AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

5-23-90
Vol. 55 No. 100

federal register

Wednesday
May 23, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

5-23-90
Vol. 55 No. 100
Pages 21171-21372

federal register

Wednesday
May 23, 1990

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

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

WHO: The Office of the Federal Register.

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

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

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KANSAS CITY, MO

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WHERE: Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Rules and Regulations

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is republishing its organization and function statements to reflect the current titles of the principal organizational units of the Board and their primary functions. Since the Board last updated and published its organization and function statements on November 21, 1988 (53 FR 46843), there have been certain title changes and other organizational realignments. This republication also reflects changes based on the Whistleblower Protection Act of 1989, Pub. L. 101–12, 103 stat. 16 et seq.

EFFECTIVE DATE: May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bentley Roberts (202) 653–8892.

List of Subjects in 5 CFR Part 1200

Organization and functions (Government agencies).

For the reasons set out in the preamble, title 5, chapter II, subchapter A, of the Code of Federal Regulations, is amended as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

Part 1200 is revised to read as follows:

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.

1200.1 What is the Merit System Protection Board?
1200.2 Who is on the Board?

Subpart B—Offices of the Board

1200.10 Who assists the Board?

Subpart A—General

Authority: 5 U.S.C. 1201 et seq.

§ 1200.1 What is the Merit Systems Protection Board?

The Merit Systems Protection Board (the Board) is an independent government agency that operates like a court. The Board was created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems.

§ 1200.2 Who is on the Board?

(a) The Board has three members whom the President appoints and the Senate confirms. Members of the Board serve seven-year terms.

(b) The President appoints, with the Senate's consent, one member of the Board to serve as Chairman and chief executive officer of the Board. The President also appoints one member of the Board to serve as Vice Chairman. If the office of the Chairman is vacant or the Chairman cannot perform his of her duties, then the Vice Chairman performs the Chairman's duties. If both the Chairman and the Vice Chairman cannot perform their duties, then the remaining Board Member performs the Chairman's duties.

Subpart B—Offices of the Board

Authority: 5 U.S.C. 1204 (h) and (j).

§ 1200.10 Who assists the Board?

(a) A staff helps the Board carry out its work. The staff is organized into the following offices:

(1) Office of the Executive Director.
(2) Office of Equal Employment Opportunity.
(3) Office of the Inspector General.
(4) Office of Management Analysis.
(5) Office of Administration.
(6) Office of the Administrative Law Judge.
(7) Office of Appeals Counsel.
(8) Office of the Clerk of the Board.
(9) Office of the General Counsel.
(10) Office of Policy and Evaluation.
(11) Office of Regional Operations.
(12) Regional Offices.

(b) *Office of the Executive Director.* The Executive Director manages the operations and programs of the Board's headquarters and regional offices under the direction of the Chairman.

(c) *Office of Equal Employment Opportunity.* The Director, Office of Equal Employment Opportunity, manages the Board's equal employment programs and has direct access to the Chairman on EEO matters.

(d) *Office of The Inspector General.* the Inspector General is the Board's internal auditor and reports directly to the Executive Director. The Inspector General plans and directs audits, investigations, and internal control evaluations.

(e) *Office of Management Analysis.* The Director, Office of Management Analysis, develops and coordinates internal management programs and projects, conducts agencywide management reviews, and prepares information publications including the Board's annual report and annual appeals study.

(f) *Office of Administration.* The Director, Office of Administration, manages the Board's three administrative divisions: Financial and Administrative Management; Information Resources Management; and Personnel Management.

(g) *Office of the Administrative Law Judge.* The Administrative Law Judge hears certain Senior Executive Service appeals, Hatch Act cases, disciplinary and corrective action complaints brought by the Special Counsel, actions against Administrative Law Judges, appeals of actions taken against MSPB employees, and other cases that the Board assigns.

(h) *Office of Appeals Counsel.* The Director, Office of Appeals Counsel, prepares proposed decisions that recommend appropriate action by the Board in petition for review cases and other cases assigned by the Board.

(i) *Office of the Clerk of the Board.* The Clerk of the Board enters petitions for review and original jurisdiction cases onto the Board's docket and monitors their processing. The Clerk of the Board also does the following:

(1) Gives information on the status of cases;

(2) Manages the Board's records, reports, and correspondence style and control programs; and

(3) Answers requests under the Freedom of Information and Privacy Acts at the Board's headquarters.

(j) *Office of the General Counsel.* The General Counsel provides legal advice to the Board and its headquarters and regional offices, represents the Board in court proceedings, manages legislative policy, and performs congressional and media liaison.

(k) *Office of Policy and Evaluation.* The Director, Policy and Evaluation, conducts special reviews and studies of Federal merit systems, including actions of the Office of Personnel Management under 5 U.S.C. § 1206.

(l) *Office of Regional Operations.* The Director, Office of Regional Operations manages the appellate functions of the 11 MSPB regional offices.

(m) *Regional Offices.* The Board has 11 regional offices located throughout the country (See Appendix II to 5 CFR part 1201 for a list of the regional offices). The regional offices enter initial appeals onto their docket and decide these cases as provided for in the Board's regulations.

Dated: May 18, 1990.

Matthew D. Shannon,

Acting Clerk of the Board.

[FR Doc. 90–11977 Filed 5–22–90; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV–90–145RO]

Limes and Avocados Grown in Florida; Order Directing That Referenda Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Agents To Conduct the Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referenda order.

SUMMARY: This referenda order directs that referenda be conducted among eligible Florida lime and avocado producers to determine whether they favor continuation of Marketing Order Nos. 911 and 915. These marketing orders cover limes grown in Florida and avocados grown in South Florida, respectively.

DATES: The referenda are scheduled to be conducted during the period June 4, 1990, through June 22, 1990. The representative production period is April 1, 1989 through March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; Telephone: 202–475–3918.

SUPPLEMENTARY INFORMATION: The referenda order directs that referenda be conducted among producers covered under Marketing Agreement and Marketing Order Nos. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, and 915 (7 CFR part 915) regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. The referenda are to be conducted among producers in the respective production areas who, during the period April 1, 1989 through March 31, 1990 (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production of limes and avocados covered by their marketing orders to ascertain whether they favor continuance of their orders.

Sections 911.64 and 915.64 of these marketing orders require that the Secretary of Agriculture conduct a continuance referendum as soon as practicable after the end of their fiscal year ending March 31, 1990, and every six years thereafter, to determine if producer support is sufficient to continue the orders. Such referenda are scheduled to be held during the period June 4, 1990 through June 22, 1990.

The referenda will permit Florida lime and avocado producers to vote for the continuation or termination of their orders, and provide the U.S. Department of Agriculture with information needed to determine whether sufficient industry support exists to continue the orders. Termination of the lime order would be considered if less than two-thirds of the lime producers voting in the referendum, and lime producers of less than two-thirds of the production represented by the referendum, favor continuance of the order. Likewise, termination of the avocado order would be considered if less than two-thirds of the avocado producers voting in the referendum, and avocado producers of less than two-thirds of the production represented by the referendum, favor continuance of the order. The results of each referendum will be considered separately.

In evaluating the merits of continuance versus termination, the Secretary would not only consider the results of the continuance referenda, but also all other relevant information concerning the operation of the orders, including the relative benefits and disadvantages to producers, handlers, and consumers, to determine whether continued operation of the orders would tend to effectuate the declared policy of the Act.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of their marketing orders.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referenda herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB Nos. 0581–0191 and 0581–0078. It has been estimated that it will take an average of about five minutes for each of the approximately 260 lime producers and 300 avocado producers to participate in the voluntary referenda balloting.

William G. Pimental and John R. Toth, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Florida Citrus Building, Suite 104, 500 Third Street NW., Winter Haven, Florida 33881–4002, telephone 813–299–4770, are hereby designated as referenda agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended (7 CFR 900.400 *et seq.*).

Copies of the text of the aforesaid marketing orders may be examined in the office of the referenda agents or in the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456.

Ballots to be cast in the referenda may be obtained from the referenda agents and from their appointees.

List of Subjects in 7 CFR Parts 911 and 915

Avocados, Limes, Marketing agreements, Reporting and recordkeeping requirements.

Authority: Agricultural Marketing Agreement Act of 1937, as amended; secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: May 16, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–11958 Filed 5–22–90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising its schedules of fees charged for licensing and regulatory services provided by the NRC. The revised schedule of fees will more completely recover NRC costs incurred in providing services to identifiable recipients, including both materials and facility applicants. The revision is based on the FY 1990 budgeted costs of providing services in accordance with the Commission's license fee guidelines and evaluation of public comments on the proposed rule. All applicants and licensees currently subject to fees under NRC regulations are affected by the rule.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–7351.

SUPPLEMENTARY INFORMATION:

I Background
II Responses to Comments
III Changes Included in the Final Rule
IV Section-by-Section Analysis
V Environmental Impact: Categorical Exclusion
VI Paperwork Reduction Act Statement
VII Regulatory Analysis
VIII Regulatory Flexibility Certification
IX Backfit Analysis

I. Background

On December 1, 1989 (54 FR 49763–49771), the Commission published in the Federal Register a notice of proposed rulemaking for revisions to 10 CFR part 170 ("Fees for Facilities and Materials Licenses and Other Regulatory Services * * *"). This action was necessary for the Commission to update the fee schedules in part 170 to more completely recover costs incurred by the Commission in providing services to identifiable recipients and to encourage the continued submittal of topical reports.

The notice of proposed rulemaking invited interested persons to submit written comments for consideration in connection with the proposed amendments on or before January 30, 1990. In addition, the Commission's staff has been available to answer any questions concerning the proposed rulemaking. Three public meetings were held in Regions I, III, and IV to discuss the proposed changes and consider any questions. A total of eleven industry and Agreement State representatives attended the three meetings. The Commission placed a copy of the workpapers relating to the proposed rule in its Public Document Room at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

II. Responses to Comments

The Commission received twenty-nine (29) letters commenting on the proposed rule. Eighteen letters were from persons concerned with materials license fees (including five Agreement States) and eleven letters were from utility licensees and owners groups concerned with fees for part 50 facilities. The comments fell into the following broad categories:

1. Increases in fees.
2. Reestablishment of a ceiling for topical report reviews.
3. Payment of fees by electronic fund transfer (EFT).
4. Exemption provisions.
5. Other comments.

1. Increases in fees:

Comment. Commenters' main concern is that the proposed increases were substantial and businesses would find it very difficult to escalate prices on a percentage basis as intended by the proposed rule. In several specific areas such as teletherapy and nuclear medicine (Categories 7A and 7C), manufacturing (Category 3B) and research and development (Category 3M) commenters were concerned not only about the proposed increases but why, in some instances, the proposed cost for an application for renewal would exceed the cost of a new application. Some commenters also indicated that inspection fees are too high because, in some instances, inspections take no more than one hour to perform.

Response. The Commission agrees that the proposed increases in many instances may be substantial. However, as was pointed out in the proposed rule, the last revision to the materials license fees in 10 CFR part 170 was in 1984 and the fees in that schedule were based on FY 1981 data. In terms of cost data, ten years have elapsed since the schedules were revised. During that time, the professional licensing staff-hour rate increased from $58 per hour to $92 per hour, a 59% increase. The professional inspection staff-hour rate has increased from $53 per hour to $92 per hour, a 74% increase. One commenter who supported the proposed changes pointed out that the hourly rate increases have been on an average of 6 to 7 percent per year, barely keeping pace with inflation. In addition, there have been changes in the emphasis on some of the programs resulting in greater professional staff effort being expended for those particular categories of licenses. With respect to the question of why renewals require more time than new licenses for Category 3B, this type of license often has frequent amendments to add new products or to change existing descriptions of products or processes. The renewal process often requires a review of many documents to determine which descriptions are current and which have been superseded; a situation that does not occur with a new application. In addition, companies applying for new licenses will on the average operate simpler programs using both smaller activities and varieties of radioisotopes than are utilized by the existing licensees.

License renewals in Category 7C require more time on the average than new applications because the average medical use licensee renewing a license is an institution offering a full variety of diagnostic services and often some therapy services. The average applicant for a new medical use license is a small clinic or private physician who is requesting authorization to perform one or a few medical procedures. Because of the total revision of 10 CFR part 35 which became effective in 1987, new applicants and licensees renewing medical use licenses must submit complete applications and descriptions for all activities to be authorized. Thus the simplifications in the licensing process due to the part 35 revision have helped reduce review time for the simpler programs being initiated more than for the existing programs with more activities to describe.

Some commenters, particularly Agreement States, support the revision in that it strengthens the fee schedules for categories of licenses regulated by Agreement States. The Commission will proceed in adjusting the fees in part 170 because the Independent Offices Appropriation Act of 1952 (IOAA) requires that fees be updated as necessary to more fully recover the Commission's costs of processing

applications and conducting inspections. With respect to inspections, the inspection fee covers more than just the time an inspector may spend on the premises conducting the inspection. As indicated in § 170.12(g) the inspection fee includes preparation time, time on site and documentation time as well as any associated contractual services costs but excludes the time involved in the processing and issuance of a notice of violation or civil penalty.

2. Reestablishment of a ceiling for topical report reviews:

Comment. Nine commenters addressed the reestablishment of a ceiling for topical reports. Several commenters supported the $50,000 ceiling as an appropriate level for reestablishment. One suggested that if the ceiling were reestablished it should be set at the previous rate of $20,000. Most of the commenters in this area indicated that the public interest, as well as the interests of NRC and the industry, are better served by encouraging the submittal of topical reports. Two commenters suggested that the $50,000 ceiling be made retroactive to January 30, 1989, the date the ceilings for topical reports were removed.

Response. The Commission has reestablished the fee ceiling for the review of topical reports at $50,000 and the review of any amendments, revisions, or supplements to topical reports at $50,000. This figure represents an adjustment of a previous ceiling of $20,000 to reflect the effects of inflation and is an amount which approximates the median of topical report fees over $20,000 charged in 1989. As a matter of policy, the Commission will exempt all review costs that exceed $50,000 for those topical report reviews completed on or after January 30, 1989. Thus, applicants for the review of topical reports or for amendments, revisions, or supplements to topical reports will be treated equally for those reports completed on or after January 30, 1989, because all will be subject to the $50,000 fee ceiling.

3. Payment of fees by electronic fund transfer (EFT):

Comment. Six commenters addressed the proposal to require those bills in excess of $5,000 to be paid by EFT. One commenter endorsed the concept pointing out that he routinely uses EFT. Another commenter indicated that specific payment instructions should accompany the bill. Other commenters indicated that EFT is not justified. They pointed out that for many companies EFT is not a common practice, would require special action by them as well as the expenditure of resources to accomplish, and at times, is not available or desirable to use.

Response. The Commission has established the $5,000 requirement for EFT and will provide specific instructions on its use for those bills issued for more than $5,000. This is consistent with U.S. Department of the Treasury the cash management initiatives and will encourage timely receipts and deposits of monies owed to the Federal Government.

4. Exemption provisions:

Comment. Five commenters addressed the changes being proposed in the exemption provisions of § 170.11 (a)(3), (a)(4) and (a)(11). The comments ranged from the suggestion of totally eliminating all fee exemptions so that all materials licensees are treated equally from a fee standpoint to that of indicating that exemptions are necessary and those suggested in the proposed rule are appropriate. One commenter was concerned that exemptions shift a greater cost burden to those institutions/organizations that are not exempt. One commenter suggested that the language in § 170.11(a)(4) be clarified by using the wording in the Section-by-Section Analysis.

Response. The Commission will maintain the exemption provisions in § 170.11 and has made clarifying language changes to 10 CFR 170.11(a)(4) as suggested. The Commission will establish a new exemption provision in § 170.11(a)(11) to provide that Indian tribes and Indian organizations that are Federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from payment of fees. The exemption in § 170.11(a)(11) is modified so that the exemption does not cover licenses authorizing distribution of products or the offering of consultant services. This is consistent with the exemption provisions of § 170.11 (a)(4) and (a)(9).

Establishing a new exemption does not shift a greater cost burden to those who pay fees. The amount of the fee assessed represents the average time to review a licensing action or to conduct an inspection for those licensees subject to fees as well as those exempt from fee payment. The costs for processing licensing actions or conducting inspections for exempt licensees are not recovered. There is no attempt to shift that cost to those who are paying fees.

5. Other comments:

a. One commenter suggested the elimination of the initial $150 application fee required in § 170.31 for those reviews based on full costs. He indicated that it adds an unnecessary administrative cost for initiating, processing and tracking the payment for the licensee as well as the NRC.

Response. The Commission agrees and has made the necessary changes to eliminate the $150 filing fee in § 170.31. This is consistent with a similar change that was made with respect to filing fees in § 170.21 effective January 30, 1989.

b. Two commenters noted the inconsistency between 10 CFR 52.55 "Duration of Certification" which provides a 15 year validity of design certificates and § 170.12 Payment of Fees, paragraph (e)(2)(ii)(C) and footnote 4 to § 170.21 which mandate a 10 year period over which review costs are recovered for designs not referenced in utility applications.

Response. The Commission agrees and part 170 has been amended to correct this inconsistency.

c. One commenter suggested that the Commission assess fees for inspection of general licensees because these costs are not currently recovered. In addition, the commenter suggested that the Commission reduce the time available for reciprocity currently at 180 days. He indicated that this would place licenses in the NRC jurisdiction in a more competitive economic position with some Agreement State licensees who do not pay fees. At the present time, an Agreement State licensee who does not pay fees can operate for six months in a non-Agreement State in competition with the NRC licensee who has to pay fees.

Response. The Commission will continue its current policy of not assessing fees to NRC general licensees except for those related to spent fuel storage as addressed in the ongoing rulemaking published for comment on May 5, 1989 (54 FR 19379). In a majority of cases, general licensees are not required to file an application, do not receive specific approvals and are infrequently inspected. With respect to the reciprocity provision, the Commission recognizes that a difference exists between NRC and Agreement State length of reciprocity and whether or not fees are assessed. Although reciprocity is a matter of compatibility with respect to Agreement State regulations, the NRC has concentrated only on the radiation safety-related criteria for granting reciprocity and not the administrative functions such as length of time and whether or not a fee is required.

d. One commenter suggested that reasonable limits be established to prevent excessive routine inspections of small programs. The commenter felt that it is unacceptable to be charged an

inspection fee any time an inspector chooses to visit a facility.

Response. Similar comments were received on the June 27, 1988, proposed rule (53 FR 24077). These comments were addressed in the final rule published on December 29, 1988 (53 FR 52633). Effective January 30, 1989, the Commission removed the billing frequencies for routine inspections of small programs from § 170.31. The Commission indicated at that time that the routine inspection program is a structured program and that the frequency of inspections is not generally expected to be more frequent than that stipulated in the previous regulation.

e. One commenter requested that the Commission consider establishing a separate fee category for portable gauges and lower the inspection fee, and consider this action for gas chromatographs as well. A similar comment was received on the June 27, 1988, proposed rule that part 170 be revised to create a new category for diagnostic devices. The commenter believes that doctors should be charged the same for medical use of an imaging scope as industrial users.

Response. Portable gauge and gas chromatograph licenses and licenses which authorize human use of diagnostic devices are grouped for fee purposes with other similar license types, such as fixed gauge licenses and other medical uses of byproduct, source or special nuclear material. The fees for these categories of licenses reflect the Commission's average cost to review applications and perform inspections of these programs. At this time, it is not practical to develop a separate category for each type of license or authorization or for each manufactured item. Establishing a separate fee category for portable gauges, gas chromatographs and diagnostic devices could have an adverse impact on licensees because they would be subject to multiple fee categories if their licenses include items other than portable gauges, gas chromatographs, or medical uses of byproduct, source or special nuclear material. The Commission realizes that in using the average-cost method instead of the full-cost method for determining license fees, variations will exist between licenses grouped within a single category. However, in developing the current fee categories, every effort was made to group licenses in the most logical and equitable manner. The Commission, therefore, has determined that the fees in this final rule are appropriate for portable gauge, gas chromatograph, and medical use type licenses.

f. One person commenting on the June 27, 1988, proposed revision to § 170.31 indicated that there was a disparity between the amount of the fee charged for licenses authorizing calibration services and that charged for other types of licenses such as manufacturing and distribution licenses.

Response. Even though comments were received on the materials portion of the fee schedules in 10 CFR part 170 which became effective January 30, 1989, the Commission made no changes to the fee schedule for small materials licenses indicating that adjustments would be made in 1990. Based on supporting information from the Office of Nuclear Material Safety and Safeguards, fee category 3N has been modified with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. This change was highlighted in the proposed rule (54 FR 49765).

III. Changes Included in the Final Rule

The changes included in the final rule are outlined below. Any differences between the final rule and the proposed rule are explained in the following discussion. Most of these changes were included in the proposed rule published on December 1, 1989 (54 FR 49763).

1. Amend § 170.20 to change the cost per professional staff-hour from $86 per hour to $92 per hour based on the FY 1990 budget. The $92 per hour rate is a decrease from the proposed $95 per hour. This decrease is a result of adjustments made by Congress to the FY 1990 budget. The method used for calculating the hourly rate is exactly the same as that used in the proposed rule. An analysis of the budget which generated this rate is provided in the Section-by-Section Analysis.

2. Establish in part 170 a fee ceiling of $50,000 for topical report reviews and for the review of any amendments, revisions or supplements to topical reports.

3. Update the schedule of fees in § 170.31 for small radioisotope licenses based on the FY 1990 budget. Because the professional staff-hour rate has decreased from $95 to $92, based on the FY 1990 budget, all fees shown in the proposed rule for small radioisotope licenses have been reduced in this final rule to reflect the decrease.

4. Remove the $150 application filing fees in § 170.31 for those applications where fees are assessed based on the full cost for the review.

5. Modify fee Category 3N with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P. Change Category 10B in § 170.31 from full cost fees to flat fees.

6. Delete the exemption provision in § 170.11(a)(3), broaden the exemption in § 170.11(a)(4), and clarify the exemption in § 170.11(a)(5).

7. Establish a new exemption provision in § 170.11(a)(11) to provide that Indian tribes and Indian organizations that are federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from payment of fees. The exemption is modified so that it does not cover licenses authorizing the distribution of products or the offering of consultant services.

8. Amend § 170.12 (d) and (e) and footnote 4 to § 170.21 to clarify that fees for a standard design certification, if not referenced, will be recovered within fifteen years from the date of certification or renewal of the certification.

9. Revise § 170.12(h) to request that bills in excess of $5,000 be paid by electronic fund transfer.

The agency workpapers which support the final changes to 10 CFR part 170 are available in the Public Document Room, at 2120 L Street NW., Washington, DC, in the lower level of the Gelman Building.

IV. Section-by-Section Analysis

The following section-by-section analysis of those sections affected provides additional explanatory information. All references are to 10 CFR part 170, Code of Federal Regulations.

Section 170.3 Definitions.

This section is revised to remove the paragraph designations for the definitions, arrange the definitions in alphabetical order, and add definitions of "Indian organization" and "Indian tribe."

"Indian organization" means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

Section 170.11 Exemptions.

Paragraph (a)(3) is being removed in its entirety. Fees for any byproduct, source, or special nuclear materials licenses issued under 10 CFR parts 30, 40, 70, or 71 that are considered to be incidental to the operation of a nuclear

reactor will be charged under the respective materials fee category rather than under the 10 CFR part 50 reactor fee category as has been past practice. Therefore, for special nuclear materials licenses or any other licenses which are required prior to operation of the reactor, e.g., startup sources, reactor fuel, or calibration or monitoring equipment, fees will be assessed under 10 CFR 170.31 rather than § 170.21. If an applicant possesses byproduct, source, or special nuclear material for decontamination, inspection, repair, modification, or testing of their reactor components, for which a license is required under the Commission's applicable materials regulations, fees will be assessed in accordance with 10 CFR 170.31.

Paragraph (a)(4) is changed to broaden the exemption for non-profit educational institutions to include certain activities (e.g., research) not covered by the current exemption. The Commission has received several exemption requests from colleges and universities for licensed activities not covered by the current exemption. Additionally, this change is in keeping with the concern of Congress regarding the impact of the current schedule on some entities and their limited ability to pass through the costs of these charges to the ultimate consumer. Although the legislative history for annual fees contained in part 171 of this chapter discusses the option of considering modifications to these fee schedules for hospitals, research and medical institutions and uranium producers, the Commission is continuing to limit this particular exemption to non-profit educational institutions.

The exemption has been clarified to indicate that it does not include power reactor licenses and materials licenses which authorize human use, commercial distribution, remunerated service to other persons, or activities performed under a Government contract. The Commission will continue to assess fees for these kinds of activities. For example, fees are charged for licenses which authorize use of strontium 90 eye applicators in the treatment of eye diseases and xenon 133 for blood flow pulmonary functions; distribution of *in vitro* kits and radiopharmaceuticals; service for a charge to other persons or licensees such as soil density measurements and installation, calibration, and leak testing of equipment containing radioactive material and use of licensed material for consulting services. On the other hand, if a non-profit educational institution provides these or similar services, except human use, to other persons without charge, the exemption would still apply.

Paragraph (a)(5) is changed, for clarification, to include certificates of compliance and other approvals.

Paragraph (a)(11) is added to provide that Indian tribes and Indian organizations that are Federally recognized as eligible for services provided by the Secretary of the Interior because of their status as Indians will be exempt from license fees. Indian tribes are recognized as separate political entities similar to State governments. The Commission intends to exempt Indian tribes and wholly owned tribal commercial organizations conducting licensed activities on tribal lands from license fees in the same manner as it does States and governmental agencies. The exemption is modified, consistent with § 170.11 (a)(4) and (a)(9), so that the exemption does not cover licenses authorizing the distribution of products or the offering of consultant services.

Section 170.12 Payment of Fees

As indicated in the proposed rule, paragraphs (a), (b), (c), and (d) are revised to more clearly distinguish the fee payment requirements for materials licenses and approvals not subject to full cost from the requirements for other licensed activities that are subject to full cost. In addition, paragraphs (d) and (e) are being revised to change the 10 year period of cost recovery to a 15 year period to be consistent with § 52.55. This is consistent with the intent of the Commission as stated in the final 10 CFR part 52 rule (54 FR 15376) that an applicant for design certification does not have to pay an application fee, but the applicant will have to pay the full cost of the NRC review of the application, although not until the certification is referenced in an application for a construction permit or combined license or, failing that, not until the certification expires. Also paragraphs (e) and (f) are being revised to eliminate the $150 application fee for those applications where fees are determined based on full cost.

Paragraph (h) is being revised to indicate that (1) payments may also be made by electronic fund transfer (EFT) and (2) that where specific instructions regarding payment are provided on the bills, payment should be made accordingly. It is the intent of the Commission to request payment by electronic fund transfer of those bills which are in excess of $5,000. This change is being made to encourage timely receipts and deposits in accordance with U.S. Department of the Treasury cash management initiatives.

Section 170.20 Average Cost Per Professional Staff-Hour

This section is modified to reflect an agency-wide professional staff-hour rate based on FY 1990 costs to the Agency. Accordingly, the professional staff rate for the NRC for FY 1990 for all fee categories that are based on full cost is $92 per hour, or $161.4 thousand per FTE (professional staff year). For FY 1990, the budgeted obligations by direct program are: (1) Salaries and Benefits, $203.16 million; (2) Administrative Support, $74.64 million; (3) Travel, $12.27 million, and (4) Program Support, $148.70 million. In FY 1990, 1,636 FTEs are considered to be in direct support of NRC programs applicable to fees (see Table I). Of the total 3,180 FTEs, 1,544 FTEs will be considered overhead (supervisory and support) or exempted (due to their program function). Of these 1,544 FTEs, a total of 286 FTEs and the resulting $26.1 million in support are exempted from the fee base due to the nature of their functions (i.e., enforcement activities and other NRC functions currently exempted by Commission policy).

TABLE I.—ALLOCATION OF DIRECT FTEs BY OFFICE

Office	Number of direct FTEs [1]
NRR	1,007.5
Research	146.0
NMSS	317.3
AEOD	85.0
ASLAP/ASLBP	22.2
ACRS	25.0
OGC	33.0
Total direct FTE	1,636.0

[1] Regional employees are counted in the office of the program each supports.

In determining the cost for each direct labor FTE (an FTE whose position/function is such that it can be identified to a specific license or class of licenses) whose function, in the NRC's judgment, is necessary to the regulatory process, the following rationale is used:

1. All direct FTEs are identified by office.
2. NRC plans, budgets, and controls on the following four major categories (see Table II):
   (a) Salaries and Benefits.
   (b) Administrative Support.
   (c) Travel.
   (d) Program Support.
3. Program Support, the use of contract or other services for which the NRC

pays for support from outside the Commission, is charged to various categories as used.

4. All other costs (i.e., Salaries and Benefits, Travel, and Administrative Support) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the December 1, 1989, proposed rule (54 FR 49763) and the FY 1990 budget, and excluding budgeted Program Support obligations, the remaining $263.97 million allocated uniformly to the direct FTEs (1,636) results in a calculation of $161.4 thousand per FTE for FY 1990 (an hourly rate of $92).

TABLE II.—FY 1990 BUDGET BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$203.16
Administrative support	74.64
Travel	12.27
Total nonprogram support obligations	290.07
Program support	148.70
Total budget	438.77

The Direct FTE Productive Hourly Rate ($92/hour rounded down to the nearest whole dollar) is calculated by dividing the annual nonprogram support cost ($290.07 million) less the amount applicable to exempted functions ($26.1 million) by the product of the direct FTE (1,636 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A–76, "Performance of Commercial Activities."

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects and Inspections

Since the Commission decision to remove the fee ceiling for topical report reviews (53 FR 52633; December 29, 1988), and as discussed in the proposed rule published December 1, 1989, the number of topical reports submitted for review has significantly decreased. It appears that the principal reason for the reduction in topical reports being submitted is the uncertain and potentially unlimited fee for NRC review of these reports. This is counterproductive to the agency because, in many cases, the regulatory effort gains significant benefit in terms of (1) the resolution of safety significant problems, and (2) the staff time saved by conducting a generic review of a topical item thereby saving extensive plant-by-plant review in the same or similar areas. Examples of beneficial topical initiatives are numerous. The recent B&W Owners Group decision to undertake a complete reassessment of all B&W reactor designs, thus eliminating a costly NRC review, saved time and produced a more complete technical review than could have been accomplished by NRC alone. Another example is the CE Owner's Group development of EP Guidelines for all of its units. This generic effort saves NRC costly review time assessing plant-by-plant guidelines. These are just two of many examples where the public interest is served by an industry undertaking to resolve an issue. The surfacing of safety significant items stemming from the review of topical reports and the subsequent resource savings to the NRC, as well as the overall high level of technical competence available from industry, justifies NRC encouragement of industry submittal of these reports.

In conclusion, a balance must be maintained between the need to encourage industry submittal of these reports and the need to assess fees for the costs of reviewing the reports. The current system of charging a fee with no ceiling for NRC review of these reports appears to have had an inhibiting effect on the industry. As a result, the Commission is amending 10 CFR 170.21, Category J, Special Projects, to provide that the maximum fee for review of a topical report shall not exceed $50,000 and any amendments, revisions, or supplements to topical reports shall not exceed $50,000. This figure represents an adjustment of a previous ceiling of $20,000 to reflect the effects of inflation and is an amount which approximates the median of topical report fees over $20,000 charged in 1989. The Commission, as a matter of policy, will exempt all costs exceeding $50,000 for topical report reviews completed on or after January 30, 1989.

The professional hourly rate assessed for the services provided under the schedule is revised as shown in § 170.20. Footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, and January 30, 1989, rules, as appropriate. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1990 rates shown in this final rule. Footnote 4 of § 170.21 is revised to clarify that the period for payment of fees for standard design certifications is extended from 10 to 15 years. Footnote 5 has been added to § 170.21 to indicate that $50,000 is the maximum amount that may be assessed for each topical report or each amendment, revision and supplement to a topical report.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services

The licensing and inspection fees in this section are modified to reflect the FY 1990 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. It includes the addition of a category for decommissioning applications for byproduct material. The fees shown in this final rule will apply to those decommissioning applications that are currently pending NRC review as well as subsequently filed applications. Fee Category 13, establishing fees for spent fuel storage cask Certificates of Compliance and for inspections related to storage of spent fuel, remains a part of the final rule. (The proposed rule relating to spent fuel storage was published for comment on May 5, 1989 (54 FR 19379)). A final rule relating to the storage of spent fuel in NRC approved storage casks at power reactor sites is currently being processed for publication in the near future.

Fee categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13, and 14 are revised to delete the $150 initial application fee. Fees for these categories are based on the full cost (professional staff hours and any contractual services costs) to conduct the licensing review. Because licensees are billed for these costs and are required to pay invoices within a specified time, this will eliminate the administrative cost related to initiating, processing and tracking the $150 payment for the licensee as well as the NRC.

Fee Category 3N is modified with a provision added that licenses which authorize leak test services and/or calibration services only will be subject to fee Category 3P.

Fee Category 10B is changed from full-cost to flat fees. This change is based on an analysis of the actual staff-hours expended for the review and approval of the part 71 quality assurance programs.

Fee Category 12, Special Projects, is revised to provide that the maximum fee for review of a topical report and any amendments, revisions or supplements to topical reports shall not exceed $50,000. This is consistent with the change made to § 170.21, Category J.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

This rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. These guidelines took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 336 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the Independent Offices Appropriation Act of 1952 was further clarified on December 16, 1976, by four decisions of the Court of Appeals for the District of Columbia. *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, when the U.S. Court of Appeals for the Fifth Circuit held in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (1979, cert. denied 44 U.S. 1102 (1980)), that (1) the Nuclear Regulatory Commission had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included in the fee schedule the costs of uncontested hearings and of administrative and technical support services; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

The NRC does not believe that the increase in fees that would result from the adoption of this rule would result in significant economic impact on most materials licensees. The increase in the annual cost that would be imposed on these licensees would not be significant in terms of their gross annual receipts. This rule revision will not have significant impact on state and local governments and geographical regions or on health, safety and the environment. The foregoing discussion constitutes the regulatory analysis for the final rule.

VIII. Regulatory Flexibility Certification

In the notice of proposed rulemaking published on December 1, 1989 (54 FR 49763), the Commission determined in its Regulatory Flexibility Certification that, based upon the available information, this rule was not expected to have a significant economic impact upon a substantial number of small entities as defined by the Small Business Act or the Small Business Administration regulations issued pursuant to the Act (13 CFR part 121). The Commission did, however, invite any licensee who considered itself to be a small entity to provide additional information by responding to four general questions on how the regulation could be modified to take into account the differing needs of small entities. In keeping with its normal practice, the Commission mailed the proposed rule document to each of its more than 8,000 licensees. Also, the Commission held public meetings in three regions to discuss the proposed rule.

The Commission received 29 comments on the proposed rule, representing less than one-half percent of all NRC licensees. Of the 29 comments, none mentioned the Regulatory Flexibility issue directly although several commenters expressed concern over the substantial increases in the fees assessed for specific categories of licenses.

A total of seven comments are believed to have come from small entities based upon a review of information contained in their comments. Two of these comments were from hospitals, one from an industrial radiographer, one from a well logger, one from an engineering consultant, and two from other small research and development and manufacturing licensees. Although several of these commenters expressed concern over the percentage rate of increase in the fees which would be assessed for certain categories of licenses, these commenters neither indicated that the increased fees would significantly affect their ability to do business nor provided the NRC with the information needed for NRC to make that determination. The fees assessed by the NRC for each category of license are intended to reflect the level of effort required by the NRC to conduct the necessary licensing and inspection actions for that category. To this extent, the NRC has attempted to "tier" the costs imposed on its licensees to the level of effort that is required for the NRC to ensure that licensed activities are conducted in a manner that adequately protects public health and safety.

Based upon the number of comments received on the proposed rule and comments from attendees at the public meetings, as well as an analysis of these comments, the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The increase in the annual cost imposed on most of these licensees is not significant in terms of their gross annual receipts. There is no annual recordkeeping burden imposed by the final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for it because these amendments do not require the modification of or addition to systems, structures, components or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects in 10 CFR Part 170

Byproduct material, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the

following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.3, remove the paragraph designations (a) through (z) for the definitions, arrange the definitions in alphabetical order, and add definitions of "Indian organization" and "Indian tribe" to read as follows:

§ 170.3 Definitions.

* * * * *

Indian organization means any commercial group, association, partnership, or corporation wholly owned or controlled by an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided by the Secretary of the Interior because of their status as Indians.

* * * * *

3. In § 170.11, paragraph (a)(3) is removed and reserved; paragraphs (a)(4) and (a)(5) are revised and paragraph (a)(11) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(3) [Reserved]

(4) A construction permit or license applied for by, or issued to, a non-profit educational institution for a production or utilization facility, other than a power reactor, or for the possession and use of byproduct material, source material, or special nuclear material. This exemption does not apply to those byproduct, source or special nuclear material licenses which authorize:

(i) Human use;

(ii) Remunerated services to other persons;

(iii) Distribution of byproduct material, source material, or special nuclear material or products containing byproduct material, source material, or special nuclear material; and

(iv) Activities performed under a Government agency contract.

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except for a utilization facility designed to produce electrical or heat energy pursuant to section 103 or 104b of the Atomic Energy Act of 1954, as amended.

* * * * *

(11) A license for possession and use of byproduct material, source material, or special nuclear material or other approval applied for by or issued to an Indian tribe or an Indian organization conducting licensed activities on tribal lands, except for licenses which authorize distribution of byproduct material, source material, or special nuclear material, or products containing byproduct material, source material, or special nuclear material, or licenses authorizing services to any person other than an Indian tribe or an Indian organization.

* * * * *

4. In § 170.12, paragraphs (a), (b), (c), (d), (e), (f), and (h) are revised to read as follows:

§ 170.12 Payment of fees.

(a) *Application fees.* Each application for which a fee is prescribed shall be accompanied by a remittance in the full amount of the fee. Applications subject to fees for which no remittance is received will not be charged irrespective of the Commission's disposition of the application or a withdrawal of the application.

(b) *License fees.* (1) Fees for applications for materials licenses not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for permits and licenses that are subject to fees based on the full cost of the reviews are payable upon notification by the Commission. Except as provided in paragraph (b)(3) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and costs related to each.

