), ASTM–D–1943(10).

3.1.5 Method A–5, Chemical Determination of Uranium.

Principle: Uranium may be measured chemically by either colorimetry or fluorometry. In both procedures, the sample is dissolved, the uranium is oxidized to the hexavalent form and extracted into a suitable solvent. Impurities are removed from the solvent layer. For colorimetry, dibenzoylmethane is added, and the uranium is measured by the absorbance in a colorimeter. For fluorometry, a portion of the solution is fused with a sodium fluoride-lithium fluoride flux and the uranium is determined by the ultraviolet activated fluorescence of the fused disk in a fluorometer.

Applicability: This method is applicable to the measurements of emission rates of uranium when the isotopic ratio of the uranium radionuclides is well known. ASTM–E–318(15), ASTM–D–2907(14).

3.1.6 Method A–6, Radon-222—Continuous Gas Monitor.

Principle: Radon-222 is measured directly in a continuously extracted sample stream by passing the air stream through a calibrated scintillation cell. Prior to the scintillation cell, the air stream is treated to remove particulates and excess moisture. The alpha particles from radon-222 and its decay products strike a zinc sulfide coating on the inside of the scintillation cell producing light pulses. The light pulses are detected by a photomultiplier tube which generates electrical pulses. These pulses are processed by the system electronics and the read out is in pCi/l of radon-222.

Applicability: This method is applicable to the measurement of radon-222 in effluent

streams which do not contain significant quantities of radon-220. Users of this method should calibrate the monitor in a radon calibration chamber at least twice per year. The background of the monitor should also be checked periodically by operating the instrument in a low radon environment. EPA 520/1–89–009(24).

3.1.7 Method A–7, Radon-222-Alpha Track Detectors

Principle: Radon-222 is measured directly in the effluent stream using alpha track detectors (ATD). The alpha particles emitted by radon-222 and its decay products strike a small plastic strip and produce submicron damage tracks. The plastic strip is placed in a caustic solution that accentuates the damage tracks which are counted using a microscope or automatic counting system. The number of tracks per unit area is correlated to the radon concentration in air using a conversion factor derived from data generated in a radon calibration facility.

Applicability: Prior approval from EPA is required for use of this method. This method is only applicable to effluent streams which do not contain significant quantities of radon-220, unless special detectors are used to discriminate against radon-220. This method may be used only when ATDs have been demonstrated to produce data comparable to data obtained with Method A–6. Such data should be submitted to EPA when requesting approval for the use of this method. EPA 520/1–89–009(24).

3.2 Methods for Gaseous Beta Emitting Radionuclides.

3.2.1 Method B–1, Direct Counting in Flow-Through Ionization Chambers.

Principle: An ionization chamber containing a specific volume of gas which flows at a given flow rate through the chamber is used. The sample (effluent stream sample) acts as the counting gas for the chamber. The activity of the radionuclide is determined from the current measured in the ionization chamber.

Applicability: This method is applicable for measuring the activity of a gaseous beta-emitting radionuclide in an effluent stream that is suitable as a counting gas, when no other beta-emitting nuclides are present. DOE/EP–0096(17), NCRP–58(23).

3.2.2 Method B–2, Direct Counting With In-line or Off-line Beta Detectors.

Principle: The beta detector is placed directly in the effluent stream (in-line) or an extracted sample of the effluent stream is passed through a chamber containing a beta detector (off-line). The activities of the radionuclides present in the effluent stream are determined from the beta count rate, and a knowledge of the radionuclides present and the relationship of the gross beta count rate and the specific radionuclide concentration.

Applicability: This method is applicable only to radionuclides with maximum beta particle energies greater then 0.2 MeV. This method may be used to measure emissions of specific radionuclides only when it is known that the sample contains only a single radionuclide or the identity and isotopic ratio of the radionuclides in the effluent stream are well known. Specific radionuclide analysis of periodic grab samples may be used to identify the types and quantities of radionuclides present and to establish the relationship between specific radionuclide analyses and gross beta count rates.

This method is applicable to unidentified mixtures of gaseous radionuclides only for the purposes and under the conditions described in section 3.7.

3.3 Methods for Non-Gaseous Beta Emitting Radionuclides.

3.3.1 Method B–3, Radiochemistry-Beta-Counting.

Principle: The element of interest is separated from other elements, and from the sample matrix by radiochemistry. This may involve precipitation, distillation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet, and counted with a beta counter. Corrections for chemical yield, and decay (if necessary) are made. The beta count rate determines the total activity of all radionuclides of the separated element. This method may also involve the radiochemical separation and counting of a daughter element, after a suitable period of ingrowth, in which case it is specific for the parent nuclide.

Applicability: This method is applicable for measuring the activity of any beta-emitting radionuclide, with a maximum energy greater than 0.2 MeV, provided no other radionuclide is present in the separated sample. APHA–608(5).

3.3.2 Method B–4, Direct Beta Counting (Gross beta determination).

Principle: The sample, collected on a suitable filter, is counted with a beta counter. The sample must be thin enough so that self-absorption corrections can be made.

Applicability: Gross beta measurements are applicable only to radionuclides with maximum beta particle energies greater than 0.2 MeV. Gross beta measurements may be used to measure emissions of specific radionuclides only (1) when it is known that the sample contains only a single radionuclide, and (2) measurements made using Method B–3 show reasonable agreement with the gross beta measurement. Gross beta measurements are applicable to mixtures of radionuclides only for the purposes and under the conditions described in section 3.7. APHA–602(4), ASTM–D–1890(11).

3.3.3 Method B–5, Liquid Scintillation Spectrometry.

Principle: An aliquot of a collected sample or the result of some other chemical separation or processing technique is added to a liquid scintillation "cocktail" which is viewed by photomultiplier tubes in a liquid scintillation spectrometer. The spectrometer is adjusted to establish a channel or "window" for the pulse energy appropriate to the nuclide of interest. The activity of the nuclide of interest is measured by the counting rate in the appropriate energy channel. Corrections are made for chemical yield where separations are made.

Applicability: This method is applicable to any beta-emitting nuclide when no other radionuclide is present in the sample or the separated sample provided that it can be incorporated in the scintillation cocktail. This method is also applicable for samples which contain more than one radionuclide but only when the energies of the beta particles are sufficiently separated so that they can be resolved by the spectrometer. This method is most applicable to the measurement of low-energy beta emitters such as tritium and carbon-14. APHA–609(6), EML–LV–539–17(19).

3.4 Gamma Emitting Radionuclides

3.4.1 Method G–1, High Resolution Gamma Spectrometry.

Principle: The sample is counted with a high resolution gamma detector, usually either a Ge(Li) or a high purity Ge detector, connected to a multichannel analyzer or computer. The gamma emitting radionuclides in the sample are measured from the gamma count rates in the energy regions characteristic of the individual radionuclide. Corrections are made for counts contributed by other radionuclides to the spectral regions of the radionuclides of interest. Radiochemical separations may be made prior to counting but are usually not necessary.

Applicability: This method is applicable to the measurement of any gamma emitting radionuclide with gamma energies greater than 20 keV. It can be applied to complex mixtures of radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gases. The method may also be applied to the analysis of gaseous gamma emitting radionuclides directly in an effluent stream by passing the stream through a chamber or cell containing the detector. ASTM–3649(9), IDO–12096(18).

3.4.2 Method G–2, Low Resolution Gamma Spectrometry.

Principle: The sample is counted with a low resolution gamma detector, a thallium activated sodium iodide crystal. The detector is coupled to a photomultiplier tube and connected to a multichannel analyzer. The gamma emitting radionuclides in the sample are measured from the gamma count rates in the energy regions characteristic of the individual radionuclides. Corrections are made for counts contributed by other radionuclides to the spectral regions of the radionuclides of interest. Radiochemical separation may be used prior to counting to obtain less complex gamma spectra if needed.

Applicability: This method is applicable to the measurement of gamma emitting radionuclides with energies greater than 100 keV. It can be applied only to relatively simple mixtures of gamma emitting radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gas. The method can be applied to the analysis of gaseous radionuclides directly in an effluent stream by passing the gas stream through a chamber or cell containing the detector. ASTM–D–2459(12), EMSL–LV–0539–17(19).

3.4.3 Method G–3, Single Channel Gamma Spectrometry.

Principle: The sample is counted with a thallium activated sodium iodide crystal. The detector is coupled to a photomultiplier tube connected to a single channel analyzer. The activity of a gamma emitting radionuclide is

determined from the gamma counts in the energy range for which the counter is set.

Applicability: This method is applicable to the measurement of a single gamma emitting radionuclide. It is not applicable to mixtures of radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gas. The method can be applied to the analysis of gaseous radionuclides directly in an effluent stream by passing the gas stream through a chamber or cell containing the detector.

3.4.4 Method G–4, Gross Gamma Counting.

Principle: The sample is counted with a gamma detector usually a thallium activated sodium iodine crystal. The detector is coupled to a photomultiplier tube and gamma rays above a specific threshold energy level are counted.

Applicability: Gross gamma measurements may be used to measure emissions of specific radionuclides only when it is known that the sample contains a single radionuclide or the identity and isotopic ratio of the radionuclides in the effluent stream are well known. When gross gamma measurements are used to determine emissions of specific radionuclides periodic measurements using Methods G–1 or G–2 should be made to demonstrate that the gross gamma measurements provide reliable emission data. This method may be applied to analysis of gaseous radionuclides directly in an effluent stream by placing the detector directly in or adjacent to the effluent stream or passing an extracted sample of the effluent stream through a chamber or cell containing the detector.

3.5 Counting Methods. All of the above methods with the exception of Method A–5 involve counting the radiation emitted by the radionuclide. Counting methods applicable to the measurement of alpha, beta and gamma radiations are listed below. The equipment needed and the counting principles involved are described in detail in ASTM–3648(8).

3.5.1 Alpha Counting:

• *Gas Flow Proportional Counters.* The alpha particles cause ionization in the counting gas and the resulting electrical pulses are counted. These counters may be windowless or have very thin windows.

• *Scintillation Counters.* The alpha particles transfer energy to a scintillator resulting in a production of light photons which strike a photomultiplier tube converting the light photons to electrical pulses which are counted. The counters may involve the use of solid scintillation materials such as zinc sulfide or liquid scintillation solutions.

• *Solid-State Counters.* Semiconductor materials, such as silicon surface-barrier p-n junctions, act as solid ionization chambers. The alpha particles interact which the detector producing electron hole pairs. The charged pair is collected by an applied electrical field and the resulting electrical pulses are counted.

• *Alpha Spectrometers.* Semiconductor detectors used in conjunction with multichannel analyzers for energy discrimination.

3.5.2 Beta Counting:

• *Ionization Chambers.* These chambers contain the beta-emitting nuclide in gaseous form. The ionization current produced is measured.

• *Geiger-Muller (GM) Counters-or Gas Flow Proportional Counters.* The beta particles cause ionization in the counting gas and the resulting electrical pulses are counted. Proportional gas flow counters which are heavily shielded by lead or other metal, and provided with an anti-coincidence shield to reject cosmic rays, are called low background beta counters.

• *Scintillation Counters.* The beta particles transfer energy to a scintillator resulting in a production of light photons, which strike a photomultiplier tube converting the light photon to electrical pulses which are counted. This may involve the use of anthracene crystals, plastic scintillator, or liquid scintillation solutions with organic phosphors.

• *Liquid Scintillation Spectrometers.* Liquid scintillation counters which use two photomultiplier tubes in coincidence to reduce background counts. This counter may also electronically discriminate among pulses of a given range of energy.

3.5.3 Gamma Counting:

• *Low-Resolution Gamma Spectrometers.* The gamma rays interact with thallium activated sodium iodide or cesium iodide crystal resulting in the release of light photons which strike a photomultiplier tube converting the light pulses to electrical pulses proportional to the energy of the gamma ray. Multi-channel analyzers are used to separate and store the pulses according to the energy absorbed in the crystal.

• *High-Resolution gamma Spectrometers.* Gamma rays interact with a lithium-drifted (Ge(Li)) or high-purity germanium (HPGe) semiconductor detectors resulting in a production of electron-hole pairs. The charged pair is collected by an applied electrical field. A very stable low noise preamplifier amplifies the pulses of electrical charge resulting from the gamma photon interactions. Multichannel analyzers or computers are used to separate and store the pulses according to the energy absorbed in the crystal.

• *Single Channel Analyzers.* Thallium activated sodium iodide crystals used with a single window analyzer. Pulses from the photomultiplier tubes are separated in a single predetermined energy range.

3.5.4 Calibration of Counters. Counters are calibrated for specific radionuclide measurements using a standard of the radionuclide under either identical or very similar conditions as the sample to be counted. For gamma spectrometers a series of standards covering the energy range of interest may be used to construct a calibration curve relating gamma energy to counting efficiency.

In those cases where a standard is not available for a radionuclide, counters may be calibrated using a standard with energy characteristics as similar as possible to the radionuclide to be measured. For gross alpha and beta measurements of the unidentified mixtures of radionuclides, alpha counters are calibrated with a natural uranium standard and beta counters with a cesium-137 standard. The standard must contain the same weight and distribution of solids as the samples, and be mounted in an identical manner. If the samples contain variable amounts of solids, calibration curves relating weight of solids present to counting efficiency are prepared. Standards other than those prescribed may be used provided it can be shown that such standards are more applicable to the radionuclide mixture measured.

3.6 Radiochemical Methods for Selected Radionuclides. Methods for a selected list of radionuclides are listed in Table 1. The radionuclides listed are those which are most commonly used and which have the greatest potential for causing doses to members of the public. For radionuclides not listed in Table 1, methods based on any of the applicable "principles of measurement" described in section 3.1 through 3.4 may be used.

3.7 Applicability of Gross Alpha and Beta Measurements to Unidentified Mixtures of Radionuclides. Gross alpha and beta measurements may be used as a screening measurement as a part of an emission measurement program to identify the need to do specific radionuclide analyses or to confirm or verify that unexpected radionuclides are not being released in significant quantities.

Gross alpha (Method A–4) or gross beta (Methods B–2 or B–4) measurements may also be used for the purpose of comparing the measured concentrations in the effluent stream with the limiting "Concentration Levels for Environmental Compliance" in Table 2 of Appendix E. For unidentified mixtures, the measured concentration value shall be compared with the lowest environmental concentration limit for any radionuclide which is not known to be absent from the effluent stream.