(3) For early site reviews issued under 10 CFR part 52, there is no application fee. Fees for the review of an application for an early site permit are deferred as follows: The permit holder shall pay the applicable fees for the permit at the time an application for a construction permit or combined license referencing the early site permit is filed. If, at the end of the initial period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit. Each bill will identify the applications and costs related to each.

(c) *Amendment fees and other required approvals.* (1) Amendment fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for license amendments, other required approvals and requests for dismantling, decommissioning and termination of licensed activities that are subject to full cost recovery are payable upon notification by the Commission. Each applicant will be billed at six-month intervals for all accumulated costs for each application the applicant has on file for review by the Commission until the review is completed, except for amendment and other approvals for early site permits which will be billed in a deferred manner consistent with that addressed in paragraph (d)(4) of this section. Each bill will identify the applications and costs related to each.

(d) *Renewal fees.* (1) Renewal fees for materials licenses and approvals not subject to full cost reviews must accompany the application when it is filed.

(2) Fees for applications for renewals that are subject to the full cost of the review are payable upon notification by the Commission. Except as noted in paragraphs (d)(3) and (d)(4) of this section, each applicant will be billed at six-month intervals for all accumulated costs for each application that the applicant has on file for review by the Commission until the review is completed. Each bill will identify the applications and the costs related to each.

(3) Fees for review of an application for renewal of a standard design certification shall be deferred as follows: The full cost of review for a renewed standard design certification must be paid by the applicant for renewal or other entity supplying the design to an applicant for a construction permit, combined license issued under part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the renewed certification is referenced in an application for a construction permit, combined license, or operating license. The applicant for renewal shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the entity shall pay the installment. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of renewal of the certification, the applicant for renewal shall pay the costs for the review of the

application for renewal, or remainder of those costs, at that time.

(4) Fees for the review of an application for renewal of an early site permit shall be deferred as follows: The holder of the renewed permit shall pay the applicable fees for the renewed permit at the time an application for a construction permit or combined license referencing the permit is filed. If, at the end of the renewal period of the permit, no facility application referencing the early site permit has been docketed, the permit holder shall pay any outstanding fees for the permit.

(e) *Approval fees.* (1) Fees for applications for materials approvals that are not subject to full cost recovery must accompany the application when it is filed. Fees for those applications subject to full cost reviews are payable upon notification by the Commission. Each applicant will be billed at six month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

(2) (i) There is no application fee for standardized design approvals or certifications issued under 10 CFR part 52. The full cost of review for a standardized design approval or certification must be paid by the holder of the design approval, the applicant for certification, or other entity supplying the design to an applicant for a construction permit, combined license issued under 10 CFR part 52, or operating license, as appropriate, in five (5) equal installments. An installment is payable each of the first five times the approved/certified design is referenced in an application for a construction permit, combined license issued under 10 CFR part 52, or operating license. In the case of a standard design certification, the applicant for certification shall pay the installment, unless another entity is supplying the design to the applicant for the construction permit, combined license, or operating license, in which case the other entity shall pay the installment.

(ii) (A) In the case of a design which has been approved but not certified and for which no application for certification is pending, if the design is not referenced, or if all costs are not recovered, within five years after the date of the preliminary design approval (PDA) or the final design approval (FDA), the applicant shall pay the costs, or remainder of those costs, at that time;

(B) In the case of a design which has been approved and for which an application for certification is pending, no fees are due until after the certification is granted. If the design is not referenced, or if all costs are not recovered, within fifteen years after the date of certification, the applicant shall pay the costs, or remainder of those costs, at that time.

(C) In the case of a design for which a certification has been granted, if the design is not referenced, or if all costs are not recovered, within fifteen years after the date of the certification, the applicant shall pay the costs for the review of the application, or remainder of those costs, at that time.

(f) *Special Project Fees.* Fees for applications for special projects such as topical reports are based on full cost of the reviews and are payable upon notification by the Commission. Each applicant will be billed at six-month intervals until the review is completed. Each bill will identify the applications and the costs related to each.

* * * * *

(h) *Method of payment.* Fee payments shall be made by check, draft, money order or electronic fund transfer made payable to the U.S. Nuclear Regulatory Commission. Where specific payment instructions are provided on the bills to applicants or licensees, payment should be made accordingly, e.g., bills of $5,000 or more will normally indicate payment by electronic fund transfer.

* * * * *

5. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required approvals and inspections under §§ 170.21 and 170.31 which are based upon the full costs for the review or inspection will be calculated using a professional staff rate per hour equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support and travel. The professional staff-hour rate for the NRC for FY 1990 is $92 per hour.

6. In § 170.21, Category J. Special Projects and Footnotes 2 and 4 to the schedule are revised and Footnote 5 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard reference design approvals, special projects, and inspections.

* * * * *

SCHEDULE OF FACILITY FEES

* * * * *

Family categories and types of fees	Fees
* * * * *	
J. Special projects	
Approvals:	
1. Topical reports [5]	$50,000.
2. Amendments, revisions and supplements to topical reports [5].	$50,000.
3. All other approvals, special projects, reports and amendments except those specified in 1 and 2 above.	Full Cost.
* * * * *	

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, and January 30, 1989, rule revisions, as appropriate. For those applications currently on file for which review costs have reached the applicable fee ceiling established by the June 20, 1984, rule, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. For topical reports, and amendments, revisions, and supplements to topical reports, the amount shown is the maximum that may be assessed for each report or each amendment, revision and supplement. In no event will the total review costs be less than $150.

[4] Collection of the review costs for a preliminary design approval (PDA) and final design approval (FDA) are deferred, respectively, for a period of five years from the approval; except that, if the design is referenced during that period, 20 percent of the total costs will be payable by the holder of the design approval or certificate as each reference is made until the full costs are paid. If the design is certified, the five-year deferral period is extended to 15 years from the certification, with the same proviso that 20 percent of the costs will be payable each time the design is referenced. In the event the full costs are not recovered by the end of the applicable deferral period, the holder of the design approval or certificate must pay the remainder of any costs not previously recovered by the NRC. Applications for amendments to PDAs, FDAs and certifications are subject to full costs and will be billed upon completion of the review.

[5] The amount shown represents the maximum amount that may be assessed for each topical report or each amendment, revision, and supplement to a topical report.

7. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services including inspections.

Applicants for materials licenses and other regulatory services and holders of materials licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety, and safeguards inspections, where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$400.
Renewal	$400.
Amendment	$300.
Inspections:	
Routine	$370.
Nonroutine	$1,000.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$550.
Renewal	$550.
Amendment	$180.
Inspections:	
Routine	$550.
Nonroutine	$640.
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
B. Licenses for possession and use of source material for shielding, except as provided for in § 170.11(a)(8):	
Application—New license	$90.
Renewal	$90.
Amendment	$90.
Inspections:	
Routine	$230.
Nonroutine	$280.
C. All other source material licenses:	
Application—New license	$630.
Renewal	$600.
Amendment	$360.
Inspections:	
Routine	$640.
Nonroutine	$1,200.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application—New license	$1,800.
Renewal	$1,100.
Amendment	$180.
Inspections: [5]	
Routine	$1,700.
Nonroutine	$1,700.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,000.
Renewal	$1,800.
Amendment	$440.
Inspections: [5]	
Routine	$830.
Nonroutine	$1,600.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of part 32 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$2,700.
Renewal	$1,100.
Amendment	$370.
Inspections:	
Routine	$1,100.
Nonroutine	$1,500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of part 32 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$900.
Renewal	$400.
Amendment	$250.
Inspections:	
Routine	$640.
Nonroutine	$920.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$400.
Renewal	$380.
Amendment	$200.
Inspections:	
Routine	$370.
Nonroutine	$550.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$920.
Renewal	$320.
Amendment	$280.
Inspections:	
Rountine	$460.
Nonroutine	$1,000.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	$3,700.
Renewal	$1,500.
Amendment	$370.
Inspections:	
Routine	$830.
Nonroutine	$1,100.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$1,700.
Renewal	$850.
Amendment	$200.
Inspections:	
Routine	$550.
Nonroutine	$550.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,100.
Renewal	$960.
Amendment	$280.
Inspections:	
Routine	$370.
Nonroutine	$550.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$2,000.
Renewal	$460.
Amendment	$310.
Inspections:	
Routine	$550.
Nonroutine	$550.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,500.
Renewal	$750.
Amendment	$230.
Inspections:	
Routine	$550.
Nonroutine	$550.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,800.
Renewal	$1,600.
Amendment	$400.
Inspections:	
Routine	$740.
Nonroutine	$920.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$900.
Renewal	$900.
Amendment	$500.
Inspections:	
Routine	$640.
Nonroutine	$740.
N. Licenses that authorize services for other licenses, except (1) licenses that authorize calibration and/or leak testing services only are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$1,100.
Renewal	$640.
Amendment	$320.
Inspections:	
Routine	$550.
Nonroutine	$550.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$2,400.
Renewal	$1,400.
Amendment	$390.
Inspections: [5]	
Routine	$920.
Nonroutine	$2,000.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$400.
Renewal	$400.
Amendment	$300.
Inspections:	
Routine	$920.
Nonroutine	$920.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material or special nuclear material from other persons for the purpose of commercial disposal by land burial by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for treatment or disposal by incineration, packaging of residues resulting from incineration and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full cost.
Inspections:	
Routine	Full cost.
Nonroutine	Full cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,200.
Renewal	$1,500.
Amendment	$160.
Inspections:	
Routine	$1,700.
Nonroutine	$1,300.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,500.
Renewal	$740.
Amendment	$180.
Inspections:	
Routine	$1,300.
Nonroutine	$1,700.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$2,700.
Renewal	$1,600.
Amendment	$430.
Inspections:	
Routine	$640.
Nonroutine	$640.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full cost.
Inspections:	
Routine	$550.
Nonroutine	$830.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$1,100.
Renewal	$1,100.
Amendment	$280.
Inspections:	
Routine	$920.
Nonroutine	$1,500.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$630.
Amendment	$340.
Inspections:	
Routine	$920.
Nonroutine	$1,500.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,800.
Renewal	$1,600.
Amendment	$290.
Inspections:	
Routine	$1,300.
Nonroutine	$1.400.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$570.
Renewal	$830.
Amendment	$340.
Inspections:	
Routine	$830.
Nonroutine	$1,200.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$460.
Renewal	$320.
Amendment	$250.
Inspections:	
Routine	$550.
Nonroutine	$550.
9. Device, product or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$2,600.
Amendment—each device	$920.
Inspections	None
B. Safety evaluation of devies or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel devices:	
Application—each device	$1,300.
Amendment—each device	$460.
Inspections	None.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$550.
Amendment—each source	$180.
Inspections	None.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by a single applicant, except reactor fuel:	
Application—each source	$280.
Amendment—each source	$90.
Inspections	None.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full cost.
Inspections	None.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
B. Evaluation of part 71 quality assurance programs:	
Application—Approval	$180.
Renewal	$180.
Amendment	$180.
Inspections:	None.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full cost.
Inspections	None.
12. Special projects:	
Approval:	
1. Topical reports [6]	$50,000.
2. Amendments, revisions and supplements to topical reports [6].	$50,000.
3. All other approvals (including transportation route approvals), special projects, reports and amendments except those specified in 1 and 2 above.	Full cost.
Inspections	None.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full cost.
Amendments, revisions and supplements.	Full cost.
Reapproval	Full cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Routine	Full cost.
Nonroutine	Full cost.
C. Inspections related to storage of spent fuel under § 72.210 of part 72 of this chapter:	
Routine	Full cost.
Nonroutine	Full cost.
14. Byproduct, source of special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR parts 30, 40, 70 and 72:	
Approval, Renewal, Amendment	Full cost.
Inspection:	
Routine	Full cost.
Nonroutine	Full cost.

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals or applications to reinstate expired licenses and approvals, except those subject to fees assessed at full cost, must be accompanied by the prescribed application fee for each category, except that applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval fees*—Fees for applications for new licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs. (fee Categories 1A, 1B, 2A, 4A, 5B, 10A, 11, 12, 13A and 14) are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, shall not be subject to fee.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, except that inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations will not be subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, except in cases when the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 of this part, to which any applicable contractual support service costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to § 2.204 of part 2 nor for amendments resulting specifically from such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 30.11, 40.14, 70.14, 73.5, and any other such sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, and January 30, 1989, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, rule, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, to the effective date of this rule will not be billed to the applicant. In no event will the total review costs be less than $150.

[4] Licensees paying fees under Categories 1A and 1B are not subject to fees under Categories 1C and

1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] The amount shown represents the maximum amount that may be assessed for each topical report or each amendment, revision, and supplement to a topical report.

Dated at Rockville, Maryland, this 17th day of May 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-11955 Filed 5-22-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-70-AD; Amdt. 39-6610]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires the removal and replacement of the passenger oxygen/yaw damper module on the P5 panel in the cockpit. This amendment is prompted by a report that improper closure of the passenger oxygen system switch guard resulted in the switch being held in the reset position, causing the contacts of the system relay to weld together. This condition, if not corrected, could result in the inability to deploy the passenger oxygen system automatically or manually in the event of loss of cabin pressurization.

EFFECTIVE DATE: June 11, 1990.

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

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: One operator of Boeing Model 747-400 series airplanes recently reported that the switch guard on the passenger oxygen system switch was closed in a manner which caused the momentary switch to be inadvertently held in the "reset" position. This resulted in the contacts of the system relay welding together, disabling the passenger oxygen system. As a result, the passenger oxygen system could not be deployed automatically or manually in the event of cabin depressurization.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-35A2067, dated March 15, 1990, which describes the procedure for removal of the existing passenger oxygen/yaw damper module on the P5 panel in the cockpit, and replacement with a modified module which incorporates a new switch guard.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires the removal and replacement of the passenger oxygen/yaw damper module, in accordance with the alert service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR 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: Applies to Model 747-400 series airplanes, listed in Boeing Alert Service Bulletin 747-35A2067, dated March 15, 1990, certificated in any category. Compliance required within the next 500 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent disablement of the passenger oxygen system, accomplish the following:

A. Remove and replace the passenger oxygen/yaw damper module in accordance with Boeing Alert Service Bulletin 747-35A2067, dated March 15, 1990.

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, Seattle Aircraft Certification Office, 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, Seattle Aircraft Certification Office.

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 information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information

may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 11, 1990.

Issued in Seattle, Washington, on May 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-11929 Filed 5-22-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-76-AD; Amdt. 39-6611]

Airworthiness Directives; Airbus Industrie Models A300-B2 and A300-B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Models A300-B2 and A300-B4 series airplanes, which requires repetitive visual inspections to detect cracks in the forward intermediate section skin at Frame 30A where it joins Stringer 30, and repair, if necessary. This amendment is prompted by in-service experience which has identified cracks in this area. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: June 11, 1990.

ADDRESSES: 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: The Direction Generale 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 Models A300-B2 and A300-B4 series airplanes. Inspections of in-service airplanes have identified cracks on the external skin at Frame 30A where it joins Stringer 30. The affected airplanes had accumulated between 14,100 and 20,033 flight cycles. The cracks ranged in length from 4 mm. to 36 mm. These fatigue cracks were found on both the left- and right-hand side, initiating at the lowest rivet attaching the skin to Frame 30A, and growing in a forward and aft direction. This condition, if not corrected, could result in rapid decompression of the airplane.

Airbus Industrie has issued All Operators' Telex (AOT) 53/90/01, dated April 12, 1990, which describes procedures for repetitive inspections to detect cracks in the fuselage forward intermediate section skin at the junction of Frame 30A and Stringer 30, and repair, if necessary. The French DGAC has classified this AOT as mandatory and has issued Airworthiness Directive T-90-093-110(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, this AD requires repetitive inspections to detect cracks in the forward intermediate section skin at Frame 30A, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR 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 Models A300-B2 and A300-B4 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the fuselage forward intermediate section skin at the junction of Frame 30A and Stringer 30, accomplish the following:

A. Prior to the accumulation of 18,000 landings or 24,000 hours time-in-service, whichever occurs first, or within 100 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the fuselage forward intermediate section skin at the junction of Frame 30A and Stringer 30, left and right, in accordance with Airbus All Operators' Telex (AOT) 53/90/01, dated April 12, 1990.

B. If cracks are found, repair prior to further flight, in accordance with Airbus AOT 53/90/01, dated April 12, 1990. Repeat the inspection required by paragraph A., above, prior to the accumulation of 15,000 landings or 20,000 hours time-in-service, whichever occurs first, after any crack is repaired.

C. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 2,000 landings.

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 FARs 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 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.

This amendment becomes effective June 11, 1990.

Issued in Seattle, Washington, on May 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-11930 Filed 5-22-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASW-45]

Revision of Transition Area; Taylor, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Correction and suspension of effectiveness.

SUMMARY: This action corrects the latitude and longitude coordinates of the Taylor Municipal Airport and suspends the effectiveness of the establishment of the transition area until June 28, 1990. Airspace Docket No. 89-ASW-45 was published in the **Federal Register** on April 17, 1990 (55 FR 14237). The intended effect of this action is to make a minor editorial change to the legal description of the Taylor, TX, Transition Area by correcting the coordinates of the Taylor Municipal Airport and to delay the effective date of the transition area by 56 days. The correct coordinates of the Taylor Municipal Airport are as follows:

Latitude—30°34'15" N.
Longitude—97°26'34" W.

DATES: The amendment to 14 CFR 71.181 published at 55 FR 14237 as corrected, is suspended until 0901 u.t.c., June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

Issued in Fort Worth, TX, on May 4, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-11931 Filed 5-22-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 91037-0102]

RIN 0607-AA12

Foreign Trade Statistics; Amendment to the Foreign Trade Statistics Regulations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Foreign Trade Statistics Regulations (FTSR) to raise the present exemption for filing Shipper's Export Declarations (SEDs) for qualified shipments destined to Canada, Country Groups T or V (See Supplement No. 1 to part 770 of the Export Administration Regulations—15 CFR), Puerto Rico, or the Virgin Islands of the United States from $1500 to $2500. This exemption does not apply to shipments: (1) Through the U.S. Postal Service (See § 30.54), (2) requiring a Department of Commerce validated export license, (3) requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic in Arms Regulations (ITAR-22 CFR, part 121-130), (4) Subject to the ITAR but exempt from license requirements, and (5) requiring a Department of Justice, Drug Enforcement Administration export permit (21 CFR part 1312).

EFFECTIVE DATE: May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Don L. Adams, Chief, Foreign Trade Division, Bureau of the Census, (301) 763-5342.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking published in the **Federal Register** on November 16, 1989 (54 FR 47686), proposed amending the FTSR to raise the value limit for the exemption from SED filing requirements from $1500 to $2500. Because this amendment affected the reporting requirements, interested persons were given 60 days from the date of publication in the **Federal Register** (November 16, 1989 to January 16, 1990) to submit their comments regarding the notice.

Discussion of Major Comments

The Census Bureau received six comments regarding the proposed amendment, all supportive. One commentor suggested that we increase the value limit to $3,000 to coincide with the limit set for many items exported under the Export Administration Regulations general license of limited value (GLV). After consultation with the U.S. Customs Service and Bureau of Export Administration, we decided to maintain the $2,500 limit as originally proposed since the public had no chance to comment on the higher level. Because of this comment and similar questions we receive on an ongoing basis relating to the application of this exemption, we are rewording § 30.55 in this Final Rule. Specifically: (1) We define the applicable destinations in terms of the country groups designated in the Export Administration Regulations, rather than stating "except as prohibited by", (2) we itemize instances where due to license or permit requirements this exemption does not apply, and (3) we add a clarifying paragraph denoting that this exemption applies to individual Schedule B commodity numbers, for qualified shipments, regardless of the total shipment value. This listing of exceptions is not a change in the application of this exemption and therefore does not change the reporting requirement for exporters.

Regulatory Impact Analysis and Information Collection

This amendment does not meet the criteria of a major rule as set forth in section 1(b) of Executive Order 12291; therefore, no Regulatory Impact Analysis is required. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. Pursuant to the Provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), the General Counsel of the Department of Commerce certified to the Small Business Administration that this

amendment will not have a significant economic effect on a substantial number of small entities because it raises the exemption level thereby reducing the reporting requirements of smaller entities. This rule imposes no additional burden on the public thus satisfying the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection has current OMB approval under control numbers 0607–0018 and 0607–0152. The public reporting burden for this collection of information is estimated to average 11 minutes per response, inlcuding the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Associate Director, for Management Services, Bureau of the Census, Washington, DC 20233; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This Final Rule is being made effective upon publication in the **Federal Register**. A delayed effective date is unnecessary because the rule raises the value limit for the exemption from SED requirements thereby reducing the reporting burden by over 1.5 million SEDs annually. Therefore, the Census Bureau finds good cause to dispense with the Administrative Procedure Act delayed effective date requirement (5 U.S.C., 553(d)).

List of Subjects in 15 CFR, Part 30

Economic Statistics, Foreign trade, Reporting requirements.

The Foreign Trade Statistics Regulations (15 CFR part 30) are amended as set forth below.

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for part 30 continues to read as follows:

Authority: Title 13, United States Code, sections 301–307; and Title 5, United States Code, section 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765.

2. Section 30.55 is amended by revising paragraph (h) to read as follows:

§ 30.55 Miscellaneous exemptions.

* * * * *

(h) Except as noted below, shipments destined to Canada, Country Groups T or V (See Supplement No. 1 to part 770 of the Export Administration Regulations—15 CFR), Puerto Rico, or the Virgin Islands of the United States where the value of commodities, shipped from one exporter to one consignee on a single exporting carrier, classified under the individual Schedule B number(s) is $2,500 or less.

(1) This exemption applies to individual Schedule B commodity numbers regardless of the total shipment value. In instances where a shipment, meeting the above criteria, contains a mixture of individual Schedule B commodity numbers valued $2,500 and less and individual Schedule B commodity numbers valued over $2,500, thus necessitating the preparation of a Shipper's Export Declaration, those commodity numbers valued $2,500 and less should not be reported on the declaration.

(2) This exemption does not apply to shipments:

(i) Exported through the U.S. Postal Service (See § 30.54).

(ii) Requiring a Department of Commerce validated export license (Individual, Project, Distribution, and Service Supply) (15 CFR, parts 772 and 773).

(iii) Requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic in Arms Regulations (ITAR–22 CFR, parts 121–130).

(iv) Subject to the ITAR but exempt from license requirements.

(v) Requiring a Department of Justice, Drug Enforcement Administration export permit (21 CFR, part 1312).

This exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on $2500 and under shipments.

* * * * *

Barbara Everitt Bryant,

Director, Bureau of the Census.

I concur: March 30, 1990.

John P. Simpson,

Acting Assistant Secretary for Enforcement, Department of the Treasury.

[FR Doc. 90–11956 Filed 5–22–90; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8302]

RIN 1545–AL05

Low-income Housing Credit for Federally-assisted Buildings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986, as enacted by section 252 of the Tax Reform Act of 1986 and, as amended by sections 1002(1) and 4003 of the Technical and Miscellaneous Revenue Act of 1988. The changes to section 42 under section 7108 of the Omnibus Reconciliation Act of 1989 are not reflected in these final regulations but will be the subject of a separate notice of proposed rulemaking. The regulations provide guidance concerning the low-income housing credit allowable for certain Federally-assisted buildings acquired during a 10-year period.

EFFECTIVE DATE: The regulations are effective January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Reaman, 202–377–6349 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1005. The estimated average burden associated with the collection of information in this final rule is 3 hours per respondent or recordkeeper. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require greater or less time, depending upon their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project,

Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

Background

On November 3, 1987, the **Federal Register** published a notice of proposed rulemaking (52 FR 42116) by cross reference to temporary regulations published the same day (52 FR 42098) under section 42 of the Internal Revenue Code of 1986. A number of public comments were received concerning these regulations, and a public hearing was held on March 17, 1988. After consideration of the written comments and those presented at the hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 252 of the Tax Reform Act of 1986 (100 Stat. 2189) as amended by sections 1002(1) and 4003 of the Technical and Miscellaneous Act of 1988 (102 Stat. 3373, 3643) enacted a new low-income housing credit under section 42 of the Internal Revenue Code of 1986. The credit is equal to the applicable percentage of the qualified basis of each qualified low-income building. The temporary regulations published in the **Federal Register** on November 3, 1987, provide guidance with respect to the credit allowable for certain Federally-assisted buildings acquired during a 10-year period. The low-income housing credit is available to the acquirer of a qualified low-income building for which a special waiver is granted by the Internal Revenue Service in order to avert an assignment of the mortgage secured by the building to the Department of Housing and Urban Development or the Farmers' Home Administration, or to avert a claim against a Federal mortgage insurance fund with respect to a mortgage which is so secured.

Public Comment

Several commentators suggested that the waiver under section 42(d)(6) should apply to a project, as well as a building. In response to this comment, proposed § 1.42–2(d)(3) has been revised to indicate that a single waiver application can be filed for a project consisting of multiple buildings as long as the information required for each building is identified by building address. Proposed § 1.42–2(d)(3) has also been revised to indicate that a waiver application can be filed for specific buildings that are Federally-assisted in a project consisting of multiple buildings that may or may not be Federally-assisted.

Several commentators requested that the certification that Federal mortgage funds are at risk should come from the Federal agency, rather than the taxpayer. This suggestion has been adopted, and proposed § 1.42–2(c)(3) has been revised to indicate that the Federal agency is to provide such certification in the form of a letter or other written statement made or received and approved by the national office of the Federal agency.

Several commentators contended that it is unclear what documentation taxpayers must provide to evidence the specified Federal agency action that must have been taken to demonstrate that a waiver is necessary to avert Federal mortgage funds being at risk. In response to this, proposed § 1.42–2(c)(3) has been revised to indicate that a letter or other written statement made or received and approved by the national office of the Federal agency is sufficient specified Federal agency action.

Several commentators urged that a building should qualify as troubled if it shows a history of financial distress, whether or not the owner has defaulted on a mortgage payment. In response, the proposed rule has been revised to indicate that designation of troubled status must be based on a review by the Federal agency of the financial condition of the building or project and on a determination by the agency of a history of financial distress or mortgage defaults. See § 1.42–2(c)(3)(ii)(D).

A commentator urged that the granting of a waiver under section 42(d)(6)(A) should be contingent on approval by the Federal agency of the past performance of the current owner/seller of the building or project. Because the Federal agency already has the ability to take this factor into account under proposed § 1.42–2(c)(3) (relating to action by the Department of Housing and Urban Development or the Farmers' Home Administration), this comment is not specifically incorporated in the final regulations.

A commentator requested that the waiver under section 42(d)(6) should be available where a change in ownership is being forced due to conditions beyond the control of the owner of the building or project, such as death or bankruptcy. Under section 42(d)(6)(A) and proposed § 1.42–2(c)(3) the Federal agency already has sufficient latitude to consider circumstances such as death or bankruptcy. Therefore, the final regulations do not specifically adopt this recommendation.

A commentator stated that proposed § 1.42–2(a) should explicitly reference section 42(d)(2)(A)(i)(II) which permits the inclusion in eligible basis of amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation. In response to this comment, proposed § 1.42–2(a) has been revised to contain a reference to determining eligible basis under section 42(d)(2).

A commentator recommended adding language to proposed § 1.42–2(c)(4) (relating to the waiver requirement that no prior owner was allowed a low-income housing credit for the building) to cover situations where the building or project is acquired after the end of the 15-year compliance period in section 42(i)(1). This recommendation has not been adopted since section 42(n) provides that the State housing credit ceiling is zero for any calendar year after 1989.

A commentator requested that since the existence of a mortgage is a prerequisite to a waiver application, proposed § 1.42–2(d)(2)(ix) should change the phrase "any outstanding mortgage" to "the outstanding mortgage" and delete the phrase "if any,". The proposed rule has been clarified in response to this request. See § 1.42–2(d)(2)(vii).

A commentator requested clarification concerning the effective date of a waiver. In response to this, proposed § 1.42–2(d)(4) has been clarified to state that the waiver is effective when granted by the Internal Revenue Service. Previously, it was stated that a waiver will be effective when granted but in no event later than 60 days after a taxpayer files a substantially complete application for waiver. Some taxpayers believed this language granted an automatic waiver, if a waiver was not granted within 60 days. The intent behind the 60 day period was that if a waiver was granted after the expiration of 60 days from the date the application was filed, the waiver would be effective starting 60 days after the filing date. Given this confusion, the 60 day language has been deleted from the proposed § 1.42–2(d)(4).

Several commentators urged that non-Federally-assisted buildings or projects should be eligible for the waiver of the 10-year rule under section 42(d)(6). This suggestion has not been adopted because only a Federally-assisted building, as defined in section 42(d)(6)(B), is eligible to apply for the waiver.

Several commentators contended that buildings or projects that have already

been foreclosed upon by the Department of Housing and Urban Development or the Farmers' Home Administration should be eligible for the waiver of the 10-year rule under section 42(d)(6). This suggestion has not been adopted as it is inconsistent with the section 42(d)(6)(A) requirement that a waiver be necessary "to avert an assignment of the mortgage" or "to avert a claim against a Federal mortgage insurance fund * * *".

Several commentators stated that the regulations should address "other circumstances of financial distress" contained in section 42(d)(6)(A)(iii) with respect to eligibility for waiver of the 10-year rule contained in section 42(d)(2)(B)(ii). Section 42(d)(6)(A)(iii) was eliminated by the Technical and Miscellaneous Revenue Act of 1988.

The Internal Revenue Service also invited public comments on any other issues arising under section 42 with respect to which guidance is needed. A number of comments were received, and, while those comments are not discussed in this Treasury decision, they will be taken into account in promulgating other regulations under section 42. The Internal Revenue Service appreciates the submission of those comments.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Susan Reaman of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries) Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.0–1 through 1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The amendments to 26 CFR parts 1 and 602 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

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

Authority: 26 U.S.C. 7805. * * * Section 1.42–2 also issued under 26 U.S.C. 42(m).

§ 1.42–1 [Removed and reserved]

Par. 2 New §§ 1.42–0 and 1.42–2 are added in the appropriate place and § 1.42–1 is removed and reserved. The added provisions read as follows:

§ 1.42–0 Table of contents.

This section lists the paragraphs contained in §§ 1.42–1 and 1.42–2.

§ 1.42–1 [Reserved]
§ 1.42–2 Waiver of requirement that an existing building eligible for the low-income housing credit was last placed in service more than 10 years prior to acquisition by the taxpayer.
(a) Low-income housing credit for existing building
(b) Waiver of 10-year holding period requirement
(c) Waiver requirements
(1) Federally-assisted building
(2) Federal mortgage funds at risk
(3) Statement by the Department of Housing and Urban Development or the Farmers' Home Administration
(4) No prior credit allowed
(d) Application for waiver
(1) Time and manner
(2) Information required
(3) Other rules
(4) Effective date of waiver
(5) Attachment to return
(e) Effective date of regulations

§ 1.42–1 [Reserved]

§ 1.42–2 Waiver of requirement that an existing building eligible for the low-income housing credit was last placed in service more than 10 years prior to acquisition by the taxpayer.

(a) *Low-income housing credit for existing building.* Section 42 provides that, for purposes of section 38, new and existing qualified low-income buildings are eligible for a low-income housing credit. The eligibility rules for new and existing buildings differ. Under section 42(d)(2), an existing building may be eligible for the low-income housing credit based upon the acquisition cost and amounts chargeable to capital account (to the extent properly included in eligible basis) if—

(1) The taxpayer acquires the building by purchase (as defined in section 179(d)(2), as applicable under section 42(d)(2)(D)(iii)(I)),

(2) There is a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of—(i) The date the building was last placed in service, or

(ii) The date of the most recent nonqualified substantial improvement of the building, and

(3) The building was not previously placed in service by the taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the taxpayer as of the time the building was last previously placed in service.

(b) *Waiver of 10-year holding period requirement.* Section 42(d)(6) provides that a taxpayer may apply for a waiver of the 10-year holding period requirement specified in paragraph (a)(2) of this section. The Internal Revenue Service will grant a waiver only if—

(1) The existing building satisfies all of the requirements in paragraph (c) of this section, and

(2) The taxpayer makes an application in conformity with the requirements in paragraph (d) of this section.

(c) *Waiver requirements*—(1) *Federally-assisted building.* To satisfy the requirement of this paragraph, a building must be a Federally-assisted building. The term "Federally assisted building" means any building which is substantially assisted, financed, or operated under section B of the United States Housing Act of 1937, section 221(d)(3) or 236 of the National Housing Act, or section 515 of the Housing Act of 1949, as such acts were in effect on October 22, 1986.

(2) *Federal mortgage funds at risk.* To satisfy the requirement of this paragraph, Federal mortgage funds must be at risk with respect to a mortgage that is secured by the building or a project of which the building is a part. For purposes of this paragraph, Federal mortgage funds are at risk if, in the event of a default by the mortgagor on the mortgage secured by the building or the project of which the building is a part—

(i) The mortgage could be assigned to the Department of Housing and Urban Development or the Farmers' Home Administration, or

(ii) There could arise a claim against a Federal mortgage insurance fund (or such Department or Administration).

(3) *Statement by the Department of Housing and Urban Development or the Farmers' Home Administration.* (i) To satisfy the requirement of this paragraph, a letter or other written statement must be made or received and approved by the national office of the Department of Housing and Urban Development or the Farmers' Home Administration ("the Federal agency"). This letter or statement shall include the following:

(A) A statement that, as of the earlier of the time of the taxpayer's acquisition of the building or the taxpayer's application for a waiver, the building is a Federally-assisted building within the meaning of paragraph (c)(1) of this section and identifies the source of Federal assistance;

(B) A statement that a waiver of the 10-year holding period requirement is necessary to avert Federal mortgage funds being at risk within the meaning of paragraph (c)(2) of this section; and

(C) A statement that the Federal agency has taken a Federal agency action as described in paragraph (c)(3)(ii) of this section.

(ii) The following specified Federal agency actions shall be the only means of satisfying the requirement of this paragraph:

(A) The Federal agency intends to accept an assignment of a mortgage secured by the building or the project of which the building is a part, and such assignment requires payments by the agency or a mortgage insurance fund maintained by the agency to the prior mortgagee;

(B) The Federal agency or a mortgage insurance fund maintained by the agency intends to accept, as a consequence of foreclosure proceedings or otherwise, conveyance of the building or the project of which the building is a part;

(C) The Federal agency or a mortgage insurance fund maintained by the agency intends, as a consequence of default, to take possession of, hold title to, or otherwise assume ownership of the building or the project of which the building is a part; or

(D) The Federal agency has designated the building or the project of which the building is a part as a troubled building or project. A designation of a troubled building or project must satisfy the following requirements:

(*1*) Designation of troubled status must be based on a review by the Federal agency of the financial condition of the building or project and on a determination by the Federal agency of a history of financial distress or mortgage defaults;

(*2*) Designation of troubled status must be made or received and approved by the national office of the Federal agency; and

(*3*) Federal agency regulations or procedures must provide that, in the event of transfer of the ownership of a designated troubled building or project, the building or project may be subject to continued review by the Federal agency. Each Federal agency may prescribe its own standards and procedures for designating a troubled building or project so long as such standards are consistent with the requirements of this paragraph (c)(3)(ii)(D).

(4) *No prior credit allowed.* The requirement of this paragraph is satisfied only if no prior owner was allowed a low-income housing credit under section 42 for the building.

(d) *Application for waiver*—(1) *Time and manner.* In order to receive a waiver of the 10-year holding period requirement specified in paragraph (a)(2) of this section, a taxpayer must file an application (including the applicable user fee) that complies with the requirements of this paragraph (d) and Rev. Proc. 90–1, 1990–1 I.R.B. 8 (or any subsequent applicable revenue procedure). The application must be filed by a taxpayer who has acquired the building by purchase or who has a binding contract to purchase the building. Such binding contract may be conditioned upon the granting of a waiver under this section. The application may be filed at any time after a binding contract has been entered into, but no later than 12 months after the taxpayer's acquisition of the building. An application for a waiver of the 10-year holding period requirement must not contain a request for a ruling on any other issue arising under section 42 or other sections of the Internal Revenue Code. An application for a waiver of the 10-year holding period requirement must be mailed or delivered to the address listed in section 3.01 of Rev. Proc. 90–1 (or any subsequent applicable revenue procedure).

(2) *Information required.* An application for a waiver of the 10-year holding period requirement must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number;

(ii) The name (if any) and address of the acquired building and the project (if any) of which it is a part;

(iii) The date of acquisition or the date of the binding contract for acquisition of the building by the taxpayer and the expected date of acquisition, the amount of consideration paid or to be paid for the acquisition (including the value of any liabilities assumed by the taxpayer), and the taxpayer's certification that such acquisition is by purchase (as defined in section 179(d)(2), as applicable under section 42 (d)(2)(D)(iii)(I));

(iv) The identity of the person from whom the building is acquired, and whether such person is a Federal agency, a mortgagee holding title to the building, or the mortgagor or prior owner;

(v) The date the building was last placed in service and the date of the most recent (if any) nonqualified substantial improvement of the building (as defined in section 42 (d)(2)(D)(i));

(vi) The taxpayer's certification that the building was not previously placed in service by the taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the taxpayer as of the time the building was last placed in service;

(vii) The amount and disposition (*e.g.*, discharge, assignment, assumption, or refinance) of the outstanding mortgage at the time of acquisition and the identities of the mortgagee and mortgagor;

(viii) The taxpayer's certification that no prior owner was allowed a low-income housing credit under section 42 for the building (made to the best of the taxpayer's knowledge, with no documentation from other persons needed to be submitted); and

(ix) The statement from the Federal agency required by paragraph (c)(3)(i) of this section.

(3) *Other rules.* (i) In the event that an acquired building will be owned by more than one taxpayer, a single application for waiver may be filed by one taxpayer on behalf of the co-owners if the application contains the names, addresses and taxpayer identification numbers of the other owners. A general partner or a designated limited partner may file an application for waiver on behalf of a partnership.

(ii) In the event that multiple Federally-assisted buildings in a project are being acquired by the taxpayer, a single application for waiver with respect to such buildings may be filed if the application contains the required information set out for the address of each Federally-assisted building involved.

(iii) In the event that specific Federally-assisted buildings are being acquired by the taxpayer in a project consisting of multiple buildings that may or may not be Federally-assisted, a single application for waiver with respect to the Federally-assisted

buildings being acquired may be filed if the application contains the required information set out for the address of each Federally-assisted building being acquired.

(4) *Effective date of waiver.* A waiver will be effective when granted in writing by the Internal Revenue Service after submission of a completed application for waiver filed under this paragraph (d).

(5) *Attachment to return.* A waiver letter granted by the Internal Revenue Service shall be filed with the taxpayer's Federal income tax return for the first taxable year the low-income housing credit is claimed by the taxpayer.

(e) *Effective date of regulations.* The provisions of § 1.42–2 are effective for buildings placed in service by the taxpayer after December 31, 1986.

§ 1.42–2T [Removed]

Par. 3. Section 1.42–2T is hereby removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. The table in § 602.101 (c) is amended by removing the entry for § 1.42–2T and adding in the appropriate place "§ 1.42–2 * * * 1545–1005".

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

February 2, 1990.

[FR Doc. 90–1752 Filed 5–22–90; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[FRL–3781–5]

Environmental Protection Agency and the Nebraska Department of Environmental Control; Underground Injection Control Program Revision; Aquifer Exemption Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Program revision; aquifer exemption approval.

SUMMARY: The State of Nebraska has submitted a revision to its Underground Injection Control Program under 40 Code of Federal Regulations (CFR) part 145, requesting that EPA approve an exemption of a portion of the Chadron Aquifer near Crawford, Nebraska in connection with a Class III permit application. After careful review of the exemption petition, the Nebraska Department of Environmental Control (NDEC) decision to exempt the aquifer, the request of the NDEC Director, the record of the hearing before EPA, all related documents, and comments received from the public, EPA has decided to exempt a portion of the aquifer.

EFFECTIVE DATE: This determination shall be promulgated for the purposes of judicial review at 1 e.s.t. on June 6, 1990, and shall become effective on June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Drinking Water Branch, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Phone (913) 551–7032.

SUPPLEMENTARY INFORMATION: The Underground Injection Control (UIC) program, established by the Safe Drinking Water Act (SDWA) provides for the protection of underground sources of drinking water (USDW) from potential contamination from injection well practices. The UIC permit regulations, specifically 40 CFR 144.7 and 146.4, apply to and regulate aquifer exemptions.

I. Background

On March 23, 1984, NDEC granted an exemption for approximately 3,000 acres in connection with a research and development (R&D) application by the Wyoming Fuel Company (WFC), former applicant, for an underground injection well permit for uranium mining. On February 7, 1985, EPA approved 6.7 acres of the requested 3,000 acres. A decision on exempting the remaining area was placed in abeyance. Deferment of the decision to exempt the remainder of the 3,000 acres was made for the following reasons: (1) Further data regarding the impact and producibility of the project would be compiled during the R&D project which would allow EPA to evaluate whether the exemption should and properly may be expanded; (2) No other permit action was pending which clearly demonstrated the further extent of production capabilities or radionuclide concentrations beyond the R&D area being exempted in 1985, and (3) Public comment had suggested that EPA limit the exemption to that portion of the aquifer on which the permit applicant proposed actual injection activities. Deferment also allowed EPA to further evaluate the injection and restoration mining activities, the extent to which exemption criteria were met for the larger area, and the potential environmental effect of the mining activity.

In November 1987, Ferret Exploration Company of Nebraska Inc. (FEN), which bought the interest of the WFC, submitted a commercial permit application to NDEC. On March 18, 1988, NDEC submitted to EPA a request for approval on a program revision which included the exemption of the remaining 3,000 acres of the Chadron Aquifer near Crawford, Nebraska, in Dawes County for Class III in-situ uranium mining activities.

On July 21, 1988, EPA published notice in the **Federal Register** of the State's request and announced a public hearing. Notice of that hearing was also published in Crawford, Chadron, Alliance, Sidney, Scottsbluff, and Omaha, Nebraska newspapers, and was mailed to all interested parties and officials known to EPA. On August 23, 1988, EPA held a hearing in Crawford, Nebraska. Upon request, EPA extended the public comment period deadline until December 21, 1988.

After carefully reviewing and considering the record of such hearing, the public comments, data from the research and development project, the Nuclear Regulatory Commission's (NRC) draft and final Environmental Assessment (EA), restoration determinations of both NRC and NDEC, and all evidence and written arguments submitted, EPA is approving the revision to the State program to include the portion of the Chadron Aquifer exemption area submitted by the NDEC.

The geology of the area from the lower most strata upward, includes the Pierre shale which lies below the ore zone. This formation is not considered to contain aquifers of any importance in this region. Because of its impermeable nature it also serves as an aquiclude preventing downward migration of water. The basal sandstone member of the Chadron Formation is the host member of the Crow Butte uranium ore deposit and the only aquifer in this formation. The Middle Chadron is characterized by a brick red clay and the buff colored siltstones of the Upper Chadron/lower Brule serve as the upper confining layer. The Brule Formation, which lies conformably on top of the Chadron Formation, is an important aquifer regionally and locally for domestic and agricultural purposes.

The approved exemption area covers approximately 3,000 acres. The legal description of the portion of the Chadron Aquifer being exempted (all in Dawes County) includes:

T. 31 N, R. 52 W.	Section 11	S/2NE/4; NW/4/ SE/4; E/2SE/4.
T. 31 N, R. 52 W.	Section 12	S/2NW/4; SW/4; S2SE/4; NW/ 4SE/4.
T 31 N, R.52 W.	Section 13	NW/4; NE/4; SE/ 4; NE/4SW/4.
T. 31 N, R. 52 W.	Section 14	NE/4NE/4.
T.31 N, R.51 W.	Section 17	SW/4SW/4.
T. 31 N, R. 51 W.	Section 18	Lots 1,2,3,4; SE/4 NW/4; S/2SE/ 4; NW/4SE/4; E/2SW/4.
T. 31 N, R.51 W.	Section 19	All.
T. 31 N, R.51 W.	Section 20	W/2NW/4; SW/4.
T 31 N, R.51 W.	Section 24	E/2NE/4; NE/4 SE/4.
T. 31 N, R.51 W.	Section 29	W/2.
T. 31 N, R.51 W.	Section 30	NE/4NW/4; NE/4; NE/4SE/4.

II. EPA's Criteria

The agency's approval of the above described portion of the Chadron Aquifer is based on criteria established in EPA regulations. The criteria for exempting an aquifer are found in 40 CFR 146.4 and are as follows:

An aquifer or a portion thereof, which meets the criteria for a USDW, as defined in 40 CFR 146.3, may be determined under 40 CFR 144.7 to be an "exempted aquifer" if it meets the following criteria:

(a) It does not currently serve as a source of drinking water; and

(b) It cannot now and will not in the future serve as a source of drinking water because:

(1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;

(2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(3) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The total dissolved solids content of the groundwater is more than 3,000 and less than 10,000 milligrams per liter (mg/l) and it is not reasonably expected to supply a public water system.

III. Specific Criteria Met

The Agency finds that the aquifer portion being exempted does not currently serve as a source of drinking water (i.e., it meets the criteria of § 146.4(a)). EPA also finds that the portion being exempted contains minerals that, considering their quantity and location, are expected to be commercially producible (i.e., it meets the criteria of § 146.4(b)(1)). EPA relies on these grounds for exempting the aquifer portion described above.

A. 40 CFR 146.4(a)

The aquifer portion being exempted "does not currently serve as a source of drinking water."

No one was identified as currently using water for human consumption from the Chadron Aquifer in the specific lateral boundary in the entire 3,000 acre area the State has requested for exemption. Evidence presented at the State's 1984 hearing indicated there were no drinking water supply wells in the Chadron Aquifer within the 3,000 acre exemption area. FEN performed a survey and provided information on all wells, including domestic, livestock or other types, within an area of review (AOR) of ¼ mile of the proposed exemption boundary, and also located wells within an AOR of 2¼ miles of the exemption boundary. The water user survey conducted by FEN was updated during 1987 and is included in § 4.3 of the commercial permit application to NDEC. Neither survey located any drinking water wells in the Chadron Aquifer within the exemption area. Figure 13.0–1 of the commercial permit application illustrates all the drinking water wells completed in the AOR (2¼ miles) including those completed in the Chadron Formation.

A report entitled "The Baseline Hydrogeochemical Investigation in a Part of Northwest Nebraska" prepared by the Nebraska Conservation and Survey Division in 1982, also inventoried wells in the immediate area including wells penetrating the Chadron Aquifer. None of the Chadron wells inventoried in this survey nor those in the FEN surveys are within the 3,000 acre aquifer exemption boundary. The nearest well is #55 as described in the FEN permit application and is located 2,200 feet west of the proposed exemption area.

Two individuals expressed in writing that wells drilled into the Chadron formation were used as a source of drinking water. These wells, listed as Wells #51, #123, #60, and #61 on the FEN UIC commercial permit application, are not within the boundary of the exemption area of 3,000 acres. These wells were drilled during the initial exploration program by WFC and were left unplugged at the request of the land owner.

Crawford, Nebraska and other users of the water from the Chadron Aquifer outside the exemption boundary will not lose protection under the SDWA. Monitoring wells will be required by the NDEC permit to be installed in the Brule formation, which is the first USDW immediately above the injection zone, to detect vertical migration of any contaminants, and at the perimeter of the permitted area to detect lateral migration. Migration of fluids vertically or horizontally from the site will be in violation of the permit and the SDWA.

B. 40 CFR 146.4(b)(1)

The aquifer "cannot now and will not in the future serve as a source of drinking water because it is mineral, hydrocarbon or geothermal energy producing or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible."

EPA finds that it has clearly been demonstrated that the portion of the Chadron Aquifer in question meets this criterion. The record of review and R&D data indicate that the exempted area cannot now and will not in the future be a drinking water source because it includes a zone which is mineral bearing and is commercially producible. Evidence was presented at the NDEC hearing on September 14–15, 1983, that 25.5 million pounds of uranium were contained in the 3,000 acre exemption area. Information from pump tests, leach tests, core studies, correlation of geophysical logs, and feasibility studies was presented that indicated the uranium deposit within the 3,000 acre aquifer exemption area was expected to be commercially producible.

Since 1983 additional studies, including an additional pumping test (subsection 4.4 of the commercial permit application), leach tests, feasibility studies, and geological studies confirm the commercial producibility of the deposit. FEN submitted to EPA information from their feasibility study that provided production cost estimates which demonstrate that at the current spot market of $20 per pound U_3O_8, the uranium would be economical for FEN to produce for at least the first ten years A pilot plant with two wellfields has operated in section 19 of the aquifer exemption area since July 1986. The R&D project with two wellfields was

chosen because it is representative of the Crow Butte deposit. The mining results from the R&D project would thus be representative of the mining of the deposit as a whole. The pilot plant has produced over 30,000 pounds U_3O_8 from the two wellfields. A total of 8,456 pounds U_3O_8 was produced from Wellfield No. 2 representing all of the estimated reserves in this five spot wellfield. Wellfield No. 1 continues to operate at commercial grades and had produced over 27,000 pounds U_3O_8 through March 1988. The flow rates and headgrades of the production exceeded FEN's projections.

C. Other Criteria Considered and Evaluated. 40 CFR 146.4(b)(3)

(1) Section 146.4(b)(3) of 40 CFR, authorizes an exemption if the aquifer or portion thereof cannot now and will not in the future serve as a source of drinking water because it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption. While the Agency is not relying on this criterion for the exemption, this criterion was evaluated. EPA's review indicates that:

(a) The cost is and will be unreasonable for the City of Crawford to develop the Chadron formation as a source of drinking water in the exempt area and to remove the naturally occurring radionuclides in the Basal Chadron to make it fit for human consumption. Other, much cheaper alternative sources are available to the City for its public water supply. This issue is further addressed in section IV., Response to Comments.

(b) Technologically, only a municipal system would be capable of treating water naturally contaminated by radium and/or uranium to reduce the levels sufficiently to allow use for human consumption. In addition, an individual user would generally be incapable of handling and disposing of radioactive waste from such a system. Other sources of surface and groundwater are available in adequate quantities for the City's water system. A report entitled, The Occurrence of Radionuclides in Water, prepared by Resource Technologies, Inc., was submitted by FEN on April 29, 1988, in support of their exemption application. The document states that levels of uranium and radium-226 exceeding drinking water standards will necessarily be found virtually throughout the ore body and adjacent area of the Basal Chadron. The use of new technologies to remove uranium and radium economically was investigated and is evaluated in the responsiveness summary of this decision.

IV. Response to Comments

Thirty letters were received following the July 22, 1988, **Federal Register** announcement of EPA's public hearing and during the 30-day public notice period and the 120-day extended public comment period. No letters were received requesting EPA to hold a hearing although one telephone caller did express an interest in holding the hearing. The hearing was therefore held as scheduled on August 23, 1988. Most comments received were by way of testimony at the public hearing or written comments submitted after the hearing. The comment period was extended through December 21, 1988, upon public request, to allow additional time for interested persons to review data. At that time the public record was closed. Eight individuals entered testimony for the record at EPA's public hearing on August 23, 1988. Twenty-one letters were received in favor of the proposed exemption and commercial permit. Nine letters were opposed. The letters received which were opposed expressed concerns similar to those expressed at the hearing. A summary of the issues and responses is discussed below:

Six commenters at the hearing expressed a concern that both wellfields should be restored prior to making a decision on approving an aquifer exemption for the remaining acreage. The NRC and the DEC on April 12, 1988 and December 12, 1988, respectively, determined that restoration of the smaller R&D wellfield was successful, and that the pilot project had demonstrated that restoration was feasible in the formation. The decisions were based on restoration of the smaller R&D wellfield. The NRC and NDEC both agree that restoration of the smaller wellfield sufficiently demonstrates the success of the FEN process to restore the aquifer to conditions existing prior to mining activities. EPA agrees. The overall change in water chemistry was minimal and meets the goals of restoration. The water is suitable for any use it would have been suitable for prior to the mining activities. Due to this, the restoration effort is considered fully successful and similar results are expected during the commercial operation. The EPA took split samples during the restoration process, which also confirmed the conclusions of the two licensing agencies.

As recognized in EPA's original decision, the two wellfields as proposed in the R&D permit application specified use of Wellfield No. 2 to investigate the leaching response of the formation over a complete leaching cycle including ore recovery and restoration. Wellfield No. 1 was proposed to investigate the effect of different well spacings on ore recovery. Restoration remains an important aspect of this project. The State permit application and the NRC license application contain restoration procedures. The NRC and NDEC will evaluate and verify restoration activities during the commercial stage of the project. Monitoring and the requirements for restoration during commercial mining will continue under the supervision of both regulatory agencies.

One commenter expressed a concern that Chadron water can be treated economically and submitted evidence that the City of Eldon, Iowa was treating water with 40 to 50 picocuries per liter (pCi/l) radium. EPA agrees that it is technically feasible to treat water contaminated with radium. Uranium, in addition to radium, is present in the Chadron formation, and is the predominant mineral which would require removal. Upon review, EPA discovered that the City of Eldon, Iowa was found to exceed the Maximum Contaminant Level (MCL) for gross alpha and combined radium 226 and 228 radioactivity in 1980–1987. The City filed an exemption request from the radium regulation which indicated that excessive cost to users was the reason the MCL could not be met. Pursuant to the applicable regulations, an exemption request cannot be considered with radium levels in the range stated above. In December 1987 Eldon was issued an Administrative Order by the Iowa Department of Natural Resources to connect its water supply to the Wapello Rural Water System and to discontinue use of its current water supply.

The City of Crawford currently has more economical water supplies available through two sources of surface water, the White River and Deadman Creek, and another source of groundwater, the Brule formation. Statistical data does not support a conclusion that water from the Chadron Aquifer is currently needed as a source of drinking water for the City of Crawford. Additionally, should the Chadron Aquifer be needed in the future as a source of drinking water, it will be no more contaminated after the mining activity than it is currently because restoration of the aquifer after mining will stabilize the contaminants at levels comparable to those which existed before mining activities commenced.

Four commenters requested that FEN submit more than 10% of their well logs

to NDEC. FEN has made all of its data available to EPA and NDEC for review. By request of the NDEC, however, FEN copied and submitted to NDEC 10% of its well logs. This is a request which EPA finds reasonable considering the large number of logs run. By the terms of the NDEC permit, the permittee shall have available on site for review upon request all available logging and testing on each well(s), the results of the formation testing program, and compatibility of injected materials with fluids in the injection zone and the minerals in both the injection zone and confining zone; or any such information as the NDEC may require in consultation with the permittee. In addition to the submitted well logs, both EPA and DEC have periodically viewed data at FEN's facility.

Several commenters requested that EPA limit the area of the exemption. Options suggested by commenters other than the 3000 acres requested by NDEC included (1) limiting the exemption to areas for which FEN currently holds a lease interest (this includes the NDEC and NRC permit and license areas, of approximately 2560 acres); (2) limiting the area to the 5-year mine plan; (3) limiting the area to the 10-year mine plan; or (4) limiting the area to Section 19.

The area being approved as exempt is the NDEC requested 3000 acre area. Prior to approving 3000 acres of the exemption, EPA evaluated the in-situ operation together with pertinent environmental factors, the data developed during the R&D activities, the extent to which exemption criteria are met for the larger area, and the potential environmental effects of the mining activity. This exemption is not intended to control the commercial mining operation. Rather the permit and license will control the mining through operational conditions and the requirements for monitoring, reporting, corrective action and restoration. EPA believes through permitting and licensing by both the NRC and the NDEC, the operation at the facility will be adequately overviewed on a routine basis. This includes reviews of the permit at scheduled intervals and as operations proceed, with revisions being made as necessary after public involvement and comment. Therefore, because the area proposed for exemption meets the requirements of the regulations, the entire area requested is being exempted.

One commenter was concerned that some nonmineralized areas were being considered for exemption in the 3000 acre area, thus providing a buffer zone. The commenter did not believe the SDWA gave EPA the authority to include a buffer zone in an exemption. EPA has determined that a buffer zone is not included within the exemption boundary. No approval of a buffer zone was considered in EPA's initial decision in 1985. The 3000 acre area being exempted correlated directly to FEN's proposed mining activities. No mining, however, can take place outside the NRC and NDEC permit boundaries. Any excursion outside the exemption boundary will be in violation of the SDWA and any excursion beyond the permit area will be a violation of the State permit as well as the SDWA. If an excursion should occur, appropriate corrective actions will be required to bring the mining activities back into compliance with the permit. The size of the exemption is based on the location of the ore zone boundaries. EPA has reviewed the information on location of the ore zone and the proposed mining activity and has determined the proposed exemption area to be appropriate for this facility.

One commenter was concerned that an exemption is counter to the NDEC's Groundwater Protection Strategy. The Nebraska Groundwater Protection Strategy administered by NDEC under the Groundwater Protection Program is a plan for prevention of groundwater contamination in Nebraska. The plan deals with specific areas of groundwater pollution. An aquifer exemption is not counter to this effort. An aquifer exemption requires a controlled and permitted activity to occur subject to NRC and NDEC regulatory authority. Groundwater pollution and the potential to contaminate drinking water supplies is a major factor in the consideration of an aquifer exemption. Required activities after mining has ceased also provide for aquifer protection and restoration. EPA's exemption decision is consistent with NDEC's exemption decision and their Groundwater Protection Strategy.

Three commenters believed the NDEC was required to hold new hearings on the exemption. On September 14 and 15, 1983, the NDEC held a hearing prior to making its exemption determination. Based on the proceeding at the state hearing, NDEC granted the exemption for 3000 acres as submitted by the WFC. On March 28, 1984, the NDEC submitted to the EPA a request for exemption of 3000 acres of the Chadron Aquifer. The request to EPA was renewed by NDEC on March 18, 1988, based on the results of the R&D project. The NDEC has met its requirements under state law and an additional hearing was determined by the Director of NDEC to be unnecessary. The NDEC announced notice of a public hearing on March 13, 1989, on the commercial permit and held their hearing on May 11, 1989. Notice of future modifications will also be handled as required under state law.

Several commenters expressed a concern with the difficulty in gaining access to records. All EPA records, except those ruled exempt under the Freedom of Information Act, were made available during the public comment period. Copies of new information were made available at the EPA office in Kansas City, Kansas, the NDEC offices in Lincoln and Chadron, Nebraska, and the Nebraska Oil and Gas Conservation Commission Office in Sidney, Nebraska. Data developed from the R&D project and existing geologic data and all environmental reports, studies, documents and other Agency decision memoranda were made available for public review. Procedures are available for anyone to receive copies of all public documents.

Comments were received that there is no provision in the SDWA authorizing EPA to grant aquifer exemptions. The SDWA identifies underground injection wells as a potential source of pollution to the nation's underground sources of drinking water. To protect these sources of drinking water, Congress directed EPA to promulgate regulations governing the adoption of state-enforced underground injection control programs. As a part of these regulations, EPA was directed to establish minimum requirements that must be adopted and implemented by all EPA approved UIC programs. The UIC regulations, specifically 40 CFR 144.7 and 146.4, which include the criteria for exempting aquifers, were promulgated as part of the regulations designed to protect underground sources of drinking water which went through rulemaking procedures allowing public notice and opportunity for comment in 1980. This very issue regarding EPA's authority to grant aquifer exemptions under the SDWA was raised immediately after the 6.7 acre exemption was granted for this project in 1984. The U.S. Court of Appeals for the Eight Circuit issued an opinion on this subject as follows:

* * * WNRC [Western Nebraska Resources Counsel] argues the Safe Drinking Water Act does not authorize EPA to grant aquifer exemptions under any circumstances. In advancing that argument, WNRC attacks directly the agency's authority to promulgate regulations dealing with (1) the identification of exempt aquifers, 40 CFR 144.7(b), (2) the substantial and

nonsubstantial revision of state UIC programs, *Id* [sic] § 145.32(b), and (3) the criteria to be applied in determining what may be considered an exempt aquifer *id.* § 146.4.

WNRC's substantive challenge to the agency's regulations is untimely. At the latest, the regulations challenged by WNRC were last subject to any significant revision in 1982 or 1983. *See* 48 FR 14,207–08 (1983) (minor change to UIC program revisions regulations); *id.* at 14,193 (minor revision to identification of exempt aquifer regulations); 47 FR 4,998–99 (1982) (minor revision to criteria for determining exempt aquifer). * * * WNRC's challenge to these regulations is barred by the 45-day limitation of section 300J–7(a) [of the SDWA].

Western Nebraska Resource Counsel v. *EPA*. 793 F.2d 194, 199, 24 ERC 1936, 1940 (8th Cir. 1986). Accordingly, the authority exists for EPA to grant an aquifer exemption pursuant to regulations promulgated under the SDWA. The time to challenge this authority has passed.

One commenter questioned the authority for the NDEC Director as opposed to the Nebraska Environmental Control Council (NECC) to grant aquifer exemptions. The commenter compared an aquifer exemption designation to a UIC program revision. The NDEC adopted regulations, approved by the NECC, which gives the Director the authority to designate aquifers as exempt under Title 122, Chapter 5 of the Rules and Regulations for Underground Injection and Mineral Production Wells, as promulgated under the authority of the Nebraska Environmental Protection Act. An exemption under the NDEC regulations is not considered a change to the Nebraska UIC regulations. It represents a UIC program modification of the applicable UIC program in the state. The term "program revision" is an EPA UIC primacy program term and does not correspond with state statutory or regulatory revisions.

The authority for EPA to postpone and place in abeyance the remaining acreage in the initial decision was raised. Under the program revision provisions of 40 CFR 145.32, EPA is not bound by a time period for decisions on state program changes as it is under 40 CFR 145.31(e) to approve, deny, or approve in part new state UIC programs. EPA acted with reasoned caution and well within the scope of its permissible discretion in granting a limited exemption in 1984 modifying the Nebraska UIC program to include the R&D portion of the requested aquifer exemption while holding the remainder in abeyance pending further information about the success and restorability of the mining activities.

One commenter questioned the terminology variation between the EPA regulation, 40 CFR 146.4(b)(1) and the NDEC regulation 122, chapter 5, concerning the terms "commercially producible" and "production capabilities." While there is variation in the language of the State and EPA regulations, FEN has demonstrated both commercial producibility, as described above in section III of this decision, and the production capabilities of the in-situ mining process.

An issue was raised concerning the FEN surety bond, its renewal and/or use of a letter of credit (LOC) instead of a bond to show financial responsibility. An irrevocable LOC is a less widely used approach to financial responsibiity, but provides as much assurance for the regulatory agency as surety bonds. The LOC is an irrevocable assurance, usually provided by a bank, to pay the regulatory agency up to a certain sum in the event of operator nonperformance. The evidence of financial responsibility, in the form of a LOC or other form, satisfactory to the NDEC in accordance with Chapter 37, Title 122, *Rules and Regulations for Underground Injection and Mineral Production*, must be provided to NDEC in the amount of four million, eight-hundred seventy-seven thousand, five-hundred fifty dollars ($4,877,550). This financial responsibility will provide for proper plugging and abandonment of the permitted wells, restoration of the acquifer, and surface reclamation. The NDEC and NRC will review the financial responsibility annually to ensure its adequacy. The NDEC and NRC have agreed the amount is sufficient. This is a NDEC permit issue and will be addressed by the State before approving a commercial mining permit.

A concern was raised regarding the possibility of the Ogalala Sioux Indian Tribe of South Dakota asserting their superior water rights to the White River over the City of Crawford, Nebraska. The Tribe was contacted by EPA for their specific comments due to their past concern with the FEN activities at the Crow Butte site. Although no written comments were received from the Tribe, their concerns were similar to those previously raised, specifically assurance of their undisturbed use of the Chadron Aquifer as a source of drinking water. It is the opinion of EPA that through the NDEC permit and other existing controls, adequate protection is provided to the Ogalala Sioux Indian Tribe. The Tribe's reservation is located approximately 30 miles north of Crawford, Nebraska. Further, an assertion of water rights to the White River by the Ogalala Sioux Tribe would not force Crawford to use the Chadron Aquifer for drinking water because Deadman Creek and the Brule Acquifer are readily available as sources of drinking water.

A concern was raised that the uranium levels found in the Brule formation, located above the injection formation, were from upward migration of fluids from the mining activity. EPA reviewed data from several wells in the Brule Formation. Mean averages of uranium levels, measured between 1982 and 1987, ranged from .133 mg/l to 29.2mg/l with an average mean of 9.87 mg/l. Fluctuations in uranium levels appear to be a naturally occurring phenomenon which EPA does not consider to be an indication of upward migration of fluids from the FEN project activities. No excursions were detected at the plant site. Monitoring wells constructed in the Brule Formation showed no indication of upward migration of fluids from the mining zone. In addition, commercial permitting requirements will provide for appropriate monitoring in the first USDW above the injection zone to detect possible upward migration of fluids.

The issue of transport of uranium and of radioactive waste from the site was a public concern. Proper transport of uranium and waste off-site is in activity regulated by the NRC with the uranium mining license. Temporary on-site disposal is an NRC license condition. FEN, however, has chosen not to dispose of any radioactive waste on site permanently. FEN has formulated a contract for long-term disposal of contaminated wastes at an appropriately licensed site. Transportation of radioactive waste is also regulated by the Department of Transportation (DOT). The DOT has established procedures for emergency actions and first responders to implement in the event of radioactive cargo incidents. Transportation routes are designated by DOT throughout the United States. States may designate restricted roads if desired. The DOT procedures address radioactive principals. health risks, hazard identification and response protocols. Federal and State procedures are in place to address emergency incidents which might arise, which include the involvement of EPA, DOT and NRC.

A question was posed about the frequency of site inspections. This comment is directly related to State permit conditions and compliance

activities along with the NRC licensing requirements rather than to the exemption. EPA's oversight activities have found both the number and the quality of the inspections of the site reported by NDEC to be appropriate. The NDEC permit and the NRC license will address site inspections.

One commenter indicated that several "accidents" had occurred at the facility which resulted in a loss of test fluid during R&D operations. Based on this comment, EPA performed a thorough review of the project and determined that reporting by FEN to the NDEC and NRC and numerous site inspections by both agencies show no indication of any "accident" or loss of test fluids at the facility. The commenter declined to provide more specific information to establish the time frame or nature of any accident. Without specific information regarding the alleged accident from the commenter, and based on the record available for review, EPA is unable to substantiate the claim that any accident has occurred at the facility.

EPA coordinated its review efforts with NRC and NDEC on the issue of potential geologic faults in the mining area. EPA's objective is to insure protection of groundwater where injection wells are operated. The NRC received a letter on potential faulting or structural control of minerlization within the permit area. The correspondence stated that near-vertical faults existed over the area planned for solution mining. These faults were suggested to be natural zones for groundwater movement having a high probability of resulting in loss of control of mining fluids and subsequent groundwater contamination. NRC reviewed pertinent data from FEN's files. Although the evidence of faulting is inconclusive, the information does appear to support FEN's claim that if faulting did occur, it was minor and probably would not cause movement of mining solution. Intense testing during the R&D phase of the project indicated there is adequate confinement in that the mining zone can be in-situ leach mined without vertical migration of the mining solution. To date, the monitoring has shown no vertical or horizontal movement of the mining zone. The geologic data clearly indicates there is sufficient aquitard thickness and integrity above and below the Chadron Aquifer to assure control of mining solutions. Additional aquifer testing will be required as the project moves out of the zone of influence of the existing aquifer tests. This testing must confirm the continued confinement within the future mining area before additional mining will be allowed.

The issue of whether EPA should perform a complete National Environmental Policy Act (NEPA) review for the aquifer exemption determination was raised. Because of EPA's expertise in environmental matters, EPA is authorized to prepare a "functional equivalent" of an Environmental Impact Statement (EIS) in lieu of a formal EIS prior to taking particular actions. *See, e.g., Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 379–387 (D.C. Cir. 1973); *Essex Chemical Corp.* v. *Ruckelshaus*, 486 F.2d 427, 430–431, (D.C. Cir 1973). There are two criteria the EPA must meet before performing the "functional equivalent" review:

1. The EPA's authorizing statute must provide "substantive and procedural standards" that ensure full and adequate consideration of environmental issues; and

2. The EPA must afford an opportunity for public participation in the evaluation of environmental factors prior to announcing a final decision.

The EPA has met these criteria in making this aquifer exemption determination by following the substantive and procedural standards of 40 CFR part 146 to assess the environmental issues and to include adequate public participation in the review of the proposed exemption request and all data associated with the decision process. The EPA's functional equivalent environmental review is included as Section V of this decision. In addition, the NRC has issued a draft and final EA indicating a finding of no significant impact. NRC's draft EA has been available for EPA and public review since December 1, 1988. On December 27, 1989, the NRC published notice in the **Federal Register** their final finding of no significant impact. The NRC's final EA was also available at that time.

V. Environmental Impacts

EPA evaluated the environmental impacts of the proposed project, especially those associated with groundwater contamination. EPA has also reviewed and commented on the draft environmental assessment conducted by the NRC prior to the issuance of the Source Material License to FEN. In conducting the review of the environmental considerations involved in this action, the EPA considered, *inter alia*:

- Environmental information submitted by the applicant (FEN) to support the permit and license applications and the aquifer exemption request;
- The draft and final EA of the NRC for the issuance to FEN of a license to receive, possess, use and transfer source material and by-product material in the course of a commercial facility associated with the in-situ extraction of uranium;
- Comments on the NRC Draft EA by the Environmental Review Branch, EPA, Region VII, January 19, 1989;
- Restoration determinations of the NDEC (12/12/88) and the NRC (4/12/88);
- Information supplied in discussions with the NDEC and the NRC;
- Site visits by EPA staff on June 4, 1986, August 26, 1987, and August 23, 1988;
- Information obtained during the EPA comment period and at the August 23, 1988, public hearing conducted by EPA; and
- Results of laboratory analyses performed by EPA, NRC and NDEC in 1986.

EPA has reviewed the environmental impacts of the proposed commercial project based on the above information. Of particular interest are the effects on other types of land use (e.g., agriculture, recreation, and tourism); transportation and handling of waste and associated mining activities creating air pollution; livestock endangerment from unplugged wells; and endangerment to other forms of wildlife (e.g., large game and fowl and endangered species). Also of concern are the effects of the in-situ mining operation on ground and surface water. The findings are:

(1) The area of intense mining activity is primarily located in section 19, T31N, R51W, Dawes County, Nebraska. The disturbed surface area, historically used for livestock grazing and pasture land, will be reclaimed and returned to a condition suitable for its original use.

(2) No routine particular emissions from the commercial project are expected from the proposed in-situ mining operation. Radon 222 is the only projected routine radioactive release. The projected radioactive concentrations within the area of the commercial project site are well below the NRC limit of an unrestricted air concentration of 3.0E–9 μCi/l. Employee radiation exposures will be minimized by a ventilation system in the recovery plant. After mining is complete, and the site reclaimed and restored, no further radiological impacts above pre-existing background are expected to occur. The applicant must dispose of radioactive solid waste at a licensed disposal site. Liquid effluent discharges are not permitted by the NRC license, and are collected in the solar evaporation ponds.

(3) With its initial UIC permit application, the applicant submitted an environmental report which describes land use, demographic and social characteristics of the area surrounding the proposed project, regional historic, archeological, architectural, scenic and natural landmarks, and terrestrial and aquatic ecology. Intensive investigations were conducted throughout a 13 section area (commercial study area), with special emphasis on the section containing the commercial project site restricted area boundary. Equivalent studies were conducted within a 5 mile "Adjacent Area." Finally, extensive studies were conducted within a 50 mile "Outer Area." In 1987, FEN updated information on the extent of present and projected land and water use and trends in population or industrial patterns. The information was verified by FEN through collection and review of additional data, personal communication, and site reconnaissance. The update considers an area within the 5 mile (Adjacent Area) radius of the center point of the commercial permit area. EPA has reviewed the previous submittal and the updated information and finds:

(a) The land in the commercial project site is privately owned with a major percentage in pastureland (92.5%). Much of the surrounding lands are designated as National Forests. Hunting and fishing activities occur on adjacent or nearby areas which include Fort Robinson State Park, Fort Robinson Wildlife Area, Ponderosa Wildlife Area, the Nebraska National Forest and the Ogallala National Grassland. The project is not expected to diminish the hunting and fishing activities in these areas. Also, the project does not overlap onto any of these major recreational areas, nor are there any irrigated lands within the project site.

(b) Because the increase in employment related to the project during its construction and commercial stage are relatively small, no significant adverse effects to the existing public facilities and services are expected.

(c) Harvestable wildlife populations are relatively low within and immediately surrounding the exempted area, compared to the hunting and fishing activities described in (a) above. There are no threatened or endangered plant specifies, birds, reptiles, amphibians, fish or mammals on the commercial project site. Bald eagles were observed, even though the species is an uncommon winter resident and migrant, and its critical habitat does not exist within or near the project area. The impacts on carnivores and raptors are expected to be in direct proportion to the reduction in suitable prey species. Due to the degraded or marginal range conditions for suitable prey species and big game mammals, it is probable that habitat conditions will not be adversely affected and in fact can be enhanced during the operational and reclamational stages of the project development. With proper attention given to good conservation, erosion practices, and grassland reseeding and vegetation protection, many of the habitat conditions can be improved. While waterfowl occasionally could land on the evaporation ponds, EPA finds that the ponds associated with the project would not significantly affect waterfowl populations in the area. No long-term impacts from the project are anticipated, and no impairment of ecological stability or diminishment of biological diversity are expected.

(4) Disturbances from construction and operation will result in a temporary increase in traffic through delivery of the necessary equipment and supplies. However, no significant environmental impact is expected to be associated with this activity. Activities from the Burlington Northern Railroad, highway traffic, power lines, telephone lines, residences and farming already exist on land adjacent to the project site.

(5) Because of the monitoring and operational controls placed on the operation, any excursions of contaminated groundwater at the project site can be controlled with minimal impact. The two reasons for this are:

(a) For the commercial operation, consideration will be given in the NDEC permit to limiting the mining units which can be in operation at any given time. This will limit the quantity of contaminating fluid injected into the ore zone, and if excursions do occur, they can be controlled by increasing the overproduction rate and thereby drawing the lixiviant back into the mining zone.

(b) The monitoring programs at the site monitor not only water quality in the ore zone and adjacent aquifers to detect excursions, but also the potentiometric pressure of the adjacent aquifers. This provides early detection of any lateral or vertical excursions. Mitigating measures can then be taken before the excursions are out of control.

FEN, the applicant, proposes a restoration plan which will be reviewed and incorporated in the permit and license of the NDEC and NRC as a requirement. Their plan essentially consists of the same restoration methodology for the commercial operation as was used at the R&D project. Three stages were undertaken for groundwater restoration at the R&D operation. The first stage termed the halo recovery stage consisting of withdrawal of wellfield water, with no injection, in order to flush lixiviant out of the wellfield. The second stage, the permeate injection (clean water)/ reductant stage, consisted of running water recovered from the wellfield through a reverse osmosis unit and injecting the permeate (clean water) into the wellfield. Reductant was added to the injection stream to cause the metals to be removed from solution. The third stage, the wellfield recirculation, was undertaken to allow mixing of the wellfield and to allow the permeate/ reductant to have maximum affect. The NRC and NDEC reviewed the restoration results of Wellfield No. 2 and both agencies confirmed restoration to be successful. The elevation of the groundwater parameters above baseline maximum values indicates that some of the naturally occurring constituents in the host rock were brought into solution due to oxidizing conditions being established. However, the degree of elevation in the worst case for ammonia is approximately two-tenths of a mg/l. Similarly, the other elevated constituents are either hundredths of thousandths of a mg/l. These rises in constituent levels are so insignificant that the water has undergone little or no change. Because the overall change in water chemistry is small, the groundwater was determined suitable for any premining use. Due to this, the restoration effort is considered fully successful and similar results are expected during the commercial operations.

VI. Alternatives to Exemption

Alternatives applicable for the proposed project are: (1) To grant the exemption request of 3000 acres as submitted by NDEC; (2) to deny the exemption request; (3) to grant an exemption of the NDEC and NRC permit and license boundaries of approximately 2560 acres; (4) to grant FEN's suggested alternative exemption area (letter of Dec. 21, 1988); or (5) to grant an exemption boundary based on the 5, 10, or 20 year mining plans.