TABLE 1.—LIST OF APPROVED METHODS FOR SPECIFIC RADIONUCLIDES

Radionuclide	Approved methods of analysis
Am-241	A–1, A–2, A–3, A–4
Ar-41	B–1, B–2, G–1, G–2, G–3, G–4
Ba-140	G–1, G–2, G–3, G–4
Br-82	G–1, G–2, G–3, G–4
C-11	B–1, B–2, G–1, G–2, G–3, G–4
C-14	B–5
Ca-45	B–3, B–4, B–5
Ce-144	G–1, G–2, G–3, G–4
Cm-244	A–1, A–2, A–3, A–4
Co-60	G–1, G–2, G–3, G–4
Cr-51	G–1, G–2, G–3, G–4
Cs-134	G–1, G–2, G–3, G–4
Cs-137	G–1, G–2, G–3, G–4
Fe-55	B–5, G–1
Fe-59	G–1, G–2, G–3, G–4
Ga-67	G–1, G–2, G–3, G–4
H-3 (H_2O)	B–5
H-3 (gas)	B–1
I-123	G–1, G–2, G–3, G–4
I-125	G–1
I-131	G–1, G–2, G–3, G–4
In-113m	G–1, G–2, G–3, G–4
Ir-192	G–1, G–2, G–3, G–4
Kr-85	B–1, B–2, B–5, G–1, G–2, G–3, G–4
Kr-87	B–1, B–2, G–1, G–2, G–3, G–4

TABLE 1.—LIST OF APPROVED METHODS FOR SPECIFIC RADIONUCLIDES—Continued

Radionuclide	Approved methods of analysis
Kr-88	B-1, B-2, G-1, G-2, G-3, G-4
Mn-54	G-1, G-2, G-3, G-4
Mo-99	G-1, G-2, G-3, G-4
N-13	B-1, B-2, G-1, G-2, G-3, G-4
O-15	B-1, B-2, G-1, G-2, G-3, G-4
P-32	B-3, B-4, B-5
Pm-147	B-3, B-4, B-5
Po-210	A-1, A-2, A-3, A-4
Pu-238	A-1, A-2, A-3, A-4
Pu-239	A-1, A-2, A-3, A-4
Pu-240	A-1, A-2, A-3, A-4
S-35	B-5
Se-75	G-1, G-2, G-3, G-4
Sr-90	B-3, B-4, B-5
Tc-99	B-3, B-4, B-5
Te-201	G-1, G-2, G-3, G-4
Uranium (total alpha)	A-1, A-2, A-3, A-4
Uranium (Isotopic)	A-1, A-3
Uranium (Natural)	A-5
Xe-133	G-1
Yb-169	G-1, G-2, G-3, G-4
Zn-65	G-1, G-2, G-3, G-4

4. Quality Assurance Methods

Each facility required to measure their radionuclide emissions shall conduct a quality assurance program in conjunction with the radionuclide emission measurements. This program shall assure that the emission measurements are representative, and are of known precision and accuracy and shall include administrative controls to assure prompt response when emission measurements indicate unexpectedly large emissions. The program shall consist of a system of policies, organizational responsibilities, written procedures, data quality specifications, audits, corrective actions and reports. This quality assurance program shall include the following program elements:

4.1 The organizational structure, functional responsibilities, levels of authority and lines of communications for all activities related to the emissions measurement program shall be identified and documented.

4.2 Administrative controls shall be prescribed to ensure prompt response in the event that emission levels increase due to unplanned operations.

4.3 The sample collection and analysis procedures used in measuring the emissions shall be described including where applicable:

4.3.1 Identification of sampling sites and number of sampling points, including the rationale for site selections.

4.3.2 A description of sampling probes and representativeness of the samples.

4.3.3 A description of any continuous monitoring system used to measure emissions, including the sensitivity of the system, calibration procedures and frequency of calibration.

4.3.4 A description of the sample collection systems for each radionuclide measured, including frequency of collection, calibration procedures and frequency of calibration.

4.3.5 A description of the laboratory analysis procedures used for each radionuclide measured, including frequency of analysis, calibration procedures and frequency of calibration.

4.3.6 A description of the sample flow rate measurement systems or procedures, including calibration procedures and frequency of calibration.

4.3.7 A description of the effluent flow rate measurement procedures, including frequency of measurements, calibration procedures and frequency of calibration.

4.4 The objectives of the quality assurance program shall be documented and shall state the required precision, accuracy and completeness of the emission measurement data including a description of the procedures used to assess these parameters. Accuracy is the degree of agreement of a measurement with a true or known value. Precision is a measure of the agreement among individual measurements of the same parameters under similar conditions. Completeness is a measure of the amount of valid data obtained compared to the amount expected under normal conditions.

4.5 A quality control program shall be established to evaluate and track the quality of the emissions measurement data against preset criteria. The program should include where applicable a system of replicates, spiked samples, split samples, blanks and control charts. The number and frequency of such quality control checks shall be identified.

4.6 A sample tracking system shall be established to provide for positive identification of samples and data through all phases of the sample collection, analysis and reporting system. Sample handling and preservation procedures shall be established to maintain the integrity of samples during collection, storage and analysis.

4.7 Periodic internal and external audits shall be performed to monitor compliance with the quality assurance program. These audits shall be performed in accordance with written procedures and conducted by personnel who do not have responsibility for performing any of the operations being audited.

4.8 A corrective action program shall be established including criteria for when corrective action is needed, what corrective actions will be taken and who is responsible for taking the corrective action.

4.9 Periodic reports to responsible management shall be prepared on the performance of the emissions measurements program. These reports should include assessment of the quality of the data, results of audits and description of corrective actions.

4.10 The quality assurance program should be documented in a quality assurance project plan which should address each of the above requirements.

5. References

(1) American National Standards Institute, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities", ANSI-N13.1-1969, American National Standards Institute, New York, New York (1969).

(2) American Public Health Association, "Methods of Air Sampling", 2nd Edition, Method 605, "Tentative Method of Analysis for Plutonium Content of Atmospheric Particulate Matter". American Public Health Association, New York, NY (1977).

(3) Ibid, Method 601, "Tentative Method of Analysis for Gross Alpha Radioactivity Content of the Atmosphere".

(4) Ibid, Method 602, "Tentative Method of the Analysis for Gross Beta Radioactivity Content of the Atmosphere".

(5) Ibid, Method 608, "Tentative Method of Analysis for Strontium-90 Content of Atmospheric Particulate Matter".

(6) Ibid, Method 609, "Tentative Method of Analysis for Tritium Content of the Atmosphere".

(7) Ibid, Method 603, "Tentative Method of Analysis for Iodine-131 Content of the Atmosphere".

(8) American Society for Testing and Materials, 1986 Annual Book ASTM Standards, Designation D-3648-78, "Standard Practices for the Measurement of Radioactivity". American Society for Testing and Materials, Philadelphia, PA (1986).

(9) Ibid, Designation D-3649-85, "Standard Practice for High Resolution Gamma Spectrometry".

(10) Ibid, Designation D-1943-81, "Standard Test Method for Alpha Particle Radioactivity of Water".

(11) Ibid, Designation D-1890-81, "Standard Test Method for Beta Particle Radioactivity of Water".

(12) Ibid, Designation D-2459-72, "Standard Test Method for Gamma Spectrometry of Water".

(13) Ibid, Designation D-3972-82, "Standard Test Method for Isotopic Uranium in Water by Radiochemistry".

(14) Ibid, Designation D-2907-83, "Standard Test Methods for Microquantities of Uranium in Water by Fluorometry".

(15) Ibid, Designation E-318, "Standard Test Method for Uranium in Aqueous Solutions by Colorimetry".

(16) Ibid, Designation D-3084-75, "Standard Practice for Alpha Spectrometry of Water".

(17) Corley, J.P. and C.D. Corbit, "A Guide for Effluent Radiological Measurements at DOE Installations", DOE/EP-0096, Pacific Northwest Laboratories, Richland, Washington (1983).

(18) Department of Energy, "RESL Analytical Chemistry Branch Procedures Manual", IDO-12096, U.S. Department of Energy, Idaho Falls, Idaho (1982).

(19) Environmental Protection Agency, "Radiochemical Analytical Procedures for Analysis of Environmental Samples", EMSL-LV-0539-17, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Las Vegas, Nevada (1979).

(20) Environmental Protection Agency, "Radiochemistry Procedures Manual", EPA 520/5-84-006, Eastern Environmental Radiation Facility, Montgomery, Alabama (1984).

(21) National Council on Radiation Protection and Measurements, NCRP Report

No. 50, "Environmental Radiation Measurements", National Council on Radiation Protection and Measurement, Bethesda, Maryland (1976).

(22) Ibid, Report No. 47, "Tritium Measurement Techniques". (1976).

(23) Ibid, Report No. 58 "A Handbook of Radioactivity Measurement Procedures" (1985).

(24) Environmental Protection Agency, "Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1–89–009, U.S. Environmental Protection Agency, Washington, DC (1989).

8. By adding Method 115 to the list of methods in Appendix B to part 61 to read as follows:

Method 115—Monitoring for Radon-222 Emissions

This Appendix describes the monitoring methods which must be used in determining the radon-222 emissions from underground uranium mines, uranium mill tailings piles, phosphogypsum stacks, and other piles of waste material emitting radon.

1. Radon-222 Emissions from Underground Uranium Mine Vents

1.1 Sampling Frequency and Calculation of Emissions. Radon-222 emissions from underground uranium mine vents shall be determined using one of the following methods:

1.1.1 Continuous Measurement. These measurements shall be made and the emissions calculated as follows:

(a) The radon-222 concentration shall be continuously measured at each mine vent whenever the mine ventilation system is operational.

(b) Each mine vent exhaust flow rate shall be measured at least 4 times per year.

(c) A weekly radon-222 emission rate for the mine shall be calculated and recorded weekly as follows:

$$A_w = C_1Q_1T_1 + C_2Q_2T_2 + \ldots C_iQ_iT_i$$

Where:

A_w = Total radon-222 emitted from the mine during week (Ci)

C_i = Average radon-222 concentration in mine vent i(Ci/m³)

Q_i = Volumetric flow rate from mine vent i(m³/hr)

T_i = Hours of mine ventilation system operation during week for mine vent i(hr)

(d) The annual radon-222 emission rate is the sum of the weekly emission rates during a calendar year.

1.1.2 Periodic Measurement. This method is applicable only to mines that continuously operate their ventilation system except for extended shutdowns. Mines which start up and shut down their ventilation system frequently must use the continuous measurement method describe in Section 1.1.1 above. Emission rates determined using periodic measurements shall be measured and calculated as follows:

(a) The radon-222 shall be continuously measured at each mine vent for at least one week every three months.

(b) Each mine vent exhaust flow rate shall be measured at least once during each of the radon-222 measurement periods.

(c) A weekly radon-222 emission rate shall be calculated for each weekly period according to the method described in Section 1.1.1. In this calculation T = 168 hr.

(d) The annual radon-222 emission rate from the mine should be calculated as follows:

$$A_y = \frac{52 - W_s}{n} \quad (A_{w1} + A_{w2} + \ldots A_{wi})$$

Where:

A_y = Annual radon-222 emission rate from the mine(Ci)

A_{wi} = Weekly radon-222 emission rate during the measurement period i (Ci)

n = Number of weekly measurement periods per year

W_s = Number of weeks during the year that the mine ventilation system is shut down in excess of 7 consecutive days, i.e. the sum of the number of weeks each shut down exceeds 7 days

1.2 Test Methods and Procedures

Each underground mine required to test its emissions, unless an equivalent or alternative method has been approved by the Administrator, shall use the following test methods:

1.2.1 Test Method 1 of Appendix A to part 60 shall be used to determine velocity traverses. The sampling point in the duct shall be either the centroid of the cross section or the point of average velocity.

1.2.2 Test Method 2 of Appendix A to part 60 shall be used to determine velocity and volumetric flow rates.

1.2.3 Test Methods A–6 or A–7 of Appendix B, Method 114 to part 61 shall be used for the analysis of radon–222. Use of Method A–7 requires prior approval of EPA based on conditions described in Appendix B.

1.2.4 A quality assurance program shall be conducted in conformance with the programs described for Continuous Radon Monitors and Alpha Track Detectors in EPA 520/1–89–009. (2)

2. Radon–222 Emissions from Uranium Mill Tailings Piles

2.1 Measurement and Calculation of Radon Flux from Uranium Mill Tailings Piles.

2.1.1 Frequency of Flux Measurement. A single set of radon flux measurements may be made, or if the owner or operator chooses, more frequent measurements may be made over a one year period. These measurements may involve quarterly, monthly or weekly intervals. All radon measurements shall be made as described in paragraphs 2.1.2 through 2.1.6 except that for measurements made over a one year period, the requirement of paragraph 2.1.4(c) shall not apply. The mean radon flux from the pile shall be the arithmetic mean of the mean radon flux for each measurement period. The weather conditions, moisture content of the tailings and area of the pile covered by water existing at the time of the measurement shall be chosen so as to provide measurements representative of the long term radon flux from the pile and shall be subject to EPA review and approval.

2.1.2 Distribution of Flux Measurements. The distribution and number of radon flux measurements required on a pile will depend on clearly defined areas of the pile (called regions) that can have significantly different radon fluxes due to surface conditions. The mean radon flux shall be determined for each individual region of the pile. Regions that shall be considered for operating mill tailings piles are:

(a) Water covered areas,
(b) Water saturated areas (beaches),
(c) Dry top surface areas, and
(d) Sides, except where earthen material is used in dam construction.

For mill tailings after disposal the pile shall be considered to consist of only one region.

2.1.3 Number of Flux Measurements. Radon flux measurements shall be made within each region on the pile, except for those areas covered with water. Measurements shall be made at regularly spaced locations across the surface of the region, realizing that surface roughness will prohibit measurements in some areas of a region. The minimum number of flux measurements considered necessary to determine a representative mean radon flux value for each type of region on an operating pile is:

(a) Water covered area—no measurements required as radon flux is assumed to be zero,
(b) Water saturated beaches—100 radon flux measurements,
(c) Loose and dry top surface—100 radon flux measurements,
(d) Sides—100 radon flux measurements, except where earthern material is used in dam construction.

For a mill tailings pile after disposal which consists of only one region a minimum of 100 measurements are required.

2.1.4 Restrictions to Radon Flux Measurements. The following restrictions are placed on making radon flux measurements:

(a) Measurements shall not be initiated within 24 hours of a rainfall.
(b) If a rainfall occurs during the 24 hour measurements period, the measurement is invalid if the seal around the lip of the collector has washed away or if the collector is surrounded by water.
(c) Measurements shall not be performed if the ambient temperature is below 35°F or if the ground is frozen.

2.1.5 Areas of Pile Regions. The approximate area of each region of the pile shall be determined in units of square meters.

2.1.6 Radon Flux Measurement. Measuring radon flux involves the adsorption of radon on activated charcoal in a large-area collector. The radon collector is placed on the surface of the pile area to be measured and allowed to collect radon for a time period of 24 hours. The radon collected on the charcoal is measured by gamma–ray spectroscopy. The detailed measurement procedure provided in Appendix A of EPA 520/5–85–0029(1) shall be used to measure the radon flux on uranium mill tailings, except the surface of the tailings shall not be penetrated by the lip of the radon collector as directed in the procedure, rather the collector shall be

carefully positioned on a flat surface with soil or tailings used to seal the edge.

2.1.7 Calculations. The mean radon flux for each region of the pile and for the total pile shall be calculated and reported as follows:

(a) The individual radon flux calculations shall be made as provided in Appendix A EPA 86 (1). The mean radon flux for each region of the pile shall be calculated by summing all individual flux measurements for the region and dividing by the total number of flux measurements for the region.

(b) The mean radon flux for the total uranium mill tailings pile shall be calculated as follows.

$$J_s = \frac{J_1 A_1 + \ldots J_2 A_2 \ldots J_i A_i}{A_t}$$

Where:
J_s = Mean flux for the total pile (pCi/m²-s)
J_i = Mean flux measured in region i (pCi/m²-s)
A_i = Area of region i (m²)
A_t = Total area of the pile (m²)

2.1.8 Reporting. The results of individual flux measurements, the approximate locations on the pile, and the mean radon flux for each region and the mean radon flux for the total stack shall be included in the emission test report. Any condition or unusual event that occurred during the measurements that could significantly affect the results should be reported.

3.0 Radon-222 Emissions from Phosphogypsum Stacks.

3.1 Measurement and Calculation of the Mean Radon Flux. Radon flux measurements shall be made on phosphogypsum stacks as described below:

3.1.1 Frequency of Measurements. A single set of radon flux measurements may be made after the phosphogypsum stack becomes inactive, or if the owner or operator chooses, more frequent measurements may be made over a one year period. These measurements may involve quarterly, monthly or weekly intervals. All radon measurements shall be made as described in paragraphs 3.1.2 through 3.1.6 except that for measurements made over a one year period, the requirement of paragraph 3.1.4(c) shall not apply. For measurements made over a one year period, the radon flux shall be the arithmetic mean of the mean radon flux for each measurement period.

3.1.2 Distribution and Number of Flux Measurements. The distribution and number of radon flux measurements required on a stack will depend on clearly defined areas of the stack (called regions) that can have significantly different radon fluxes due to surface conditions. The mean radon flux shall be determined for each individual region of the stack. Regions that shall be considered are:

(a) Water covered areas,
(b) Water saturated areas (beaches),
(c) Loose and dry top surface areas,
(d) Hard-packed roadways, and
(e) Sides.

3.1.3 Number of Flux Measurements. Radon flux measurements shall be made within each region on the phosphogypsum stack, except for those areas covered with water. Measurements shall be made at regularly spaced locations across the surface of the region, realizing that surface roughness will prohibit measurements in some areas of a region. The minimum number of flux measurements considered necessary to determine a representative mean radon flux value for each type of region is:

(a) Water covered area—no measurements required as radon flux is assumed to be zero,
(b) Water saturated beaches—50 radon flux measurements,
(c) Loose and dry top surface—100 radon flux measurements,
(d) Hard-packed roadways—50 radon flux measurements, and
(e) Sides—100 radon flux measurements.

A minimum of 300 measurements are required. A stack that has no water cover can be considered to consist of two regions, top and sides, and will require a minimum of only 200 measurements.

3.1.4 Restrictions to Radon Flux Measurements. The following restrictions are placed on making radon flux measurements:

(a) Measurements shall not be initiated within 24 hours of a rainfall.
(b) If a rainfall occurs during the 24 hour measurement period, the measurement is invalid if the seal around the lip of the collector has washed away or if the collector is surrounded by water.
(c) Measurements shall not be performed if the ambient temperature is below 35 °F or if the ground is frozen.

3.1.5 Areas of Stack Regions. The approximate area of each region of the stack shall be determined in units of square meters.

3.1.6 Radon Flux Measurements. Measuring radon flux involves the adsorption of radon on activated charcoal in a large-area collector. The radon collector is placed on the surface of the stack area to be measured and allowed to collect radon for a time period of 24 hours. The radon collected on the charcoal is measured by gamma-ray spectroscopy. The detailed measurement procedure provided in Appendix A of EPA 520/5-85-0029(1) shall be used to measure the radon flux on phosphogypsum stacks, except the surface of the phosphogypsum shall not be penetrated by the lip of the radon collector as directed in the procedure, rather the collector shall be carefully positioned on a flat surface with soil or phosphogypsum used to seal the edge.

3.1.7 Calculations. The mean radon flux for each region of the phosphogypsum stack and for the total stack shall be calculated and reported as follows:

(a) The individual radon flux calculations shall be made as provided in Appendix A EPA 86 (1). The mean radon flux for each region of the stack shall be calculated by summing all individual flux measurements for the region and dividing by the total number of flux measurements for the region.

(b) The mean radon flux for the total phosphogypsum stack shall be calculated as follows.

$$J_s = \frac{J_1 A_1 + J_2 A_2 + \ldots J_i A_i}{A_t}$$

Where:
J_s = Mean flux for the total stack (pCi/m²-s)
J_i = Mean flux measured in region i (pCi/m²-s)
A_i = Area of region i (m²)
A_t = Total area of the stack

3.1.8 Reporting. The results of individual flux measurements, the approximate locations on the stack, and the mean radon flux for each region and the mean radon flux for the total stack shall be included in the emission test report. Any condition or unusual event that occurred during the measurements that could significantly affect the results should be reported.

4.0 Quality Assurance Procedures for Measuring Rn-222 Flux

A. Sampling Procedures

Records of field activities and laboratory measurements shall be maintained. The following information shall be recorded for each charcoal canister measurement:

(a) Site
(b) Name of pile
(c) Sample location
(d) Sample ID number
(e) Date and time on
(f) Date and time off
(g) Observations of meteorological conditions and comments

Records shall include all applicable information associated with determining the sample measurement, calculations, observations, and comments.

B. Sample Custody

Custodial control of all charcoal samples exposed in the field shall be maintained in accordance with EPA chain-of-custody field procedures. A control record shall document all custody changes that occur between the field and laboratory personnel.

C. Calibration Procedures and Frequency

The radioactivity of two standard charcoal sources, each containing a carefully determined quantity of radium-226 uniformly distributed through 180g of activated charcoal, shall be measured. An efficiency factor is computed by dividing the average measured radioactivity of the two standard charcoal sources, minus the background, in cpm by the known radioactivity of the charcoal sources in dpm. The same two standard charcoal sources shall be counted at the beginning and at the end of each day's counting as a check of the radioactivity counting equipment. A background count using unexposed charcoal should also be made at the beginning and at the end of each counting day to check for inadvertent contamination of the detector or other changes affecting the background. The unexposed charcoal comprising the blank is changed with each new batch of charcoal used.

D. Internal Quality Control Checks and Frequency

The charcoal from every tenth exposed canister shall be recounted. Five percent of the samples analyzed shall be either blanks (charcoal having no radioactivity added) or

samples spiked with known quantities of radium-226.

E. Data Precision, Accuracy, and Completeness

The precision, accuracy, and completeness of measurements and analyses shall be within the following limits for samples measuring greater than 1.0 pCi/m^2-s.

(a) Precision: 10%

(b) Accuracy: ±10%

(c) Completeness: at least 85% of the measurements must yield useable results.

5.0 References

(1) Hartley, J.N. and Freeman, H.D., "Radon Flux Measurements on Gardinier and Royster Phosphogypsum Piles Near Tampa and Mulberry, Florida," U.S. Environmental Protection Agency Report, EPA 520/5–85–029, January 1986.

(2) Environmental Protection Agency, "Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1–89–009, U.S. Environmental Protection Agency, Washington, DC. (1989).

9. By adding Appendix D to part 61 to read as follows:

Appendix D to Part 61—Methods for Estimating Radionuclide Emissions

1. Purpose and Background

Facility owners or operators may estimate radionuclide emissions to the atmosphere for dose calculations instead of measuring emissions. Particulate emissions from mill tailings piles should be estimated using the procedures listed in reference #2. All other emissions may be estimated by using the "Procedures" listed below, or using the method described in reference #1.

2. Procedure

To estimate emissions to the atmosphere:

(a) Determine the amount (in curies) used at facilities for the period under consideration. Radioactive materials in sealed packages that remain unopened, and have not leaked during the assessment period should not be included in the calculation.

(b) Multiply the amount used by the following factors which depend on the physical state of the radionuclide. They are:

(i) 1 for gases;

(ii) 10^{-3} for liquids or particulate solids; and

(iii) 10^{-6} for solids.

If any nuclide is heated to a temperature of 100 degrees Celsius or more, boils at a temperature of 100 degrees Celsius or less, or is intentionally dispersed into the environment, it must be considered to be a gas.

(c) If a control device is installed between the place of use and the point of release, multiply emissions from (b) by an adjustment factor. These are presented in Table 1.

TABLE 1.—ADJUSTMENT TO EMISSION FACTORS FOR EFFLUENT CONTROLS

Controls	Types of radionuclides controlled	Adjustment factor to emissions	Comments and conditions
HEPA filters	Particulates	0.01	Not applicable to gaseous radionuclides; periodic testing is prudent to ensure high removal efficiency.
Fabric filter	Particulates	0.1	Monitoring would be prudent to guard against tears in filter.
Sintered metal	Particulates	1	Insufficient data to make recommendation.
Activated carbon filters	Iodine gas	0.1	Efficiency is time dependent; monitoring is necessary to ensure effectiveness.
Douglas bags: Held one week or longer for decay	Xenon	0.5/wk	Based on xenon half-life of 5.3 days;
Douglas bags: Released within one week	Xenon	1	Provides no reduction of exposure to general public.
Venturi scrubbers	Particulates	0.05	Although venturis may remove gases, variability in gaseous removal efficiency dictates adjustment factor for particulates only.
	Gases	1	
Packed bed scrubbers	Gases	0.1	Not applicable to particulates.
Electrostatic precipitators	Particulates	0.05	Not applicable for gaseous radionuclides
Xenon traps	Xenon	0.1	Efficiency is time dependent; monitoring is necessary to ensure effectiveness.
Fume hoods	All	1	Provides no reduction to general public exposures.
Vent stacks	All	1	Generally provides no reduction of exposure to general public.

References

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclides Emissions from NRC-Licensed and Non-DOE Federal Facilities", EPA 520/1–89–002, January 1989.

(2) Nuclear Regulatory Commission, "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations", U.S. Nuclear Regulatory Commission Regulatory Guide 3.59, March 1987.

10. By adding Appendix E part 61 to read as follows:

Appendix E to Part 61—Compliance Procedures Methods for Determining Compliance With Subpart I

1. Purpose and Background

This Appendix provides simplified procedures to reduce the burden on Nuclear Regulatory Commission (NRC) licensees, and non-Department of Energy Federal facilities in determining compliance with 40 CFR part 61, subpart I. The procedures consist of a series of increasingly more stringent steps, depending on the facility's potential to exceed the standard.

First, a facility can be found in compliance if the quantity of radioactive material possessed during the year is less than that listed in a table of annual possession quantities. A facility will also be in compliance if the average annual radionuclide emission concentration is less than that listed in a table of air concentration levels. If the facility is not in compliance by these tables, it can establish compliance by estimating a dose using screening procedure developed by the National Council on Radiation Protection and Measurements with a radiological source term derived using EPA approved emission factors. These procedures are described in a "Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions From NRC-Licenced and Non-DOE Federal Facilities."

A user-friendly computer program called COMPLY has been developed to reduce the burden on the regulated community. The Agency has also prepared a "User's Guide for the COMPLY Code" to assist the regulated community in using the code, and in handling more complex situations such as multiple release points. The basis for these compliance procedures are provided in "Background Information Document: Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I". The compliance model is the highest level in the COMPLY computer code and provides for the most realistic assessment of dose by allowing the use of site-specific information.

2. Table of Annual Possession Quantity

(a) Table 1 may be used for determining if facilities are in compliance with the standard. The possession table can only be used if the following conditions are met:

(i) No person lives within 10 meters of any release point; and

(ii) No milk, meat, or vegetables are produced within 100 meters of any release point.

(b) Procedures described in Reference (1) shall be used to determine compliance or exemption from reporting by use of Table 2.

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Ac-225	9.6E−05	9.6E−02	9.6E+01
Ac-227	1.6E−07	1.6E−04	1.6E−01
Ac-228	3.4E−03	3.4E+00	3.4E+03
Ag-106	1.6E+00	1.6E+03	1.6E+06
Ag-106m	2.6E−03	2.6E+00	2.6E+03
Ag-108m	6.5E−06	6.5E−03	6.5E+00
Ag-110m	9.4E−05	9.4E−02	9.4E+01
Ag-111	6.7E−02	6.7E+01	6.7E+04
Al-26	4.0E−06	4.0E−03	4.0E+00
Am-241	2.3E−06	2.3E−03	2.3E+00
Am-242	1.8E−02	1.8E+01	1.8E+04
Am-242m	2.5E−06	2.5E−03	2.5E+00
Am-243	2.3E−06	2.3E−03	2.3E+00
Am-244	4.6E−02	4.6E+01	4.6E+04
Am-245	7.0E+00	7.0E+03	7.0E+06
Am-246	9.8E−01	9.8E+02	9.8E+05
Ar-37	1.4E+06		
Ar-41	1.4E+00		
As-72	2.9E−02	2.9E+01	2.9E+04
As-73	6.0E−02	6.0E+01	6.0E+04
As-74	4.3E−03	4.3E+00	4.3E+03
As-76	8.8E−02	8.8E+01	8.8E+04
As-77	7.9E−01	7.9E+02	7.9E+05
At-211	1.0E−02	1.0E+01	1.0E+04
Au-193	4.2E−01	4.2E+02	4.2E+05
Au-194	3.5E−02	3.5E+01	3.5E+04
Au-195	3.3E−03	3.3E+00	3.3E+03
Au-198	4.6E−02	4.6E+01	4.6E+04
Au-199	1.5E−01	1.5E+02	1.5E+05
Ba-131	1.0E−02	1.0E+01	1.0E+04
Ba-133	4.9E−05	4.9E−02	4.9E+01
Ba-133m	9.3E−02	9.3E+01	9.3E+04
Ba-135m	5.8E−01	5.8E+02	5.8E+05
Ba-139	4.7E+00	4.7E+03	4.7E+06
Ba-140	2.1E−03	2.1E+00	2.1E+03
Ba-141	1.3E+00	1.3E+03	1.3E+06
Ba-142	1.1E+00	1.1E+03	1.1E+06
Be-7	2.3E−02	2.3E+01	2.3E+04
Be-10	3.0E−03	3.0E+00	3.0E+03
Bi-206	3.1E−03	3.1E+00	3.1E+03
Bi-207	8.4E−06	8.4E−03	8.4E+00
Bi-210	4.2E−03	4.2E+00	4.2E+03
Bi-212	4.7E−02	4.7E+01	4.7E+04
Bi-213	6.0E−02	6.0E+01	6.0E+04
Bi-214	1.4E−01	1.4E+02	1.4E+05
Bk-249	7.0E−04	7.0E−01	7.0E+02
Bk-250	1.0E−01	1.0E+02	1.0E+05
Br-77	7.5E−02	7.5E+01	7.5E+04
Br-80	1.2E+01	1.2E+04	1.2E+07
Br-80m	1.5E+00	1.5E+03	1.5E+06
Br-82	1.6E−02	1.6E+01	1.6E+04
Br-83	9.9E+00	9.9E+03	9.9E+06
Br-84	5.6E−01	5.6E+02	5.6E+05
C-11	1.3E+00	1.3E+03	1.3E+06
C-14	2.9E−01	2.9E+02	2.9E+05
Ca-41	2.7E−02	2.7E+01	2.7E+04
Ca-45	5.8E−02	5.8E+01	5.8E+04
Ca-47	1.1E−02	1.1E+01	1.1E+04
Cd-109	5.0E−03	5.0E+00	5.0E+03
Cd-113	3.3E−04	3.3E−01	3.3E+02
Cd-113m	4.4E−04	4.4E−01	4.4E+02
Cd-115	5.4E−02	5.4E+01	5.4E+04
Cd-115m	1.0E−02	1.0E+01	1.0E+04
Cd-117	5.6E−02	5.6E+01	5.6E+04
Cd-117m	1.3E−01	1.3E+02	1.3E+05
Ce-139	2.6E−03	2.6E+00	2.6E+03
Ce-141	1.8E−02	1.8E+01	1.8E+04
Ce-143	1.0E−01	1.0E+02	1.0E+05
Ce-144	1.7E−03	1.7E+00	1.7E+03
Cf-248	2.0E−05	2.0E−02	2.0E+01
Cf-249	1.7E−06	1.7E−03	1.7E+00
Cf-250	4.0E−06	4.0E−03	4.0E+00
Cf-251	1.7E−06	1.7E−03	1.7E+00
Cf-252	6.4E−06	6.4E−03	6.4E+00
Cf-253	3.3E−04	3.3E−01	3.3E+02