EPA has the authority to approve, approve in part, or disapprove the exemption request. (40 CFR 146.4 states that an aquifer "may" be exempt if it meets criteria for exemption.) This decision must be based on an evaluation of environmental and public health and welfare factors relevant under applicable regulations and statutory

provisions. (See e.g., 40 CFR parts 6, 144, and 146; SDWA, and NEPA). As discussed, granting the entire exemption allowing in-situ mining will have minimal impacts on the environment and public health and welfare. Uranium resource production clearly is provided for in the applicable regulations. Short of disallowing any mining, the only alternative to the in-situ commercial operation is conventional surface (e.g., strip) mining, an alternative with potentially very significant environmental impact. Based on the record and the relevant regulatory and statutory criteria, EPA concludes, after weighing the benefits and environmental costs of the options relevant under the applicable rules and statutes, that strip mining is not a preferable alternative.

EPA has chosen not to limit this decision to other options based on the number of acres exempted. EPA has evaluated the proposed in-situ mining operation together with pertinent environmental factors. EPA concludes that because the entire 3000 acre area qualifies for exemption for Class III in-situ leach mining activities for extraction of uranium, there is no need to limit the aquifer exemption determination to a smaller area. Information was developed from the R&D project regarding the ore body, confinement of the aquifer, and restoration capabilities. Conditions are favorable for in-situ mining of uranium in this area. In-situ mining was chosen over other conventional mining methods after taking into consideration the increased construction and operational costs and environmental impact of other mining methods. The increased environmental impacts of alternative mining methods include a significant disturbance of the surface environment affecting health and safety, increased radiation exposure, adverse effects of hydrogeology, adverse socioeconomic impact, solid and liquid waste generation, air quality impact, aesthetic degradation, adverse effects on wildlife, and a host of other environmental impacts. Furthermore, uranium resources situated in smaller, lower grade and/or deeper deposits could be lost or reduced if conventional surface mining is employed.

After considering all the alternatives and relevant factors, EPA concludes that granting of the NDEC exemption request for in-situ mining is justified under the applicable regulations and the preferred and most acceptable mining alternative. The Agency further concludes that the environmental effects of the project do not justify denying or limiting the exemption being granted here today.

VII. Relationship Between Short-Term Uses and Long-Term Productivity

The estimated lifetime for this in-situ uranium commercial project is 20 years for extraction and restoration/reclamation operations. The commercial site includes a proposed permit area of approximately 2500 acres. Of this total surface area, it is estimated that approximately 500 acres will be disturbed during the life of this project. The mine schedule covers the first ten years of the project. A map showing the proposed mine plan is found as Figure 5.1–1 of the FEN commercial permit application. Each well field will be divided into mining units averaging approximately 22.5 acres. Due to the possibilities of a variation in actual locations of the ore body boundaries as a result of future ore reserve information, the actual configuration of the various well fields as well as the ultimate final boundaries of the mining units will be determined when the production and injection wells are installed. The ore body will be mined through the use of a series of five- or seven-spot wellfield patterns installed over the mineralized section of the formation. A single five-spot pattern is roughly rectangular and consists of four injection wells surrounding a single central recovery well. Spacing between the wells in any five-spot will range from 40 to 100 feet, depending on the topography and ore characteristics. The perimeter monitor wells will be located 300 feet from the wellfield on 400-foot centers.

The proposed site for the operation historically has been used for livestock grazing, and is approximately ninety-two (92) percent pastureland, five (5) percent forestland, and two (2) percent cropland. The Restricted Area Boundary (RAB) of approximately 80 acres is particularly degraded due to overgrazing, and the bottomland vegetation is comprised principally of indicators of such land practices: i.e., noxious weeds and poisonous plants. Squaw Creek, which borders the west side of the RAB, is characterized by steep, eroded banks due to overgrazing. It is quite possible that when the site is reclaimed, following Soil Conservation Service recommendations, that affected land can be improved considerably from its already degraded condition.

The in-situ leaching of uranium provides several environmental advantages over conventional mining. Because hydrologic conditions are favorable in the area, the impacts from in-situ mining are considerably less. The greatest impact of the uranium extraction method is to the ore zone groundwater quality. Groundwater in the ore zone within the immediate areas being mined is expected to contain temporarily increased concentrations of radioactive elements during the operation of the wellfields. Restoration will reduce the concentration of contaminants on a wellfield average to the affected groundwater baseline quality or to a condition consistent with its premining use. The impact of the surface environment will be minimal because in-situ leaching does not destroy large surface areas and produces much less waste than conventional mining and milling operations. Furthermore, there are no expected excavations (other than for evaporation ponds) or subsidence effects associated with the in-situ method. EPA believes that the impacts associated with the local short-term uses of the environment by the in-situ uranium mining projects are acceptable. Furthermore, the long-term productivity of the environment should not be affected adversely by the project, and the long-term productivity of the mineral resources being mined will be enhanced by the commercial project.

VIII. Commitment of Resources

Both the groundwater, as discussed in part VII above, and the surface environment will be affected by the proposed commercial project. During construction and operation, land use will be altered due to the construction of the building, evaporation ponds and installation of injection and production wells. However, through the NDEC and NRC permit and licensing provisions, the irreversible and irretrievable effects of the operation should be minimal.

After completion of the mining process in any mine unit, groundwater restoration activities and plugging and abandonment of the wells, FEN will decommission the recovery facilities and reclaim all land affected by the leaching operations. FEN proposed a plan for dismantling plant building and equipment, reclamation of ponds and roads, and the ultimate disposal of chemical, hazardous, and radionuclide wastes. Scheduling for mining and restoration will be accomplished upon a mining unit basis. Following the uranium recovery operation in an individual mining unit, the groundwater will be restored. Reclamation activities in individual mining units will also involve returning disturbed lands to their original use conditions.

The greatest impact of the in-situ mining method is on the groundwater quality in the ore zone. FEN proposes to use reverse osmosis (or similar surface

treatment) and groundwater sweep as the initial method of restoration. A groundwater sweep involves pumping contaminated water from the mineralized zone, treating it, and reinjecting the treated water to the mineralized zone. The pumping of the mineralized zone creates a negative hydraulic gradient from the surrounding, uncontaminated groundwater, and causes the groundwater to flow towards the production well. Because approximately two-thirds of the withdrawn water will be returned to the mineralized zone using the reverse osmosis process, no significant or irreversible impact on the area groundwater is expected.

The Pierre Shale below the mineralized zone is not considered to contain aquifers of any importance in this region. Because of its impermeable nature it also serves as an aquiclude preventing vertical migration of water. The basal sandstone member of the Chadron Formation is the host member of the Crow Butte uranium ore deposit and the only aquifer in this unit. The Middle Chadron, characterized by a brick red clay, is the upper confining layer. The Brule Formation, which lies conformably on top of the Chadron Formation, is an important aquifer for domestic and agriculture purposes.

Due to the thickness of the Middle Chadron, which is the aquitard between the mineralized zone and the Brule Aquifer, it is unlikely that any irreversible or irretrievable effects on the Brule would occur if the mining operation were implemented. In addition, the hydraulic head of the Brule Aquifer would prevent any upward migration of leach fluids or Chadron Aquifer water under normal conditions.

An excursion would occur if lixiviant fortified groundwater moved beyond the expected confines of a mining unit. It would then be detected in a monitor well. It is common practice to dramatically degrade the water quality within the mineralized zone during mining. The unexpected migration of these mining solutions could occur based upon a variety of circumstances. Most causes of excursions are from an improper balance between injection and recovery rates, undetected high permeability strata or geologic faults, improperly abandoned exploration drill holes, discontinuity and unsuitability of the confining units which allow movement of the lixiviant out of the ore zone, poor well integrity, or hydrofracturing of the ore zone or surrounding units.

The likelihood of these situations occurring due to the hydrologic and geologic conditions at the site are extremely remote. Based on the differential hydraulic conductivities which exist between the Brule and Chadron Formations, it is improbable that a vertical excursion would occur. It would be much more likely that a horizontal excursion may occur. Horizontal excursions are primarily controlled by the normal practice of wellfield overproduction. However, should overproduction fail to control the excursion, lixiviant fortified waters could move to a monitor well. Should such an event take place, it is easily reversed by increasing the overproduction rate and thereby drawing the lixiviant back into the mining zone.

Based on the information previously discussed and operational controls to be implemented, none of the above are expected to be a problem. Furthermore, the operational history of the R&D site indicates that no excursion events took place.

The NDEC and NRC will review the restoration water quality data (subsequent to post-restoration water quality monitoring) and must determine that groundwater restoration is complete before FEN will be allowed to abandon the wellfield site.

Radioactivity concentrations near the commercial site are projected to fall well below NRC limits. To insure that offsite concentrations are maintained below permissible limits, the NRC will require FEN to monitor radon concentrations at and near the site boundary. No further radiological impacts are expected to occur after mining has been completed and the site has been fully reclaimed.

IX. Limitations of This Approval

The portion of the Basal Chadron aquifer defined by the NDEC requests is approved for exemption under 40 CFR 144.7, 145.32 and 146.4. A total lateral area of approximately 3000 acres is being approved under this action. Vertically only the Basal Chadron aquifer is exempted. The exemption is applicable only for purposes of Class III in-situ injection well mining of uranium using sodium carbondate/bicarbonate as the lixiviant with an oxygen or hydrogen peroxide oxidant. Any variation from this lixiviant combination shall require an NDEC permit and NRC license amendment. This approval does not authorize any wastewater disposal through well injection into the Chadron aquifer.

X. Conclusions

From EPA review of the entire record (including all public hearings, several field visits, information from the NDEC, NRC and public comments) and after careful evaluation, EPA believes there will be no significant adverse impact on human health or the environment from the commercial project. No evidence was presented during the comment period or found through EPA's independent evaluation which would indicate otherwise. The following statements supporting a finding of no significant impact are summarized below:

1. The groundwater monitoring program proposed by FEN is sufficient to monitor the operations and will provide a warning system that will minimize any impact on groundwater. Furthermore, aquifer testing indicates that the production zone is adequately confined by the underlying Pierre Shale Formation and the overlying Middle and Upper Chadron Formations, thereby assuring hydrologic control of mining solutions.

2. Radiological effects from the proposed operation of the well field and processing plant will be only small percentages of NRC regulatory limits and will be continuously monitored through the NRC license.

3. The NRC and NDEC environmental monitoring programs are comprehensive and will detect any radiological releases resulting from the operation.

4. Radioactive waste generation will be minimal and such waste products will be transported and disposed at an approved site in accordance with applicable Federal and State regulations.

5. Groundwater in the mining zone, based upon previous testing, can be restored to baseline concentrations or applicable uses for which the formation was suitable prior to the mining activities.

For the reasons discussed above, the EPA has decided to approve an aquifer exemption of the Basal Chadron Formation is described by the applicant, FEN, and approved and submitted to EPA by the NDEC as a revision to the Nebraska approved UIC program.

A transcript of the proceedings at the EPA hearing in Crawford, Nebraska on August 23, 1988, and the contents of the administrative record are available for review. Please contact: Environmental Protection Agency, Water Management Division, ATTN: Angela Ludwig, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone (913) 551-7032.

Morris Kay,

Regional Administrator.

[FR Doc. 90-11985 Filed 5-22-1990; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300216; FRL-3737-8]

Updating of Pesticide Regulations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This document updates seven regulations in 40 CFR part 180 to reflect appropriate citations to other regulations in part 180. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

DATES: This regulation becomes effective on May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia C. Critchlow, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: This document amends 40 CFR part 180 by amending §§ 180.7, 180.8, 180.9, 180.10, 180.13, 180.29, and 180.32 to reflect the correct reference to another regulation in part 180 and to remove obsolete and inappropriate references.

In the **Federal Register** of January 6, 1986 (51 FR 847), EPA issued a final rule which amended 40 CFR 180.33, the regulation which prescribes pesticide petition fees. Section 180.33 is updated on an annual basis to reflect appropriate fees for specific petition actions. Other sections in part 180 which refer to the fee schedules in § 180.33 have not been amended and, therefore, now contain obsolete and incorrect references to specific paragraphs in § 180.33.

1. *Section 180.7.* Section 180.7(d) states in part: "Each supplement shall be accompanied by a deposit of fees as specified in § 180.33(e)." Fees are no longer required for supplements to petitions; therefore, this sentence is being removed from § 180.7(d).

2. *Section 180.8.* In its last sentence, § 180.8 states, "A deposit for fees as specified in § 180.33(f) shall accompany the resubmission of the petition." In the current fee regulations, petitions which are withdrawn and later resubmitted are discussed in § 180.33(g); however, the fee for such resubmission is prescribed in § 180.33(g) only in nonspecific terms, as "the fee that would be required if it [the petition] were being submitted for the first time." Since that first-time fee could be one of several, depending on the nature of the tolerance or exemption being requested, § 180.8 is being amended to refer to the generic "§ 180.33."

3. *Section 180.9.* In its last sentence, § 180.9 states, "The additional data shall be accompanied by a deposit of fees as specified in § 180.33(g)." Since fees are no longer required for amendments, this sentence is being removed from § 180.9.

4. *Section 180.10.* In § 180.10(a) and (b), it refers to fees prescribed in "§ 180.33(i)(3)." The current paragraph which prescribes fees regarding an advisory committee is § 180.33(j)(3), and § 180.10 is being amended to refer to the generic § 180.33.

5. *Section 180.13.* Section 180.13(a) refers to "filing fee as specified in § 180.33(h)." The current paragraph which prescribes filing fees is § 180.33(i), and § 180.13 is being amended to refer to the generic § 180.33.

6. *Section 180.29.* In § 180.29(c) and (d), it refers to deposits provided by § 180.33(i)(3) for requests that a proposed rule be referred to an advisory committee. These deposits are now prescribed in § 180.33(j)(3), and § 180.29 is being amended to refer to the generic § 180.33.

7. *Section 180.32.* In § 180.32(a), in the last sentence it refers to "fees as provided in § 180.33(d)." The fees for amending and repealing tolerances or exemptions from tolerances are now prescribed in § 180.33(a), (b), (c), or (f), depending on which action is being discussed. Section 180.32 is being amended to refer to generic § 180.33. The correct citation for amending a tolerance is § 180.33(a) or (b); repealing a tolerance is § 180.33(f); granting or repealing an exemption is § 180.33(c).

To avoid the possible need for future revisions of the regulations which include references to § 180.33, these regulations are being amended to reflect references only to § 180.33, rather than to specific paragraphs in § 180.33.

No new regulatory requirements are being added. The changes being made are merely technical amendments to update certain regulations in part 180; therefore, advance notice and public comment are not required.

List of Subjects in 40 CFR Part 180

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

Dated: May 10, 1990.

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

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.7 [Amended]

2. Section 180.7 *Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities* is amended in paragraph (d) by removing the fifth sentence which reads, "Each supplement shall be accompanied by a deposit of fees as specified in § 180.33(e)."

§ 180.8 [Amended]

3. Section 180.8 *Withdrawal of petitions without prejudice* is amended in the last sentence by changing "§ 180.33(f)" to read "§ 180.33."

§ 180.9 [Amended]

4. Section 180.9 *Substantive amendments to petitions* is amended by removing the last sentence which reads, "The additional data shall be accompanied by a deposit of fees as specified in § 180.33(g)."

§ 180.10 [Amended]

5. Section 180.10 *Referral of petition to advisory committee* is amended in paragraphs (a) and (b) by changing "§ 180.33(i)(3)" to read "§ 180.33."

§ 180.13 [Amended]

6. Section 180.13 *Objections to regulations and requests for hearings* is amended in paragraph (a) by changing "§ 180.33(h)" to read "§ 180.33."

§ 180.29 [Amended]

7. Section 180.29 *Adoption of tolerance on initiative of Administrator or on request of an interested person* is amended in paragraphs (c) and (d) by changing "§ 180.33(i)(3)" to read "§ 180.33."

§ 180.32 [Amended]

8. Section 180.32 *Procedure for amending and repealing tolerances or exemptions from tolerances* is amended in paragraph (a) by changing "§ 180.33(d)" to read "§ 180.33."

[FR Doc. 90-11856 Filed 5-22-90; 8:45 am]
BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-55; RM-5161, RM-5400, and RM-5401]

Radio Broadcasting Services: Atmore, Chatom, and Bayou LaBatre, AL, and Pascagoula, MS

AGENCY: Federal Communications Commission.

SUMMARY: This document corrects a final rule at 54 Fed Reg 41445, October 10, 1989, which incorrectly referred to Pascagoula as being located in Alabama. Pascagoula is located in Mississippi.

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

SUPPLEMENTARY INFORMATION: In FR Doc 89-23796, published in the 10/10/89 Federal Register on page 41445, the following correction is made to § 73.202(b).

1. On page 41445, in the third column, item 4 is corrected to read: "Section 73.202(b), the Table of FM Allotments, is amended under Mississippi by removing Channel 292A and adding Channel 290C3 at Pascagoula."

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-11949 Filed 5-22-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90637-9166]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of bag limit reductions.

SUMMARY: The Secretary of Commerce (Secretary) reduces to zero the bag limits in the exclusive economic zone (EEZ) for king mackerel from the Gulf migratory group. The Secretary has determined that the recreational allocation for the Gulf migratory group of king mackerel will be reached on May 20, 1990. This reduction of the bag limits is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: Reduction of the bag limits is effective at 12:01 a.m., local time, May 21, 1990, until 12 p.m. (midnight), local time, June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR part 642. Regulations effective July 1, 1989, implemented catch limits recommended by the Councils for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1989, through June 30, 1990). Those regulations set the recreational allocation for Gulf migratory group king mackerel at 2.89 million pounds (54 FR 30554, July 21, 1989). From November 1 through March 31, the management area for the Gulf migratory group of king mackerel extends in the EEZ from the Mexico/United States border to a line extending directly east from the Volusia/Flagler County, FL, boundary (29°25′ N. latitude). From April 1 through October 31, the management area extends in the EEZ from the Mexico/United States border to a line extending directly west from the Monroe/Collier County, FL, boundary (25°48′ N. latitude).

Under § 642.22(b), after consulting with the Councils, the Secretary is required to reduce to zero the bag limits for the king mackerel migratory group when the appropriate recreational allocation for that group has been reached, or is projected to be reached, and when that group is overfished, by publishing a notice in the **Federal Register**. The Secretary, based on current statistics, has determined that the recreational allocation of 2.89 million pounds for the Gulf migratory group of king mackerel will be reached on May 20, 1990. He also finds, based on the most recent stock assessment, that the Gulf migratory king mackerel resource remains overfished. Further, he has consulted with the Councils and they agree with this finding and concur in this action. Hence, the bag limits for king mackerel from the Gulf migratory group are reduced to zero effective 12:01 a.m., May 21, 1990, through June 30, 1990, the end of the fishing year.

The Secretary previously determined that the commercial king mackerel quotas for the western and eastern zones of the Gulf migratory group had been reached and closed the commercial fishery for Gulf migratory group king mackerel (54 FR 43970, October 30, 1989; and 55 FR 1212, January 12, 1990). With this bag limit reduction, all commercial and recreational fisheries in the EEZ for Gulf migratory group king mackerel are closed through June 30, 1990. During the closure, Gulf migratory group king mackerel may not be harvested from or possessed in the EEZ and may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in king mackerel from the Gulf migratory group that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(b) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 17, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-11976 Filed 5-18-90; 12:57 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 100
Wednesday, May 23, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[AMS-FV-90-139PR]

Almonds Grown in California; Change to the Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a revision of the administrative rules and regulations established under the Federal marketing order for California almonds. Currently, handlers may receive credit against a portion of the assessments levied under the marketing order for their own brand or generic advertising and promotion activities. This proposal would provide handlers with an additional opportunity to receive such credit. This action is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

DATES: Comments must be received by June 22, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3923.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order," regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Service (AMS) has considered the economic impact of this action on small entities.

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 95 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 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 almonds may be classified as small entities.

This action proposes to provide handlers of California almonds with an additional opportunity to receive credit against the creditable portion of their annual assessments under the order. This action would not impose any additional costs or expenses on handlers.

This action proposes to revise § 981.441 of subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Board and other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against that portion of such handlers' assessment obligations which is designated for marketing promotion, including paid advertising. That paragraph also provides that handlers shall not receive credit for allowable expenditures that would exceed the amount of such creditable assessments. Section 981.41(e) further provides that before crediting is undertaken, and after recommendations are received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to recommendations are received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer the order provisions for crediting handler marketing promotion and paid advertising expenditures.

Section 981.441 prescribes rules and regulations to regulate crediting for handlers' marketing promotion expenditures, including paid advertising. This action proposes to revise § 981.441(c)(3)(iv) of the regulations, concerning crediting for almond product advertisement expenditures.

Almond products are defined in the order as nut mixtures containing shelled or unshelled almonds and edible preparations manufactured entirely or partially from raw shelled almonds. Section 981.441(c)(3)(iv) currently provides that, when almond products other than almond butter are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's actual payment, whichever is less. In order for the advertisement to be eligible for credit, the advertised almond product must: (A) Not contain nuts other than almonds, (B) contain a minimum of 50 percent raw shelled almonds by weight, and (C) display the handler's brand.

There currently are provisions in the regulations governing the advertisement of 100 percent creditable forms of almonds in conjunction with non-almond commodities or products which complement almonds. The Board

believes that a provision governing the advertising of almond products in conjunction with 100 percent creditable forms of almonds is also needed.

The Board believes that because a 100 percent creditable form of almonds would be included in these joint advertisements, the costs of the advertisements should be eligible to be credited at the 100 percent rate. Therefore, this action proposes to revise § 981.441(c)(3)(iv) to allow handlers credit for 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's actual payment, whichever is less, for advertisements which include one or more almond products, such as sugar-coated almonds, in conjunction with one or more 100 percent creditable forms of almonds.

The information collection requirements that are contained in the section of the regulations that would be amended by this proposal have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581.0071.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1.19, 48 Stat. 31, as amended; 7 U.S.C. 601.674.

Subpart—Administrative Rules and Regulations

2. Section 981.441 is amended by revising paragraph (c)(3)(iv) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(3) * * *

(iv) When almond products, other than almond butter, are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's payment thereof, whichever is less: *Provided,* That (A) the almond product does not contain nuts other than almonds, (B) the almond product contains at least 50 percent raw shelled almonds by weight, and (C) the almond product displays the handler's brand and: *Provided further,* That, if the product is advertised with forms of almonds for which 100 percent credit is allowed, the advertisement shall receive 100 percent credit provided it meets the criteria of paragraphs (c)(3)(iv) (A), (B), and (C) of this section. With respect to almond butter advertising, the credit shall be 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's payment thereof, whichever is less. For the handler to receive credit, the almond butter must meet the specifications contained in § 981.466, and the handler's brand must be displayed.

* * * * *

Dated: May 17, 1990.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 90-11902 Filed 5-22-90; 8:45 am]

BILLING CODE 3410-2-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWP-3]

Proposed Revision of the Honolulu, HI, Control Zone and Establishment of the NAS Barbers Point, HI, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Honolulu, HI, Control Zone by dividing the control zone between NAS Barbers Point, HI, and Honolulu International Airport. This proposal will result in separate control zones at Honolulu International Airport and NAS Barbers Point, HI. The intended effect of this proposal is to gain an operational benefit by dividing the airspace, which will result in improved service to system users.

DATES: Comments must be received on or before June 25, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 90-AWP-3, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Cherlynn Miller, System Management Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NRPM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System

Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2a which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Honolulu, HI, Control Zone by dividing the control zone between NAS Barbers Point, HI, and Honolulu International Airport. This proposal would result in separate control zones at Honolulu International Airport and NAS Barbers Point, HI. Because of local weather phenomena, present day operations are impacted by Honolulu Air Traffic Control Tower's ability to provide service to all quadrants of the control zone. The division of the control zone would enable NAS Barbers Point and Honolulu Air Traffic Control facilities to provide improved service to system users. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 2, 1990.

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

List of Subjects in a 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Honolulu, HI [REVISED]

Within a 5-mile radius of Honolulu International Airport (lat. 21°19'19" N long. 157°55'31" W.), beginning at lat. 21°20'21" N. long. 158°00'02" W., clockwise to lat. 21°17'22" N., long. 157°59'41" W. then direct to point of beginning.

NAS Barbers Point, HI [NEW]

Within a 5-mile radius of NAS Barbers Point (21°18'24" N., 158°04'12" W.), beginning at lat. 21°17'22" N., long. 157°59'41" W., clockwise to lat. 21°14'03" N., long. 158°04'21" W., then direct to lat. 21°10'54" N., long. 158°10'39" W., direct to lat. 21°16'56" W., direct to lat. 21°19'15" N., long. 158°08'46" W., then clockwise via the 5-mile radius of NAS Barbers Point to lat. 21°20'21" N., long. 158°00'02" W., then direct to point of beginning; and within 2 miles each side of the NAS Barbers Point TACAN 289° radial extending from the 5-mile radius zone to 7.5 miles NW of the TACAN.

Issued in Los Angeles, California, on April 12, 1990.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 90–11932 Filed 5–22–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Sixth Proviso to 46 U.S.C. app. 883—Stevedoring Equipment; Transportation in Vessel Which Does Not Use the Equipment

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

ACTION: Notice of proposed change of position; solicitation of comments.

SUMMARY: The U.S. Customs Service is reviewing its current interpretation of the sixth proviso to the coastwise merchandise statute (46 U.S.C. app. 883) relating to the transportation of stevedoring equipment and material. The current position of Customs is that stevedoring equipment and material may be transported between coastwise points in a non-coastwise-qualified vessel if the requirements of the sixth proviso are met, even if the stevedoring equipment is not used exclusively for loading and unloading the transporting vessel. This interpretation, however, may not be consistent with the intent of the stevedoring equipment and material provision of the sixth proviso. Customs is considering revoking its current interpretation, resulting in the issuance of new rulings holding that stevedoring equipment and material transported under the sixth proviso must be used exclusively for loading and unloading the transporting vessel. Because this possible change of position could have an impact on certain members of the public, Customs is inviting public comments on the subject.

DATES: Comments must be received on or before July 23, 1990.

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

FOR FURTHER INFORMATION CONTACT: B. James Fritz, Carrier Rulings Branch, 202–566–5706.

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its current position that stevedoring equipment and material may be transported in certain non-coastwise-qualified vessels where the requirements of the sixth proviso to the coastwise merchandise law (46 U.S.C. app. 883) are met, even if the stevedoring equipment and material is not exclusively used for loading and unloading the transporting vessel.

Section 27, of the Merchant Marine Act of 1920, as amended (46 U.S.C. app. 883), the Jones Act, provides in part that no merchandise shall be transported between points in the U.S. embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the U.S. and owned by citizens of the U.S. The Act of September 21, 1965 (Pub. L. 89–194, 79 Stat. 823), added the sixth proviso to section 883, and the Act of August 11, 1968 (Pub. L. 90–474, 82 Stat. 700), amended the originally enacted sixth proviso.

The 1965 Act exempted from the provisions of section 883 the coastwise transportation of empty cargo vans, empty lift vans, and empty shipping tanks in non-coastwise-qualified U.S.-

flag vessels or foreign flag vessels on a reciprocal basis where the vans and tanks are owned or leased by the owner or operator of the transporting vessels and are being transported for use in the carriage of cargo in foreign trade. The 1968 Act added equipment for use with cargo vans, lift vans, empty shipping tanks, empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges, and certain empty instruments of international traffic to the articles included in the sixth proviso. These articles and the articles covered by the 1965 Act were required by the 1968 Act to be owned or leased by the owner or operator of the transporting vessel and to be transported for his use in handling his cargo in foreign trade.

The 1968 Act also added stevedoring equipment and material to the articles included in the sixth proviso. To qualify for exemption from section 883 under the sixth proviso, the stevedoring equipment and material must be "owned or leased by the owner or operator of the transporting vessel, or * * * by the stevedoring company contracting for the lading or unlading of that vessel", and the stevedoring equipment and material must be transported without charge for use in the handling of cargo in foreign trade.

Customs position on the interpretation of the sixth proviso relating to stevedoring equipment and material has been that stevedoring equipment and material transported under the proviso by the owner of the vessel is not required to be used exclusively for loading or unloading the transporting vessel. In its most recent ruling on this subject, Customs held that a vessel of a foreign country that provides reciprocal treatment to U.S. vessels, which was bareboat chartered by the owner of certain cranes, could be used to transport the cranes between U.S. points where the cranes were to be used to load and unload cargo of the owner of the cranes into or from vessels other than the vessel which transported the cranes. (109629/109464, July 21, 1988).

Customs has received a request on behalf of an owner and operator of U.S.-flag coastwise-qualified vessels to reverse this position and to issue a new interpretation of the sixth proviso. Pursuant to this interpretation, stevedoring equipment and material transported under the sixth proviso would be required to be employed exclusively for the purpose of loading and unloading the transporting vessel. The party requesting this action contends that the current position of Customs is inconsistent with the congressional intent of the 1968 Act which added stevedoring equipment and material to the sixth proviso.

Customs has been guided by the general rule of law that a proviso which carves out a special class of cases from the purview of a general or comprehensive statute "is to be construed strictly, and held to apply only to cases shown to be clearly within its purpose." *United States* v. *McElvain*, 272 U.S. 633, 639 (1926). The purpose of the coastwise laws, and particularly of 46 U.S.C. App. 883, is to promote development of the U.S. merchant marine. *American Maritime Association* v. *Blumenthal*, 590 F. 2d 1156, 1158–59 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 943 (1979). Pursuant to the coastwise laws, "all vessels engaged in the coastwise or other domestic trade have been required to be American-built and American-owned." *Id.* at 1159. Customs is required to strictly construe the sixth proviso when it permits merchandise to be transported between coastwise points in non-coastwise-qualified vessels.

Customs now believes the weight of authority indicates that the stevedoring equipment and material provision added to the sixth proviso by the 1968 Act was intended to apply only to stevedoring equipment and material used to load and unload the vessel transporting the stevedoring equipment and material. See 114 Cong. Rec. 21480, 21481 (1968) (remarks of Representatives Mailliard, Green, and Dellenback); H. Rep. No. 1712, 90th Cong., 2nd Sess. (1968) (page 2, quoting the comments of the Department of Commerce); and Sen. Rep. No. 1485, 90th Cong., 2nd Sess. (1968) (reprinted at 1968 U.S.C.C.A.N. 3185) (July 19, 1968, letter from General Counsel of the Department of Commerce).

Customs is suspending the issuance of rulings on this issue during the pendency of Federal Register notice and comment procedures. Customs is considering the revocation of its July 21, 1988, ruling and similar rulings (106595, February 22, 1984; 103747, December 8, 1978; 102831/102585, June 16, 1977; 102055, March 26, 1976). Customs proposes the issuance of a new ruling which would hold that stevedoring equipment and material transported under the sixth proviso must be used exclusively for loading and unloading the transporting vessel.

Authority

Because this change of position, if implemented, will result in some operational changes in affected business entities, Customs is providing interested parties notice and an opportunity to comment in accordance with § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)).

Request for Comments

Prior to final determination, consideration will be given to any written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, U.S. Customs Service.

Drafting Information

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

Elizabeth B. Anderson,

Commissioner of Customs.

Approved: May 15, 1990.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90–11903 Filed 5–22–90; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–90–14]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Boca Raton, the Coast Guard is considering changing regulations governing the Boca Club bridge on Camino Real (SE. 10th Street) at Boca Raton by permitting the number of openings to be limited during certain periods. This proposal is being made because vessel traffic has increased. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 9, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE. 1st Ave. Miami, FL 33131–3050. The comments

and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 484, 909 SE. 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Walt Paskowsky, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Proposed Regulations

The bridge presently opens on signal. The City of Boca Raton requested a change to a 30 minute opening schedule. Analysis of highway traffic data indicates this two lane roadway has a low level of service from the frequent back to back bridge openings. Extending the opening schedule to once every 30 minutes is considered unduly hazardous to navigation and inconvenient to vehicular traffic because of the large number of vessels that would accumulate at this low bridge and the length of time required to pass them through. Opening the bridge every 15 minutes is proposed as an alternative to on-signal operation. This will reduce the delay being experienced by motorists, while meeting the reasonable needs of navigation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

1. The Authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1g.

2. Section 117.261(aa–1) is added to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

* * * * *

(aa–1) Boca Club, Camino Real (SE 10th St.) bridge, mile 1048.2 at Boca Raton. The draw shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: May 6, 1990.

J.L. Linnon,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 90–11921 Filed 5–22–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, New York Harbor, Staten Island, NY

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Navy has requested the Corps of Engineers establish a restricted area in the waters of New York Harbor adjacent to the naval station at Stapleton, Staten Island, New York. The purpose of the restricted area is to reduce safety hazards and security risks for government-owned facilities and vessels.

DATES: Written comments must be received on or before June 22, 1990.

ADDRESSES: Send written comments on this proposal to HQUSACE, ATTN: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tomer at (212) 264–9053 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers proposes to establish a naval restricted area in the waters of New York Harbor adjacent to Pier One Stapleton, Staten Island, Richmond County, New York. The proposed restricted area would encompass the waters surrounding the naval pier where extensive naval operations involving the Northeast Surface Action Group will occur. These operations may also involve helicopters which will land and take off from naval vessels. Heavy commercial vessel traffic as well as civilian recreational boating in New York Harbor creates the danger of ship collisions and security risks in the vicinity of the Naval Station. The purpose of the restricted area is to reduce safety hazards and security risks by protecting persons and property from the dangers encountered in naval operations, and by safeguarding the area from accidents, sabotage and other subversive acts.

A portion of the restricted area to the east of the U.S. Pierhead Line would be within Federal Anchorage 23B, a commercial vessel anchorage. The Navy has coordinated this proposal with the Coast Guard to minimize impacts on vessels using the anchorage area. Commercial vessels properly anchored within the anchorage area would be allowed to swing into the seaward portion of the restricted area.

The restricted area as proposed would be divided into two parts. That area extending 600 feet easterly or channelward from the U.S. Pierhead Line would be closed to all vessels and persons unless specifically authorized to enter by the Commanding Officer, Naval Station, Staten Island. The remainder of the area would be open to vessels transiting the area provided they proceed by the most direct route without unnecessary delay or stopping. Maps marked to show the location of the

proposed restricted area are available by writing to the address listed in **ADDRESSES**, or from the New York District Engineer.

Economic Assessment and Certification

This proposed rule is being issued with respect to a military function of the Department of Defense and the provisions of E.O. 12291 do not apply. I hereby certify that this proposed rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 of the Code of Federal Regulations to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Part 334 is amended by adding § 334.85, to read as follows:

§ 334.85 New York Harbor, adjacent to the Stapleton Naval Station, Staten Island, New York; restricted area.

(a) *The area.* The waters of New York Harbor beginning at a point on shore at latitude 40°38'02"N, longitude 074°04'24"W; thence easterly to latitude 40°38'02.5"N, longitude 074°04'09"W; thence southerly to latitude 40°37'53"N, longitude 074°04'07"W; thence east-southeasterly to latitude 40°37'50"N, longitude 074°03'50.2"W; thence south-southeasterly to latitude 40°37'37.5"N, longitude 074°03'46"W; thence southwesterly to the shore line at latitude 40°37'24.5"N, longitude 074°04'18"W; thence northerly along the shore line to the point of origin.

(b) *The regulations.* (1) The portion of the restricted area extending from the shore out to a line 600 feet east of the U.S. Pierhead Line is closed to all persons and vessels except those vessels owned by, under hire to or performing work for Naval Station New York, Staten Island, New York.

(2) The portion of the restricted area beginning 600 feet seaward of the U.S. Pierhead Line is open to transiting vessels only. Vessels shall proceed across the area by the most direct route and without unnecessary delay. For vessels under sail, necessary tacking shall constitute a direct route.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station New York, and such agencies he/she may designate.

Dated: April 25, 1990.

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–11942 Filed 5–22–90; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan: Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published March 8, 1990, (55 FR 8489) has been extended 30 days. The March 8, 1990, notice proposed to disapprove revisions to the Wisconsin State Implementation Plan, regarding compliance methodology rules developed by Wisconsin for non-fugitive particulate emissions, sulfur dioxide, volatile organic compounds, carbon monoxide, lead, total reduced sulfur, and non-criteria pollutants. It also proposed to disapprove revisions to Wisconsin's opacity rules, USEPA is extending the comment period based on an extension request by the Wisconsin Department of Natural Resources.

DATES: Comments are now due on or before June 7, 1990.

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

Dated: May 15, 1990

Valdas V. Admkus,

Regional Administrator.

[FR Doc. 90–11984 Filed 5–22–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Notice of Completion of Status Review; Argali Sheep (Ovis ammon)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of completion of status review.

SUMMARY: The Service announces completion of its review of the status of the argali sheep. This review has determined there is information that indicates that the species *Ovis ammon* may be threatened throughout its range.

DATES: The comment period on the status review ended on March 26, 1990. Further public comments will be solicited when a proposed rule is published.

ADDRESSES: Additional information and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and other information received are available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: On Friday, November 24, 1989 (54 FR 48723), the Fish and Wildlife Service (Service) published a notice in the **Federal Register** announcing the initiation of a status review with regard to the argali (*Ovis ammon*) and requesting comments. The comment period has now closed and the comments that have been received have been considered. This notice is to provide the public with the Service's position arising out of that status review and the course of action that it now intends to follow.

The Service has determined that there is information indicating that the species *Ovis ammon* may be threatened throughout its range. This determination encompasses all subspecies of *Ovis ammon* including populations in China, Mongolia, the Soviet Union, Nepal, India, Pakistan, and Afghanistan. Accordingly, the Service will shortly

publish a proposed rulemaking in the Federal Register to formally propose the listing of this species as threatened throughout its range. A 120-day period will be provided for public review and comment. It is emphasized that following the review the Service may classify the entire species or specific populations as threatened or endangered.

During the proposed rulemaking process, *Ovis ammon hodgsoni* will remain endangered as presently listed. This subspecies is also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). No other subspecies of *Ovis ammon* is presently listed under the Endangered Species Act. However, these other subspecies are listed in CITES Appendix II. Hunting trophies and other specimens of these other subspecies may be imported into the United States provided they are legally taken and accompanied by appropriate CITES documents from the country of export.