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Cl-254	3.6E−06	3.6E−03	3.6E+00
Cl-36	1.9E−04	1.9E−01	1.9E+02
Cl-38	6.5E−01	6.5E+02	6.5E+05
Cm-242	6.0E−05	6.0E−02	6.0E+01
Cm-243	3.3E−06	3.3E−03	3.3E+00
Cm-244	4.2E−06	4.2E−03	4.2E+00
Cm-245	2.3E−06	2.3E−03	2.3E+00
Cm-246	2.3E−06	2.3E−03	2.3E+00
Cm-247	2.3E−06	2.3E−03	2.3E+00
Cm-248	6.4E−07	6.4E−04	6.4E−01
Cm-249	4.6E+00	4.6E+03	4.6E+06
Cm-250	1.1E−07	1.1E−04	1.1E−01
Co-56	2.4E−04	2.4E−01	2.4E+02
Co-57	1.6E−03	1.6E+00	1.6E+03
Co-58	9.0E−04	9.0E−01	9.0E+02
Co-58m	1.7E−01	1.7E+02	1.7E+05
Co-60	1.6E−05	1.6E−02	1.6E+01
Co-60m	4.0E+00	4.0E+03	4.0E+06
Co-61	3.8E+00	3.8E+03	3.8E+06
Cr-49	9.0E−01	9.0E+02	9.0E+05
Cr-51	6.3E−02	6.3E+01	6.3E+04
Cs-129	1.5E−01	1.5E+02	1.5E+05
Cs-131	2.8E−01	2.8E+02	2.8E+05
Cs-132	1.3E−02	1.3E+01	1.3E+04
Cs-134	5.2E−05	5.2E−02	5.2E+01
Cs-134m	3.2E−01	3.2E+02	3.2E+05
Cs-135	2.4E−02	2.4E+01	2.4E+04
Cs-136	2.1E−03	2.1E+00	2.1E+03
Cs-137	2.3E−05	2.3E−02	2.3E+01
Cs-138	4.4E−01	4.4E+02	4.4E+05
Cu-61	4.0E−01	4.0E+02	4.0E+05
Cu-64	5.2E−01	5.2E+02	5.2E+05
Cu-67	1.5E−01	1.5E+02	1.5E+05
Dy-157	4.4E−01	4.4E+02	4.4E+05
Dy-165	5.6E+00	5.6E+03	5.6E+06
Dy-166	8.1E−02	8.1E+01	8.1E+04
Er-169	4.0E−01	4.0E+02	4.0E+05
Er-171	3.6E−01	3.6E+02	3.6E+05
Es-253	2.6E−04	2.6E−01	2.6E+02
Es-254	2.3E−05	2.3E−02	2.3E+01
Es-254m	1.8E−03	1.8E+00	1.8E+03
Eu-152	1.6E−05	1.6E−02	1.6E+01
Eu-152m	3.5E−01	3.5E+02	3.5E+05
Eu-154	2.0E−05	2.0E−02	2.0E+01
Eu-155	5.2E−04	5.2E−01	5.2E+02
Eu-156	3.2E−03	3.2E+00	3.2E+03
F-18	5.6E−01	5.6E+02	5.6E+05
Fe-52	4.9E−02	4.9E+01	4.9E+04
Fe-55	1.4E−01	1.4E+02	1.4E+05
Fe-59	1.3E−03	1.3E+00	1.3E+03
Fm-254	1.8E−02	1.8E+01	1.8E+04
Fm-255	4.0E−03	4.0E+00	4.0E+03
Fr-223	1.4E−01	1.4E+02	1.4E+05
Ga-66	5.6E−02	5.6E+01	5.6E+04
Ga-67	1.1E−01	1.1E+02	1.1E+05
Ga-68	7.6E−01	7.6E+02	7.6E+05
Ga-72	3.6E−02	3.6E+01	3.6E+04
Gd-152	4.4E−06	4.4E−03	4.4E+00
Gd-153	2.0E−03	2.0E+00	2.0E+03
Gd-159	6.8E−01	6.8E+02	6.8E+05
Ge-68	2.3E−04	2.3E−01	2.3E+02
Ge-71	2.6E+00	2.6E+03	2.6E+06
Ge-77	1.0E−01	1.0E+02	1.0E+05
H-3	1.5E+01	1.5E+04	1.5E+07
Hf-181	2.5E−03	2.5E+00	2.5E+03
Hg-193m	9.5E−02	9.5E+01	9.5E+04
Hg-197	2.4E−01	2.4E+02	2.4E+05
Hg-197m	2.5E−01	2.5E+02	2.5E+05
Hg-203	5.2E−03	5.2E+00	5.2E+03
Ho-166	2.8E−01	2.8E+02	2.8E+05
Ho-166m	6.0E−06	6.0E−03	6.0E+00
I-123	4.9E−01	4.9E+02	4.9E+05
I-124	9.3E−03	9.3E+00	9.3E+03
I-125	6.2E−03	6.2E+00	6.2E+03

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
I-126	3.7E−03	3.7E+00	3.7E+03
I-128	9.3E+00	9.3E+03	9.3E+06
I-129	2.6E−04	2.6E−01	2.6E+02
I-130	4.6E−02	4.6E+01	4.6E+04
I-131	6.7E−03	6.7E+00	6.7E+03
I-132	2.0E−01	2.0E+02	2.0E+05
I-133	6.7E−02	6.7E+01	6.7E+04
I-134	3.2E−01	3.2E+02	3.2E+05
I-135	1.2E−01	1.2E+02	1.2E+05
In-111	4.9E−02	4.9E+01	4.9E+04
In-113m	2.1E+00	2.1E+03	2.1E+06
In-114m	4.9E−03	4.9E+00	4.9E+03
In-115	2.7E−04	2.7E−01	2.7E+02
In-115m	1.4E+00	1.4E+03	1.4E+06
In-116m	3.5E−01	3.5E+02	3.5E+05
In-117	1.3E+00	1.3E+03	1.3E+06
In-117m	7.6E−02	7.6E+01	7.6E+04
Ir-190	3.5E−03	3.5E+00	3.5E+03
Ir-192	9.7E−04	9.7E−01	9.7E+02
Ir-194	2.5E−01	2.5E+02	2.5E+05
Ir-194m	1.5E−04	1.5E−01	1.5E+02
K-40	6.8E−05	6.8E−02	6.8E+01
K-42	2.9E−01	2.9E+02	2.9E+05
K-43	6.0E−02	6.0E+01	6.0E+04
K-44	4.9E−01	4.9E+02	4.9E+05
Kr-79	7.0E+00		
Kr-81	1.8E+02		
Kr-83m	2.0E+04		
Kr-85	8.4E+02		
Kr-85m	1.1E+01		
Kr-87	2.0E+00		
Kr-88	4.2E−01		
La-140	1.6E−02	1.6E+01	1.6E+04
La-141	1.1E+00	1.1E+03	1.1E+06
La-142	2.3E−01	2.3E+02	2.3E+05
Lu-177	1.4E−01	1.4E+02	1.4E+05
Lu-177m	3.5E−04	3.5E−01	3.5E+02
Mg-28	2.1E−02	2.1E+01	2.1E+04
Mn-52	3.5E−03	3.5E+00	3.5E+03
Mn-52m	5.2E−01	5.2E+02	5.2E+05
Mn-53	5.7E−02	5.7E+01	5.7E+04
Mn-54	2.5E−04	2.5E−01	2.5E+02
Mn-56	2.5E−01	2.5E+02	2.5E+05
Mo-93	1.5E−03	1.5E+00	1.5E+03
Mo-99**	5.7E−02	5.7E+01	5.7E+04
Mo-101	8.4E−01	8.4E+02	8.4E+05
Na-22	3.2E−05	3.2E−02	3.2E+01
Na-24	2.6E−02	2.6E+01	2.6E+04
Nb-90	2.5E−02	2.5E+01	2.5E+04
Nb-93m	1.2E−02	1.2E+01	1.2E+04
Nb-94	6.0E−06	6.0E−03	6.0E+00
Nb-95	2.3E−03	2.3E+00	2.3E+03
Nb-95m	2.0E−02	2.0E+01	2.0E+04
Nb-96	2.5E−02	2.5E+01	2.5E+04
Nb-97	1.0E+00	1.0E+03	1.0E+06
Nd-147	3.0E−02	3.0E+01	3.0E+04
Nd-149	1.1E+00	1.1E+03	1.1E+06
Ni-56	2.0E−03	2.0E+00	2.0E+03
Ni-57	2.1E−02	2.1E+01	2.1E+04
Ni-59	2.2E−02	2.2E+01	2.2E+04
Ni-63	1.4E−01	1.4E+02	1.4E+05
Ni-65	7.0E−01	7.0E+02	7.0E+05
Np-235	3.0E−02	3.0E+01	3.0E+04
Np-237	1.8E−06	1.8E−03	1.8E+00
Np-238	1.9E−02	1.9E+01	1.9E+04
Np-239	1.0E−01	1.0E+02	1.0E+05
Np-240	6.5E−01	6.5E+02	6.5E+05
Np-240m	4.7E+00	4.7E+03	4.7E+06
Os-185	9.2E−04	9.2E−01	9.2E+02
Os-191m	9.0E−01	9.0E+02	9.0E+05
Os-191	3.8E−02	3.8E+01	3.8E+04
Os-193	2.9E−01	2.9E+02	2.9E+05
P-32	1.7E−02	1.7E+01	1.7E+04
P-33	1.2E−01	1.2E+02	1.2E+05

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Pa-230	6.3E−04	6.3E−01	6.3E+02
Pa-231	8.3E−07	8.3E−04	8.3E−01
Pa-233	9.3E−03	9.3E+00	9.3E+03
Pa-234	9.3E−02	9.3E+01	9.3E+04
Pb-203	8.3E−02	8.3E+01	8.3E+04
Pb-205	1.2E−02	1.2E+01	1.2E+04
Pb-209	1.1E+01	1.1E+04	1.1E+07
Pb-210	5.5E−05	5.5E−02	5.5E+01
Pb-211	1.2E−01	1.2E+02	1.2E+05
Pb-212	6.0E−03	6.0E+00	6.0E+03
Pb-214	1.2E−01	1.2E+02	1.2E+05
Pd-103	2.1E−01	2.1E+02	2.1E+05
Pd-107	8.2E−02	8.2E+01	8.2E+04
Pd-109	9.4E−01	9.4E+02	9.4E+05
Pm-143	7.6E−04	7.6E−01	7.6E+02
Pm-144	1.1E−04	1.1E−01	1.1E+02
Pm-145	5.2E−04	5.2E−01	5.2E+02
Pm-146	4.4E−05	4.4E−02	4.4E+01
Pm-147	2.6E−02	2.6E+01	2.6E+04
Pm-148	1.7E−02	1.7E+01	1.7E+04
Pm-148m	7.6E−04	7.6E−01	7.6E+02
Pm-149	2.8E−01	2.8E+02	2.8E+05
Pm-151	1.2E−01	1.2E+02	1.2E+05
Po-210	9.3E−05	9.3E−02	9.3E+01
Pr-142	2.8E−01	2.8E+02	2.8E+05
Pr-143	1.0E−01	1.0E+02	1.0E+05
Pr-144	1.5E+01	1.5E+04	1.5E+07
Pt-191	6.4E−02	6.4E+01	6.4E+04
Pt-193	2.1E−02	2.1E+01	2.1E+04
Pt-193m	4.8E−01	4.8E+02	4.8E+05
Pt-195m	1.4E−01	1.4E+02	1.4E+05
Pt-197	1.1E+00	1.1E+03	1.1E+06
Pt-197m	3.6E+00	3.6E+03	3.6E+06
Pu-236	7.0E−06	7.0E−03	7.0E+00
Pu-237	2.3E−02	2.3E+01	2.3E+04
Pu-238	2.7E−06	2.7E−03	2.7E+00
Pu-239	2.5E−06	2.5E−03	2.5E+00
Pu-240	2.5E−06	2.5E−03	2.5E+00
Pu-241	1.3E−04	1.3E−01	1.3E+02
Pu-242	2.5E−06	2.5E−03	2.5E+00
Pu-243	3.8E+00	3.8E+03	3.8E+06
Pu-244	2.4E−06	2.4E−03	2.4E+00
Pu-245	2.1E−01	2.1E+02	2.1E+05
Pu-246	4.8E−03	4.8E+00	4.8E+03
Ra-223	1.3E−04	1.3E−01	1.3E+02
Ra-224	3.2E−04	3.2E−01	3.2E+02
Ra-225	1.3E−04	1.3E−01	1.3E+02
Ra-226	5.5E−06	5.5E−03	5.5E+00
Ra-228	1.3E−05	1.3E−02	1.3E+01
Rb-81	4.2E−01	4.2E+02	4.2E+05
Rb-83	1.4E−03	1.4E+00	1.4E+03
Rb-84	2.0E−03	2.0E+00	2.0E+03
Rb-86	1.7E−02	1.7E+01	1.7E+04
Rb-87	1.0E−02	1.0E+01	1.0E+04
Rb-88	1.7E+00	1.7E+03	1.7E+06
Rb-89	6.4E−01	6.4E+02	6.4E+05
Re−184	1.8E−03	1.8E+00	1.8E+03
Re-184m	3.6E−04	3.6E−01	3.6E+02
Re-186	1.9E−01	1.9E+02	1.9E+05
Re-187	9.3E+00	9.3E+03	9.3E+06
Re-188	3.7E−01	3.7E+02	3.7E+05
Rh-103m	1.7E+02	1.7E+05	1.7E+08
Rh-105	3.4E−01	3.4E+02	3.4E+05
Ru-97	8.3E−02	8.3E+01	8.3E+04
Ru-103	3.1E−03	3.1E+00	3.1E+03
Ru-105	2.9E−01	2.9E+02	2.9E+05
Ru-106	5.9E−04	5.9E−01	5.9E+02
S-35	7.5E−02	7.5E+01	7.5E+04
Sb-117	2.0E+00	2.0E+03	2.0E+06
Sb-122	3.9E−02	3.9E+01	3.9E+04
Sb-124	6.0E−04	6.0E−01	6.0E+02
Sb-125	1.4E−04	1.4E−01	1.4E+02
Sb-126	1.8E−03	1.8E+00	1.8E+03
Sb-126m	7.6E−01	7.6E+02	7.6E+05
Sb-127	2.0E−02	2.0E+01	2.0E+04
Sb-129	1.8E−01	1.8E+02	1.8E+05
Sc-44	1.4E−01	1.4E+02	1.4E+05
Sc-46	4.0E−04	4.0E−01	4.0E+02
Sc-47	1.1E−01	1.1E+02	1.1E+05
Sc-48	1.1E−02	1.1E+01	1.1E+04
Sc-49	1.0E+01	1.0E+04	1.0E+07
Se-73	1.6E−01	1.6E+02	1.6E+05
Se-75	1.1E−03	1.1E+00	1.1E+03
Se-79	6.9E−03	6.9E+00	6.9E+03
Si-31	4.7E+00	4.7E+03	4.7E+06
Si-32	7.2E−04	7.2E−01	7.2E+02
Sm-147	1.4E−05	1.4E−02	1.4E+01
Sm-151	3.5E−02	3.5E+01	3.5E+04
Sm-153	2.4E−01	2.4E+02	2.4E+05
Sn-113	1.9E−03	1.9E+00	1.9E+03
Sn-117m	2.3E−02	2.3E+01	2.3E+04
Sn-119m	2.8E−02	2.8E+01	2.8E+04
Sn-123	1.8E−02	1.8E+01	1.8E+04
Sn-125	7.2E−03	7.2E+00	7.2E+03
Sn-126	4.7E−06	4.7E−03	4.7E+00
Sr-82	1.9E−03	1.9E+00	1.9E+03
Sr-85	1.9E−03	1.9E+00	1.9E+03
Sr-85m	1.5E+00	1.5E+03	1.5E+06
Sr-87m	1.2E+00	1.2E+03	1.2E+06
Sr-89	2.1E−02	2.1E+01	2.1E+04
Sr-90	5.2E−04	5.2E−01	5.2E+02
Sr-91	1.2E−01	1.2E+02	1.2E+05
Sr-92	2.5E−01	2.5E+02	2.5E+05
Ta-182	4.4E−04	4.4E−01	4.4E+02
Tb-157	2.2E−03	2.2E+00	2.2E+03
Tb-160	8.4E−04	8.4E−01	8.4E+02
Tc-95	9.0E−02	9.0E+01	9.0E+04
Tc-95m	1.4E−03	1.4E+00	1.4E+03
Tc-96	5.6E−03	5.6E+00	5.6E+03
Tc-96m	7.0E−01	7.0E+02	7.0E+05
Tc-97	1.5E−03	1.5E+00	1.5E+03
Tc-97m	7.2E−02	7.2E+01	7.2E+04
Tc-98	6.4E−06	6.4E−03	6.4E+00
Tc-99	9.0E−03	9.0E+00	9.0E+03
Tc-99m	1.4E+00	1.4E+03	1.4E+06
Tc-101	3.8E+00	3.8E+03	3.8E+06
Te-121	6.0E−03	6.0E+00	6.0E+03
Te-121m	5.3E−04	5.3E−01	5.3E+02
Te-123	1.2E−03	1.2E+00	1.2E+03
Te-123m	2.7E−03	2.7E+00	2.7E+03
Te-125m	1.5E−02	1.5E+01	1.5E+04
Te-127	2.9E+00	2.9E+03	2.9E+06
Te-127m	7.3E−03	7.3E+00	7.3E+03
Te-129	6.5E+00	6.5E+03	6.5E+06
Te-129m	6.1E−03	6.1E+00	6.1E+03
Te-131	9.4E−01	9.4E+02	9.4E+05
Te-131m	1.8E−02	1.8E+01	1.8E+04
Te-132	6.2E−03	6.2E+00	6.2E+03
Te-133	1.2E+00	1.2E+03	1.2E+06
Te-133m	2.9E−01	2.9E+02	2.9E+05
Te-134	4.4E−01	4.4E+02	4.4E+05
Th-226	3.0E−02	3.0E+01	3.0E+04
Th-227	6.4E−05	6.4E−02	6.4E+01
Th-228	2.9E−06	2.9E−03	2.9E+00
Th-229	4.9E−07	4.9E−04	4.9E−01
Th-230	3.2E−06	3.2E−03	3.2E+00
Th-231	8.4E−01	8.4E+02	8.4E+05
Th-232	6.0E−07	6.0E−04	6.0E−01
Th-234	2.0E−02	2.0E+01	2.0E+04
Ti-44	5.2E−06	5.2E−03	5.2E+00
Ti-45	4.0E−01	4.0E+02	4.0E+05
Tl-200	4.4E−02	4.4E+01	4.4E+04
Tl-201	1.8E−01	1.8E+02	1.8E+05
Tl-202	1.0E−02	1.0E+01	1.0E+04
Tl-204	2.5E−02	2.5E+01	2.5E+04
Tm-170	2.4E−02	2.4E+01	2.4E+04
Tm-171	5.9E−02	5.9E+01	5.9E+04
U-230	5.0E−05	5.0E−02	5.0E+01
U-231	1.4E−01	1.4E+02	1.4E+05
U-232	1.3E−06	1.3E−03	1.3E+00
U-233	7.6E−06	7.6E−03	7.6E+00
U-234	7.6E−06	7.6E−03	7.6E+00
U-235	7.0E−06	7.0E−03	7.0E+00
U-236	8.4E−06	8.4E−03	8.4E+00
U-237	4.7E−02	4.7E+01	4.7E+04
U-238	8.6E−06	8.6E−03	8.6E+00
U-239	8.3E+00	8.3E+03	8.3E+06
U-240	1.8E−01	1.8E+02	1.8E+05
V-48	1.4E−03	1.4E+00	1.4E+03
V-49	1.3E+00	1.3E+03	1.3E+06
W-181	1.1E−02	1.1E+01	1.1E+04
W-185	1.6E−01	1.6E+02	1.6E+05
W-187	1.1E−01	1.1E+02	1.1E+05
W-188	1.0E−02	1.0E+01	1.0E+04
Xe-122	7.6E−02	7.6E+01	7.6E+04
Xe-123	1.6E+00	1.6E+03	1.6E+06
Xe-125	6.0E−01		
Xe-127	7.0E+00		
Xe-129m	7.6E+01		
Xe-131m	2.2E+02		
Xe-133	5.2E+01		
Xe-133m	6.0E+01		
Xe-135	7.6E+00		
Xe-135m	4.2E+00		
Xe-138	9.9E−01		
Y-86	2.8E−02	2.8E+01	2.8E+04
Y-87	2.3E−02	2.3E+01	2.3E+04
Y-88	2.5E−04	2.5E−01	2.5E+02
Y-90	1.1E−01	1.1E+02	1.1E+05
Y-90m	4.3E−01	4.3E+02	4.3E+05
Y-91	1.8E−02	1.8E+01	1.8E+04
Y-91m	1.6E+00	1.6E+03	1.6E+06
Y-92	7.0E−01	7.0E+02	7.0E+05
Y-93	3.8E−01	3.8E+02	3.8E+05
Yb-169	5.5E−03	5.5E+00	5.5E+03
Yb-175	2.1E−01	2.1E+02	2.1E+05
Zn-62	8.6E−02	8.6E+01	8.6E+04
Zn-65	4.4E−04	4.4E−01	4.4E+02
Zn-69	2.7E+01	2.7E+04	2.7E+07
Zn-69m	2.0E−01	2.0E+02	2.0E+05
Zr-86	2.4E−02	2.4E+01	2.4E+04
Zr-88	2.7E−04	2.7E−01	2.7E+02
Zr-89	1.6E−02	1.6E+01	1.6E+04
Zr-93	2.8E−03	2.8E+00	2.8E+03
Zr-95	6.4E−04	6.4E−01	6.4E+02
Zr-97	4.6E−02	4.6E+01	4.6E+04

*Radionuclides boiling at 100 °C or less, or exposed to a temperature of 100 °C, must be considered a gas. Capsules containing radionuclides in liquid or powder form can be considered to be solids.

**Mo-99 contained in a generator to produce Technetium-99 can be assumed to be a solid.

3. Table of Concentration Levels

(a) Table 2 may be used for determining if facilities are in compliance with the standard.

1. The concentration table as applied to emission estimates can only be used if all releases are from point sources and concentrations have been measured at the stack or vent using EPA-approved methods, and the distance between each stack or vent and the nearest resident is greater than 3 times the diameter of the stack or vent. Procedures provided in Ref. (1) shall be used to determine compliance or exemption from reporting by use of Table 2.

2. The concentration table may be used to determine compliance with the standard based on environmental measurements provided these measurements are made in conformance with the requirements of § 61.107(b)(5).

4. NCRP Screening Model

The procedures described in Reference (4) may be used to determine doses to members of the general public from emissions of radionuclides to the atmosphere. Both the total dose from all radionuclides emitted, and the dose caused by radioactive iodine must be considered in accordance with the procedures in Ref. (1).

5. The COMPLY Computer Code

The COMPLY computer code may be used to determine compliance with subpart I. The compliance model in the COMPLY computer code may be used to determine the dose to members of the general public from emissions of radionuclides to the atmosphere. The EPA may add radionuclides to all or any part of COMPLY to cover radionuclides that may be used by the regulated community.

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Ac-225	9.1E−14	Bi-207	1.0E−14
Ac-227	1.6E−16	Bi-210	2.9E−13
Ac-228	3.7E−12	Bi-212	5.6E−11
Ag-106	1.9E−09	Bi-213	7.1E−11
Ag-106m.	1.2E−12	Bi-214	1.4E−10
Ag-108m.	7.1E−15	Bk-249	5.6E−13
Ag-110m.	9.1E−14	Bk-250	9.1E−11
Ag-111	2.5E−12	Br-77	4.2E−11
Al-26	4.8E−15	Br-80	1.4E−08
Am-241	1.9E−15	Br-80m	1.8E−09
Am-242	1.5E−11	Br-82	1.2E−11
Am-242m.	2.0E−15	Br-83	1.2E−08
Am-243	1.8E−15	Br-84	6.7E−10
Am-244	4.0E−11	C-11	1.5E−09
Am-245	8.3E−09	C-14	1.0E−11
Am-246	1.2E−09	Ca-41	4.2E−13
Ar-37	1.6E−03	Ca-45	1.3E−12
Ar-41	1.7E−09	Ca-47	2.4E−12
As-72	2.4E−11	Cd-109	5.9E−13
As-73	1.1E−11	Cd-113	9.1E−15
As-74	2.2E−12	Cd-113m.	1.7E−14
As-76	5.0E−11	Cd-115	1.6E−11
As-77	1.6E−10	Cd-115m.	8.3E−13
At-211	1.1E−11	Cd-117	6.7E−11
Au-193	3.8E−10	Cd-117m.	1.6E−10
Au-194	3.2E−11	Ce-139	2.6E−12
Au-195	3.1E−12	Ce-141	6.3E−12
Au-198	2.1E−11	Ce-143	3.0E−11
Au-199	4.8E−11	Ce-144	6.2E−13
Ba-131	7.1E−12	Cf-248	1.8E−14
Ba-133	5.9E−14	Cf-249	1.4E−15
Ba-133m.	5.9E−11	Cf-250	3.2E−15
Ba-135m.	1.8E−10	Cf-251	1.4E−15
Ba-139	5.6E−09	Cf-252	5.6E−15
Ba-140	1.3E−12	Cf-253	3.1E−13
Ba-141	1.4E−09	Cf-254	3.0E−15

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Ba-142	1.3E−09	Cl-36	2.7E−15
Be-7	2.3E−11	Cl-38	7.7E−10
Be-10	1.6E−12	Cm-242	5.3E−14
Bi-206	2.3E−12	Cm-243	2.6E−15
Cm-244	3.3E−15	Eu-156	1.9E−12
Cm-245	1.8E−15	F-18	6.7E−10
Cm-246	1.9E−15	Fe-52	5.6E−11
Cm-247	1.9E−15	Fe-55	9.1E−12
Cm-248	5.0E−16	Fe-59	6.7E−13
Cm-249	3.7E−09	Fm-254	2.0E−11
Cm-250	9.1E−17	Fm-255	4.3E−12
Co-56	1.8E−13	Fr-223	3.3E−11
Co-57	1.3E−12	Ga-66	6.2E−11
Co-58	6.7E−13	Ga-67	7.1E−11
Co-58m	1.2E−10	Ga-68	9.1E−10
Co-60	1.7E−14	Ga-72	3.8E−11
Co-60m	4.3E−09	Gd-152	5.0E−15
Co-61	4.5E−09	Gd-153	2.1E−12
Cr-49	1.1E−09	Gd-159	2.9E−10
Cr-51	3.1E−11	Ge-68	2.0E−13
Cs-129	1.4E−10	Ge-71	2.4E−10
Cs-131	3.3E−11	Ge-77	1.0E−10
Cs-132	4.8E−12	H-3	1.5E−09
Cs-134	2.7E−14	Hf-181	1.9E−12
Cs-134m.	1.7E−10	Hg-193m.	1.0E−10
Cs-135	4.0E−13	Hg-197	8.3E−11
Cs-136	5.3E−13	Hg-197m.	1.1E−10
Cs-137	1.9E−14	Hg-203	1.0E−12
Cs-138	5.3E−10	Ho-166	7.1E−11
Cu-61	4.8E−10	Ho-166m.	7.1E−15
Cu-64	5.3E−10	I-123	4.3E−10
Cu-67	5.0E−11	I-124	6.2E−13
Dy-157	5.0E−10	I-125	1.2E−13
Dy-165	6.7E−09	I-126	1.1E−13
Dy-166	1.1E−11	I-128	1.1E−08
Er-169	2.9E−11	I-129	9.1E−15
Er-171	4.0E−10	I-130	4.5E−11
Es-253	2.4E−13	I-131	2.1E−13
Es-254	2.0E−14	I-132	2.3E−10
Es-254m.	1.8E−12	I-133	2.0E−11
Eu-152	2.0E−14	I-134	3.8E−10
Eu-152m.	3.6E−10	I-135	1.2E−10
Eu-154	2.3E−14	In-111	3.6E−11
Eu-155	5.9E−13	In-113m.	2.5E−09
In-114m.	9.1E−13	Nb-95	2.2E−12
In-115	7.1E−14	Nb-95m	1.4E−11
In-115m.	1.6E−09	Nb-96	2.4E−11
In-116m.	4.2E−10	Nb-97	1.2E−09
In-117	1.6E−09	Nd-147	7.7E−12
In-117m.	9.1E−11	Nd-149	7.1E−10
Ir-190	2.6E−12	Ni-56	1.7E−12
Ir-192	9.1E−13	Ni-57	1.8E−11
Ir-194	1.1E−10	Ni-59	1.5E−11
Ir-194m	1.7E−13	Ni-63	1.4E−11
K-40	2.7E−14	Ni-65	8.3E−10
K-42	2.6E−10	Np-235	2.5E−11
K-43	6.2E−11	Np-237	1.2E−15
K-44	5.9E−10	Np-238	1.4E−11
Kr-79	8.3E−09	Np-239	3.8E−11
Kr-81	2.1E−07	Np-240	7.7E−10
Kr-83m	2.3E−05	Np-240m.	5.6E−09
Kr-85	1.0E−06	Os-185	1.0E−12
Kr-85m	1.3E−08	Os-191m.	2.9E−10

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Kr-87	2.4E−09	Os-191	1.1E−11
Kr-88	5.0E−10	Os-193	9.1E−11
La-140	1.2E−11	P-32	3.3E−13
La-141	7.7E−10	P-33	2.4E−12
La-142	2.7E−10	Pa-230	3.2E−13
Lu-177	2.4E−11	Pa-231	5.9E−16
Lu-177m.	3.6E−13	Pa-233	4.8E−12
Mg-28	1.5E−11	Pa-234	1.1E−10
Mn-52	2.8E−12	Pb-203	6.2E−11
Mn-52m.	6.2E−10	Pb-205	5.6E−12
Mn-53	1.5E−11	Pb-209	1.3E−08
Mn-54	2.8E−13	Pb-210	2.8E−15
Mn-56	2.9E−10	Pb-211	1.4E−10
Mo-93	1.1E−12	Pb-212	6.3E−12
Mo-99	1.4E−11	Pb-214	1.2E−10
Mo-101	1.0E−09	Pd-103	3.8E−11
Na-22	2.6E−14	Pd-107	3.1E−11
Na-24	2.6E−11	Pd-109	4.8E−10
Nb-90	2.6E−11	Pm-143	9.1E−13
Nb-93m	1.0E−11	Pm-144	1.3E−13
Nb-94	7.1E−15	Pm-145	6.2E−13
Pm-146	5.3E−14	Re-184m.	3.7E−13
Pm-147	1.1E−11	Re-186	1.8E−11
Pm-148	5.0E−12	Re-187	2.6E−10
Pm-148m.	6.7E−13	Re-188	1.7E−10
Pm-149	4.2E−11	Rh-103m.	2.1E−07
Pm-151	7.1E−11	Rh-105	1.3E−10
Po-210	7.1E−15	Ru-97	6.7E−11
Pr-142	1.1E−10	Ru-103	2.6E−12
Pr-143	7.1E−12	Ru-105	2.8E−10
Pr-144	1.8E−08	Ru-106	3.4E−13
Pt-191	4.3E−11	S-35	1.3E−12
Pt-193	1.8E−11	Sb-117	2.4E−09
Pt-193m.	4.8E−11	Sb-122	1.4E−11
Pt-195m.	3.2E−11	Sb-124	5.3E−13
Pt-197	4.0E−10	Sb-125	1.6E−13
Pt-197m.	2.6E−09	Sb-126	1.4E−12
Pu-236	5.9E−15	Sb-126m.	9.1E−10
Pu-237	1.9E−11	Sb-127	7.1E−12
Pu-238	2.1E−15	Sb-129	7.7E−11
Pu-239	2.0E−15	Sc-44	1.7E−10
Pu-240	2.0E−15	Sc-46	4.2E−13
Pu-241	1.0E−13	Sc-47	3.8E−11
Pu-242	2.0E−15	Sc-48	9.1E−12
Pu-243	4.2E−09	Sc-49	1.2E−08
Pu-244	2.0E−15	Se-73	1.7E−10
Pu-245	2.1E−10	Se-75	1.7E−13
Pu-246	2.2E−12	Se-79	1.1E−13
Ra-223	4.2E−14	Si-31	5.6E−09
Ra-224	1.5E−13	Si-32	3.4E−14
Ra-225	5.0E−14	Sm-147	1.4E−14
Ra-226	3.3E−15	Sm-151	2.1E−11
Ra-228	5.9E−15	Sm-153	5.9E−11
Rb-81	5.0E−10	Sn-113	1.4E−12
Rb-83	3.4E−13	Sn-117m.	5.6E−12
Rb-84	3.6E−13	Sn-119m.	5.3E−12
Rb-86	5.6E−13	Sn-123	1.1E−12
Rb-87	1.6E−13	Sn-125	1.7E−12
Rb-88	2.1E−09	Sn-126	5.3E−15
Rb-89	7.1E−10	Sr-82	6.2E−13
Re-184	1.5E−12	Sr-85	1.8E−12
Sr-85m	1.6E−09	Th-232	6.2E−16
Sr-87m	1.4E−09	Th-234	2.2E−12
Sr-89	1.8E−12	Ti-44	6.2E−15