Upon completion of a final rulemaking on the status of *Ovis ammon*, the Service will provide appropriate new guidance to the public consistent with the listing determination. Through this approach and process, it is the intention of the Service to resolve the status of *Ovis ammon* in a manner that will clarify names, distributions and descriptions of those subspecies and/or populations of *Ovis ammon* that are on the U.S. List of Endangered and Threatened Wildlife. The final rule will present the conditions under which importation of specimens, including hunting trophies, may continue. Questions concerning the status and location of *Ovis ammon hodgsoni* have been difficult for the Service to resolve because of misunderstandings concerning the scope of the original listing of *Ovis ammon hodgsoni* as endangered. The outlined process can be completed quickly and with an opportunity for all concerned parties to comment in the manner required by law.

Author: The primary author of this notice is Charles W. Dane (see addresses above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 17, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-11934 Filed 5-22-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 100
Wednesday, May 23, 1990

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 COMMERCE

Bureau of Export Administration

Licensing Procedures and Regulations Subcommittee of Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held June 12, 1990, 1 p.m. in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. The Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening remarks by the Chairwoman.
2. Presentation of papers or comments by the public.
3. Presentation on status of general license GCT.
4. Statue report on 1990 agenda items as follows:
   - Combined Shipper's Export Declaration (SED) and SED dollar exemption level.
   - Proposal to increase Distribution License Processing Data Rate Levels.
   - Proposed General License G–TEMP.
   - Enhancement to Electronic Licensing System.
5. Preparation of agenda for 1991.

Interested members of the public are requested to present their ideas for items which the Subcommittee can address in the next fiscal year.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: May 17, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90–12001 Filed 5–22–90; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held June 12, 1990, 9:30 a.m., in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue NW., Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening remarks and introduction of new Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Presentation by SPEC on performance measurement.
4. Working Group formation on 1566 COCOM position for Fall 1990:
   - Review of previous work on Artificial Intelligence, Computer-Aided Design and Computer-Aided Manufacturing, cross compilers, network software, and software development systems.
   - Regulation changes on mass market software and on low-level cryptography and ITAR transfers.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and stratetic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presenation materials to the Committee members, the Committee suggests that presenters forward the public presention materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Councel, fomally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: May 17, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90–12002 Filed 5–22–90; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held June 12 and 13, 1990, in the Herbert C. Hoover Building, room 1617F, 14th

and Pennsylvania Avenue NW., Washington, DC. The General Session of the meeting will convene at 3:30 p.m. on June 12. The meeting will reconvene in Executive Session at 9 a.m. on June 13. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status report on COCOM negotiations.
4. Discussion of performance measurement proposal.
5. Work planning for 1991.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, 4069A, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: May 17, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90–12003 Filed 5–22–90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 17–90]

Proposed Foreign-Trade Zone; Dallas-Fort Worth, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas-Fort Worth Maquila Trade Development Corporation (MTDC), a Texas non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone at sites in Dallas and Fort Worth, Texas, within the Dallas Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 8, 1990. The applicant is authorized to make this proposal under Article 1446.01 of the Texas Revised Statutes.

The proposed MTDC project would be the third general-purpose zone project in the Dallas-Fort Worth Customs port of entry area. The existing zones in the area are: FTZ 39 at the DFW International Airport (Grantee: Dallas-Fort Worth Regional Airport Board, FTZ Board Order 133, 43 FR 37478, 8/17/78); and, FTZ 113 at the Mid-Texas International Center in Midlothian, some 20 miles south of Dallas (Grantee: Midlothian Trade Zone Corporation, Board Order 283, 50 FR 300, 1/3/85).

The proposed new foreign-trade zone would cover 3 sites (1050 acres) in the Dallas-Fort Worth area. *Site 1* (766 acres) is the LBJ Southport Center industrial park at I–635/I–20 and I–45 in South Dallas (developers: LBJ Diamond Partnership, Langdon 101 & 114, and I20–I45 Partnership). *Site 2* (24 acres) is an industrial area located at Alta Mesa Boulevard and Will Rogers Boulevard in southern Fort Worth (developer: Centre Development Company, Inc.). *Site 3* (260 acres) is located within the CentrePort industrial development at Highway 183 and Highway 360, south of the DFW International Airport (developer: Centre Development Company, Inc.).

The application contends there is a need for additional zone services in the Dallas-Fort Worth area at sites for which the existing grantees are not appropriate sponsors. The proposed MTDC zone will focus on activity associated with maquiladora plants in Mexico, including the warehousing/distribution of products such as truck parts, electronic components, telecommunication equipment, pharmaceuticals and toys.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, Suite 500, 5850 San Felipe Street, Houston, TX 77057–3012; and, Colonel William D. Brown, District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, TX 76102–0300.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 3, 1990.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 7A5, 100 Commerce Street, Dallas, TX 75242

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 16, 1990.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 90–12004 Filed 5–22–90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to requests by the petitioners, a domestic interested party, an importer, and certain respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. The review covers eleven manufacturers/exporters of this merchandise to the United States and the period April 1, 1986 through March 31, 1987. As a result of the review, the Department has preliminarily determined that dumping margins exist for these firms and range from 0.06 to 4.44 percent.

We also intend to revoke this order with respect to Capetronic (BSR).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips, Robin Gray or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1131.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1988 the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 49709) the final results of its last administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18336, April 30, 1984). In April 1987, the petitioners, a domestic interested party, and certain respondents requested in accordance with § 353.53a(a) of the Commerce Regulations (1987) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on May 20, 1987 (52 FR 18937), covering fifteen companies: AOC International, Inc., Capetronic (BSR) Ltd., Fulet Electronic Industries, Ltd., Funai Electric Company, Hitachi Television (Taiwan) Ltd., Kuang Yuan Co., Ltd., Nettek Corporation, Ltd., Paramount Electronics, Philips Electronic Industries Taiwan, RCA (Taiwan), Sampo Corp., Sanyo Electric Corp. (Taiwan), Shin-Shirasuna Electric Corp., Tatung Co., and Teco Electric. Sampo and Sanyo had no shipments during the review period. Requests to review Paramount and Teco were withdrawn. With respect to the remaining firms, Funai failed to respond to our questionnaire and we were unable to successfully verify much of Tatung's questionnaire response. Because Tatung failed its verification in the United States, the Department was not able to rely on any of the submitted data to determine a margin. Therefore we used 4.44%, the highest rate of the reviewed firms as the BIA rate for Funai and Tatung. We verified in Taiwan and in the United States the questionnaire responses submitted by Capetronic, Hitachi, Philips, and RCA.

We have determined that Capetronic has not sold this merchandise to the U.S. for less than fair value for a two year period. Therefore, we intend to revoke the antidumping duty order with respect to the subject merchandise manufactured and exported by Capetronic, contingent upon Capetronic's maintaining a *de minimis* margin for the final results. Since the tentative revocation was published prior to March 28, 1989, the effective date of the new Commerce Regulations, the Department is acting under § 353.54 of the prior regulations with respect to revocation for this firm.

As required by section 751 of the Tariff Act of 1930 (the Act), we have now conducted this administrative review.

Scope of Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers regardless of tariff classification. During the review period, the merchandise was classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under the Harmonized Tariff Schedule (HTS) items 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

The review covers eleven manufacturers/exporters and the period April 1, 1986 through March 31, 1987.

United States Price

In calculating United States price, we used purchase price (PP) or exporter's sales price (ESP), as defined in section 772 of the Act, where appropriate. PP and ESP were based on the packed f.o.b., c.i.f., or delivered prices to the first unrelated purchaser in the United States.

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these latter sales, we preliminarily determine that purchase price is the most appropriate determinant of United States price because:

1. The merchandise in question was shipped directly from the manufacturers to the unrelated buyers, without being introduced into the inventory of the related selling agent;

2. Direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the nature of the transactions.

For those sales to the first unrelated purchaser that took place after importation into the United States, we based United States price on ESP, in accordance with section 772(c) of the Tariff Act.

We made deductions, where appropriate, for export charges, stamp taxes, ocean freight, marine insurance, U.S. and foreign inland freight and insurance, U.S. and foreign brokerage fees, bank charges, U.S. customs duties, inspection fees, discounts, rebates, credit expenses, warranty, advertising and sales promotion, after-sale warehousing, royalties, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. Where applicable, we made an addition for import duties not collected on imported raw materials used to produce subsequently exported merchandise. We accounted for taxes imposed in Taiwan, but not collected by reason of exportation to the United States, by multiplying the appropriate duty paying value (DPV) of the merchandise sold in the United States by the tax rates in Taiwan and adding the result to the U.S. price. For a bonded factory, the DPV is

the ex-factory price; for an unbonded factory, the DPV is the price to the first unrelated purchaser in the U.S.

Foreign Market Value

In calculating foreign market value, we used home market price, third-country price, or constructed value, as defined in section 773 of the Tariff Act, as appropriate.

Home market price were used where sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a reliable basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, insurance, commissions to unrelated parties, rebates, credit expenses, bank charges, discounts, warranty, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We also made adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses deducted in ESP calculations, but not for amounts exceeding the U.S. expenses. Finally, we made circumstances-of-sale adjustments for commodity tax differences, where appropriate.

We based FMV on third country sales in the case of AOC, Capetronic, Shin-Shirasuna, the Philips because there were either no home market sales, or the home market sales were not contemporaneous. The third countries were Canada, Panama, and Chile.

Third-country price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers. We made adjustments, where applicable, for ocean freight, brokerage in Taiwan, marine insurance, foreign import duty, Taiwan inland freight, inland insurance, stamp taxes and export charges, royalties, differences in the physical characteristics of the merchandise, and packing.

Petitioners alleged that AOC sold color televisions in the home market at prices below their cost of production. We considered the allegation sufficient to warrant a below-cost investigation. As a result of our investigation, we found no below-cost sales. Therefore, we included all of AOC's home market sales in our calculation of FMV.

We used constructed value for Capetronic, Hitachi, RCA, and Kuang Yuan. Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of packing. Where the statutory minimum of 10 percent of the cost of materials and fabrication exceeded the actual cost for general expenses we added the statutory minimum amount in accordance with section 773(e) of the Act. Where the statutory minimum of eight percent of the sum of the cost of materials, fabrication, and general expenses exceeded the actual profit we added the statutory minimum. Where the actual amount of general expenses and profit exceeded the statutory minimum amounts, we added the actual amounts.

Shin-Shirasuna reported six U.S. transactions which it maintains belong to an unrelated firm which contracted with Shin-Shirasuna to assemble CTVs for a processing fee. The unrelated company, not located in Taiwan, sets the price to the U.S. customer and supplies the major components free of charge. The contracting firm claims that since Shin-Shirasuna manufactured the parts into televisions, the sales in question were, in fact, made by Shin-Shirasuna. We have not included these sales in our preliminary determination. We invite comments on this matter.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the dumping margins to be:

Manufacturer/exporter	Period	Margin
AOC International, Inc.	4/1/86-3/31/87	0.06
Capetronic (BSR) Ltd.	4/1/86-5/29/87	.20
Fulet Electronic Industrial Co., Ltd.	4/1/86-3/31/87	.26
Funai Electric Company	4/1/86-3/31/87	4.44
Hitachi Television (Taiwan) Ltd.	4/1/86-3/31/87	4.44
Kuang Yuan	4/1/86-3/31/87	.54
Nettek Corp., Ltd	4/1/86-3/31/87	1.30
Philips Electronic Industries	4/1/86-3/31/87	.76
RCA Taiwan, Ltd.	4/1/86-3/31/87	4.03
Shin-Shirasuna Electric Corp	4/1/86-3/31/87	3.40
Tatung Co	4/1/86-3/31/87	4.44

We preliminarily determine that a *de minimis* margin of 0.20 percent exists for Capetronic for the period April 1, 1986 through May 29, 1987. Since Capetronic had no margins for the period October 19, 1983 through March 31, 1986 and made all sales at not less than fair value during the period April 1, 1986 through May 29, 1987, we intend to revoke the antidumping duty order with respect to the subject merchandise manufactured and exported by Capetronic. This intent to revoke is contingent upon Capetronic's maintaining a *de minimus* margin for the final results.

Capetronic has also agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances as specified in the written agreement. If the order is revoked with respect to Capetronic, it shall apply to unliquidated entries of color television receivers, except for video monitors, manufactured and exported to the United States by Capetronic and entered or withdrawn from warehouse for consumption on or after May 29, 1987, the date of our tentative determination to revoke (52 FR 20130).

Interested parties may submit case briefs on these preliminary results and, intent to revoke in part, within 30 days of the date of publication of this notice and may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as is convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after the submission of the initial round of comments. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs or at any hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individuals differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the cash deposit rate for AOC International, Inc., Fulet Electronic Industrial Co., Ltd. and Capetronic (BSR) Ltd., is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any shipments from a manufacturer/exporter not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for the firm (53 FR 49709). For any future entries of this

merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1987 and who is unrelated to any reviewed firm, a cash deposit of 4.44 percent will be required.

These deposit requirements and waivers are effective for all shipments of color television receivers from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part, and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1) and (c)) and § 353.22 of the Commerce Regulations published in the Federal Register March 28, 1989 (54 FR 12742). Because the tentative revocation was published (52 FR 20130, May 29, 1987) prior to March 28, 1989, we are proceeding with revocation pursuant to 19 CFR 353.54 (1988) of the Commerce Regulations.

Dated: May 15, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–12005 Filed 5–22–90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination on Request for Reconsideration; Certain Electrolytic Tin Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of a short-supply determination on request for reconsideration; certain electrolytic tin plate.

SHORT-SUPPLY REVIEW NUMBER: 14.

SUMMARY: The Secretary of Commerce ("Secretary") hereby modifies his short-supply decision of April 19, 1990, by granting US Can's requests for 2,150 net tons during July-September 1990 of certain electrolytic tin plate ("ETP") under the U.S.-E.C. and U.S.-Japan steel arrangements.

EFFECTIVE DATE: May 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: On March 22, 1990, the Secretary received an adequate short-supply petition from United States Can Company ("US Can") requesting a short-supply allowance for 5,250 net tons and 3,250 net tons of certain ETP during the third and fourth quarters of 1990, respectively, under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products. The Secretary conducted a short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 191–221, 103 Stat. 1886 (1989) ("The Act"), and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

Because potential domestic suppliers of ETP demonstrated a willingness and ability to offer and supply the requested material during both the third and fourth quarters of 1990, the Secretary determined on April 19, 1990, that short supply did not exist with respect to the requested ETP. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Regulations, the Secretary denied US Can's request for a short-supply allowance of 8,500 net tons of ETP for the second half of 1990. A notice of the decision denying the request was published in the Federal Register on April 27, 1990, 55 FR 17793.

On April 30, 1990, US Can filed a timely request for reconsideration under § 357.109 of Commerce's Short-Supply Regulations for 2,950 net tons of its third quarter short-supply needs, alleging that its supply situation for ETP from a supplier had changed, and that a response considered in the Secretary's determination did not properly address the commercial realities of the customer-supplier relationship with respect to inventory. The Secretary granted US Can's request for reconsideration and published a notice announcing the reconsideration request in the Federal Register on May 9, 1990, 55 FR 19290.

US Can based its request on changes in anticipated supplies from LTV Steel Corporation ("LTV") and US Can's belief that the inventory offered by LTV did not represent a bonafide supply of material to meet US Can's third quarter needs. On April 30, 1990, the Secretary sent a questionnaire to LTV in connection with this request for reconsideration. The Secretary focused the questionnaire on whether LTV had a viable supply of 2,950 net tons of ETP to meet US Can's third quarter needs.

Questionnaire Responses

LTV indicated that its ability to supply US Can had changed since the Secretary's April 19, 1990, decision. LTV acknowledged that because the material US Can requires consists of a multitude of sizes and grades and is continuously changing, LTV would be unable to guarantee the acceptability of 2,150 net tons of its ETP inventory to meet US Can's third quarter needs on a product-by-product basis.

Conclusion

LTV cannot guarantee the acceptability of 2,150 net tons of ETP to meet US Can's third quarter needs for 1990. Therefore, pursuant to § 357.109 of Commerce's Short-Supply regulations, the Secretary hereby modifies the April 19, 1990, negative short-supply determination with respect to the requested ETP, by granting a short-supply allowance to US Can for 2,150 net tons of ETP for the third quarter of 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–12006 Filed 5–22–90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review and Request for Comments; Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Type 430 Stainless Steel Wire Rod.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 1,650 metric tons of various sizes of certain type 430 stainless steel wire rod under Article 8 of the U.S.-Brazil and U.S.-EC steel arrangements. This request covers the period from July 1, 1990 through December 31, 1990.

SHORT–SUPPLY REVIEW NUMBER: 17.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary hereby announces that a short-supply

determination is under review with respect to certain type 430 stainless steel wire rod. On May 18, 1990, the Secretary received an adequate short-supply petition from the American Wire Producers Association (AWPA), on behalf of four domestic wire redrawers, for 1,650 metric tons of this product under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products and Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. This petition covers the period from July 1, 1990 through December 31, 1990.

The requested product meets the specifications for type 430 stainless steel wire rod with the exception of the maximum carbon content. In this request, the carbon level cannot exceed 0.04 percent. The sizes and quantity requested for each size are as follows:

Diameter (millimeters)	Quantity (metric tons)
5.5 to 6.0	1,440
7.0	120
9.5	40
20.0	50

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: 1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; 2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or 3) the requested steel product is not produced in the United States. Because the Secretary has made affirmative short-supply determinations for this product in each of the past two years, a decision will be made no later than June 1, 1990.

In accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Regulations, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than June 1, 1990.

Comments: Interested parties wishing to comment on this review must send written comments not later than May 30, 1990 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration. U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0159.

Dated: May 21, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–12138 Filed 5–22–90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on June 11–15, 1990, at the Marriott Casa Marina Hotel, 1500 Reynolds Street, Key West, FL (telephone: 305–296–3535). The Council and its Committees will take final action on the Red Drum Fishery Management Plan (FMP), the Snapper/Grouper FMP Amendment #2 (a prohibition on the harvest or possession of jewfish), and Amendment #3 (wreckfish management).

Additionally, on June 11, a public scoping meeting will be held to discuss the snapper/grouper fishery. On June 12, at 8:30 a.m., the Council's Snapper/Grouper Advisory Panel will meet in joint session with the Snapper/Grouper Committee. The Billfish, Swordfish, Shark, Red Drum and Snapper/Grouper Committees also will meet throughout the week to conduct other fishery management business.

A detailed agenda will be available to the public on or about May 14, 1990. For more information contact Robert K. Mahood, Executive Director, or Gregg Waugh, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: May 17, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–11954 Filed 5–22–90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

May 16, 1990.

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

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

EFFECTIVE DATE: May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, 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) 377–5810. For information on categories on which consultations have been requested, call (202) 377–3740.

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).

Inasmuch as recent consultations held between the Governments of the United States and Fiji have not resulted in a mutually satisfactory solution for Categories 351/651, the United States Government has decided to control imports in these categories for the period February 28, 1990 through February 27, 1991.

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in further consultations with the Government of Fiji, further notice will be published in the **Federal Register.**

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). Also see 55 FR 11043, published on March 26, 1990.

Dated: May 16, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 16, 1990.

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 in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 23, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Fiji and exported during the twelve-month period which began on February 28, 1990 and extends through February 27, 1991, in excess of 75,010 dozen.[1]

Textile products in Categories 351/651 which have been exported to the United States prior to February 28, 1990 shall not be subject to this directive.

Textile products in Categories 351/651 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

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 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. 90–11878 Filed 5–22–90; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after February 27, 1990.

DEPARTMENT OF DEFENSE

Department of the Army

Chemical Stockpile Disposal Program; Intent To Prepare Environmental Impact Statement

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: Intent to prepare an Environmental Impact Statement (EIS) and to initiate the public scoping process for the construction and operation of a chemical munitions disposal facility at Pueblo Depot Activity, Colorado. This announces the Notice of Intent to prepare an EIS on the potential impact of the design, construction, operation and closure of the proposed chemical agent demilitarization facility at Pueblo Depot Activity, Colorado. The proposed facility will be used to demilitarize all mustard-filled chemical munitions currently stored at Pueblo Depot Activity. Potential environmental impacts will be examined for several locations of the on-site incineration facility and the "no action" alternative. The "no action" alternative is considered to be deferral of demilitarization with continued storage of the mustard-filled chemical munitions at Pueblo Depot Activity.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR No. 38, pp. 5816–17) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. In compliance with the National Environmental Policy Act (NEPA), section 102(2)(c), the Army decided to prepare an EIS to assess the site-specific health and environmental impacts of on-site incineration of the mustard-filled chemical munitions at Pueblo Depot Activity. The first phase of this effort will entail the collection and analyses of detailed site-specific information to ensure that the programmatic preferred alternative (on-site incineration) remains valid for Pueblo Depot Activity. A separate report summarizing this effort will be published prior to preparation of the draft EIS for Pueblo Depot Activity. The draft EIS will be available in the summer of 1991. Upon completion of the draft EIS, public notice of its availability for review will be announced and interested persons may provide comment on that document.

Notice of Public Meeting: Notice is further given of the Army's intention to initiate the scoping process to aid in determining the significant issues related to the proposed action at Pueblo Depot Activity. Public, as well as Federal, State and local agency, participation and input is desired. An initial scoping meeting will be held on 4 June 1990 at 7 p.m. at the Pueblo County High School. Interested individuals, governmental agencies and private organizations are encouraged to attend and submit information and comments for consideration by the Army.

FOR FURTHER INFORMATION CONTACT: Program Manager for Chemical Demilitarization, attn: SAIL–PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010–5401. Individuals desiring to be placed on a mailing list to receive additional information on the public scoping process and copies of the draft and final EIS should contact the Program Manager at the above address.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 90–11953 Filed 5–22–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 11–12 June 1990.

Time: 0900–1700.

Place: Walter Reed Army Institute, Wash., DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on the review of the Walter Reed Army Institute of Research Scientific Program will meet to establish guidelines for conducting the review and to schedule subsequent in-depth scientific reviews. This meeting will be open to the public. Any interested person may attend, appear before,

or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-11884 Filed 5-22-90; 8:45 am]

BILLING CODE 3710-8-M

Corps of Engineers

To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Arts Park La Within the Sepulveda Flood Control Basin; Los Angeles, CA

AGENCY: Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. Study Alternatives

The Cultural Foundation, a nonprofit Corporation, proposes the construction of the Arts Park LA on a 60 acre site within the Sepulveda Flood Control Basin. The Arts Park will serve as a multi-cultural and multi-discipline cultural center to serve the residents of the San Fernando Valley in Los Angeles County. Corps of Engineers approval is required for this use.

The Arts Park is proposed to consist of several facilities consistent with the multi-cultural theme of the center. Facilities proposed include a Performing Arts Center, Performance Glen and Grove, Arts Park Center, Childrens Center for the Arts, Natural History Museum, Lakeside Food Pavillion, Media Education Center, Founders Grove, Artists Outdoor Workshops and a water reclamation facility. Additionally, paved parking for 600 cars is proposed.

Several Alternatives to the Applicants Proposed Action are possible. These include:

a. No Action Alternative

The No Action alternatives involves the construction of no Arts Park related facilities on Federal lands.

b. Construction of Entire Facility in Another Location

This set of alternatives involves the construction of the entire proposed Arts Park facilities in an other location within the San Fernando Valley. Potential alternative sites include Hansen Dam Flood Control Basin, Warner Center, Van Nuys Civic Center, Pierce College, and California State University, Northridge. Other potential sites may be identified during the scoping process.

c. Construction of Some Project Components at Alternative Sites

This alternative involves the construction of a portion of the Arts Park (most probably the Performing Arts Center) at an alternative location within or outside of the Sepulveda Basin.

d. Construction of a Reduced Sized Project in the Sepulveda Basin

This set of alternatives involve the construction of a reduced intensity Arts Park at the Sepulveda Basin. This alternative could range from a construction of the Performance Glen and Grove only to a construction complex nearly as intense as the Applicant's proposed project.

e. Alternative Designs

This alternative involves the development of the facilities proposed for Arts Park on the proposed site, but using different designs and facility placements.

A detailed alternatives analysis and screening analysis will be an integral portion of the EIS.

2. Scoping Process

A key issue of the EIS will be the identification and analysis of alternatives to the Applicant's Proposed Project. This analysis will include sites both within the Sepulveda Basin and at other locations as well as alternative projects at the proposed site.

Other key environmental issues include:

a. Impact to other existing or potential recreational opportunities at the site and surrounding areas of the Sepulveda Flood Control Basin.

b. Traffic, air quality and noise impacts associated with the construction and operation of the facility.

c. Potential impact to wildlife using the site and adjoining areas.

d. Potential aesthetic impacts.

e. Potential impact on public services and utilities.

3. A scoping meeting is planned at the Reserve Center Drill Hall, Naval and Marine Corps Reserve Center in Lake Balboa Park near the Sepulveda Flood Control Basin on Tuesday, April 24, 1990 at 2 to 5 p.m. and at 7 to 9:30 p.m.

4. Publication of Draft EIS

The Draft EIS is scheduled to be available for public review in May 1990.

ADDRESSES: Questions concerning the proposed action, its alternatives, the Draft EIS and public scoping should be addressed to: Ms. Sheila Murphy, Environmental Resources Branch, Army Corps of Engineers, 300 North Los Angeles Street, Los Angeles, California 90053, (213) 894-3695.

Dated: April 30, 1990.

Charles S. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90-11940 Filed 5-22-90; 8:45 am]

BILLING CODE 3710-KF-M

Environmental Statements; Availability, etc.; Circumferential Highway Project, NH

The New England Division of the Army Corps of Engineers announces its intent to prepare a Draft Environmental Impact Statement (DEIS) for the New Hampshire Department of Transportation (DOT) Circumferential Highway Project—Nashua, Hudson, Litchfield and Merrimack, New Hampshire. The Corps of Engineers will be evaluating a permit application for the proposed work under section 404 of the Clean Water Act.

AGENCY: New England Division, U.S. Army Corps of Engineers, Department of Defense (DOD).

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Nashua-Hudson region of southern New Hampshire is experiencing rapid population and economic growth which necessitates the expansion of the region's highway system. The construction of a circumferential highway around Nashua is proposed to provide relief for existing and projected highway capacity deficiencies and to enhance traffic flow in the area. Various social, economic and environmental impacts will occur with each of the applicant's alternatives. Because the Army Corps of Engineers will have to decide whether and under what circumstances to grant a Federal permit for the proposed work, we have decided to prepare an EIS to aid in agency decisionmaking and to assure compliance with the National Environmental Policy Act (NEPA).

The Federal Highway Administration (FWA) prepared a DEIS dated 1984. In 1988, the New Hampshire Department of Transportation (DOT) withdrew the project from Federal funding and became the project proponent. Due to the time elapsed since release of the DEIS, potential changes in transportation patterns, Federal environmental policy changes and the

availability of additional alternative information, a new DEIS will be released to assure major issues have been identified.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* The project proposed by the applicant is a 12 mile long, 4-lane limited access perimeter highway. It is to be built on a new alignment located primarily east of Nashua forming a semi-circle around the city. Various alternative alignments begin in the vicinity of Exit 2 of the F.E. Everett Turnpike in south Nashua circling east, north, and then west through Hudson and Litchfield, recrossing the Merrimack River and returning to the Everett Turnpike in Merrimack or North Nashua.

2. *Alternatives:* Various alignment alternatives are being considered to reduce traffic to the area's primary highway, the F.E. Everett Turnpike. In addition to these capital improvement alignments, a No Action and Transportation System Management (TSM) Alternative are also being considered. The New Hampshire DOT conducted engineering studies that separate the highway into a Southern and Northern Segment.

The Southern Segment—One Southern Segment alternative would require construction on 379 acres in Nashua and Hudson, including 44.4 acres of wetlands. An analysis of this and other alignments for the southern corridor will be included as alternatives in the DEIS.

The Northern Segment—Alternative corridors are being evaluated for the Northern Segment. All corridor alternatives impact lands in Hudson, Litchfield and Merrimack. Additional alternatives may be proposed for analysis in the DEIS by the scoping process.

No Action Alternative—Under the No Action Alternative, traffic will continue to use the existing street and highway network.

The TSM Alternative—The purpose of the TSM Alternative is to encourage maximum utilization and energy efficiency of the existing transportation system by increasing its passenger capacity, without implementing capital-intensive construction projects.

3. *Scoping Process:* Public meetings were conducted by the U.S. Department of Transportation, Federal Highway Administration and the State of New Hampshire Department of Transportation to introduce the project and solicit comments, during the period March 1967 to September 1988. The Corps of Engineers has held a preliminary coordination meeting with Federal and State agencies to identify issues of concern.

The Environmental Protection Agency has indicated it will accept Cooperating Agency status for this study. Additional requests will be sent to the following agencies to accept Cooperating Agency status for this study:

U.S. Department of Interior—Fish and Wildlife Service
U.S. Department of Agriculture—Soil Conservation Service
U.S. Department of Transportation—Federal Highway Administration

The DEIS will analyze the potential social, economic, and environmental impacts to the region resulting from the proposed project such as impacts to wetlands, water quality, wildlife, increased residential and commercial development and historic and archaeological resources. Construction and operational phase impacts will be considered, as well as cumulative and secondary impacts.

4. *Scoping Meeting:* The Corps plans to hold an EIS Scoping Meeting on the evening of June 28, 1990 at the Nashua City Hall Auditorium. All interested agencies, organizations and publics are invited to attend this meeting. Sufficient local notification will be provided.

5. *Availability:* It is anticipated that the DEIS would be made available for review in November, 1990. The FEIS on this permit action is anticipated in the spring of 1991.

Address: Questions about the proposed action and DEIS can be answered by Mr. Richard Roach, Senior Project Manager, New England Division, Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254–9149. Phone: 617–647–8211.

Dated: May 11, 1990.

Vyto L. Andreliunas,

Director of Operations.

[FR Doc. 90–11941 Filed 5–22–90; 8:45 am]

BILLING CODE 3710-24-M

DEPARTMENT OF EDUCATION

DEPARTMENT OF STATE

DEPARTMENT OF JUSTICE

Nondiscrimination in Federally-Assisted Programs; Enforcement Coordination Agreements Between State and Justice Departments

ACTION: Agreement between the Department of State and the Department of Education to delegate certain civil rights compliance responsibilities for educational institutions.

A. Purpose

Section 1–207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, as amended, section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions, as required in the Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs (28 CFR §§ 42.401–42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the Department of State designates the Department of Education as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions is delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4); and

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission (EEOC) regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR §§ 42.601–42.613, 29 CFR 1691.1–1–1697.13, 48 Federal Register 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

The Department of State assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Department of State.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Department of State, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue written letters of findings of compliance or of noncompliance that (a) Advise the recipient and, where appropriate, the complainant of the results of the disapproval review or complaint investigation; (b) provide recommendations, where appropriate, for achieving voluntary compliance; and (c) offer, where appropriate, the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified, if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education shall promptly provide copies of its letters of findings to the Department of State and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. If compliance cannot be voluntarily achieved and the Department of Education does not fund the applicant or recipient, refer the matter to the Department of State for its own independent activity and notify the Assistant Attorney General for Civil Rights of the referral. If compliance cannot be achieved and both the Department of Education and the Department of State fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Department of State with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of State of the referral.

9. Notify the Department of State and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient.

D. Duties of the Department of State

The Department of State shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance and training necessary for it to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Department of State, the types of assistance provided, compliance information solely in the Department of State's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the Department of State requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the Department of State shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Department of State against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Department of State, make the final compliance determination and:

(a) If the Department of State wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education if the Department of State will either join as a party in the administrative hearing conducted by the Department of Education or will conduct its own administrative hearing.

(b) When the Department of State initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Department of State conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and of any action taken against the applicant or recipient. The Department of State may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Department of State neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights in writing, within 15 days after notification from the Department of Education, that voluntary compliance cannot be achieved.

E. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Department of State of any such redelegation prior to its effective date.

F. Effect on Prior Delegation

This agreement supersedes and replaces the delegation agreement effective July 23, 1966, between the U.S. Department of Health, Education, and Welfare and the Department of State.

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective 30 days from publication in the Federal Register.

H. Termination

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: January 16, 1990.

Ivan Selin,

Under Secretary for Management, Department of State.

Dated: March 30, 1990.

Lauro F. Cavazos,

Secretary, Department of Education.

Dated: April 19, 1990.

John R. Dunne,

Assistant Attorney General for Civil Rights Division, Department of Justice.

[FR Doc. 90–11901 Filed 5–22–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; a Grant to State of Illinois

AGENCY: Department of Energy.

ACTION: Notice of an noncompetitive financial assistance (Grant) award.

SUMMARY: The Department of Energy (DOE), announces that pursuant to 10 CFR 600.7(b), it is intending to award a grant on a noncompetitive basis to the State of Illinois Department of Energy and Natural Resources (ENR) for the "Support of High-Sulfur Coal Research."

SCOPE: The objective of this project is to stimulate the utilization of high-sulfur coal, the predominant generic coal type found in the Illinois Basin as well as in other important bituminous coal producing regions in the United States, while meeting NSPS and pending environmental standards through coal preparation and advanced combustion technologies. The intended research will 1) Develop improved coal cleaning technology and investigate the distribution and basic nature of noxious elements, especially sulfur, contained in coal, 2) develop advanced combustion technologies that will not only meet stringent emission regulations but also maintain or increase thermal efficiency and combustor performance, and 3) transfer the technological information developed to industry through publications and regularly held conferences and workshops. The State of Illinois will make available to this project the personnel, material and other facilities necessary for carrying out a research program dedicated to solving problems inherent in the use of high-sulfur coal.

In accordance with the criteria presented under 10 CFR 600.7(b)(2)(i)(B) and (D), the State of Illinois has been selected as the grant recipient. This activity would be conducted by the State of Illinois using its own resources; however, DOE support of the activity would enhance the public benefits to be derived by cosponsoring work in areas for which there is insufficient funding available, and by preventing duplication of effort in parallel DOE/State of Illinois R&D. Additionally, by pursuing its own research and development program since 1982, the State of Illinois has become a unique repository of the extensive data and information relating to the high-sulfur coals endemic to the Illinois Basin.

The term of the grant is for a one-year period and with an estimated value of $1,500,000. This funding level will be equally shared between DOE and the State of Illinois.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Keith R. Miles, P.O. Box 10940, Pittsburgh, PA 15236. Telephone: AC (412) 892–5984.

Dated: May 10, 1990.

Carroll A. Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 90–11991 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

Defense Nuclear Facilities Safety Board Recommendation 90–3; Future Monitoring Programs at the Department of Energy's Hanford Site, Washington; Request for and Approval of Extension of Time

AGENCY: Department of Energy, Office of Nuclear Safety.

ACTION: Notice of Extension of Time to Respond to Defense Nuclear Facilities Safety Board Recommendations.

SUMMARY: On March 27, 1990, the Defense Nuclear Facilities Safety Board (Defense Board), in accordance with Section 312(5) of Public Law 100–456, approved a number of recommendations regarding Future Monitoring Programs at the Department of Energy's Hanford Reservation, located near Richland, Washington. Those recommendations were published in the Federal Register on March 30, 1990 at pp. 11994–11995.

The DOE's response to the Defense Board's recommendations are printed below.

FOR FURTHER INFORMATION CONTACT: Steven M. Blush, Director, Office of Nuclear Safety, U.S. Department of Energy, Washington, DC 20585. Phone (202) 586–2407.

Issued in Washington, DC on May 16, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

May 16, 1990

The Honorable John T. Conway,

Chairman, Defense Nuclear Facilities Safety Board, 600 E Street NW., Suite 675, Washington, DC.

Dear Mr. Chairman: I have received your letter of March 27, 1990, which identified four recommendations concerning the safety of the single-shell tanks located at the Hanford Site. These recommendations were discussed with the Defense Nuclear Facilities Safety Board (DNFSB) members and consultants on April 10, 1990. I agree with and accept your recommendations. The Office of Environmental Restoration and Waste Management is in the process of developing specific implementation plans.

Regarding a related matter, the Department of Energy Headquarters (DOE–HQ) has performed a number of investigations into the gas generation issue raised during your March 20–21, 1990, visit to Hanford. In early April, an investigation team consisting of technical experts was sent to Hanford, to evaluate hydrogen gas generation. The team examined a hydrogen explosion below the waste crust and estimated that the probability of combustion was low; however, if such an explosion were to occur, the primary tank might sustain damage. The preliminary analysis of this scenario indicated that the secondary containment unit, an underground, steel-lined, reinforced-concrete vault would not be likely to sustain damage. We are further assessing the chemical makeup of the tank to determine if there might be any further synergistic effects from a hydrogen explosion.

In addition, the Office of Nuclear Safety (NS) and the Office of the Assistant Secretary for Environment, Safety, and Health (EH) have conducted an extensive independent review. The DOE Richland Operations Office (DOE–RL) has prepared a Safety Improvement Plan for the double-shell and single-shell tanks. This plan addresses safety

issues raised by the DOE–HQ investigation team and the DNFSB. Issues raised by NS and EH will be incorporated into a final plan. The Office of Environmental Restoration and Waste Management is forming a tank advisory panel to ensure that recommendations generated as a result of the independent reviews conducted to date are adequately addressed in DOE–RL plans.

It is our desire to incorporate the results from all these reviews in our response to your recommendations.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 90–11990 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

[Form EIA–767]

Steam-Electric Plant Operation and Design Report

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed revision of the Form EIA–767, "Steam-Electric Plant Operation and Design Report," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (requried by the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing reporting forms. This program ensures that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revision to the Form EIA–767, "Steam-Electric Plant Operation and Design Report."

DATES: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the DOE contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send written comments to Mr. Al Breuel (EI–541), Energy Information Administration, Department of Energy, Mail Stop: EI–541, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 254–5628.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information, or copies of the proposed changes to the form and instructions should be directed to Mr. Breuel at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy (DOE) Organization Act (Pub. L. 95–91), the Energy Information Administration is obliged to publish, and otherwise make available to the public, high-quality statistical data that reflect current and prospective electric power plant operations.

The Form EIA–767 collects data on the operation and design of steam-electric plants annually. The form is sponsored by the following agencies: the Environmental Protection Agency (EPA); the DOE Office of Policy, Planning and Analysis (Environmental Analysis) (PE); the DOE Office of the Assistant Secretary for Fossil Energy (FE); the Federal Energy Regulatory Commission (FERC); and the Bureau of Economic Analysis (BEA) of the Department of Commerce. Most of the data elements on this form are required by more than one sponsor. EPA uses the data to develop, assess, reform, and enforce the regulations required by the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), and the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 and other sections). PE uses the data to assess the environmental impacts of electric energy plans and projections, and the imapct of environmental regulations on the generation of electric power, EPA, FE, and PE use the data to perform emission trends and analyses for the Interagency Acid Precipitation Task Force established by the Energy Security Act of 1980 (42 U.S.C. 8901 *et seq.*). FE uses the data to evaluate the inventory of pollution control technology and generation technology. FERC uses the data to evaluate fuel use in utility rate-making proceedings and the use of alternate fuels. BEA uses the data to assess the imapct of pollution abatement and control expenditures on the Gross National Product. EIA, in coordination with the sponsors, revised the form and is responsible for collecting and processing the data. Within EIA, the data are used to develop a comprehensive electric power data base that supports EIA models. Other data users include Congress, State environmental regulatory bodies, trade associations, universities, manufacturers, electric utilities, and other Federal agencies.

II. Current Actions

In keeping with its mandated responsibilities, EIA and the sponsors propose the following revisions to the form in order to provide timely and accurate data regarding nitrogen oxide emissions:

Schedule III, Section A.

—Item 6 will be added asking for the annual average nitrogen content of the coal to the nearest 0.1 percent.

Schedule III, Section C.

—Item 13b will be changed from "Year Coal Last Burned" to "Year Alternate Fuel Last Burned." Item 13c will be changed from "Number of Days Required to Switch to Coal Burning" to "Number of Days Required to Switch to Alternate Fuel."

—Item 14 will be changed from "Nitrogen Oxide (NO_x) Control Equipment" to "Nitrogen Oxide (NO_x) Control Equipment/Process." Item 14a will be changed from "Low NO_x Burners, Yes or No" to "Low NO_x Control Process" with the following codes for selection: N—Not Applicable; L—Low Excess Air; B—Biased Firing; A—Overfire Air; F—Flue Gas Recirculation; R—Fuel Reburning; X—Low NO_x Burner; O—Other. In Item 14b, NA (Not Applicable) will be added to the codes for low NO_x burner manufacturers.

—Item 15 will be added requesting the boiler manufacturer with the following codes for selection: BW—Babcock and Wilcox; CE—Combustion Engineering; ER—Erie City Iron Works; FW—Foster Wheeler; RS—Riley Stoker; VO—Vogt Machine Co.; OT—Other.

These changes will have no effect on the current expiration date of the form (12/31/92). The approved changes will be implemented for the 1990 data submissions.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed revisions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Current public reporting burden for this collection is estimated to average 84 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to be complete and submit the required form with the proposed revisions?

E. What is the estimated cost of completing this revised form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in the form EIA–767.

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of this data survey; they also will become a matter of public record.

Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), 790a, and Section 205 of Public Law 95–91, Department of Energy Organization Act, as amended, 42 U.S.C. 7135.

Issued in Washington, DC, May 17, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–11995 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–361–000 et al.]

Florida Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 16, 1990.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket Nos. ER90–361–000]

Take notice that Florida Power Corporation (FPC) on May 10, 1990 tendered for filing a Contract For Interchange Service Between FPC and the City of Tallahassee. This contract supersedes a May 1983 interchange contract between the two parties. The proposed contract provides for sales under interchange service schedules A, B, D, F, H, J, and X.

According to FPC, a copy of this filing has been served on the City of Tallahassee.

Comment date: May 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Co.

[Docket No. ER90–363–000]

Take notice that on May 11, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing a change in rate schedule for Rate Schedule FERc No. 108, a contract with the City of Santa Clara, California (City) entitled "System Bulk Power Sale and Purchase Agreement Between City of Santa Clara and Pacific Gas and Electric Company" (Agreement). The Agreement and its appendices were accepted by the Commission on September 23, 1987 in Docket No. ER87–498–000 and contain capacity and energy rate for firm, baseload power sold to City by PG&E.

PG&E proposes to change the energy rate pursuant to appendix A of the Agreement from 25.5 mills to 26.3 mills based on the new 1990 Avererage Thermal Cost Index. Since the increase is under $1,000,000 and City consents to this filing, PG&E is filing in accordance with §35.13(a) (2) of the Commission's regulations (18 CFR 35.13(a) (2)). In addition, PG&E is requesting a waiver of the Commission's notice requirements in accordance with §35.11 of the Commission's regulations (18 CFR 35.11) so that the energy rate change my become effective on April 1, 1990 as agreed to the Agreement.

Copies of this filing were served upon City and the California Public Utilities Commission.

Comment date: May 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Power & Light Corp.

[Docket No. ER89–401–003]

Take notice that on May 8, 1990, Citizens Power & Light Corporation (Citizens) tendered for filing certain inforamtion as required by Ordering Paragraph (N) of the Commission's August 8, 1989 order in the above referenced docket.

Comment date: May 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corp.

[Docket No. ER90–358–000]

Take notice that on May 8, 1990, Florida Power Corporation (Florida Power) tendered for filing amended revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, Reedy Creek Improvement District, and the Cities of Gainesville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud, Starke, Tallahassee and Vero Beach, Florida, and Cajun Electric Power Cooperative, Inc. and Entergy Services, Inc. The interchange services which are affected by these revisions are Services Schedule B—Short Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Entergy with Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1990 through April 30, 1991. Florida Power therefore requests wavier of the Commission's sixty -day notice requirement. According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corp.

[Docket No. ER90–362–000]

Take notice that on May 10, 1990, Niagara Mohawk Power Corporation (Niagara Mohawk) filed as a supplement to Niagara Mohawk Rate Schedule No. 142, a letter agreement between Niagara Mohawk and the Long Island Lighting Company (LILCO), under which Niagara Mohawk agreed to wheel for LILCO certain loads of 100 MW over a four-month period starting June 1, 1990 and ending September 30, 1990. No changes to the rate charged under Rate Schedule No. 142 will occur, nor are there any terms or conditions affected.

Niagara Mohawk states that a copy of the filing was served on LILCO and the New York Public Service Commission.

Comment date: May 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Co.

[Docket No. ER90–359–000]

Take notice that on May 8, 1990, the Montana Power Company (Montana) tendered for filing a revised appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Plower Planning and Conservation Act, Public Law 96–501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate has an effective date of August 19, 1989 and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: May 30, 1990, in accordance with Standard Paragraph E end of this notice.

7. Montana Power Co.

[Docket No. ER90–351–000]

Take notice that on May 1, 1990, the Montana Power Company (Montana Power) tendered for filing pursuant to part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC–90, applicable for sales of electricity by Montana Power for resale to Central Montana Electric Power Cooperative, Inc., (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc., (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC–90 will provide it with a decrease in revenues from sales to these customers of $1,179,184 (−7.23%) during the year ending June 30, 1991, and implements the fifth annual rate adjustment pursuant to a Settlement Agreement approved in Docket No. ER84–359–000.

Comment date: May 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 90–11906 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–365–002]

Toyo Power Corp. (Alpha Joshua, Inc.); Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

May 16, 1990.

On May 10, 1990, Toyo Power Corporation (Applicant), of 1455 FrazeeRoad, suite 300, San Diego, California 92108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California to the west of the town of Majave. The certification on the original application was issued on September 30, 1988; 44 FERC ¶ 61,422 (1988). The first recertification was issued on July 10, 1989; 48 FERC ¶ 62,009 (1989). The instant recertification is requested due to change in the ownership structure and partnership agreement of transmission line. ESI Energy, Inc., an indirect wholly-owned subsidiary of FPL Group Inc., an electric utility holding company, will have 48 percent ownership equity interest in the facility. All other characteristics of the facility remain the same as that set forth in Docket No. QF88–365–001.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11907 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–366–002]

Toyo Power Corp., (Beta Willow, Inc.); Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

May 16, 1990.

On May 10, 1990, Toyo Power Corporation (Applicant), of 1455 Frazee Road, suite 300, San Diego, California 92108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kern County, California to the west of the town of Majave. The certification on the original application was issued on September 30, 1988; 44 FERC ¶ 61,422 (1988). The first recertification issued on July 10, 1989; 48 FERC ¶ 62,010 (1989). The instant recertification is requested due to change in the ownership structure and partnership agreement of transmission line. ESI Energy, Inc., an indirect wholly-owned subsidiary of FPL Group Inc., an

electric utilty holding company, will have 48 percent ownership equity interest in the facility. All other characteristics of the facility remain the same as that set forth in Docket QF88–366–001.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11906 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–1324–000 et al.]

Natural Gas Certification Filings; Texas Gas Transmission Corporation, et al.

May 16, 1990.

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP90–1324–000]

Take notice that on May 8, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–1324–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phibro Distributors Corporation (Phibro), under Texas Gas' blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport, on an interruptible basis, up to 200,000 MMBtu per day for Phibro, Texas Gas states that construction of facilities would not be required to provide the proposed service.

Texas Gas further states that the maximum day, average day, and annual transportation volumes would be approximately 200,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Texas Gas advises that service under § 284.223(a) commenced April 12, 1990, as reported in Docket No. ST90–2648.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

[Docket No. CP90–1352–000; CP90–1353–000]

Take notice that on May 14, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket Nos. CP90–1352–000 and CP90–1353–000 requests pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Tarpon Gas Marketing, Ltd. (Tarpon) in CP90–1352–000, and Alliance Operating Corp. (Alliance) in Docket No. CP90–1353–000, under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.[1]

ANR proposes to transport on an interruptible basis up to 150,000 dt equivalent of natural gas on a peak day for Tarpon, 150,000 dt equivalent on an average day and 54,750,000 dt equivalent on an annual basis. It is stated that ANR would receive the gas at designated points on ANR's system in Louisiana, Texas, offshore Louisiana, offshore Texas, Oklahoma, Kansas and Wisconsin and would deliver equivalent volumes to Tarpon at designated points on ANR's system in Iowa, Illinois, Indiana, Michigan, Ohio and Wisconsin. It is explained that the transportation service commenced March 23, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–2533.

It is asserted that the transportation services would be effected using existing facilities and that no construction of additional facilities would be required.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–1325–000]

Take notice that on May 8, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–1325–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of NGC Transportation, Inc. (NGC), under Northern's blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to transport, on a firm basis up to 60,000 MMBtu per day for NGC. Northern states that construction of facilities would not be required to provide the proposed service.

Northern further states that the maximum day, average day, and annual transportation volumes would be approximately 60,000 MMBtu, 45,000 MMBtu and 21,900,000 MMBtu respectively.

Northern advises that services under § 284.223(a) commenced April 1, 1990, as reported in Docket No. ST90–2701.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Company Mississippi River Transmission Corporation

[Docket Nos. CP90–1356–000 and CP90–1357–000]

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, and Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88–316–000 and Docket No. CP89–1121–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket

[1] These prior notice requests are not consolidated.

[2] These prior notice requests are not consolidated.

numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [2]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP90-1356-000 (5-14-90)	Exxon Corporation (producer).	100,000 5,100 1,861,500	OTX, OLA, TX, LA, MS, AL.	OTX, TX	2-22-90, IT, Interruptible.	ST90-2437-000, 3-15-90.
CP90-1357-000 (5-14-90)	EnTrade Corporation (marketer).	20,000 20,000 7,300,000	OK, IL, TX, AR, LA	IL, MO, LA, OK, AR, TX	2-27-90, ITS, Interruptible.	ST90-2520-000, 3-10-90.

[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Southern Natural Gas Company

[Docket Nos. CP90-1370-000 and CP90-1371-000]

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name (type)	Peak day, Average Day, Annual MMBtu	Receipt [2] points	Delivery points	Contract date, rate sechedule, service type	Related docket, start up date
CP90-1370-000	Coastal Gas Marketing Company, (marketer).	200,000 500 182,500	OTX, OLA, TX, LA, MS, AL	AL, GA	[3] 2-20-90, IT, Interruptible.	ST90-2438-000, 3-16-90.
CP90-1370-000	Coastal Gas Marketing Company, (marketer).	200,000 500 182,500	OTX, OLA, TX, LA, MS, AL	SC, TN, GA	[4] 2-20-90, IT, Interruptible.	ST90-2436-000, 3-16-90.

[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] Service Agreement No. 853620.
[4] Service Agreement No. 853610.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11909 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-2210-004, RP89-161-015, and TA90-1-48-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 16, 1990.

Take notice that ANR Pipeline Company ("ANR") on May 14, 1990 tendered for filing as part of its FERC Gas Tariff those tariff sheets listed on Attachment A, attached to the filing.

The tariff sheets are filed pursuant to the Commission's unpublished order dated April 27, 1990 in the captioned proceeding.

The instant compliance filing reduces ANR's gas demand rates as well as its non-gas commodity and non-gas demand rates to reflect ANR's change in measurement methodology of BTU content from a "saturated" to a "dry" basis. Demand rates reflect the change in billing determinants due to the increases in contract entitlements elected by certain of ANR's customers in connection with ANR's change in measurement methodology. Increases in

[3] These prior notice requests are not consolidated.

contract entitlements elected by sales customers were authorized by Commission order dated March 21, 1990 in Docket No. CP89–2210–000. Non-gas commodity rates have been reduced to reflect the reduced heating content per dekatherm.

ANR submits the tariff sheets listed on Attachment A with a requested effective date of May 1, 1990.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests must be filed on or before May 23, 1990. 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. 90–11910 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA89–16–000]

Carnegie Natural Gas Co.; Order Establishing Hearing Procedures

Issued May 17, 1990.

On February 28, 1990, the Chief Accountant issued a contested audit report [1] under delegated authority noting Carnegie Natural Gas Company's (Carnegie) disagreement with certain items contained in the staff's audit report of Carnegie books and records. The report noted Carnegie's disagreement with the staff regarding the correcting entry on Schedule No. 2 and Compliance Exception No. 1 on Schedule No. 3 concerning the reaccounting for the accumulated provision for depreciation. Carnegie was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by Part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

On March 30, 1990, Carnegie responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing.

[1] 50 FERC ¶ 62,145.

Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, chapter I), a public hearing shall be held concerning the appropriateness of Carnegie's accounting practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 90–11911 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–9–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 16, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on May 11, 1990, pursuant to section 4 of the Natural Gas Act, the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88–217, *et al.* by order issued October 6, 1989, and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Fifth Revised Sheet No. 40
Fifth Revised Sheet No. 45

The purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by its pipeline suppliers.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All motions or protests should be filed on or before May 23, 1990. 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. 90–11912 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–95–001]

Colorado Interstate Gas Co.; Compliance Filing

May 16, 1990.

Take Notice that Colorado Interstate Gas Company ("CIG"), on May 14, 1990, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1: First Revised Sheet No. 61G11.1.

CIG states that the above-referenced tariff sheet is being filed in compliance with the Commission's Order issued April 27, 1990, in this docket, to reflect customers' elected amortization periods and utilization of the Commission's current interest rate in calculating customers' respective Buyout-Buydown Surcharges.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected State commissions as well as all of CIG's firm sales customers.

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 §§ 385.214 and 385.211 of the

Commission's Rules and Regulations. All such protests should be filed on or before May 23, 1990. 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. 90-11913 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-7-24-001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 16, 1990.

Take notice that Equitrans Inc. (Equitrans) on May 11, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, effective May 1, 1990:

Substitute Fourth Revised Substitute Fourteenth Sheet No. 10.
Substitute Fifth Revised Sixth Revised Sheet No. 34.

The purpose of this filing is to amend its Out-Of-Cycle Purchased Gas Adjustment (PGA) filing made on May 1, 1990 in Docket No. TQ90-7-24-000 to reflect the correct period billing units for D(1) and D(2) rates which were inadvertently misstated in the original filing.

Equitrans states that a copy of its filing has been served upon its purchasers and interest State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.21 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 24, 1990. 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. 90-11914 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-8-24-002]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 16, 1990.

Take notice that Equitrans, Inc. (Equitrans) on May 11, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Effective June 1, 1990:

Substitute Fifth Revised Substitute Fourteenth Sheet No. 10
Substitute Sixth Revised Sixth Revised Sheet No. 34

Effective July 1, 1990:

Substitute Sixth Revised Substitute Fourteenth Sheet No. 10
Substitute Seventh Revised Sixth Revised Sheet No. 34

The purpose of this filing is to amend Equitrans Quarterly Purchased Gas Adjustment (PGA) filing made on May 1, 1990 in Docket No. TQ90-8-24-000 and May 8, 1990 in Docket No. TQ90-8-24-001 to reflect the proper current adjustment column (column 3) which was misstated due to the correction of the D(1) and D(2) rates from Docket No. TQ90-7-24-001. Also, to correct the pagination from the amend filings in Docket Nos. TQ90-7-24-000 and TQ90-8-24-001.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.21 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 24, 1990. 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. 90-11915 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-114-000]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

May 16, 1990.

Take notice that on May 14, 1990 Mississippi River Transmission Corporation (MRT) tendered for filing an original and six (6) copies of the revised tariff sheets listed below to its FERC Gas Tariff, Original Volume No. 1-A. A July 1, 1990 effective date is proposed.

Second Revised Sheet No. 9
Second Revised Sheet No. 36
Second Revised Sheet No. 37
Second Revised Sheet No. 38
Second Revised Sheet No. 46
Second Revised Sheet No. 61
Second Revised Sheet No. 62
Second Revised Sheet No. 63
Third Revised Sheet No. 64
Second Revised Sheet No. 74
Second Revised Sheet No. 80
Second Revised Sheet No. 92
Second Revised Sheet No. 96
Second Revised Sheet No. 99

MRT states that the purpose of the instant filing is to revise certain tariff provisions of MRT's Rate Schedule FTS, the Transportation General Terms and Conditions, and the Form of Transportation Service Agreement to provide more flexible service to firm shippers and reduce administrative burdens for both customers and MRT with respect to billing, requests for service, and allocations. Such revisions are based on MRT's experience since becoming an open access transporter of December 1, 1989 as well as suggested changes of shippers.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional transportation customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 24, 1990. 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. 90-11916 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-26-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

May 16, 1990.

Take notice that on May 14, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing six (6) copies each of the Fifth Revised Sheet Nos. 171 and 172 and Substitute Second Revised Sheet Nos. 173 and 174 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised sheets is June 1, 1990.

The purposes of the filing are: 1) To track Colorado Interstate Gas Company's (CIG) recovery of take-or-pay buyout, buydown or other contract reformation costs (Transition Costs) allocated to Natural at Docket No. RP90-95-000, 2) to track CIG's additional recovery of Transition Costs allocated to CIG by Northwest Pipeline Corporation at Docket No. RP90-90-000 and passed on to Natural at Docket Nos. RP89-178-003 and TM90-6-32-000; and 3) to revise previous interest calculations for certain minor adjustments to customer payments.

Natural seeks any waivers of the Commission's Regulations which may be necessary to permit the tendered tariff sheets to take effect June 1, 1990. Copies of the filing have been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP89-131-000, *et al.* and RP89-188-000, *et al.*

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR § 382.214 and 385.211. All such motions or protest must be filed on or before May 23, 1990. 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. 90-11917 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[RP90-82-001, RP90-97-001 and TM90-3-59-001]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

May 16, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on May 14, 1990, tendered for filing proposed changes to its FERC Gas Tariff.

Northern states this filing is being submitted pursuant to the terms and conditions set forth in the Commission's order issued on April 27, 1990 in Docket No. RP90-97. These terms and conditions also apply to the same tariff sheet in Docket Nos. RP90-82 and TM90-3-59-000. Effective dates of February 1, 1990, March 1, 1990, and July 1, 1990 have been requested for this filing.

Northern further states that copies of this filing were served upon Northern's customers, parties to this proceeding and all interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before May 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11918 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-38-006, RP89-99-006]

U-T Offshore System; Notice of Filing

May 16, 1990.

Take notice that on May 11, 1990, U-T Offshore System (U-TOS) filed a Second Revised Volume No. 1 of its FERC Gas Tariff in order to comply with the Commission's electronic medium requirements. U-TOS states that certain provisions in such Volume No. 1 are intended to track specific changes made by the High Island Offshore System (HIOS) in its tariff filings on December 22, 1989 and March 19, 1990. U-TOS is making certain other changes which are slightly different from the HIOS tariff.

U-TOS states that upon acceptance by the Commission of this Second Revised Volume No, 1, U-TOS will be able to commence open access interruptible transportation services.

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 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. 90-11919 Filed 5-22-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2187-001]

Valero Interstate Transmission Co.; Cancellation of Sales and Transportation Service

May 16, 1990.

Take notice that Valero Interstate Transmission Company ("Vitco), on May 4, 1990 tendered for filing the following tariff sheet to cancel Rate Schedule S-1 as directed by the Commission's order dated February 22, 1990 in Docket No. CP89-2187-000:

FERC Gas Tariff, Original Volume No. 2

1st Revised Sheet No. 13

The proposed effective date of the above filing is February 22, 1990. Vitco requests a waiver of any Commission

order or regulations which would prohibit such filing of implementation by February 22, 1990.

Accounting Treatment for Account 191

Valero Interstate Transmission Company has issued a check dated May 3, 1990 in the amount of $31,634.79 (Thirty-one thousand six hundred thirty-four dollars and seventy-nine cents) to Natural Gas Pipeline Company of America to clear the balance in Account 191 as of May 3, 1990.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 31, 1990. 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 proceedings. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–11920 Filed 5–22–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

Clean Coal Technology Program; Delay

The planned issuance of a final Program Opportunity Notice (PON), No. DE–PS01–90FE62087, which was scheduled to be issued on or after June 1, 1990, in accordance with Pub. L. 101–121, has been delayed until further notice. Accordingly, the issuance of a draft PON, scheduled to be available on or after April 13, 1990, has also been delayed. Notice of the availability of said draft PON was announced in **Federal Register**, Vol. 55, No. 61, on Thursday, March 29, 1990.

Additionally, the preproposal conference scheduled to occur at 10 a.m. on June 14, 1990, at the Thomas Jefferson Auditorium, U.S. Department of Agriculture (South Building between the 5th and 6th wings), 14th and Independence Avenue, SW., Washington, DC has also been delayed.

Issued in Washington, DC, on May 17, 1990.

Michael R. McElwrath,

Principal Deputy, Assistant Secretary, Fossil Energy.

[FR Doc. 90–11992 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

Coal Policy Committee National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Thursday, June 7, 1990, 8:30 a.m. to 4 p.m.

Place: Ritz-Carlton Hotel, 100 Carondelet Plaza, St. Louis, MO.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC., 20585, Telephone: 202/586–4695.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To discuss the status of the two studies the Council is presently preparing and the draft National Energy Strategy.

Tentative Agenda:

—Call to order by Irving Leibson, Chairman

—Discussion and recommendations on the study, "The Future Long-Range Role of Coal in the Energy Strategy of the United States"

—Discussion and recommendations on the study, "The Use of Coal and Clean Coal Technology"

—Discussion of comments on the draft National Energy Strategy

—Discussion of any other business properly brought before the National Coal Council Coal Policy Committee

—Public comment—10-minute rule

—Adjournment

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 18, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–11993 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council

Date and Time: Friday, June 8, 1990, 9:30 a.m. to 12:00 Noon

Place: Ritz-Carlton, 100 Carondelet Plaza, St. Louis, MO

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, D.C. 20585, Telephone: 202/586–4695

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal industry issues.

Tenative Agenda:

—Call to order by William Carr, Chairman of the National Coal Council.

—Remarks by Chairman Carr.

—Remarks by the Honorable Robert Gentile, Assistant Secretary, Fossil Energy.

—Report of the Coal Policy Committee.

—Report of the Finance Committee.

—Report of the Nominating Committee and Election of Officers.

—Discussion of any other business properly brought before the Council.

—Public comment—10-minute rule.

—Adjournment.

Public Participation: The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and

reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 18, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90–11994 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Office of Hearings and Appeals; Week of February 26 Through March 2, 1990

During the week of February 26 through March 2, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief 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.

Appeals

Franc Pajek Company, 2/26/90, LFA–0028

On January 26, 1989, Franc Pajek Company (Pajek) filed a Motion for Reconsideration of a Decision and Order issued to it on November 4, 1989, by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In that Decision, the OHA denied Pajek's Appeal from a denial by the Assistant Manager for Administration of the DOE's San Francisco Operations Office of a request for information filed pursuant to the Freedom of Information Act (FOIA). The OHA had found that Pajek's request for a copy of all of the bids submitted for a Lawrence Livermore National Laboratory's Contract should be denied since the requested material was confidential and commercial or financial information within the purview of Exemption 4. In considering the Motion for Reconsideration, the DOE found that Pajek had not demonstrated the existence of any changed circumstances or an error that would warrant a change in the OHA Decision. Accordingly, the DOE denied Pajek's Motion for Reconsideration but redirected it to the San Francisco Operations Office to be treated as a new FOIA request for all of the bid information.

Mary C. Searcy, 3/2/90 LFA–0022

Mary C. Searcy filed an Appeal from a determination issued by the Oak Ridge Operations Office in which Oak Ridge informed Ms. Searcy that there were no documents responsive to her Freedom of Information Act (the FOIA) request. In considering the Appeal, the DOE found that Oak Ridge's original search was adequate under the FOIA and reasonably calculated to uncover responsive documents. The Appeal was therefore denied.

Remedial Order

Concord Petroleum Corporation, Paul C. Elliott, 2/28/90, KRO–0420

Concord Petroleum Corporation and Paul C. Elliott (collectively, the respondents) objected to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the respondents on October 21, 1986. In the PRO, the ERA alleged that during the period from June 1, 1978, through December 31, 1980, the respondents violated the "layering" provision of 10 C.F.R. § 212.186 and the collateral provisions of 10 C.F.R. § § 205.202 and 210.62(c). After considering the respondents Statement of Objections, the DOE concluded that the PRO should be issued as a final Remedial Order. In reaching its conclusion, the DOE found that: (i) the layering regulation is not procedurally and substantively invalid; (ii) Concord did engage in layering in violation § 212.186; (iii) the normal business practices rule at 10 C.F.R. § 210.62(c) and the anti-circumvention at 10 C.F.R. § 205.201 were not invalid and were enforceable against Concord; (iv) the allegations in the PRO were not barred by the Texas statute of limitations and laches; (v) the interest sought by the ERA was not excessive; (vi) Elliott should be held personally liable for any regulatory violations that might have been committed by Concord; and the EPA's proposal to deposit any overcharge funds recovered from Concord into an escrow fund at the United States Treasury for distribution outlined in 10 C.F.R. § 205.280.

Motion for Discovery

Richome Oil and Gas Company, Jerome B. Herrman, 2/26/90, KRD–0710, KRH–0710

The Office of Hearings and Appeals (OHA) issued a Decision and Order concerning a Motion for Discovery and a Motion for Evidentiary Hearing filed by Rochome Oil and Gas Company and Jerome B. Herrman (collectively, the respondents), in connection with a Proposed Remedial Order (PRO) issued to the respondents and Richard P. Herrman. The respondents' Motion for Discovery sought information pertaining to decisions made by the ERA leading to the issuance of the PRO, the pricing of diluents, treating fluids, wash oils, or other additives used to increase the recovery of oil from a reservoir, and the identities of persons who had responsibilities associated with the compliance action. The OHA found that the requested discovery would not produce relevant and material evidence that would be helpful in resolving any factual issue. The OHA also denied the respondents' Motion for a Evidentiary Hearing.

Refund Applications

American Cyanamid Company, 3/2/90, RF 272–45535, RD272–45535

The DOE issued a Decision and Order denying an Application for Refund filed in the subpart V crude oil refund proceeding. Two subsidiaries of American Cyanamid Company (Cyanamid) previously submitted Stripper Well Surface Transporters claims, in which they released their rights and their parent company's rights to any other crude oil refunds by signing the Waiver and Release required for each of the Stripper Well claims. Therefore, the DOE determined that Cyanamid was not eligible for any refunds in this proceeding, and its refund application was denied. Cyanamid's ineligibility for a subpart V crude oil refund was also discussed in *In Re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987). Additionally, a consortium of States and U.S. Territories (the States) filed a consolidated objection to Cyanamid's subpart V crude oil refund application and a Motion for Discovery with respect to this application. Since the States only requested discovery if this application was not denied, the DOE dismissed the Motion for Discovery.

Atlantic Richfield Company/A&A ARCO, 2/26/90, RF304–2218, RF304–2219, RF304–2220

Atlantic Richfield Company/Gast Fuel & Service, Inc., 3/1/90, RF304–9063

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Two of the applications were filed by Azad Amiri, and one application was filed by this brother, Akbar Amiri. The two brothers demonstrated that their

respective stations were owned and operated as entirely separate entities throughout the consent order period. Therefore, both Azad and Akbar Amiri were granted small claims refunds. The sum of the refunds granted in this Decision equals $10,598, representing $7,831 in principal and $2,767 in accrued interest.

The DOE issued a Decision and Order concerning an Application for Refund filed by Gast Fuel & Service, Inc., in the Atlantic Richfield Company (ARCO) special refund proceeding. Gast documented a purchase volume of 19,574,347 gallons of ARCO motor gasoline and 2,372,409 gallons of middle distillates and sought a refund equal to its full volumetric allocation of the Consent Order Fund. Gast submitted data demonstrating that it maintained banks of unrecovered increased product costs well in excess of its full allocable share for both products. Based on the results of a competitive disadvantage analysis of Gast's purchases, the OHA determined that, for motor gasoline, Gast would be granted a refund equal to its full allocable share of the Consent Order fund and, for middle distillates, it would be granted a refund equal to its Above-Market Volumetric Share. The total refund granted in this decision was $20,372, including $5,354 in accrued interest.

Dean Foods Company, A. Duda and Sons, Inc., 2/28/90, RF272–12577, RD272–12577, RF272–12662, RD272–12662

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Dean Foods Company and A. Duda and Sons, Inc., for purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the applications. As evidence that the Applicants passed on their increased costs, the States referred to several industrial trade journal reports and an affidavit of a consulting economist which indicated that firms in the food processing industry, generally, were able to pass on any increased energy costs to their customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the Applicants should receive refunds. In addition, the Motions for Discovery filed by the States were denied. The sum of the refunds granted in this Decision is $35,056.

Exxon Corporation/John J. Hudson, Inc., et al., 3/2/90, RF 307–9739, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants was a reseller of Exxon products whose allocable share is greater than $5,000. Instead of making an injury showing to receive its full allocable share, each Applicant elected to limit its claim to the larger of $5,000 or 40 percent of its allocable share. The sum of the refunds granted in this Decision is $33,021 ($25,968 principal plus $7,053 interest).

Exxon Corporation/Poplar Hill Exxon, et al., 2/28/90 RF307–7425, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed in the Exxon Corporation special refund proceeding. The Applicants, all of whom were resellers, purchased petroleum products directly from Exxon. The Applicants disagreed with the gallonage information recorded in Exxon's records and submitted alternative gallonage figures which they requested that the DOE accept in lieu of Exxon's figures. The DOE agreed to accept the Applicants' figures because they were taken from the firm's actual records from the consent order period. The DOE determined that each Applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $27,373 ($21,525 principal plus $5,848 interest).

Exxon Corporation/Suburban Propane Gas Corp., Vangas, Inc., Pargas, Inc., 3/2/90 RF307–8848, RF307–8849, RF307–8850

The DOE issued a Decision and Order granting a refund to Quantum Chemical Corp. (Quantum). Quantum purchased all the capital stock of Suburban Propane Gas Corp., Vangas, Inc., and Pargas, Inc., subsequent to the consent order period. Quantum was found to be the proper recipient of any refund that these firms are eligible to receive. Because one entity, Quantum, now owns all of the firms involved in this determination, the DOE treated the firms as one applicant for the purposes of this proceeding. Accordingly, the volume totals from these applications were combined in order to determine Quantum's allocable share. Because Quantum did not provide a detailed demonstration of injury, it was eligible to receive 40 percent of its allocable share, up to $50,000 under the medium-range presumption of injury. In this case, 40 percent of Quantum's allocable share was more than $50,000. Accordingly, Quantum received a total refund of $63,580 ($50,000 principal and $13,580 interest).

Farmers Union Oil Co., 2/26/90, RF272–49636

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Farmers Union Oil Co., an agricultural cooperative, based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The Applicant demonstrated the volume of its claim by using a reasonable estimate of its purchases. Generally, refunds are granted to cooperatives, based up on volumes resold to members, on the condition that the cooperative certify that it will pass through any refund received to those members. Farmers furnished such certification, and it was granted a refund of $10,891.

Gulf Oil Corporation/Concord Natural Gas Corp., Gas Service, Inc., 3/1/90, RF300–7432, RF300–10806

The DOE issued a Decision and Order concerning an Application for Refund filed by Concord Natural Gas Corp. and Gas Service, Inc., two regulated public utilities, in the Gulf Oil Corporation special refund proceeding. EnergyNorth Natural Gas, Inc., a regulated public utility which owns both Concord Natural Gas Corp. and Gas Service, Inc., certified that it will notify its appropriate state regulatory agency of any refund received on behalf of Concord Natural Gas Corp. and Gas Service, Inc., in the Gulf proceeding and that it will pass through the amount of any refund received to its customers. The total amount granted in this Decision, including accrued interest, is $21,550.

Gulf Oil Corporation/G.J. Trusio Coal & Fuel, 2/26/90, RF300–10989

The DOE issued a Supplemental Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of G. J. Trusio Coal & Fuel (Trusio). The OHA had inadvertently granted Trusio two dupliate refunds: one for Case No. RF300–5905 in *Gulf Oil Corporation/Stinson Aviation Corp., et al.*, the other for Case No. RF300–9648 in *Gulf Oil Corporation/E. Earl Duffey, et al.* Accordingly, in a Decision and Order issued to Case No. RF300–10989, the OHA rescinded the refund of $1,685 granted to Trusio under Case Number RF300–9648 in *Gulf Oil Corporation/ Stinson Aviation, et al.*

Gulf Oil Corporation/Peterson Petroleum, Inc., 3/2/90, RF300–10986

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The DOE originally granted a refund of $37,357 payable to Peterson Petroleum, Inc. (Peterson) (Case No. RF300–4296) in *Gulf Oil Corporation/Peterson Petroleum, Inc.*, (Case No. RF300–4296) (April 3, 1989). The Applicants' attorney requested that the name of the payee be changed to the names of the owners during the consent order period. The DOE issued a Supplemental Order on April 27, 1989, which rescinded the refund until DOE was able to evaluate the impact of such a change on its record keeping system. DOE policy is to issue the refund check payable to the purchasing entity. After evaluating the impact, the DOE issued a second Supplemental Order which denied the applicants' request and again granted the refund payable to Peterson. However, the DOE stipulated that the owners during the consent order period are entitled to the refund. The total refund granted, including interest, equals $40,058.

Gulf Oil Corporation/Whaley's Gulf, et al., 2/28/90, RF300–8235, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. P.A.D., Inc., originally filed three of these applications. Fuel Refunds, Inc., filed two "Amended Refund Applications." Akin Energy also filed two "Amended Refund Applications." All correspondence, including the refund checks, were sent directly to the Applicants. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $16,086.

Mobil Oil Corp./Landings Car Wash, 2/28/90, RF225–11033, RF225–11034

The DOE issued a Supplemental Order rescinding a previous Decision and Order which granted a refund of $334 to Landings Car Wash in the Mobil Oil Corp. special refund proceeding in *Mobil Corp./Admiral Mobil, et al.* It had been determined that Landings had previously received a refund based on the gallonage claimed in that Decision. Accordingly, the duplicate refund granted to Landings Car Wash was rescinded.

Murphy Oil Corporation/Hoskin's Spur, Raymond Bradley Spur, Washington Spur, 2/28/90, RF309–1380, RF309–1381, RF309–1383

The DOE issued a Decision and Order granting three Applications for Refund in the Murphy Oil Corporation special refund proceeding. These claims were filed on behalf of the Applicants by Federal Refunds, Inc. (FRI), but the refunds granted in this Decision were sent directly to the Applicants, rather than to FRI. In light of FRI's past actions before the DOE, we believe that it was appropriate to do so, and in fact, FRI requested that these refunds be sent to the claimants. The total volume approved in this Decision was 10,046,046 gallons, and the total of the refunds granted was $10,233 (comprised of $8,207 in principal and $2,026 in interest).

Nash Finch Company, 2/28/90, RF272–42994

Nash Finch Company, a food distributor, applied for a refund in the subpart V crude oil proceeding. The firm had signed a Waiver and Release when it applied for a Surface Transporter's refund in the Stripper Well proceeding, waiving its right to collect future crude oil refunds. Accordingly, its crude oil application was denied.

Nestle Foods Corp., 3/2/90, RA272–23

The DOE issued a Decision and Order correcting a miscalculation of the refund amount granted to Nestle Foods Corp. (Nestle) in a Decision dated February 2, 1990. In that Decision, the DOE had mistakenly calculated Nestle's refund as $119,421 based on its purchases of 149,363,321 gallons of petroleum products. The refund amount that Nestle should have been granted was $119,491. To correct this error, the DOE granted Nestle a supplemental refund of $70.

Olin Chemicals, 2/26/90, RF272–7748, RD272–7748

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Olin Chemicals for its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of twenty-eight States and two Territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the application. As evidence that Olin passed on its increased costs, the States referred to several industrial trade journal reports and annual company reports indicating a correlation between industry prices and the rise of energy costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the Applicant should receive a refund. In addition, the Motion for Discovery filed by the States was denied. The refund granted in this Decision is $126,401. Olin will be eligible for additional refunds as additional crude oil overcharge funds become available.

R.R. Donnelley & Sons Company, 3/2/90, RF272–479, RD272–479

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to R.R. Donnelley & Sons Company based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The Applicant used the products in its printing operation and determined its claim from actual purchase records. The Applicant was an end-user of the products and was, therefore, presumed injured. A consortium of 26 States and two Territories (the States) filed a Statement of Objections and Motion for Discovery with respect to the Applicant. The DOE found that the States filings were insufficient to rebut the presumption of injury for end-users. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted is $42,252.

Robert C. McGary, et al., 2/26/90, RF272–42451, et al.