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Sr-90	1.9E−14	Ti-45	4.8E−10
Sr-91	9.1E−11	Tl-200	4.5E−11
Sr-92	2.9E−10	Tl-201	1.0E−10
Ta-182	4.5E−13	Tl-202	5.0E−12
Tb-157	2.5E−12	Tl-204	1.2E−12
Tb-160	7.7E−13	Tm-170	3.3E−12
Tc-95	1.0E−10	Tm-171	2.6E−11
Tc-95m	1.4E−12	U-230	1.5E−14
Tc-96	5.6E−12	U-231	4.2E−11
Tc-96m	6.7E−10	U-232	1.3E−15
Tc-97	7.1E−13	U-233	7.1E−15
Tc-97m	7.1E−12	U-234	7.7E−15
Tc-98	6.7E−15	U-235	7.1E−15
Tc-99	1.4E−13	U-236	7.7E−15
Tc-99m	1.7E−09	U-237	1.0E−11
Tc-101	4.5E−09	U-238	8.3E−15
Te-121	1.0E−12	U-239	4.3E−09
Te-121m.	1.2E−13	U-240	1.3E−10
Te-123	1.4E−13	V-48	1.0E−12
Te-123m.	2.0E−13	V-49	1.6E−10
Te-125m.	3.6E−13	W-181	6.7E−12
Te-127	1.0E−09	W-185	2.6E−12
Te-127m.	1.5E−13	W-187	7.7E−11
Te-129	7.7E−09	W-188	5.3E−13
Te-129m.	1.4E−13	Xe-122	9.1E−11

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Te-131	9.1E−11	Xe-123	1.6E−09
Te-131m.	1.0E−12	Xe-125	1.1E−11
Te-132	7.1E−13	Xe-127	8.3E−09
Te-133	9.1E−10	Xe-129m.	9.1E−08
Te-133m.	2.2E−10	Xe-131m.	2.6E−07
Te-134	5.3E−10	Xe-133	6.2E−08
Th-226	3.4E−11	Xe-133m.	7.1E−08
Th-227	3.8E−14	Xe-135	9.1E−09
Th-228	3.1E−15	Xe-135m.	5.0E−09
Th-229	5.3E−16	Xe-138	1.2E−09
Th-230	3.4E−15	Y-86	3.0E−11
Th-231	2.9E−10	Y-87	1.7E−11
Y-88	2.7E−13	Zn-65	9.1E−14
Y-90	1.3E−11	Zn-69	3.2E−08
Y-90m	1.9E−10	Zn-69m	1.7E−10
Y-91	2.1E−12	Zr-86	2.4E−11
Y-91m	1.3E−09	Zr-88	3.1E−13
Y-92	8.3E−10	Zr-89	1.3E−11
Y-93	2.9E−10	Zr-93	2.6E−12
Yb-169	3.7E−12	Zr-95	6.7E−13
Yb-175	4.3E−11	Zr-97	3.8E−11
Zn-62	9.1E−11		

6. References

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclides Emissions from NRC-Licensed and Non-DOE Federal Facilities", EPA 520/1–89–002, October 1989.

(2) Environmental Protection Agency, "User's Guide for the COMPLY Code", EPA 520/1–89–003, October 1989.

(3) Environmental Protection Agency, "Background Information Document: Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I", EPA 520/1–89–001, January 1989.

(4) National Council on Radiation Protection and Measurement, "Screening Techniques for Determining Compliance with Environmental Standards" NCRP Commentary No. 3, Revision of January 1989 with addendum of October, 1989.

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December 15, 1989

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 229

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 229

[Docket No. 81140-9231]

RIN 0648-AC65

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA Fisheries issues this final rule to govern the reporting of the take of marine mammals incidental to commercial fishing operations. These regulations implement the reporting requirement for commercial fishermen of the 1988 amendments to the Marine Mammal Production Act of 1972 (MMPA). The effect of this final rule is the establishment of a program and format for commercial fishing vessel owners engaged in Category I, Category II, and Category III fisheries to report the taking of marine mammals as required by the 1988 amendments to the MMPA. NOAA Fisheries also issues this final rule to update the list of Office of Management and Budget control numbers assigned to NOAA Fisheries regulations containing information collection requirements.

EFFECTIVE DATE: This rule is effective January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, 301-427-2319; Douglas Beach, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508-281-9254; Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731, 213-514-6664; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; Dr. Steve Zimmerman, Alaska Region, National Marine Fisheries Service, 709 W. 9th St., Fed. Bldg. 453, P.O. Box 21668, Juneau, AK 99802, 907-586-7233.

SUPPLEMENTARY INFORMATION:

Background

Before the 1988 amendments, the MMPA prohibited the take of marine mammals incidental to commercial fishing operations unless authorized by a General Permit or a small take exemption. In order to issue a General Permit, NOAA Fisheries was required to determine that the population stock from which a marine mammal was to be taken was within its optimum sustainable population (OSP) and that the marine mammal stock would not be disadvantaged by the incidental take. Without these determinations, a General Permit could not be issued for that particular marine mammal stock. Early in 1988 it became apparent that the necessary determinations to renew certain General Permits could not be made and many fishermen would be forced to forgo fishing altogether or risk substantial penalties for violating the MMPA. To address this problem, the Congress amended the MMPA based on a proposal developed by representatives of the fishing industry and conservation community.

Section 114, added by Public Law 100-711 on November 23, 1988, replaces certain provisions of the MMPA for granting incidental take authorizations (including small take exemptions) to most commercial fishermen with an interim exemption system until October 1, 1993. Section 114 gives commercial fishermen a 5-year exemption from the incidental taking prohibition of the MMPA, provided that certain conditions are met. The primary objective of this interim system is to provide a means to obtain reliable information from fishermen about interactions between commercial fishing activities and marine mammals. This system also allows commercial fishing operations to continue despite NOAA Fisheries' current inability to make the determinations necessary to issue General Permits for many fisheries. The information collected in conjunction with the exemption system and information on the status and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries. The Secretary of Commerce is required to provide the Congress a proposed system of authorizing incidental takes by January 1, 1992.

On January 27, 1989, NOAA Fisheries published an advance notice of proposed rulemaking and proposed List of Fisheries (54 FR 4154) associated with the exemption system and requested comments. A final List of Fisheries (54 FR 16072, April 20, 1989) categorizing fisheries as either Category I (a frequent incidental taking of marine mammals), Category II (an occasional incidental taking of marine mammals), Category III (a remote likelihood of, or no known incidental taking of, marine mammals) and an interim rule (54 FR 21910, May 19, 1989) governing the exemption system have also been published by NOAA Fisheries. The interim rule requires that vessel owners or their authorized agents engaged in a Category I or Category II fishery register with and obtain an Exemption Certificate from NOAA Fisheries to engage lawfully in any Category I or II fishery. The initial Exemption Certificate is valid from July 21, 1989, to December 31, 1990, provided reporting requirements are met. Subsequent Exemption Certificates will be issued on a calendar year basis (i.e., January 1 to December 31) and be issued only if reporting requirements and other conditions of the Exemption Certificate are met.

The 1988 amendments require vessel owners holding an Exemption Certificate to compile information regarding incidental takings of marine mammals as of July 21, 1989. This information shall be reported to the Secretary of Commerce at the close of each fishing season or annually. The 1988 amendments (section 114(c)) indicate that such reports shall include:

(1) The type of fishery engaged in by the owner's vessel;

(2) The date and approximate time of any incidental taking of a marine mammal;

(3) The area in which the incidental taking occurred;

(4) The fishing gear used at the time of the incidental taking;

(5) The species of fish involved; and for each incidental taking

(6) The number of marine mammals involved;

(7) The species of marine mammals involved; and whether the marine mammals were

(8) Deterred from gear or catch;

(9) Incidentally injured;

(10) Incidentally killed; or

(11) Lethally removed to protect gear, catch, or human life.

In addition, the 1988 amendments require vessel owners in Category III fisheries to report all lethal incidental takings of marine mammals.

On June 19, 1989, NOAA Fisheries published a proposed rule (54 FR 25832) that would govern these reporting requirements and requested comments. Based on Congressional guidance, NOAA Fisheries' interpretation of the 1988 amendments, public comment on

the proposed rule and meetings and consultations with State and Federal agencies, Regional Fishery Management Councils, Indian treaty tribes, and other interested parties, NOAA Fisheries issues this final rule to govern the reporting of the take of marine mammals incidental to commercial fishing operations under the authority of section 112 and section 114(k) of the MMPA.

Comments and Responses

NOAA Fisheries received several comments concerning the proposed reporting system published June 19, 1989 (54 FR 25832). The majority of comments received on the proposed rule dealt with the proposed report/log form. Comments relating to the system as a whole are discussed first, followed by comments on the proposed report/log form. All of the comments were considered in developing this final rule.

1. One commenter supported NOAA Fisheries' efforts to collect information on interactions between commercial fishing activities and marine mammals.

The effect of this final rule is the establishment of a program and report/log format for commercial fishing vessel owners engaged in Categories I, II, and III fisheries to report the taking of marine mammals as required by the 1988 amendments to the MMPA. The primary objective of the reporting system is to obtain reliable information about interactions between commercial fishing activities and marine mammals.

2. One commenter felt that the requirement for Category III fishermen to report the lethal incidental taking of marine mammals within 10 days of returning from a fishing trip was quite reasonable because it would allow fishermen flexibility in administering to the other activities after completion of one trip and before beginning another and recommended that the final rule reflect the same time frame. Another commenter interpreted this requirement to mean that a Category III fisherman must report marine mammal takes within 10 days of their occurrence. This commenter indicated that such a requirement would not be possible for vessels that remain at-sea for greater than 10 days.

Vessel owners engaged in Category III fisheries must report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office, in person, by phone, or by letter (see **FOR FURTHER INFORMATION CONTACT**), within 10 days of the *return* from the fishing trip during which the lethal incidental take occurred. The report must include information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any intentional lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals.

3. One commenter questioned whether NOAA Fisheries was preparing a report form for Category III fishermen. This commenter also encouraged NOAA Fisheries to distribute to all Category III fishermen a clear description of their specific reporting requirements. Another commenter suggested that NOAA Fisheries state what reporting method Category III fishermen should use. One commenter suggested that Category III fishermen who lethally take a marine mammal be required to collect the same information as Category I and II fishermen.

NOAA Fisheries is not preparing a report/log form for Category III fishermen. NOAA Fisheries believes that there is only a remote likelihood of, or no known incidental taking of, marine mammals by Category III fishermen. Therefore, NOAA Fisheries expects few such reports. Category III fishermen must report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office, in person, by phone, or by letter (see **FOR FURTHER INFORMATION CONTACT**), within 10 days of the return from the fishing trip during which the lethal incidental take occurred. The report must include the same information as Category I and II reports—the fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any intentional lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals.

NOAA Fisheries has mailed over 85,000 brochures describing the exemption program to fishermen registered with applicable Federal and state agencies. There are an estimated 23,000 Category I and II fishermen; thus, a large number of Category III fishermen have been informed of the exemption program.

4. One commenter felt the regulations should be more specific as to when Category I and II log entries are to be made. It was pointed out that in the proposed rule, Exemption Certificate holders would be required to maintain accurate daily report/log forms covering the current fishing trip, and that the proposed regulations did not specify how often the logs should be updated. The commenter believed that the regulations should specify how soon after the event entries must be made, because timely log entries will help ensure the accuracy of the logs and allow for more definitive enforcement procedures. Another commenter indicated that the 1988 amendments to the MMPA required that fishermen "regularly compile information" (section 114(c)) whereas the proposed rule would require that the information be compiled daily. Two commenters believed that fishermen should be allowed to fill out the report/log form following each trip, instead of each day. One commenter thought that NOAA Fisheries should also be more specific as to when the reports should be sent to NOAA Fisheries.

Category I and II fishermen must complete an entry on their report/log form each day they fish. NOAA Fisheries believes that this requirement is necessary and sufficient to ensure that information concerning incidental takes is recorded accurately and definitive enforcement measures are possible. Fishermen are encouraged to submit these reports to NOAA Fisheries following their fishing season or on a regular basis. However, fishermen must submit their reports, if not previously submitted, no later than December 31 of each year.

5. One commenter encouraged NOAA Fisheries to seek funding adequate to support on-board observer and alternative observation programs at a level that would provide statistically reliable fisheries and marine mammal information.

NOAA Fisheries is currently designing such programs as required by the 1988 amendments to the MMPA (section 114(d)). These alternate programs are not addressed in this rule. The purpose of this rule is to provide a means to obtain reliable reports from vessel owners concerning interactions between commercial fishing activities and marine mammals.

6. A commenter indicated that monitoring of reports by State Enforcement Agents in Indian waters should not occur and that Federal monitoring of reports should be closely coordinated and approved by Indian tribal governments. This commenter also indicated that NOAA may not have the authority to restrict or terminate Indian fishing rights due to reporting requirements without the express authority of the Congress.

NOAA Fisheries does not intend to implement any enforcement measures that violate the rights of Indians or

Indian tribal governments. Federal efforts to monitor Indian reports will be coordinated with Indian tribal governments as appropriate. If reporting problems occur, Indian fishing rights will not be restricted or terminated unless such action is in compliance with applicable law.

7. One commenter indicated that confidentiality of data measures should be approved by Indian tribal governments. This would be in keeping with NOAA's government to government responsibilities with Indian tribes.

NOAA Fisheries will consult with the Indian tribal governments concerning appropriate measures to ensure confidentiality of data collected from Indian fishermen.

8. One commenter noted that the classification section of the proposed rule did not describe consultation or agreement from the Indian governments.

The classification section of this rule is intended primarily to document compliance with procedural requirements necessary to rulemaking. The Interim Rule (54 FR 21910, May 19, 1989) implementing the exemption system and this rule adequately provide for consultation with Indian tribal governments where appropriate.

9. One commenter questioned the basis of NOAA Fisheries' estimate that it would take 2.5 minutes/day to fill out the proposed form.

NOAA Fisheries bases this estimate on prior experience, which has shown that an average of 2.5 minutes/day is adequate to allow fishermen to fill out a report/log form of this type.

10. One commenter thought that allowing information collected through the reporting system to be used in civil or criminal enforcement proceedings would jeopardize the accuracy of information reported.

Although the agency recognizes this concern, it is not anticipated that the accuracy of reports will be significantly jeopardized because the reports can be used in civil or criminal enforcement proceedings. Most of the information to be reported is not expected to involve illegal takings because of the broad exemption granted by section 114 of the MMPA. Moreover, NOAA Fisheries will be attempting to verify reports through other measures.

11. One commenter felt that the level of detail of the proposed report form was beyond the understanding of some fishermen. This commenter suggested that discussions be held with fishermen to establish a process that might be more acceptable.

NOAA Fisheries is providing, with report/log forms, detailed instructions (see appendix) on how to fill out the report/log forms. Fishermen may also contact any NOAA Fisheries office for assistance (see **FOR FURTHER INFORMATION CONTACT**). Additionally, NOAA Fisheries will consider allowing the use of alternate report/log forms for collecting the required information. However, prior approval of the Assistant Administrator for Fisheries will be required before such forms can be used (see the following comment/response).

12. One commenter suggested that alternate reporting forms issued by Indian Governments also be accepted. Another commenter supported NOAA Fisheries' acceptance of alternate report forms.

NOAA Fisheries will accept alternate report/log forms, such as those issued by individual states, Fishery Management Councils, or Indian Governments, if prior approval from the Assistant Administrator for Fisheries is obtained. These alternate forms must collect the same information required by NOAA Fisheries.