The DOE issued a Decision and Order denying six Applications for Refund in the Subpart V crude oil refund proceeding. A consortium of States and U.S. Territories (the States) filed consolidated objections to two of the refund Applications considered in this Decision because the Applicants were resellers of petroleum products. The DOE agreed with the States in this matter. Since the Entitlements Program equalized the effects of the alleged crude oil overcharges between all resellers, each of the applicants, as a reseller, would not have been placed at a competitive disadvantage by these alleged overcharges. For this reason, it would be unreasonable to adopt an injury presumption for resellers in the crude oil refund proceeding. The Applicants submitted no evidence or arguments displaying any injury from the alleged crude oil overcharges and, accordingly, their applications were denied.

Sheldon Oil Company, 2/26/90, RF272–43625

The DOE issued a Decision and Order denying an Application for Refund filed in the subpart V crude oil special refund proceeding. The Applicant was a marketer of petroleum products.

Shell Oil Company/Rogers Oil Company, et al., 2/28/90, RF315–4103, et al.

The DOE issued a Decision and Order granting four Applications for Refund filed in the Shell Oil Company special

refund proceeding. Each of the Applicants submitted more than one Application and the total gallonage of each applicant's claims exceeded 22,126,106 gallons of petroleum products purchased directly from Shell. Accordingly, each Applicant was granted a refund equal to $5,000 or 40 percent of its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $24,736 ($20,000 principal plus $4,736 interest).

W.R. Grace Co., 2/26/90, RF272–37255

The DOE issued a Decision and Order denying an Application for refund filed by W.R. Grace & Co. (Grace) in the subpart V crude oil proceeding. The DOE's denial was based on the fact that Grace's affiliate, Grace Distribution Services, had applied for and been granted a refund from the Surface Transporters Escrow and had, thereby, waived Grace's right to a refund to the crude oil proceeding.

Walt Flanagan and Company, Inc., 2/26/90, RF272–43737

The DOE issued a Decision and Order granting a refund to Walt Flanagan and Company, Inc., a manufacturer of concrete. The Applicant calculated its purchase volume using an estimation that 1 gallon of diesel fuel is consumed in the production and delivery of 1 cubic yard of ready-mixed concrete. The DOE granted a refund of $3,728 based on the Applicant's purchases of 4,660,271 gallons of diesel fuel.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./Arco Mini Mart, *et al.*	RF304–7926	2/28/90
Atlantic Richfield Co./F.K. Gailey Company, Inc..	RF304–2859	2/26/90
Atlantic Richfield Co./Lamar Oil Company, *et al.*	RF304–5756	2/26/90
Atlantic Richfield Co./Spot Oil Co., *et al.*	RF304–7515	2/27/90
Exxon Corp./Brinks, Inc., *et al.*	RF307–2295	2/27/90
Exxon Corp./Carl L. Johnson, *et al.*	RF307–7676	2/26/90
Exxon Corp./ Delaware & Elm Streets Exxon, *et al.*	RF307–9801	3/2/90
Exxon Corp./Feilpe Median Reyes, *et al.*	RF307–9608	2/27/90
Exxon Corp./ Hercules, Inc., *et al.*	RF307–8735	3/2/90
Exxon Corp./ Memphis Light, Gas, and Water Division, *et al.*	RF307–6096	2/28/90
Exxon Corp./Triangle Exxon, *et al.*	RF307–1759	2/28/90
Exxon Corp./Varig Airlines, *et al.*	RF307–9700	2/28/90
Gulf Oil Corp./ Action Petroleum, *et al.*	RF300–3657	3/1/90
Gulf Oil Corp./Big Stone Gas Co., Inc., *et al.*	RF300–5917	2/26/90
Gulf Oil Corp./Bob's Transport, *et al.*	RF300–10300	2/26/90
Gulf Oil Corp./Bob's Transport, *et al.*	RF300–10167	2/26/90
Gulf Oil Corp./ Broadway Gulf, *et al.*	RF300–7253	2/26/90
Gulf Oil Corp./Joe's Gulf Service, *et al.*	RF300–7268	3/1/90
Gulf Oil Corp./ McClellan's Gulf Service, John K. Goldberg.	RF300–9822, RF300–9828	3/1/90
Gulf Oil Corp./Pat's Self-Service, Pat's Transport.	RF300–10109, RF300–10110	3/1/90
Gulf Oil Corp./ Roundtree Oil Products, Inc..	RF300–9298	2/26/90
Charlottesville Oil Co., Jerry Carter, Inc..	RF300–9299, RF300–9366	2/26/90
Gulf Oil Corp./W.G. Ladd Oil Co., *et al.*	RF300–6040	2/26/90
Jefferson County Commission, *et al.*	RF272–24558	2/28/90
KS Nortank A/S, A/S Scantank, Compania Commercial Y, Naviera San Martin SA.	RF272–45802, RF272–45803, RF272–45853	2/28/9
Maryland State Aviation Administration.	RF272–35431	2/26/90
Murphy Oil Corp./ Tarboro Spur, Inc., *et al.*	RF309–168	2/26/90
Murphy Oil Corp./ Time Saver Stores, Inc., *et al.*	RF309–198	2/28/90
Northeast Petroleum Industries, Inc./ Haffner's Service Stations, Inc..	RF264–7	2/26/90
Shell Oil Co./Fannon Petroleum Services Inc., *et al.*	RF315–6037	2/28/90
Shell Oil Co./Flying Tiger Line, Inc., *et al.*	RF315–4009	2/26/90
Shell Oil Co./ Harriman Oil Company, *et al.*	RF315–7543	2/28/90
Shell Oil Co./Masas Shell Service, *et al.*	RF315–3231	2/28/90
United Artists Communications, *et al.*	RF272–53872	2/28/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Arco Service Station	RF304–9464
Ball Corporation	RF272–75093
Borden Dairy	RF272–76976
Central Steel Drive	RF272–77115
Cherry's Gullport Exxon	RF307–7515
Citizen's Exxon	RF307–7513
Contra Costa Exxon	RF307–261
Edward E. Sunkett	RF307–10097
Ezzatis Exxon	RF307–171
Gardner's Station	RF307–8370
Guilford Mills, Inc.	RF272–78214, RF272–78215
Higgerson-Buchanan, Inc	RF272–55300
Lakeside Exxon	RF307–9843
Monarch Marking Systems	RF272–55343
Owatonna Public Utilities	RF272–17711
United States Steel Corp	RF272–66541
Weber's Station	RF300–10483

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 p.m. and 5 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 17, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–11996 Filed 5–22–90; 8:45 am]

BILLING CODE 6450–01–M

Southwestern Power Administration

Proposed Power Rates; Opportunities for Public Review and Comment

AGENCY: Southwestern Power Administration (Southwestern), Department of Energy (DOE).

ACTION: Notice of Proposed Integrated System Power Rates and Opportunities for public review and comment.

SUMMARY: The Administrator, Southwestern, has prepared Current and Revised 1990 Power Repayment Studies for the Integrated System which show the need for an increase in annual revenues to meet cost recovery criteria. These increased revenues are needed primarily to cover increased annual expenses for operation and maintenance of the generating facilities, as well as the transmission system. The Administrator has also developed proposed Integrated System Rate Schedules, supported by a rate design study, to recover the required revenues. Beginning October 1, 1990, the proposed rates would increase

annual system revenues approximately 14.4 percent from $86,067,400 to $98,422,400.

DATES: A Public Information Forum will be held June 7, 1990, in Tulsa, Oklahoma. A Public Comment Forum will be held July 12, 1990, in Tulsa, Oklahoma. Written comments are due on or before August 21, 1990.

ADDRESSES: Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of Interior to the Department of Energy, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the code of Federal Regulations (10 CFR 903).

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. The 22 projects to which the proposed Integrated System rate schedules apply are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located on the Angelina River in the Neches River Basin in eastern Texas, consists of two hydroelectric generating units with an installed capacity of 52,000 kW. The Robert Douglas Willis Hydropower Project (previously known as the Town Bluff Dam Project) and its associated impoundment, B. A. Steinhagen Lake, located on the Neches River in the Neches River Basin in eastern Texas, consists of two hydropower generating units with an installed capacity of 8,000 kW. These projects are not interconnected with Southwestern's Integrated System hydraulically, electrically or financially. Instead, the power produced by these projects under separate contracts through which the two customers purchase the entire power outputs at the dams. Separate Power Repayment Studies are prepared for these projects which have special rates based on their hydraulically, electrically, and financially isolated operations.

Following Department of Energy guidelines, the Administrator, Southwestern, prepared a Current Power Repayment Study using existing system rates. The Study indicates that the legal requirement to repay the power investment with interest will not be met without additional revenue, primarily as a result of increased annual operation and maintenance expenses experienced by the Corps at the projects. The Revised Power Repayment Study shows that additional annual revenue of $12,355,000 (a 14.36 percent increase), beginning October 1, 1990, is needed to satisfy repayment criteria. Because of concerns expressed by Southwestern's customers, during their informal participation in the development of the Power Repayment and Rate Design Studies, regarding the magnitude and underlying causes of the proposed increase, consideration is being given to phasing-in the increase, but is not being proposed at this time. Further consideration will be based upon information received and developed during the formal public participation process.

A Rate Design Study has also been completed which allocates the revenue requirement to the various system rate schedules for recovery. The proposed increase would change annual revenues from $86,067,400 to $98,422,400 and satisfy the present financial criteria for repayment of the project and transmission system investments within the required number of years. As indicated in the Integrated System Rate Design Study, this revenue would be developed primarily through increases in the basic monthly demand and energy charges for purchases of federal hydroelectric power and energy, while small decreases result in the condition of service charges for 69 kV and load center or below 69 kV deliveries, respectively. In addition, the Rate Design Study indicates small decreases in most charges for the use of Southwestern's transmission system to deliver non-federal power and energy.

A second component of the Integrated System rates for power and energy, the purchased power adder, which produces revenues segregated to cover system purchased power costs, would be decreased as a result of expected reductions in purchased power requirements. The Administrator's authority to adjust the purchased power adder at his discretion, plus or minus $0.0005 per kilowatthour annually, as necessary, would be retained in the proposed rate schedules. Further, credits, specifically designed for each customer, which are applied against the purchased power adder component of the rate schedules would be extended through September 30, 1993. These credits are intended to refund excess revenues which have accumulated in the purchased power deferral account during recent years of favorable water conditions. They are also intended to effectively equalize each customers' average purchased power adder cost per kilowatthour, and should reduce the deferral account balance to a level needed to cover system purchases for about a year of critical water conditions, as well as allow the account to be self-sustaining under average water conditions at current interest rates. Consequently, as currently projected, the purchased power adder would be reduced to zero after September 30, 1993.

The reduction in the purchased power adder and the continuation of purchased power adder credits, when combined with the increased demand and energy charges, will result in reduced increases in the average peaking and firm power rates for most customers. Below is a general comparision of the existing and proposed system rates:

	Existing	Proposed
	Rate Schedule P–87A (System Peaking)	Rate Schedule P–90A (System Peaking)
Capacity:		
Grid or 138–161Kv	$2.23 kV/kW/Mo	$2.52/kW/Mo.
69 kV	+.16/kW/Mo	=.12/kW/Mo, or
Load Center or Below 69 kV	=.73/kW/Mo	=.55/kW/Mo.

	Existing	Proposed
Energy	$.004/kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adder of $0.0013/kWh of Peaking Energy (+/−.0005/kWh annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1990..	$.0052/kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adder of $0.0009/kWh of Peaking Energy (+/−.0005/kWh annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1993.
	Rate Schedule P–87B (Borderline Peaking)	Rate Schedule P–90B (Borderline Peaking)
Capacity: Load Center	$2.96/kW/Mo	$3.07/kW/Mo.
Energy	$.004/kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adder of $0.0013/kWh of Peaking Energy (+/−.0005/kWh annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1990.	$.0052/kWh of Peaking Energy and Supplemental Peaking Energy plus a Purchased Power Adder of $0.0009/kWh of Peaking Energy (+/−.0005/kWh annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1993.
	Rate Schedule F–87B (Borderline Firm)	Rate Schedule F–90B (Borderline Firm)
Capacity: Load Center	$2.96/kW/Mo	$3.07/kW/Mo.
Energy	$.004/kWh of Federally-Generated Energy plus a Purchased Power Adder of $0.0013/kWh of "Federal Energy" (+/−.0005/kWh annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1990 of "Federal Energy" (Defined as 1,200 kWh of Energy per kW of Capacity during each Contract Year) plus an amount in dollars equal to the actual cost to Southwestern of thermal-generated energy purchased by Southwestern from the Oklahoma Utility Companies for Service to the customer.	$.00052/kWh of Federally-Generated Energy plus a Purchased Power Adder of $0.0009/kWh of "Federal Energy" (+/−.0005/kWh annually at Administrator's discretion) with a customer-specific purchase power credit through September 30, 1993 of "Federal Energy" (Defined as 1,200 kWh of Energy per kW of Capacity during each Contract Year) plus an amount in dollars equal to the actual cost to Southwestern of thermal-generated energy purchased by Southwestern from the Oklahoma Utility Companies for Service to the customer.
	Rate Schedule TDC–87 (Transmission)	Rate Schedule TDC–90 (Transmission)
Capacity (Firm w/Energy):		
Grid or 138–161kV	$.53/kW/Mo	$.52/kW/Mo.
69kV	+.16/kW/Mo, or	+.12/kW/Mo.
Load Center or Below 69kV	+.73/kW/Mo	+.55/kW/Mo.
Energy (Firm w/o Capacity);	$.0012/kW/Mo	$.0012/kW/Mo.
Interruptible:		
	The lesser of:	The lesser of:
Capacity (Non-firm w/Energy):		
138–161kV	$.0177/kW/Day	$.0174/kW/Day.
69kV	+.0053/kW/Day, or	+.0040/kW/Day, or
Load Center or Below 69kV	+.0243/kW/Day	+.0183/kW/Day,
	or	or
Energy (Economy Energy):		
138–161kV	$.0015/kW	$.0014/kWh.
69K	+.004/kWh, or	+.0004/kWh, or
Load Center or Below 69kV	+.0020/kWh	+.0015/kWh.
	Rate Schedule IC–87 (Interruptible)	Rate Schedule IC–90 (Interruptible)
Capacity:	$0.74/kW/Day of Interruptible Capacity	$0.84/kW/Day of Interruptible Capacity.
Energy:	$.004/kWh, or return	$.0052/kWh, or return.
	Rate Schedule EE–87 (Excess)	Rate Schedule EE–90 (Excess)
Energy:	$.004/kWh	$.0052/kWh.

Opportunity is presented for customers and other interested parties to receive copies of the Integrated System Studies and proposed rate schedules. If you desire a copy of the Integrated System Power Repayment Studies and Rate Design Study Data Package with proposed Rate Schedules, submit your request to: Mr. Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7529.

A Public Information Forum will be held at 9:30 a.m., Thursday, June 7, 1990, in Southwestern's offices, room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma, to explain to customers and the public the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the Forum may be submitted from interested persons and will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by May 31, 1990, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum will be held at 1:30 p.m., Thursday, July 12, 1990, at the same location established for the Public Information Forum. At the Public Comment Forum, interested persons may submit written comments or make oral presentations of their views and comments. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers. Persons interested in attending the Public Comment Forum should indicate in writing by July 5, 1990, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a request to the Administrator.

Southwestern, at least three (3) days before the Forum so that a list of speakers can be developed. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, for a fee. Written comments on the Proposed Integrated System Rates are due on or before August 21, 1990. Ten copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

Following review of the oral and written comments and the information gathered in the course of the proceedings, the Administrator will submit the amended Integrated System Rate Proposal, Power Repayment Studies and Rate Design Study in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis, and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 11th day of May, 1990.

J.M. Shafer,

Administrator, Southwestern Power Administration.

[FR Doc. 90-11997 Filed 5-22-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3781-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Survey of Pharmaceutical Industry; Detailed Questionnaire (ICR #1460.02).

Abstract: EPA is surveying pharmaceutical manufacturing facilities on plant operations, wastewater generation and treatment, and financial data. The information will be used to develop effluent limitation and pretreatment regulations. (This is the second part of a two-part survey. EPA sent a short screening questionnaire to the pharmaceutical industry in 1989. A subset of those respondents will receive the detailed questionnaire.)

Burden Statement: The reporting burden for respondents to this survey is estimated to range from 150 to 650 hours per response, depending on the size and complexity of the plant; the average burden is 300 hours. This includes time to read instructions; gather, compile and review needed information; complete the questionnaire; and provide supervisory review and certification.

Respondents: Pharmaceutical manufacturing facilities that generate wastewater, including facilities described under Standard Industrial Classification (SIC) nos. 2833, 2834, and 2836.

Estimated No. of Respondents: 260.

Estimated Total Annual Burden on Respondents: 78,000 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, S.W., Washington, DC 20460; and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Dated: May 16, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-11986 Filed 5-22-90; 8:45 am]

BILLING CODE 6560-50-M

[FR-3781-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before June 22, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Annual Update to National Emission Data System (ICR #0916.05; OMB #2060-0088). This is a reinstatement of a previously approved collection.

Abstract: Under sections 110 and 301(a) of the Clean Air Act, EPA has the authority to maintain a national emission data base. To accomplish this, the States send to EPA an annual report with data on stationary source emission of particulate matter and other criteria pollutants. The Agency stores the data into the National Emission Data System (NEDS). EPA uses the information retrieved from NEDS to help develop emission standards, to analyze dispersion models, and to assess acid precipitation.

Burden Statement: The public reporting burden for this collection of information is estimated to average 106 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: States and air pollution control agencies.

Estimated No. of Respondents: 54.

Estimated Total Annual Burden on Respondents: 5,724 hours.

Frequency of Collection: Annually.

Title: Source Compliance and State Action Reporting (ICR #0107.03; OMB #2060-0096). This is an extension of the expiration date of a currently approved collection.

Abstract: To determine compliance with their State Implementation Plan (SIP), State and local agencies monitor stationary source emissions of criteria pollutants. They report to EPA quarterly on their enforcement activities and on sources' compliance with emission standards. EPA enters these data into the Agency's Compliance Data System (CDS). EPA uses the information retrieved from CDS to assess progress in

meeting the National Ambient Air Quality Standards (NAAQS).

Burden Statement: The public reporting burden for this collection of information is estimated to average 268.06 hours per response for reporting and 1,074.5 hours annually per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and complete and review the collection of information.

Respondents: States and local governments.

Estimated No. of Respondents: 55

Estimated Total Annual Burden on Respondents: 118,200 hours.

Frequency of Collection: Quarterly.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street SW., Washington, DC 20460; and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: May 16, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-11987 Filed 5-22-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3781-6]

Proposing the Granting of an Exemption to Armco Steel Company, L.P., for the Continued Injection of Hazardous Waste Subject to the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant an Exemption to the Armco Steel Company, L.P. of Middletown, Ohio for the Continued Injection of Waste Pickle Liquor.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is proposing to grant an exemption from the ban on disposal of hazardous wastes through injection wells to the Armco Steel Company, L.P. (Armco), of Middletown, Ohio. Armco may continue to inject Resource Conservation and Recovery Act (RCRA) regulated hazardous waste Code K062 (Waste Pickle Liquor) into two disposal wells, WDW No. 1 and WDW No. 2, after the prohibition date of August 8, 1990, if the exemption is granted. Armco submitted a petition to the EPA under 40 CFR part 148, which allows any person to petition the Administrator to determine whether its continued injection of certain hazardous wastes is harmful to human health or the environment. After a comprehensive review, the EPA has determined that there is a reasonable degree of certainty that Armco's injected waste will not migrate out of the injection zone over the next 10,000 years.

DATES: The USEPA is requesting public comments on today's proposed decision. Comments will be accepted until July 2, 1990. Comments postmarked after the close of the comment period will be stamped "Late". A public meeting and a public hearing will be scheduled for this proposed action and notice will be given in a local paper and to all people on a mailing list developed by the USEPA and the Ohio EPA. If you wish to be notified of the dates and locations of the public meeting and hearing, please contact the person listed below.

ADDRESSES: Submit written comments, by mail, to: United States Environmental Protection Agency Region V, Underground Injection Control Section (5WD-TUB-9), 230 South Dearborn Street, Chicago, Illinois 60604, Attn: Edward P. Watters, Cheif.

FOR FURTHER INFORMATION CONTACT: Allen Melcer, Lead Petition Reviewer, UIC Section, Water Division, 5WD-TUB-9, 230 S. Dearborn, Chicago, Illinois 60604, Office Telephone Number: (312) 886-1498.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (sections 3004(d)(1), (e)(1), (f)(2), and (g)(5) of RCRA). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (section 3004(k) of RCRA). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 pursuant to section 3004(m) of RCRA, (the EPA has adopted the same treatment standards for injected wastes in 40 CFR part 148. subpart B); or

(2) When the owner/operator has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate either:

(a) That the waste undergoes a chemical transformation so as to no longer pose a threat to human health and the environment; or

(b) That fluid flow is such that injected fluids would not migrate vertically upward out of the injection zone or to a point of discharge in a period of 10,000 years (40 CFR 148.20(a)).

The USEPA promulgated final regulations on July 26, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the injection prohibition (40 CFR part 148). A time frame of 10,000 years was specified for the demonstration, not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time frame will likely provide containment for a substantially longer time period, and also allow time for geochemical transformations which would render the waste nonhazardous or immobile. The Agency's standard thus does not imply that leakage will occur at some time after 10,000 years; rather, it is a showing that leakage will not occur within that time frame.

B. Facility Operation and Process

The Armco facility in Middletown, Ohio, is a fully integrated steel plant which produces flat rolled carbon steel for the automotive and appliance industries. The facility injects one liquid hazardous waste, waste pickle liquor, which is produced as a by-product of steel pickling and galvanizing operations. This waste is injected into two on-site Class I hazardous waste injection wells, WDW No. 1 and WDW No. 2, both injecting into the Mt. Simon Sandstone and the Middle Run Formation. WDW No. 1 was drilled and completed in 1967 and WDW No. 2 in 1968. The total volume of fluid injected is 156,500,000 gallons in WDW No. 1 and 131,700,000 gallons in WDW No. 2 as of September, 1989, for a combined yearly average of 14.8 million gallons.

C. Waste Minimization

Section 3002(b) of RCRA requires that generators of hazardous waste have "* * * a program in place to reduce the volume or quantity and toxicity of

such waste to the degree determined by the generator to be economically practicable". Armco has implemented a waste minimization program which includes the installation of an automatic control system for acid feed and pickle bath temperature. This system minimizes the acid used as a raw material and thus minimizes the amount of waste generated by making continious acid feed adjustments as process conditions require. Armco sends waste pickle liquor to its plant in Ashland, Kentucky for acid regeneration. A total of 4,793,273 gallons of pickle liquor have been sent to the Ashland plant since January, 1989. Armco also uses the waste pickle liquor as an inorganic coagulant in the two wastewater treatment plants located within the plant boundaries. The acid regeneration and use as a commercial chemical substitute reduces the quantity of hazardous waste injection at Armco by 30 percent.

D. Submission

On February 9, 1989, Armco submitted a petition for exemption from the land disposal restrictions of hazardous waste injection under the HSWA Amendments to RCRA pursuant to the regulations set forth at 40 CFR part 148. This submission was reviewed for technical accuracy and revision documents are dated Feburuary 12, 1990, and April 30, 1990. Several supplemental submissions were made during this period and thereafter to resolve minor deficiencies. The total submission was reviewed by staff at the USEPA, the Ohio EPA, and, in part, by the Ohio State Geological Survey as well as a private consultant hired by the USEPA to assist; in its review.

II. Basis for Determination

The draft decision to approve Armco's petition for continued injection was reached after a careful consideration of the factors involved in an environmentaly protective injection operation. These factors include: The type of waste injected, well construction, well operation, proof of the mechanical integrity of both wells, properties of the injection and confining zones, including their ability to receive and confine the waste, a detailed search for any abandoned boreholes which may serve as a conduit for upward waste migration, and comprehensive modeling of the existing waste plume to predict pressure buildup and future movement of the plume, both vertically and laterally, for the next 10,000 years. In order to be conservative, the values used for input into the models were consistently chosen so as to over-predict the pressure buildup and waste plume movement caused by the injection activity. The following sections describe each of these factors in more detail.

A. Waste Description and Analysis

The waste being injected is waste pickle liquor and is defined under 40 CFR part 261 as Waste Code K062. This waste is listed as a hazardous waste because it is corrosive (i.e., it has a pH less than or equal to 2.0) and because of its concentration of chromium (i.e., above a treatment standard of 0.32 milligrams per liter (mg/1)). The injected waste at Armco has an average pH of less than 0.2 and a chromium content ranging from 5–20 mg/1.

B. Well Construction and Operation

Armco injection well WDW No. 1 was constructed in 1967 with two strings of casing, both cemented to the surface (See Figure 1). Armco injection well WDW No. 2 was constructed in 1968 with three strings of casing, each cemented to the surface. Injection takes place through tubing set on packers at depths of 2842 feet and 2916 feet, respectively. Waste within each injection tubing is isolated from the casing by a flud-filled annulus which is continously monitored, filled with corrison inhibitor, and maintained at pressures between 390 and 450 pounds per square inch gauge (psig) above the injection pressures, as measured at the surface. The monitoring system is designed to trigger alarms and warn an operator to shut off injection if the injection or annulus pressure exceeds the maximum permitted levels, or if the annulus pressure falls below the minimum permitted level in either well.

The average injection rate at Armco has varied from a low of 0 gallons per minute (gpm) to a high of 41.2 gpm for WDW No. 1, and from 0 gpm to 49.5 gpm in WDW No. 2. The average monthly flow rates are 26.3 gpm and 12.3 gpm. The historical maximum surface injection pressure is 55 psig with an average of 25 psig. The maximum permitted injection pressures of 638 and 640 psig are below the maximum value necessary to initiate or propagate fractures in the injection zone.

C. Mechanical Integrity Test Information

To assure that the waste does not leak prior to reaching the injection zone, mechanical integrity tests (MITs) of each well are required. Section 148.20(a)(2)(iv) requires that satisfactory MITs be performed within one year prior to petition submission and also allows for requiring an MIT within one year of USEPAs petition decision.

Armco's injection wells were tested in November of 1987. The test consisted of a radioactive tracer (RAT) survey and an annulus pressure test. Annulus pressure tests were also run in 1988 and, most recently, in December, 1989. RAT surveys were run on April 26, 1990. Results of these tests demonstrated that the wells have mechanical integrity and confirmed the positive results recorded on continous monitoring equipment. From both a constructive and operation standpoint, the Armco injection wells ensure, with a reasonable degree of certainty, transmission of the injected fluid to the injection zone without leakage.

D. Site Description

As part of the "no migration" demonstration under part 148, subpart C, any Class I hazardous waste injection well petitioner must identify the strata within the injection zone which will confine fluid movement above the injection interval and the strata which act as a confining zone. The injection zone is divided into two parts, the injection interval and the containment interval. The injection interval is the interval in which waste is directly emplaced. The containment interval is the interval which will contain the waste for at least 10,000 years. The confining zone is one or more formations capable of preventing fluid movement above the injection zone. This section describes the properties of each interval with emphasis on those characteristics which make it a good receiving or confining zone.

1. Regional Geology

The Armco facility is located in Butler County, near Middletown, Ohio. It is situated on the southern edge of the Ohio-Indiana Platform, and is underlain by a sedimentary rock sequence approximately 3296 feet thick consisting of carbonates, sandstones, siltstones and shales. These units dip to the southwest at about 15 feet per mile.

As shown in Figure 1, the lowermost underground source of drinking water (USDW), defined as water with less than 10,000 mg/l total dissolved solids, is the Cincinnatian Group, the base of which is located at a depth of approximately 522 feet, as measured in WDW No. 1. The top of the injection zone is the top of the Eau Claire Formation at a depth of 2423 feet. There is thus about 1901 feet of separation between the top of the injection zone and the base of the lowermost USDW.

The Armco facility is located in an area of moderate seismic risk. Earthquakes that may cause damage in

the future are most likely to be centered in seismically active areas to the south and southwest, namely, the New Madrid and Wabash Valley fault zones located in Arkansas, Tennessee, Kentucky, Missouri, southern Indiana and southern Illinois. Approximately 8 earthquakes have been recorded within a 40 mile radius of the Armco facility. No earthquake has ever been recorded which has had an epicenter within Armco's area of review. All recorded earthquakes within a 40 mile radius have been of low intensity, ranging from below scale to IV on the Modified Mercalli Scale. Damage to disposal well systems or alteration of the hydrologic properties of the injection or confining zones would not be expected to occur, from intensity IV earthquakes. For example, damage to underground pipes would be expected to occur only for intensity levels of IX or greater. Seismic activity induced by injection activity is also highly unlikely due to the lack of evidence of faults at the site.

2. Injection Zone Description

The injection zone must have sufficient permeablility, porosity, thickness and areal extent to prevent migration of hazardous fluids out of this zone. The injection zone at Armco is 873 feet thick and consists of the upper Middle Run Formation, the Mt. Simon Sandstone, and the Eau Claire Formation at a depth of 2423 to 3296 feet below surface (Figure 1). These formations are continuous and extend over much of the midwestern United States. At the Armco site, the injection zone formations are laterally extensive and undisturbed by faults or significant fractures, as documented by a suite of openhole logs and geologic literature.

The injection interval, or the interval into which waste is directly emplaced, is the lower Eau Claire Formation, the Mt. Simon Sandstone, and the upper Middle Run Formation, located at a depth of 2900 to 3296 feet below ground surface, with a thickness of 396 feet. Analysis of well logs and cores from the Armco site shows that the rock unit through this interval is a poorly sorted, fine-grained to coarse-grained sandstone with minor siltstone and dolomite. Both the permeability and porosity of the injection interval are suitable for waste injection. Core analyses show that the injection interval has a permeability of approximately 55 millidarcies (md), and an average porosity of about 13.5 percent. The injection interval contains 8 times the volume of dolomite necessary to neutralize all of the waste pickle liquor to be injected.

The upper injection zone, or "containment interval", is the upper 477 feet of the Eau Claire Formation, consisting of interbedded dolomitic sandstones, siltsones, and shales. The containment interval contains approximately 50 feet of shaly sandstone at the base and contains shale beds with sandstone interbeds towards the top. The total shale thickness of the containment interval is 255 feet. The lowermost portion of the containment interval, is a 50 foot thick white to dark gray, fine to medium-grained, subrounded sandstone with interbedded shale and sand at the base. The sand portions exhibit moderate lateral permeability and porosity, so that it acts as a "bleed-off" zone to dissipate vertical pressures and divert waste movement laterally. The shale-rich parts of the containment interval have a porosity of 13.5 percent and permeability of 10^{-5} md, as measured from cores, which will substantially inhibit the movement of waste through these zones.

3. Confining Zone Description

The confining zone must be (1) laterally continuous, (2) free of transecting, transmissive faults and fractures over an area sufficient to prevent fluid movement and (3) of sufficient thickness and possessing lithologic and stress characteristics that inhibit the vertical propagation of fractures. The confining zone for the Armco injection operation is the Knox Dolomite, which is laterally extensive and free of transmissive faults and fractures throughout the area of review. At Armco, it is located at a depth below ground surface between 1172 and 2423 feet and has a thickness of 1251 feet, as measured in WDW No. 1 (Figure 1). It is separated from the lowermost USDW by 650 feet of permeable and less permeable strata.

The Knox Dolomite is composed of white to brown, fine to coarse-grained cyrstalline dolomite containing pyrite and chert, with 90 feet of shale at the base. Geophysical logs show low porosity ranging from 0 to 4 percent at this site. The Knox Dolomite would serve as another major hydraulic barrier to vertical movement of injected waste, if it escaped the injection zone. The presence of a few thin beds with porosities up to 9 percent that would act as pressure bleed-off zones enhances the Knox Dolomite's adequacy as a confining unit. Based on a review of all available information, the Agency has concluded that the Knox Dolomite is an adequate confining zone for Armco's injection operation.

In addition to the confining zone, the Wells Creek Formation, Black River Limestone, and Trenton Limestone, located between the top of the confining zone and the base of the lowermost USDW, provide additional assurance that contaminants will not reach drinking water sources. The Wells Creek Formation, a light gray, medium-grained sandstone, is permeable and serves as a buffer unit above the confining zone. The Black River and Trenton are limestones with some interbedded sandstone and shale, that provide additional containment properties above the confining zone.

4. Area of Review

The Area of Review (AOR) is the area within which the petitioner must identify all wells which penetrate the confining zone and demonstrate that they have been properly completed or plugged. The AOR for Class I hazardous waste injection wells is a 2-mile radius around the well bore, unless a larger area is required based on the calculated cone of influence. The cone of influence for Armco was calculated using the criteria of 99 percent pressure dissipation. The maximum pressure rise is calculated to be 278 psig at the WDW No. 2 wellbore. One percent of this value is approximately 2.8 psig. Area of Review calculations conducted with 2.8 psig as a "critical pressure rise" yield a maximum radius to the cone of influence of 2,313 feet. This is well within the 2 mile (10,560 feet) designated Area of Review. Thus, the area of review has been designated to be 2 miles. Armco has performed a well search within a 2 mile radius of the injection well, and found that there are no wells that penetrate the confining zone within this area. Therefore, no corrective action under 40 CFR part 146 is needed at this facility for the area of review at this time.

E. Model Demonstration of No Migration

The demonstration of no migration of hazardous constituents from the injection zone at Armco involves the use of a family of predictive mathematical models known as Injection Forecast. This family of models is used to predict the buildup of pressure and the transport of waste from the injection well. The Injection Forecast model has been validated by comparing its results against results generated by numerical models. The successful use of the Injection Forecast model for sites similar to Armco provides confidence that the model is validated and is appropriate for use at this site.

1. Model Development and Calibration

The Armco Steel model was developed by incorporating

hydrogeological data of the site and surrounding vicinity into a conceptual model. These values were derived from well logs, cores, published literature, and well tests. The site was evaluated using a single layer analytical model. A calibration exercise was used to refine estimates of hydrogeologic parameter values for the injection interval. For this analysis, it was assumed that the injection interval was laterally infinite. A calibration exercise reproduced the pressure responses recorded during an interference test run October 22–27, 1989, indicating that the parameter values, taken as a group, adequately represent the injection interval. The parameter values for the injection interval included a permeability of 55 md, a porosity of 13.5 percent and a skin factor of −0.12. Armco's estimates for these parameters are realistic. Reasonably conservative values were chosen for all other parameters used to model injection-induced pressure and waste transport; details of this are discussed below.

Two simulation time periods were considered in the demonstration: An historical and 20-year future operational period and a 10,000 year post-operational period. The waste plume was modeled in two ways: The pressure buildup and plume movement was calculated both laterally within the injection interval and vertically into the overlying upper Eau Claire Formation. The pressure buildup analysis assumed injection into the lower Eau Claire Formation and the upper Mt. Simon Sandstone. The bottom of the injection zone was assumed to be impermeable to fluid flow. Armco's assumptions for the pressure analysis are realistic.

2. Pressure Buildup Analysis

For the historic period up to September 30, 1989, the actual injection volumes of 156,500,000 gallons for WDW No. 1 and 131,700,000 gallons for WDW No. 2 were input into the model. For the future operational period, October 1, 1989, to September 30, 2007, the model used a rate of 90 gpm combined for both wells. A waste specific gravity of 1.18, a brine viscosity of 0.71 centipoise (cp), and a vertical permeability for the base of the containment interval in the Eau Claire Formation of 10^{-1} md, were used to predict vertical pressure buildup in the injection zone. The injection rate used in the model conservatively exceeds actual conditions. The historical combined average injection rate is approximately 19.3 gpm, but the future rate is modeled at 90 gpm. The modeled injected volume, based on overestimation of the injection rates, amounts to approximately 3 times the historic volume in the two decades after 1987. The vertical permeability for the shales within the Eau Claire Formation was estimated using geophysical logs and core data to be 1×10^{-5} md. The model used a vertical permeability value of 1×10^{-1} md to provide additional conservatism in the pressure buildup and vertical migration analyses. Thus, the model will over-predict pressure buildup. Modeling predicted that at the end of the 20-year future operational period, the maximum pressure buildup at the WDW No. 1 wellbore will be not more than 224 psi, and at WDW No. 2 not more than 278 psi. The modeled pressure buildup is greatest near the injection wells and declines to less than 2.8 psig, where 99 percent of the pressure buildup caused by injection activities has dissipated, at a distance of less than 0.5 miles. If injection is maintained at or less than the present rate, as expected, then this distance, and the maximum pressure buildup, will be much smaller.

3. Short-Term Vertical Migration

The predicted pressure buildup at the end of the operational period was used as a basis for modeling the vertical migration of waste. Sensitivity analyses were conducted by estimating the ranges of values possible for each parameter and then selecting conservative values. Vertical transport at Armco is most sensitive to injection rate and the vertical permeability of the shales within the Eau Claire Formation. Based on an injection rate of 90 gpm and a permeability of 1.0×10^{-1} md, waste movement due to pressure driven flow during the operational period is estimated at less than 115 feet. More realistic parameter values result in a shorter distance. The 115 foot estimate is reasonably conservative and over-predicts waste transport because (1) it is based on an injection rate of 90 gpm into one well, whereas the actual combined average injection rate is 19.3 gpm, (2) the vertical permeability of the containment interval was modeled as 1×10^{-1} md, whereas core data show the actual vertical permeability to be approximately 10^{-5} md, (3) the site was modeled to inject continuously into a single well, whereas actual injection occurs into two wells so that the maximum injection pressure buildup will be less than calculated, and (4) the containment interval was modeled with a porosity of 6 percent, whereas core data show the actual porosity to be approximately 13.5 percent.

4. Long-Term Vertical Migration

During the post-operational period, molecular diffusion is the primary transport mechanism for the vertical migration of waste. Geologic literature and data from field experiments were used to determine a reasonably conservative ratio for the tortuosity of the containment interval to the tortuosity of the injection interval of 1.41 and a coefficient of molecular diffusion of $2 \times 10_{-11}$ square meters per second. As an additional measure of conservatism, the model used more than twice the maximum concentration of the most mobile hazardous constituent, chromium (61.2 ppm). Based on these values the maximum vertical transport of the waste front during a 10,000 year post-operational period is 135 feet. Therefore, the total vertical migration at the Armco site will be less than 250 feet above the injection interval. The waste plume boundary is defiend as the point beyond which the chromium concentration is below 0.05 mg/1. Waste will be contained within the 130 foot thick sandy shale portion of the Eau Claire Formation during the operational period and within the shaly upper portion of the Eau Claire Formation during the 10,000 year post-operational period.