13. One commenter suggested that the report form identify separate gear types. This commenter pointed out that in some fisheries different gear types may be used on the same day. For example, some fishermen may use mid-water and bottom trawls in the same day. The proposed report form would lump all interactions under one gear type when in fact mid-water and bottom trawls may have different marine mammal interaction rates.

NOAA Fisheries believes that the information required by the report/log form is sufficient to determine interaction levels between commercial fisheries and marine mammals. Detailed information concerning different gear types within an individual fishery may be collected, at least in Category I fisheries, through an on-board observer program.

14. One commenter suggested that the term "Fish Species" on the proposed report form be clarified. Another indicated that NOAA Fisheries should require that all fish species caught be identified, not just those retained. This commenter also suggested that the total number (or amount) of fish caught and their relative proportions also be required for comparison with the number of fish lost to marine mammals.

The term "Fish Species" has been replaced on the final report/log form with "Fishery Code." As stated in the report form's instructions (see appendix), "Fishery Code" refers to the fishery code found on the fisherman's Exemption Certificate or the list of fisheries included with report/log forms. If a fisherman participates in more than one fishery during a single day, a separate line of the report/log form must be completed for each fishery. In this way, fishermen can report the incidental take of marine mammals in more than one fishery during the same day. It is not essential to require fishermen to report the number of different types of fish, or amount of fish, caught and retained each day to determine interaction levels between commercial fisheries and marine mammals.

15. One commenter proposed that the type of operation a vessel is engaged in (e.g., fishing, headed and gutted processing, surimi processing, etc.) also be included on the report form. The commenter believed that the marine mammal interactions of different operations may vary.

NOAA Fisheries believes that the collection of information by fishery is sufficient to determine levels of marine mammal and commercial fishery interactions. Additional, detailed information may be collected, at least for Category I fisheries, through an on-board observer program.

16. One commenter indicated that a fishing vessel may fish in several separate areas each day. Since the proposed report form had a column for "Area Fished," the commenter believed that fishermen would be confused as to whether they were to fill out one line per day or one line per area fished. A second commenter suggested that "Area Fished" relate to specific fishery management areas, rather than using latitude/longitude or loran data since many vessels may not have this equipment. Another commented that only latitude/longitude or loran data should be accepted.

Instructions included with the report/log form (see appendix) state that fishermen must complete an entry on the report/log form for each day fished. Fishermen do not need to fill out a separate line for each area in which they fish. Fishermen must only report the area in which they began fishing that day. NOAA believes that requiring only one entry per day per fishery fished in simplifies and streamlines reporting requirements so that regular reporting is more likely. Fishermen may report the area in which they fished by latitude/longitude, loran, or fishing management area. NOAA Fisheries believes that fishermen should be allowed to report the area they fished in by whichever method is easiest for them. However, if the fisherman participates in more than one fishery during a single day, a separate line of the report/log form must be completed for each fishery.

17. A commenter suggested that the report log should better define and distinguish between "in-gear" and "deterrence" interactions. Further, the commenter wondered if marine mammals deterred to protect a human life should be included. Another commenter suggested that the "Gear Interactions" and "Deterrence from Gear or Catch" columns be replaced by a "Mammals Taken" column. This column would be broken down into "No. Harassed," "No. Injured," "No. Dead," and "Type of Interaction—Accidental or Intentional" columns.

NOAA Fisheries has included detailed instructions with the report/log form (see appendix) defining these terms. The term "Gear Interactions" refers to marine mammals that were caught in, or interacted directly with, the vessel's fishing gear. Columns for the total number of marine mammals involved in such interactions and the number injured and killed by fishing gear are also included. The term "Deterrence from Gear or Catch" refers to marine mammals which were deterred from the vessel's fishing gear or catch. Columns for the total number of such deterrences and the number of marine mammals injured and killed as a result of these efforts are also included. Any marine mammals deterred to protect a human life should be included under "Deterrence from Gear or Catch." NOAA Fisheries believes that these column headings are sufficient to collect the necessary information on interactions between marine mammals and commercial fishing activities.

18. One commenter requested that the term "Harassment Effective" be defined. Another suggested the type of harassment used by the fishermen also be required.

The term "Harassment Effective" has been replaced with "Effective" under "Deterrence from Gear or Catch" and refers to whether or not any harassment methods were effective in deterring marine mammals away from the vessel's fishing gear or catch (see appendix). The report/log form also requests the type of harassment used by the fishermen. NOAA Fisheries believes that this information is necessary to determine which types of harassment are effective but do not harm the animal.

19. Two commenters suggested that the report log should clarify the need to complete the report form even if no marine mammal interactions occurred. These commenters pointed out that such information is critical for an accurate estimate of the rate of marine mammal interactions in each fishery.

A statement to this effect is included on the report/log form and in the accompanying instructions (see appendix).

20. Two commenters suggested that NOAA Fisheries provide fishermen with a one or two page identification chart with line drawings and key identification characteristics, perhaps on the inside of the front and back cover of the log book, to assist fishermen in identifying marine mammals.

NOAA Fisheries will develop such identification charts and distribute them along with report/log forms to fishermen. These charts will indicate a species codes for marine mammals for use on the report/log form under "Marine Mammal Species Code." A list of these marine mammal codes will also be included with the report/log form book (see appendix).

21. One commenter requested that the "Gear Lost" column be better defined. The commenter also suggested that the type of gear lost and its value also be collected. Another commenter suggested that the "Gear Lost" column require only a yes or no answer. This commenter also suggested that the fish lost column be a yes or no question instead of a open-ended question.

Instructions included with the report/log form (see appendix) indicate that the "Gear Lost" column is a yes/no question. Collection of this level of information is sufficient to determine which fisheries lose gear to, or have gear damaged by, marine mammals. Detailed information on the amount, type, and value of gear lost may be collected, at least for Category I fisheries, through an on-board observer program.

NOAA Fisheries agrees that the "Fish Lost" column should also be a yes/no question. The report/log form (see appendix) reflects this change. Collection of this level of information is sufficient to indicate which fisheries lose fish to, or have fish damaged by, marine mammals. Additional, detailed information concerning the amount or number of fish lost due to marine mammal interactions may be collected, at least for Category I fisheries, through an on-board observer program.

22. One commenter suggested that the report forms should be in a book format to accommodate use and storage in the wheelhouse. Another suggested that NOAA Fisheries' address be included on the log book.

The report/log forms will be in a book format comparable to log books already in use around the country. NOAA Fisheries also encourages fishermen to submit their reports periodically throughout the year, thus, reducing the number of forms which must be kept on-board. NOAA Fisheries' address will be included on each log book.

23. One commenter suggested that the "Hours Fished" column be replaced with a "Number of Gear Sets" column. The commenter defined this column as "any deployment of gill net, trawl, longline, etc." The commenter indicated that the duration fished and amount of gear deployed could be estimated from the number of sets.

NOAA Fisheries believes that, nationwide, "Hours Fished" is a more generic measure of fishing effort and sufficient to determine interaction levels between commercial fisheries and marine mammals. Instructions included with the form indicate various ways of filling in this column for different fisheries (see appendix).

24. One commenter suggested that the date landed, the port of landing, days absent, and a fishery code be added to the report form.

NOAA Fisheries does not believe that date landed, port of landing, and days absent are necessary, in addition to information already on the form, to estimate the interaction levels between marine mammals and commercial fisheries. The report/log form requires fishermen to indicate the fishery in which they are participating. "Fishery Code" refers to the fishery code found on the fisherman's Exemption Certificate or the list of fisheries included with report/log forms.

25. One commenter suggested that a column be added indicating whether or not an observer was on board the vessel. The commenter believed that this column is necessary to indicate whether objective confirmation of the data was possible.

NOAA Fisheries has designed its information management system to allow direct comparison of data reported by the fishermen and the data from on-board observers.

Reporting Requirements

Exemption Certificate holders are required to maintain accurate daily logs of fishing effort, incidental takes [1] of marine mammals, and other information determined necessary by the Assistant Administrator for Fisheries in such form as prescribed by NOAA Fisheries. Fishermen must complete an entry on a separate line of the report/log form each day they fish. If a fisherman participates in more than one fishery during a single day, a separate line must be completed

[1] "Incidental take" means the accidental or intentional taking of a marine mammal in the course of commercial fishing operations (54 FR 21992, May 19, 1989).

for each fishery. A current report/log form must be kept on board covering the current fishing trip and must be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the MMPA or designated agent of NOAA Fisheries. NOAA Fisheries is providing report/log forms and instructions for recording the information required to all Exemption Certificate holders for use in maintaining records and filing reports.

These reports, consisting of a copy of the required daily log, are required for each vessel engaged in a Category I or Category II fishery, whether or not marine mammals were taken. An annual report must be submitted to NOAA Fisheries no later than December 31 of each year covering all Category I and II fisheries for which each Exemption Certificate holder is registered. The submission of reports at the end of each fishing season or on a regular basis throughout the year, however, is encouraged. Exemption Certificate renewal requests must include these reports, if not previously submitted, or a new Exemption Certificate will not be issued. If a fishing vessel is not used in a Category I or Category II fishery during an exemption period for which it was registered, a report to that effect is required. With prior approval by the Assistant Administrator for Fisheries, alternate report/log forms, such as forms issued by individual states, Fishery Management Councils, or Indian Governments, for collecting the same information required by NOAA Fisheries, are acceptable.

Marine mammal report/log forms for Category I and II fisheries require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of marine mammal incidental takes; type of interaction and any injury to the marine mammal; a description of any intentional takes (i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means); and any loss of fish or gear caused by marine mammals. The report/log form used to collect this information, and instructions for its use, are included as an Appendix.

Vessel owners engaged in Category III fisheries must report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office, in person, by phone, or by letter (see **FOR FURTHER INFORMATION CONTACT**), within 10 days of the return from the fishing trip during which the incidental take occurred. The report must include information on: the fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any intentional lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals. NOAA Fisheries will incorporate this information into its data management system.

Information Management

NOAA Fisheries has developed an information management system to compile, store, process, and analyze data received from fishermen's reports, observer and verification programs, and other sources. To protect the confidentiality of this data, information from the system will be made available to the public only in an aggregate form which does not directly or indirectly disclose the identity or business of any person. Such information will be available on a continuing basis, no later than six months after receipt. Depending on the nature of information requests, appropriate user fees may be charged for the information.

To maintain the confidentiality of individual vessel owner reports, only their Exemption Certificate number, Coast Guard documentation number, state registration number, and the fisheries the vessel was engaged in are required on the individual report/log forms. Further, as section 114(j) of the MMPA indicates, confidential or proprietary information will not be disclosed except:

(1) To Federal employees requiring such information, including to Federal contractors that are authorized to collect, process or analyze report or observer data and that are bound by the restrictions on public release of such data;

(2) To State employees under agreement with NOAA Fisheries that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils.

Under exceptions (1) and (3) above, information from observers or from fisherman reports indicating a violation of the MMPA, regulations, or terms and conditions of Exemption Certificates may be used in civil or criminal enforcement proceedings.

Classification

The Assistant Administrator for Fisheries has determined that implementation of the regulations of 50 CFR part 229 will not have a significant impact on the human environment. NOAA Fisheries has prepared an environmental assessment (EA) on this action. The finding of that EA was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was required. The EA is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Under Secretary for Oceans and Atmosphere, Department of Commerce, has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This rule will not result in (1) an annual major increase in costs or prices for consumers, individual industries, or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) a significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the addition of 50 CFR 229.6(c) and 229.7(b) to the regulations will not have a significant economic impact on a substantial number of small entities. NOAA Fisheries has reviewed the final rule and has determined that the economic impact of this rule is limited to the amount of time necessary for registered fishermen to enter daily whether they had an interaction with any marine mammals. NOAA Fisheries estimates that this will require an average of 2.5 minutes per day fished for fishermen operating in Category I or II fisheries. For the limited number of lethal incidental takes of marine mammals by commercial fishermen in Category III fisheries, NOAA Fisheries estimates that those fishermen will spend on average 20 minutes per year to record and report to NOAA Fisheries. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been approved by the Office of Management and Budget (OMB control number 0648–0225). The collection which is subject to the Paperwork Reduction Act is found at 50 CFR 229.6(c) and 229.7(b). Public reporting burden for this collection of

information is estimated to average 2.5 minutes per day fished for fishermen operating in Category I or II fisheries to report the incidental take of marine mammals. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. For the limited number of lethal incidental takes of marine mammals by commercial fishermen in Category III fisheries, NOAA Fisheries estimates that those fishermen will spend on average 20 minutes per year to record and report to NOAA Fisheries. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, MMPA Exemption Task Force, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn. Paperwork Reduction Project 0648–0225).

NOAA Fisheries has determined that this rule does not directly affect the coastal zone of any State that has an approved coastal zone management program under the Coastal Zone Management Act (CZMA). These actions are being taken under the MMPA which grants exclusive authority to the Federal government to regulate the takings of marine mammals. This rule imposes additional registration and reporting requirements on a small segment of the fishing industry but the nature of these requirements is such that by themselves they do not have a direct effect on the coastal zone of any state. This determination was submitted for review by the responsible State agencies under section 307 of the CZMA. Connecticut, Florida, Louisiana, New Hampshire, New Jersey, New York, North Carolina, and Virginia concurred with NOAA Fisheries' determination. Those not responding were assumed to concur also. Massachusetts did not concur, stating that the activities implementing the MMPA Exemption System have the potential to directly affect the Massachusetts' coastal zone and therefore a consistency determination is necessary. NOAA Fisheries, while recognizing that future actions taken pursuant to these regulations may directly affect a state's coastal zone, disagrees that a consistency determination is required at this time. If some future action taken pursuant to these regulations directly affects a state's coastal zone, then a consistency determination at that time would be appropriate.

This rule has been determined not to contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR 204

Reporting and recordkeeping requirements.

50 CFR 229

Fisheries, Fishing vessels, Marine mammals, Reporting and recordkeeping.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR Chapter II is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. Paragraph (b) of § 204.1 is amended by adding the following in numerical order:

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

50 CFR part or section where the information collection requirement is located	Current OMB Control number (all numbers begin with 0648–)
* * * *	*
§ 229.6	–0225
§ 229.7	–0225
* * * *	*

* * * * *

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. A new paragraph (c)(2) is added to § 229.6 as follows:

§ 229.6 Issuance of exemption certificates.

* * * * *

(c) * * *

(2) Reports. (i) All Exemption Certificate holders must ensure that a daily log of fishing effort and incidental takes of marine mammals is accurately maintained on board the fishing vessel in such form as prescribed by the Assistant Administrator for Fisheries. Fishermen must complete an entry on the report/log form each day they fish. Marine mammal report/log forms require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of marine mammal incidental takes; type of interaction and any injury to the marine mammal; a description of any intentional takes (i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means); and any loss of fish or gear caused by marine mammals. With prior approval by the Assistant Administrator for Fisheries, National Marine Fisheries Service, alternate report/log forms, such as forms issued by individual states, Fishery Management Councils, or Indian Governments, which collect the same information required by the National Marine Fisheries Service, are acceptable.

(ii) A current report/log must be kept on board and must be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the Act or any designated agent of the National Marine Fisheries Service.

(iii) An annual report, consisting of a copy of the required log, must be submitted to the National Marine Fisheries Service no later than December 31 of each year covering all Categories I and II fisheries for which the Exemption Certificate holder is registered. This log shall include information for all Categories I and II fisheries for which each Exemption Certificate holder is registered, whether or not any marine mammals were taken. If a fishing vessel was not used in a Category I or Category II fishery during an exemption period for which it was registered, a report to that effect must be submitted.

* * * * *

2. A new paragraph (b) is added to § 229.7 as follows:

§ 229.7 Requirements for Category III fisheries.

* * * * *

(b) Vessel owners must report all lethal incidental takes of marine mammals by contacting the nearest National Museum Fisheries Service office, in person, by phone, or by letter, within 10 days of return from the fishing trip during which the incidental take occurred. The report must include information on: the fishery, fishing

effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any incidental lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals.

* * * * *

Date: December 6, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3510-22-M

CONFIDENTIAL

MARINE MAMMAL LOG

CONFIDENTIAL

Exemption No.: _____ CG Documentation No.: _____ State Vessel Registration No.: _____

A Complete Set of Instructions are Included on the Back of this Form

This form must be kept current and available for inspection.
This form must be filled out each day you fish, whether or not you interact with a marine mammal.
Submit completed forms to your Regional Office at any time, however, all report forms must be received no later than December 31.

					Gear Interactions			Deterrence From Gear or Catch					Loss Due to Marine Mammal	
Date	Hours Fished	Fishery Codes	Area Fished	Marine Mammal Species Codes	Total No. Involved	No. Injured	No. Killed	Total No. Harassed	No. Injured	No. Killed	Method	Effective Y or N	Fish Loss Y or N	Gear Loss Y or N

If you intend to fish in 1991 and want to renew your exemption certificate, please check this box. ☐

The estimated public burden for this collection of information is estimated to average approximately 2.5 minutes per day to compile information pertaining to the incidental taking of marine mammals. This estimate includes the time spent reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send any comments regarding the collection of this data or any other aspect of this program, including suggestions for reducing this burden to the National Marine Fisheries service, FPR, East-West Highway, Silver Spring, MD 20910, and to the Office of Management and Budget, Paperwork Reduction Project 0648-0225, Washington, DC 20503.

OMB Number: 0648-0225. Expiration Date: 06/30/92

MARINE MAMMAL LOG INSTRUCTIONS

A separate line on the form must be filled-out each day you fish whether or not you interact with a marine mammal. If you fish in more than one fishery in one day, complete a separate line for each fishery.

Submit completed forms to your Regional office at any time, however, all report forms must be received no later than December 31 of each year. This form must be kept current and available for inspection.

- DATE - The date you fished.

- HOURS FISHED - Total number of hours your gear was in the water for that date. For example, "soak time" for gillnetters, "troll time" for trollers, or time of trawl for trawl fishermen.

- FISHERY CODE - The code for the fishery you participated in during that day. This code can be found on your exemption certificate or from the list provided with this log book. If you fish in more than one fishery in one day, complete a separate line for each fishery.

- AREA FISHED - Area you began fishing in during that day. Please indicate the area by latitude/longitude, loran, or by fishing management area.

- MARINE MAMMAL SPECIES CODE - If you interacted with any marine mammals that day, indicate the species by using the enclosed codes. Drawings are provided with this log book for identification purposes.

- GEAR INTERACTIONS

  TOTAL INVOLVED - Total number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were caught in, or interacted with, your fishing gear that day.

  NO. INJURED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were injured while in, or by, your fishing gear.

  NO. KILLED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were killed while in, or by, your fishing gear.

- DETERRENCE FROM GEAR OR CATCH (or to protect a person)

  TOTAL NO. HARASSED - Total number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were harassed to keep them away from your fishing gear or catch (or to protect a person) for that day.

  NO. INJURED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were injured.

  NO. KILLED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were killed.

  METHOD - Indicate the method, if any, used to deter each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) away from your gear or catch.

  DETERRENCE EFFECTIVE - Indicate whether or not each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) was effectively deterred away from your fishing gear or catch that day.

- LOSS DUE TO MARINE MAMMALS

  FISH LOST - Indicate if any fish were lost to, or damaged by, each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) for that day.

  GEAR LOST - Indicate if any fishing gear was lost to, or damaged by, each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that day.

THANK YOU FOR YOUR COOPERATION

CODES FOR ATLANTIC OCEAN AND GULF OF MEXICO FISHERIES

FISHERY CODES:

Category I Commercial Fisheries in the Atlantic Ocean:

1. Southern New England, Mid-Atlantic foreign mackerel trawl fishery
2. Gulf of Maine groundfish/mackerel gillnet fishery

Category II Commercial Fisheries in the Atlantic Ocean and Gulf of Mexico:

3. Southern New England, Mid-Atlantic offshore squid trawl fishery
4. Southern New England, Mid-Atlantic mackerel trawl fishery
5. Atlantic Ocean and Gulf of Mexico tuna, shark, and swordfish longline fishery

MARINE MAMMAL CODES:

Seals -

6. Harbor seal
35. Grey seal

Dolphin/Porpoise -

15. Harbor porpoise
16. Common (Saddleback) dolphin
19. Striped dolphin
20. Bottlenose dolphin
22. Grampus (Risso's) dolphin
34. Atlantic whitesided dolphin
36. Spotted dolphin
50. Spinner dolphin

Whales -

23. Pilot whale
24. False killer whale
25. Killer whale
28. Sperm whale
29. Beaked whale
31. Humpback whale
32. Minke whale
37. Pygmy sperm whale
38. Northern right whale
39. Fin whale
60. Dwarf sperm whale

Other -

40. Manatee

Unidentified Marine Mammals -

27. Unidentified dolphin or porpoise
33. Unidentified whale
42. Unidentified seal

CODES FOR PACIFIC OCEAN FISHERIES

FISHERY CODES:

Category I Commercial Fisheries in the Pacific Ocean

6. AK Prince William Sound drift gillnet salmonid fishery
7. AK Prince William Sound set gillnet salmonid fishery
8. AK Peninsula drift gillnet salmonid fishery
9. WA marine set gillnet for salmonids in Areas 4, 4A, and 4B
10. WA, OR lower Columbia River region, Willipa Bay, Grays Harbor drift gillnet salmonid fishery
11. WA, OR, and CA thresher shark and swordfish drift gillnet fishery
12. CA halibut set gillnet fishery
13. CA angel shark set gillnet fishery
14. AK Bering Sea/Gulf of Alaska groundfish trawl fishery

Category II Commercial Fisheries in the Pacific Ocean

15. Southeast AK drift gillnet salmonid fishery
16. AK Yakutat set gillnet salmonid fishery
17. AK Cook Inlet set and drift gillnet salmonid fisheries
18. AK Kodiak set gillnet salmonid fishery
19. AK Peninsula set gillnet salmonid fishery
20. AK Bristol Bay set and drift gillnet salmonid fisheries
21. WA Puget Sound region, Hood Canal, Straits of Juan de Fuca set and drift gillnet salmonid fishery
22. WA coastal river gillnet salmonid fishery
23. CA Klamath River gillnet salmonid fishery
24. AK gillnet fisheries for other finfish
25. CA gillnets for white sea bass, yellow tail, soupfin shark, white croaker, and bonito/flying fish
26. AK South Unimak (False Pass and Unimak Pass purse-seine salmon fishery
27. AK salmon troll fishery
28. WA, OR, and CA salmon troll fisheries
29. CA herring purse-seine
30. CA anchovy, mackerel, and tuna purse-seine
31. CA sardine purse-seine
32. CA squid purse-seine
33. AK Prince William Sound sablefish long line/set line fishery
34. AK Southern Bering Sea sablefish long line/set line fishery
35. AK Metlakatla fish trap fishery
36. CA squid dip net fishery
37. WA and OR salmon net pens
38. OR salmon ranches

MARINE MAMMAL CODES:

Seals, Sea lions, and Walrus -

1. Northern fur seal
2. Steller (Northern) sea lion
3. California sea lion
5. Walrus
6. Harbor seal
7. Spotted seal
8. Ringed seal
9. Ribbon seal
10. Bearded seal
11. Northern elephant seal

Dolphin/Porpoise -

14. Dall's porpoise
15. Harbor porpoise
16. Common (Saddleback) dolphin
17. Pacific whitesided dolphin
18. Northern right whale dolphin
20. Bottlenose dolphin
22. Risso's (Grampus) dolphin

Whales -

23. Pilot whale
25. Killer whale
26. Beluga whale
28. Sperm whale
29. Beaked whales
30. Gray whale
31. Humpback whale
32. Minke whale
38. Northern right whale

Sea Otters -

13. Alaska sea otter
41. Southern (California) sea otter

Unidentified Marine Mammals -

4. Unidentified sea lion
27. Unidentified dolphin or porpoise
33. Unidentified whale
42. Unidentified seal

[FR Doc. 89-29068 Filed 12-14-89; 8:45 am]
BILLING CODE 3510-22-C

federal register

Friday
December 15, 1989

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 3

Federal Acquisition Regulation (FAR); Special Government Employees; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

Federal Acquisition Regulation (FAR); Special Government Employees

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 3.601 to state that individuals appointed as special Government employees serving as advisors or consultants, or on advisory committees, are not Government employees for purposes of FAR 3.601 unless the contract arises directly out of the activity for which they are special Government employees or, if in the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 13, 1990, to be considered in the formulation of a final rule. Consistent with our efforts to expedite the rulemaking process, comments received after the date specified may not be considered.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 89–92 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–82.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 3.601 states a general policy that contracting officers shall not knowingly award a contract to a Government employee, or to a business concern, or to other organization-owned, or substantially-owned, or controlled, by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

Included in the category of Government employees are special Government employees, as defined in 18 U.S.C. 202; that is, individuals who can work no more than 130 days during any period of 365 days and who are not required by law to receive compensation. Consequently, individuals serving as special Government employees or organizations within their control may not be awarded contracts in accordance with FAR 3.601.

This proposed rule eliminates the applicability of FAR 3.601 to special Government employees appointed as advisors or consultants, or serving as members of advisory committees, except where the contract would arise directly out of the activity of the special Government employee or, in the individual's capacity as a special Government employee, the individual is in a position to influence award of the contract. The Councils believe that only in these cases (i.e., where the individual's activity is related to the contract, or where the individual is in a position to influence award of the contract) is there the potential for an actual conflict or the appearance of a conflict of interest and, therefore, the need for a policy prohibition. Further, to assure that a conflict or appearance of a conflict does not exist, special Government employees are required, prior to assuming official responsibilities, to file a confidential or public financial disclosure form. Also, by virtue of an individual's position as a special Government employee, they are made subject to certain post-employment restrictions.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule pertains only to contracts with special Government employees. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–82) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 3

Government procurement.

Dated: December 6, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 3 be amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR part 3 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 3.601 is amended by adding a sentence following the first sentence to read as follows:

3.601 Policy.

* * * For purposes of this subpart, special Government employees appointed as advisors, consultants, or members of advisory committees, are not considered Government employees unless the contract arises directly out of the individual's activity as a special Government employee, or, in the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract. * * *

[FR Doc. 89–29125 Filed 12–14–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

Friday
December 15, 1989

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1989.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of December 1, 1989, of seven deferrals contained in the first special message of FY 1990. This message was transmitted to Congress on October 2, 1989.

Rescissions

As of the date of this report, no rescission proposals are pending before Congress.

Deferrals (Table A and Attachment A)

As of December 1, 1989, $1,363.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** cited below: 54 FR 41410, Friday, October 6, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

TABLE A
STATUS OF 1990 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	1,380.4
Routine Executive releases through December 1, 1989.....	-17.2
Overturned by the Congress.....	0
Currently before the Congress.....	1,363.2

Attachments

Attachment A - Status of Deferrals - Fiscal Year 1990

As of December 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund.....	D90-1	271,000		10-02-89	10,200				260,800
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D90-2	188,680		10-02-89	7,000				181,680
Cooperative work.....	D90-3	410,189		10-02-89					410,189
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D90-4	1,047		10-02-89					1,047
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D90-5	7,078		10-02-89					7,078
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive.....	D90-6	44		10-02-89					44

Attachment A - Status of Deferrals - Fiscal Year 1990

As of December 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-89
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D90-7	502,361		10-02-89					502,361
TOTAL, DEFERRALS.....		1,380,400	0		17,200	0		0	1,363,200

[FR Doc. 89-29336 Filed 12-14-89; 8:45 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1495/Pub. L. 101-216

Arms Control and Disarmament Amendments Act of 1989. (Dec. 11, 1989; 103 Stat. 1853; 4 pages) Price: $1.00

H.R. 3620/Pub. L. 101-217

To clarify the Food Security Act of 1985. (Dec. 11, 1989; 103 Stat. 1857; 2 pages) Price: $1.00

S. 488/Pub. L. 101-218

Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989. (Dec. 11, 1989; 103 Stat. 1859; 11 pages) Price: $1.00

H.J. Res. 175/Pub. L. 101-219

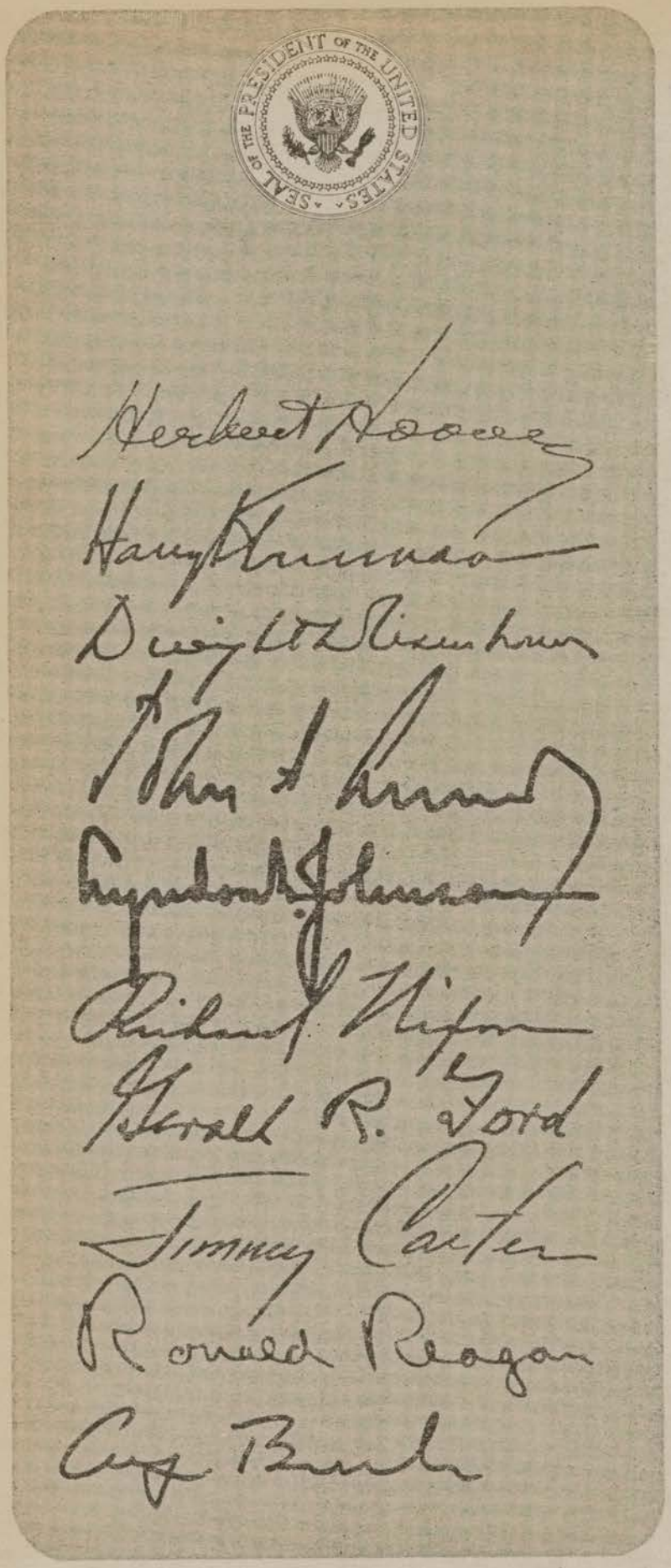
To authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes. (Dec. 12, 1989; 103 Stat. 1870; 6 pages) Price: $1.00

S. 1793/Pub. L. 101-220

To make technical and correcting changes in agriculture programs. (Dec. 12, 1989; 103 Stat. 1876; 10 pages) Price: $1.00

H.R. 3275/Pub. L. 101-221

Steel Trade Liberalization Program Implementation Act. (Dec. 12, 1989; 103 Stat. 1886; 6 pages) Price: $1.00



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