5. Short-Term Lateral Migration

Lateral transport of waste is modeled using analytical methods to determine the velocity of the waste plume and then multiplied by a time increment to get the transport distance. The waste plume is assumed to migrate laterally within an 87 foot thick interval having a porosity of 13.5 percent. The effective thickness was determined from a Temperature Survey and porosity was determined from core and log analyses of the Armco well. The estimate is realistic for porosity and conservative for effective thickness. Model results indicate that the waste will migrate laterally approximately 1,970 feet from the well during the 20-year operational period. Hydrodynamic dispersion, based on literature values of dispersivity of 20 feet, will increase this distance to 2,900 feet.

6. Long-Term Lateral Migration

During the 10,000-year post-oerational period, the waste plume will migrate due to the natural flow of groundwater in the Mt. Simon Sandstone and due to hydrodynamic dispersion. A groundwater flow velocity in the Mt. Simon Sandstone of 0.5 feet per year, based on published literature estimates, would result in an additional drift of the waste plume of 5,000 feet in 10,000

years. Hydrodynamic dispersion will result in, at most, an additional migration of 1,300 feet in 10,000 years, based on a dispersivity of 20 feet. Beyond this waste plume boundary, all hazardous constituents will be below health-based limits and the waste will also not have hazardous characteristics, such as corrosivity. Therefore, using reasonably conservative values, the maximum predicted lateral migration of waste at the Armco site is 9,200 feet, or about 1.7 miles, in 10,000 years.

Therefore, Armco has demonstrated, to a reasonable degree of certainty, that hazadous constituents will not migrate vertically more than 250 feet nor laterally more than 9,200 feet, in a 10,000 year period. Hazardous constituents will not migrate vertically out of the injection zone nor laterally to a point of discharge, within this time period.

F. Quality Asssurance and Quality Control

Armco and its consultants have demonstrated that adequate quality assurance and quality control plans were followed in preparing the petition. Armco has followed appropriate protocol for locating records for penetrations in the Area of Review, for collection and analyses of geologic and hydrogeologic data, for waste characterization, and for all tasks associated with the modeling demonstration.

III. Conditions of Petition Approval

General conditions relating to this proposed exemption may be found in 40 CFR parts 140.23 and 148.24. Also, as a condition of granting this proposed exemption from the ban on injection of waste pickle liquor (KO62), the EPA requires that the following conditions be met by Armco:

(1) The combined monthly aveage injection rate for both wells must not exceed 90 gallons per minute;

(2) Injection shall occur only into the lower Eau Claire Formation, the Mt. Simon Sandstone, and the upper Middle Run Formation in the interval from 2900 feet to 3296 feet; and

(3) The petitioner shall be in full compliance with all requirements set forth in the Underground Injection Control permits issued by Ohio EPA.

The above conditions are being incorporated into the existing UIC permits for the wells by permit modification.

Dated: May, 15, 1990.

Richard Zdanowicz,

Acting Director, Water Division, Region V. U.S. Environmental Protection Agency.

BILLING CODE 6560-50-M

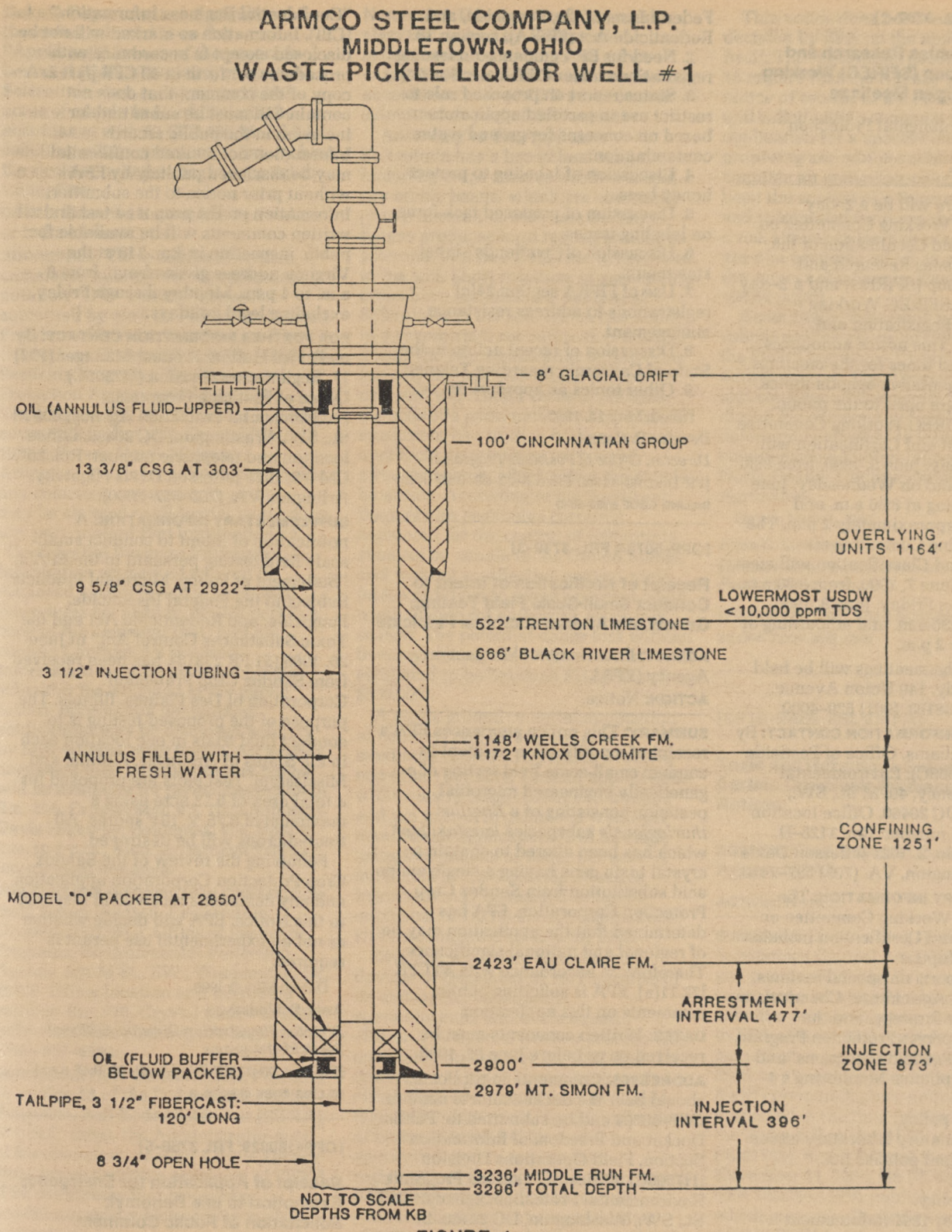


FIGURE 1
WELL SCHEMATIC WITH STRATIGRAPHIC COLUMN

[FR Doc. 90–11988 Filed 5–22–90; 8:45 am]
BILLING CODE 6560–50–C

[OPP-00289; FRL-3767-2]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Enforcement and Certification will meet on Tuesday, June 5, 1990, from 8:30 a.m. to 5 p.m. and on Wednesday, June 6, 1990, beginning at 8:30 a.m. and adjourning at approximately 2 p.m. The SFIREG Working Committee on Registration and Classification will meet on Thursday, June 7, 1990, from 8:30 a.m. to 5 p.m. and on Friday, June 8, 1990, beginning at 8:30 a.m. and adjourning at approximately 2 p.m.

ADDRESSES: The meetings will be held at: The Peabody, 149 Union Avenue, Memphis, TN 38103, (901) 529-4000.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128-D, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7410.

SUPPLEMENTARY INFORMATION: The agenda of the Working Committee on Enforcement and Certification includes the following topics:

1. Status reports on special reviews, reregistration, Agricultural Chemicals in Ground Water Strategy, and the Endangered Species Protection Program.
2. Office of Pesticide Programs' and Office of Compliance Monitoring's 4-year strategy.
3. 56-gallon policy.
4. State regulatory laboratory issues.
5. Enforcement policies (i.e., chemigation).
6. Export policy.
7. Fiscal Year 1991 Enforcement Cooperative Agreement Guidance.
8. Other topics as appropriate.

The agenda of the Registration and Classification Working Committee includes the following topics:

1. Time frames for reviewing emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 18.
2. Need for EPA guidance on issuing registrations under FIFRA, section 24(c).
3. Status report on proposed rule to restrict use to certified applicators based on concerns for ground water contamination.
4. Discussion of labeling to protect honey bees.
5. Discussion of proposed task force on labeling issues.
6. Discussion of "wetlands" label statements.
7. Use of FIFRA section 24(c) registrations to address resistance management.
8. Discussion of recent action in the State of California regarding Telone.
9. Other topics as appropriate.

Dated: May 15, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-11980 Filed 5-22-90; 8:45 a.m.]

BILLING CODE 6560-50-D

[OPP-50704; FRL-3740-3]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a genetically engineered microbial pesticide consisting of a *Bacillus thuringiensis* subspecies *kurstaki* host which has been altered to contain a crystal toxin gene having a single amino acid substitution from Sandoz Crop Protection Corporation. EPA has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), EPA is soliciting public comments on this application.

DATES: Written comments must be received on or before June 22, 1990.

ADDRESSES: Comments in triplicate, should bear the docket control number OPP-50704 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Sandoz Crop Protection Corporation of Des Plaines, Illinois. The purpose of the proposed testing is to conduct field trials in one location each in the States of Arkansas, Florida, and Mississippi. Test plots are proposed for a total area of 0.12 acre using a maximum of 6.75×10^{13} spores. All treated crops will be destroyed.

Following the review of the Sandoz Crop Protection Corporation application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: May 2, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-11857 Filed 5-22-90; 8:45 a.m.]

BILLING CODE 6560-50-D

[OPP-180829; FRL 3766-5]

Receipt of Application for Emergency Exemption to use Benomyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the North

Dakota Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide benomyl (CAS 17804-35 2) to control Sclerotinia stem rot on up to 10,000 acres of canola in North Dakota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 7, 1990.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180829," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-4360.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, benomyl, available as Benlate (EPA Reg. No. 352-354) and Benlate DF (EPA Reg. No. 352-447) from E. I. du Pont de Nemours & Co., to control Sclerotinia stem rot, caused by *Sclerotinia sclerotiorum*, on up to 10,000 acres of canola in North Dakota. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Sclerotinia has a broad host range, including crops such as sunflower and dry edible beans, which are commonly grown in rotation with canola. The fungus produces hard resting structures, sclerotia, that live from four to six years in the soil. Short rotations of susceptible crops have resulted in a buildup of Sclerotinia in the soil, which can result in a severe stem rot outbreak if weather during the two weeks prior to flowering (usually the last two weeks of June) is cool and wet. Under these conditions, the sclerotia germinate, producing small mushroom-like fruiting bodies, known as apothecia, that release millions of airborne spores, which infect the canola blossoms. According to the Applicant, there are no pesticides currently registered for the control of Sclerotinia stem rot on canola in the United States, and without an effective control, yield losses of fifteen to twenty percent could result if stem rot outbreaks occur this season. The potential dollar loss without benomyl during the 1990 season is estimated to be between $112,000 and $300,000.

A single ground or aerial application of benomyl will be applied at a maximum rate of 0.75 pounds of active ingredient per acre. Ground applications will be made using closed cab tractors and ten to twelve gallons of water per acre. Aerial applications will be made using five gallons of water per acre. A maximum of 7,500 pounds of active ingredient may be needed to treat a maximum of 10,000 acres. Applications will be completed by July 31, 1990.

Benomyl was referred to Special Review in December of 1977 because of its mutagenic, teratogenic, spermatogenic, and acute aquatic effects. The Special Review process was completed on October 20, 1982, and the decision was made to require use of either cloth or commercially available disposable dust masks by mixer/loaders of benomyl intended for aerial application and to require that registrants of benomyl products conduct field monitoring studies to identify residues that may enter aquatic sites after use on rice. Registrants completed the field monitoring study and submitted it to the Agency in November of 1984. The study was determined to be inadequate and a new study was required by the Registration Standard issued in June of 1987.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review [40 CFR 166.24 (a)(5)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the North Dakota Department of Agriculture.

Dated: May 3, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-11981 Filed 5-22-90; 8:45 a.m.]

BILLING CODE 6560-50-D

[OPTS-59889; FRL 3767-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13,1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 13 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90–195, May 7, 1990.
Y 90–196, May 10, 1990.
Y 90–197, May 16, 1990.
Y 90–198, May 14, 1990.
Y 90–199, May 16, 1990.
Y 90–201, 90–202, 90–203, 90–204, 90–205, May 20, 1990.
Y 90–206, May 21, 1990.
Y 90–207, May 20, 1990.
Y 90–208, May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90–195

Manufacturer. Confidential.
Chemical. (G) Pentadecyl phenol-salicycle acid-formaldehyde copolymer.
Use/Production. (G) Paint additive. Prod. range: 16,300–18,000 kg/yr.

Y 90–196

Manufacturer. Confidential.
Chemical. (G) Oxyalkylated resin ester.
Use/Production. (S) Additive used in energy production. Prod. range: Confidential.

Y 90–197

Manufacturer. C.J. Osborn, Div. of Suvar Corporation.
Chemical. (G) Oil modified polyurethane.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 90–198

Manufacturer. C.J. Osborn, Div. of Suvar Corporation.
Chemical. (G) Alkyd.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 90–199

Importer. Zeon Chemicals U.S.A., Inc.
Chemical. (G) Polyole fin.
Use/Import. (G) Substrate for injected molded articles and substrate for film. Import range: Confidential.

Y 90–201

Manufacturer. Franklin International.
Chemical. (G) Alkyl acrylate-methacrylic acid copolymers.
Use/Production. (S) Pressure sensitive adhesive. Prod. range: 19,000 kg/yr.

Y 90–202

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Label adhesive. Prod. range: Confidential.

Y 90–203

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Casting resin. Prod. range: Confidential.

Y 90–204

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Casting resin. Prod. range: Confidential.

Y 90–205

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Coating. Prod. range: Confidential.

Y 90–206

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resins.
Use/Production. (S) Flexible sheet molding compound resin. Prod. range: Confidential.

Y 90–207

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Toluene diisocyanate modified alkyd.
Use/Production. (S) Architectual coating. Prod. range: Confidential.

Y 90–208

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resins.
Use/Production. (S) General purpose laminating resin. Prod. range: Confidential.

Dated: May 17, 1990.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90–11982 Filed 5–22–90; 8:45 am]
BILLING CODE 6560–50–D

[OPTS–59283; FRL 3766–9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES:

Written comments by:

T 90–11, June 1, 1990.

ADDRESSES: Written comments, identified by the document control number "(OPTS–59283)" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 90–11

Close of Review Period. June 15, 1990.
Manufacturer. Gem Urethane Corporation.
Chemical. (G) Aqueous polyurethane dispersion.
Use/Production. (S) As a finish for leather and as a bonding finishing treatment for textile. Prod. range: 38,000–330,000 kg/yr.

Dated: May 17, 1990.

Steve Newburg-Rinn

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-11983 Filed 5-22-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL HOUSING FINANCE BOARD

[No. 90-53]

Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans

AGENCY: Federal Housing Finance Board.

ACTION: Request for Comments.

SUMMARY: The Federal Housing Finance Board ("FHFB") is requesting comments about the scope, content, and methodology of its "Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans" ("Monthly Interest Rate Survey" or "MIRS"). FHFB staff is beginning a comprehensive re-evaluation of the survey and requests public comment about all aspects of the survey, in general, and about the use of sub-national data, in particular.

DATES: Comments must be received by July 9, 1990.

ADDRESSES: Comments should be mailed to: Leonard H. O. Spearman, Jr., Executive Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, where comments will be available for inspection.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Senior Financial Economist, ((202) 408-2845), Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA," Pub. L. No. 101-73, 103 Stat. 183, 423-426) amended section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) by transferring the responsibility for the monthly survey by which the mortgage purchase-price limitations for these two agencies are calculated from the Federal Home Loan Bank Board ("FHLBB") to the Federal Housing Finance Board. That survey, the "Monthly Survey of Rates and Terms on Conventional 1-Family Mortgage Loans," had been conducted by the FHLBB in a similar form for over twenty years.

The survey uses stratified sampling techniques. Each month about 1,200 mortgage lenders are asked to report both terms on loans closed in the first five working days of the month and their commitment rates on several types of residential mortgage loans. Each response takes, on average, one hour to complete.

At the current time, FHFB is contracting with the Office of Thrift Supervision ("OTS"), the successor agency to the FHLBB, for the operational aspects of the survey. This includes the collection, edit, and processing of the data. FHFB publishes the monthly data, but OTS publishes the adjustable-rate mortgage indices derived from the data.

Since FHFB has only recently been given responsibility for the survey and since the survey has not had a major revision for many years, FHFB wants to take this opportunity to conduct a comprehensive re-evaluation of the survey. As part of this re-evaluation, FHFB has assembled an interagency task force to examine the technical aspects of the survey such as sample size, sample weights, geographic representation, and the adequacy of the information collected. FHFB seeks comments on any issues related to the survey.

FHFB seeks to identify users of the MIRS data, especially regional MIRS data. The knowledge of the extent of the use of regional data will be especially helpful to FHFB in determining what the future scope of the survey should be.

While the survey was originally intended to provide a measure of national mortgage market conditions, FHFB, and before that FHLBB, has published data on a number of metropolitan areas, and both have made nonpublished data available on other regional bases. Known uses of regional data include adjustable-rate mortgage indices, adjustment of state mortgage revenue bond limits based on state or metropolitan area house prices, arbitration cases dealing with relocation costs of military personnel, tax court cases dealing with the number of "points" normally charged on mortgage loans, and general statistical uses.

FHFB seeks to identify the other uses of sub-national data derived from the survey. The current sample sizes may be too small for the regional data to be considered statistically reliable, especially on a monthly basis. For example, the actual number of loans reported is about 100,000 per year, and only about 6,000 in the winter months.

If as a result of the work of the interagency technical task force, FHFB determines the regional data are unreliable, the two options FHFB would have are to either stop making regional data available or to expand the sample size. FHFB specifically seeks to identify those uses and programs that would be severely affected if it were to stop making available regional data.

Finally, FHFB requests comments on the ways the reporting burden on the surveyed institutions can be minimized.

Dated: May 17, 1990.

By the Federal Housing Finance Board.

Richard Tucker,

Deputy Director, Housing Finance Programs.

[FR Doc. 90-11960 Filed 5-22-90; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL RESERVE SYSTEM

First Financial Corp.; Application To Engage de Novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-10624) published at page 19104 of the issue for Tuesday, May 8, 1990.

Under the Federal Reserve Bank of Kansas City, the entry for First Financial Corporation is amended to read as follows:

1. *First Financial Corporation,* Wellington, Kansas, to engage *de novo* through a wholly-owned subsidiary, Wellington Area Test Farm, Inc., in community development activities under § 225.25(b)(6) of the Board's Regulation Y.

Comments on this application must be received by June 5, 1990.

Board of Governors of the Federal Reserve System, May 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-11935 Filed 5-22-90; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp., New York, NY; Application To Engage de Novo in Providing Investment Advice, Execution and Clearance of Futures Contracts on Gold Bullion, Options Thereon, and Options on Foreign Currency, U.S. Government Securities and Certain Stock and Bond Indices

Manufacturers Hanover Corporation, New York, New York ("Applicant" or "MHC"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly owned subsidiary Manufacturers Hanover Futures, Inc., Chicago, Illinois ("MHFI"), to acquire all outstanding shares of Manufacturers Hanover

Financial Options Group, Inc., Philadelphia, Pennsylvania ("MHFOG"), a wholly owned subsidiary of Manufacturers Hanover Bank (Delaware). Applicant proposes to merge MHFOG into MHFI and rename MHFI Manufacturers Hanover Futures & Options, Inc. ("MHFOI"). In addition to the activities currently conducted by MHFI, Applicant proposes that MHFOI engage *de novo*, as a futures commission merchant ("FCM"), in providing certain investment advice and engaging in the execution and clearance on major commodity and securities exchanges of certain options, futures contracts and options thereon. These activities would be conducted on a nationwide and international basis.

Applicant proposes to engage *de novo* in the following activities:

(1) Execution and clearance of foreign currency options traded on securities exchanges;

(2) Execution and clearance of futures contracts on gold bullion and options on commodities exchanges;

(3) Execution and clearance of options on U.S. government securities traded on securities exchanges;

(4) Execution and clearance of options on stock and bond indices traded on securities exchanges; and

(5) Provisions of general research and advice on market conditions and trading strategies regarding the use of the above-referenced exchange-traded contracts by customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

As a FCM for nonaffiliated persons, execution and clearance of futures contracts on gold bullion and options on such contracts are permissible under § 225.25(b)(18) of Regulation Y, and Applicant commits that MHFOI will conform these activities to the conditions of that section in conducting such activities. Similarly, the provision of investment advisory services in connection therewith is permissible under § 225.25(b)(19), and Applicant commits that MHFOI will conform these activities to the conditions described below.

The Board has previously determined by Order that certain other proposed activities are closely related to banking and permissible for bank holding companies under section 4(c)(8) of the BHC Act. The Board has previously approved engaging as a broker-dealer in the execution and clearance on security exchanges of foreign currency options, *see, e.g.*, Citicorp, 70 Federal Reserve Bulletin 591 (1984); Fidelcor, Inc., 70 Federal Reserve Bulletin 53 (1984), and stock and bond indices, *see, e.g.*, Citicorp, 70 Federal Reserve Bulletin 591 (1984); Security Pacific Corporation, 70 Federal Reserve Bulletin 238 (1984).

However, the Board has not previously approved engaging as a broker-dealer in the execution and clearance of options on stock and bond indices traded on securities exchanges. Applicant argues that options on futures contracts on instruments such as foreign currencies, U.S. Government securities, and stock and bond indices ("Options on Futures") and options directly on underlying instruments ("Options on Physicals") are functionally and operationally equivalent. In support of this position, Applicant cites Security Pacific Corporation, *supra*, and a recent ruling by the Office of the Comptroller of the Currency on the request of the Chase Manhattan Bank, N.A.

Applicant argues also that not only are Options on Futures and Options on Physicals functionally similar, but their pricing and trading are similar.

Applicant states that while Options on Futures and Options on Physicals are operationally and functionally equivalent, the Commodities Futures Trading Commission ("CFTC") regulates Options on Futures, and the Securities and Exchange Commission ("SEC") regulates Options on Physicals. Applicant maintains that this bifurcated regulation resulted from a settlement between the agencies whose object it was to maintain the status quo in the respective marketplaces. Applicant argues that the bifurcated regulation does not mean that there is any functional differences between the two types of options. In Applicant's view, Options on Physicals are not "securities" for purposes of the Glass-Steagall Act.

The Board also has not approved providing investment advice in conjunction with the execution and clearance of options on stock and bond indices traded on securities exchanges. Applicant maintains that the proposed advisory services are essentially similar to the advisory services previously approved by the Board in connection with futures contracts and options on futures contracts and Applicant has committed to conform its activities with the restrictions applied to FCM activities set forth in §§ 225.25(b) (18) and (19) of Regulation Y. In Applicant's view, these commitments are more appropriate than the commitments applied in Board orders approving investment advisory activities combined with full-service brokerage (National Westminster Bank PLC, 72 Federal Reserve Bulletin 584 (1986), and Bank of New England, 74 Federal Reserve Bulletin 700 (1988)).

Additionally, Applicant argues that substantial precedent exists for its proposed combination of FCM activities with the brokerage of SEC-regulated options contracts. *See*, e.g., The Hongkong and Shanghai Banking Corporation, 72 Federal Reserve Bulletin 345 (1986); Citicorp, 70 Federal Reserve Bulletin 591 (1984); Security Pacific Corporation, 70 Federal Reserve Bulletin 53 (1984).

Applicant takes the position that the proposed activities will benefit the public. Applicant believes that they will promote competition and provide added convenience to customers and gains in efficiency. Moreover, Applicant believes that the proposed activities will not result in any unsound banking practices. Although there is a certain amount of risk involved in executing and clearing option contracts, MHFOI's activities will be subject to extensive SEC and CFTC regulation which Applicant states that the Board has previously relied upon to reduce any potential adverse effects associated with such activities. See, e.g., Security Pacific Corporation, 70 Federal Reserve Bulletin 238, 240–41 (1984).

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 19, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that

are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, May 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–11936 Filed 5–22–90; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 043090 AND 051190

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Lawrence F. DeGeorge, LPL Technologies, Inc., LPL Technologies, Inc	90–1324	04/30/90
Lawrence J. DeGeorge, LPL Technologies Inc., LPL Technologies Inc	90–1325	04/30/90
Hubbell Incorporated, Hanson Plc, Marvin Electric Manufacturing Company, Inc	90–1361	04/30/90
Wendy's International, Inc., Keystone Convenience Company Incorporated, Keystone Convenience Company Incorporated	90–1227	05/01/90
ConAgra, Inc., TSC Industries, Inc., TSC Industries, Inc	90–1284	05/01/90
Largus AB, Harrison & Crosfield PLC, Harrisons Trading Co., Inc	90–1326	05/01/90
Marriott Corporation, Bank of Boston Corporation, Hotel Lenox Development Corp	90–1333	05/01/90
Martin Miller, Class B Voting Trust of McCulloch Corporation, McCulloch Corporation	90–1385	05/01/90
Infotechnology, Inc., Wang Laboratories, Inc., Wang Financial Information Services Corp	90–1279	05/02/90
Mr. Marcel Dutil, Noverco Inc., Noverco Inc	90–1290	05/02/90
Kyotaru Co., Ltd., VSR Acquisition Corp., Paragon Steakhouse Restaurants, Inc	90–1347	05/02/90
Tokyu Corporation, John C. Postman, Jr., 500 Post Property Limited Partnership	90–1360	05/02/90
Anthony L. Geller, Ezra Zilkha, ZG Holding Corp., c/o Zilkha & Sons, Inc	90–1371	05/02/90
Linda Wachner, The Warnaco Group, Inc., Activewear Division	90–1337	05/04/90
Warburg, Pincus Investors, L.P., SmithKline Beecham plc, Beecham Inc. and SimthKline Consumer Products, Inc	90–1340	05/04/90
FMC Corporation, Burlington Resources, Inc., Meridian Gold Company	90–1369	05/04/90
Burlington Resources Inc., FMC Corporation, FMC Gold Company	90–1370	05/04/90
Lafarge Coppee, S.A., Parker Brothers & Co., Inc., Parker Materials Inc	90–1381	05/04/90
TCW Special Placements Fund III, Mr. Alphones Stroobants, Belgium Tool and Die Company	90–1387	05/04/90
The Bruce H. Whitehead Family Irrevocable Trust I, Beverly Enterprises, Inc., Beverly California Corporation	90–1389	05/04/90
Thomas H. Lee Equity Partners, L.P., Thomas H. Lee, Lee-CST Holding Corp	90–1397	05/04/90
Time Warner Inc., S.F. Holdings, Inc., S.F. Holdings, Inc	90–1399	05/04/90
Pearson plc, Cuisenaire Company of America, Inc., Cuisenaire Company of American, Inc	90–1403	05/04/90
Jardine Matheson Holdings Limited, Financial Guardian Group, Inc., Financial Guardian Group, Inc	90–1409	05/04/90
Chinese Petroleum Corporation, Roy M. Huffington, Huffington Coproration	90–1374	05/08/90
Dundee Mills, Incorporated, The Hartwell Mills, The Hartwell Mills	90–1424	05/08/90
Leggett & Platt Incorporated, Dresher, Inc., Dresher, Inc	90–1266	05/09/90
PepsiCo, Inc., Darwin M. Larsen Family Limited Partnership, Larsen Beverage Company, Inc	90–1303	05/09/90
Viking Supply Ships A.S., The Western Company of North America, The Western Company of North America	90–1338	05/09/90
Baker Hughes Incorporated, Westmark Systems, Inc., Tracor Atlas, Inc., Tractor Instruments Austin, Inc	90–1365	05/09/90
Roadmaster Industries, Inc., Columbia Manufacturing Company, Inc., Columbia Manufacturing Company, Inc	90–1327	05/10/90
Ellis & Everard Plc, KD Holdings Corp., HVC/Daly, Inc	90–1366	05/10/90
Brierley Investments Limited, The Liberty Corporation, The Liberty Corporation	90–1372	05/10/90
TECO Energy, Inc., Mid-Continent Barge Lines, Inc., Mid-America Transportation Company	90–1373	05/10/90
William Lyon, Manya K. Giddings, Elsinore Aerospace Services, Inc	90–1394	05/10/90
The Timken Company, MPB Corporation, MPB Corporation	90–1398	05/10/90
Premark International, Inc., Leon R. Sikes, Jr., Sikes Corporation	90–1410	05/10/90
Jitney-Jungle Stores of America, Inc., Macon W. Gravlee, Jr., Foodway, Inc	90–1442	05/10/90
Stephen P. Terry, Franklin Savings Corporation, Franklin Mortgage Capital Corporation	90–1067	05/11/90
Hitachi Koki Co., Ltd., HND Corporation, HND Corporation	90–1359	05/11/90
Power Corporation Plc, Sheldon M. Gordon, Fifth and Market Associates, Ltd	90–1390	05/11/90
Saratoga Partners II, L.P., The Oklahoma Publishing Company, certain assets of Gaylord Broadcasting Co. of Ohio	90–1408	05/11/90
Dr. Hans Niederer, Jungfrau Trust, Textile Holdings, Inc	90–1415	05/11/90
GIREC Co., Ltd., Union Finance Co., Ltd., UF America, Inc	90–1443	05/11/90

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay

or

Renee A. Horton, Contact Representatives,

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–11948 Filed 5–22–90; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C-3287]

Rhone-Poulenc S.A. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a U.S. subsidiary of the French corporation, for a period of five years, to grant licenses to duplicate and sell, on a royalty free basis, the dairy cultures products of Marschall Dairy Products to any entity except Chris Hansen Laboratories and Dairyland Food Laboratories. In addition, respondents are prohibited, for a period of ten years, from acquiring any interest, with certain exceptions, in any company that manufactures or sells dairy cultures in the U.S., without prior Commission approval.

DATES: Complaint and Order issued May 1, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Robert Doyle, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Friday, February 23, 1990, there was published in the **Federal Register**, 55 FR 6452, a proposed consent agreement with analysis In the Matter of Rhone-Poulenc S.A., et al., for the purpose of soliciting public comment. Interested parties were given (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,

Secretary.

[FR Doc. 90-11947 Filed 5-22-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health (NIOSH), Protocol Peer Review of Electronic Performance Monitoring-Stress Prevention Strategies; Meeting

Name: Protocol Peer Review of Electronic Performance Monitoring-Stress Prevention Strategies.

Time and Date: 9 a.m.-2:30 p.m., May 30, 1990.

Place: Robert A. Taft Laboratories, Room B-28, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a research protocol to study the stress effects of electronic performance monitoring, and to formulate stress control strategies for inclusion in the protocol.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Lawrence M. Schleifer, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, C-24, Cincinnati, Ohio 45226, telephone 513/533-8293 or FTS 684-8293.

Dated: May 17, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-11952 Filed 5-22-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 90N-0186]

Drug Export; Antihemophilic Factor (Human) Affinity Purified

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Therapeutic Corp. has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human) Affinity Purified to the Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Alpha Therapeutic Corp., 5555 Valley Blvd., Los Angeles, CA 90032, has filed an application requesting the approval for the export of the biological product Antihemophilic Factor (Human) Affinity Purified to the Federal Republic of Germany. Antihemophilic Factor (Human) Affinity Purified is indicated in the treatment of congenital and acquired Factor VIII deficiency. The application was received and filed in the Center for Biologics Evaluation and Research on April 23, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 4, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: May 11, 1990.

Thomas S. Bozzo,

Director, Office of Compliance Center for Biologics Evaluation and Research.

[FR Doc. 90–12009 Filed 5–22–90; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meetings is announced:

Joint Meeting of the Fertility and Maternal Health Drugs Advisory Committee and the Obstetrics-Gynecology Devices Panel

Date, time, and place. June 14, 1990, 8:30 a.m., and June 15, 1990, 8 a.m., Gaithersburg Marriott Hotel, Ballroom Salon, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, June 14, 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, June 15, 1990, 8 a.m. to 3:30 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committees. The Fertility and Maternal Health Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology. The Obstetrics-Gynecology Devices Panel reviews and evaluates data on the safety and effectiveness of marketed and investigational 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 committees. Those desiring to make formal presentations should notify the contact person before May 24, 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. On June 14, 1990, 9:30 a.m. to 12:30 p.m., both committees will discuss the recent report of the National Academy of Sciences entitled "Developing New Contraceptives—Obstacles and Opportunities;" and from 1:30 p.m. to 5 p.m., the Fertility and Maternal Health Drugs Advisory Committee will discuss estrogen replacement therapy as a possible protective agent against cardiovascular disease in women without a uterus. On June 15, 1990, 8 a.m. to 12:30 p.m., the Fertility and Maternal Health Drugs Advisory Committee will continue their discussion on estrogen replacement therapy; and from 1:30 p.m. to 3:30 p.m., they will discuss whether vaginal antifungal drugs should be dispensed without prescriptions.

The committee discussion and conclusions regarding antifungal drugs may be considered by the agency in its preparation of a tentative final monograph for OTC vaginal drug products or an amendment to the tentative final monograph (proposed rulemaking) for OTC antifungal drug products. Such monographs are being developed as part of the OTC drug review. The advance notice of proposed rulemaking for OTC vaginal drug products was published in the **Federal Register** of October 13, 1983 (48 FR 46694). The tentative final monograph for OTC antifungal drug products was published in the **Federal Register** of December 12, 1989 (54 FR 51136).

FDA public advisory committee meetings may have as many as four separable portions: (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 listed 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 meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 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, Rm. 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. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 17, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-11950 Filed 5-22-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-632-PN]

Medicare Program; Withdrawal of Coverage for Certain Investigational Intraocular Lenses

AGENCY: Health Care Financial Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice proposes the withdrawal of Medicare coverage for certain investigational intraocular lenses (IOLs). Medicare coverage of IOLs that have received approval by the Food and Drug Administration (FDA) would continue to be covered by Medicare, as well as certain other IOLs that are awaiting FDA approval.

DATES: To assure consideration, comments must be received at the appropriate address, as provided below, no later than 5:00 p.m. on July 23, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-632-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-632-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Constance Conrad, (301) 966-4631.

I. Background

A. Medicare Program: Introduction

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services and supplies for persons 65 years of age of over, disabled beneficiaries, and persons with end-stage renal disease. The program currently covers approximately 29.4 million aged, 3 million disabled individuals, and 130,000 persons with end-stage renal disease.

The Medicare program consists of two separate but complementary insurance programs, a Hospital Insurance program (known as part A) and a Supplementary Medical Insurance program (known as part B). Although part A is called Hospital Insurance, covered benefits also include medical services furnished in skilled nursing facilities (SNFs) or by home health agencies (HHAs) and hospices. For purposes of the Medicare program, we refer to these entities as "providers." These providers must be certified as qualified providers of services and must sign an agreement to participate in the program. Part B covers a wide range of medical services and supplies such as those furnished by physicians, providers, or others in connection with physicians' services, outpatient hospital services, outpatient physical therapy and occupational therapy services, and home health services. Physicians' services covered under part B include visits to patients in the home office, hospital, and other institutions. Part B also covers certain drugs and biologicals, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

The Medicare program was not designed to cover the total cost of providing medical care for its beneficiaries. Under current law, beneficiaries are liable for specified cost-sharing charges, in the form of deductibles and coinsurance amounts, and the cost of the first 3 pints of whole blood (unless replacement blood is furnished). Part B of Medicare generally pays 80 percent of the reasonable charge for physicians and other covered medical services (including drugs used in immunosuppressive therapy furnished within 1 year of a covered organ transplant) after the beneficiary has met the $75 deductible. The beneficiary is then liable for the remaining 20 percent of the reasonable charge (coinsurance). In addition, if a physician does not accept assignment (that is, does not agree to accept Medicare's determination of the reasonable charge amount as payment in full for covered services), the beneficiary is liable for the difference between Medicare's reasonable charge and the physician's actual charge, subject to certain limits on that charge.

While the Medicare law does not provide an all-inclusive list of specific items, services, treatments, procedures, or technologies that should be covered by Medicare, it does vest in the Secretary the authority to make coverage decisions based on section 1862(a)(1)(A) of the Act. Specifically, section 1862(a)(1)(A) of the Act states that Medicare payment may not be made for any expenses incurred for items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. In making national coverage decisions, HCFA interprets the terms "reasonable" and "necessary" contained in section 1862(a)(1)(A) of the Act to mean that a service is safe, effective, non-investigational, and appropriate as evidenced by available scientific and medical information. We published a proposed rule on January 30, 1989 (54 FR 4302) that would establish in regulations generally applicable criteria and procedures for determining whether a service is "reasonable" and "necessary" under the Medicare program, and to set forth the coverage decisionmaking process that we propose to include in regulations.

B. The Cause and Need for Intraocular Lenses

Medical information indicates that the loss of visual acuity is part of the normal aging process. It has been estimated that in the U.S., 92 percent of people 65 years or age and over have subnormal binocular visual actuity in need of correction, as compared with 46 percent of the general adult population. Thus, almost all people over age 65 need eyeglasses or some other means to enhance their vision.

With each year of life, the lens of the eye losses some of its elasticity, decreasing the amount of accommodation, most notably for near vision. The optical condition of decreased accommodation is known as presbyopia, which occurs in all individuals, irrespective of their refractive error, and results in an inability to see near work distinctly. This is aggravated in dim illumination and with small print and is treated by means of convex lenses added to the distance corrected if such is needed. The absence of the crystalline lens (that is, aphakia), whether due to surgical removal, trauma or disease, causes a severe loss of accommodation (the ability to focus visual images in the

retina). The chief symptom is a decrease in both far and near vision. Aphakia may be corrected by means of cataract spectacle lenses, contact lenses, or intraocular lens (IOL) implants.

IOL implants are used to replace the lens of the eye. Generally, an IOL implantation is performed during the same operative procedure when the natural lens of the eye is removed. Implants seldom ned to be replaced, and are usually performed on an outatient basis.

C. Current Medicare Coverage for Intraocular Lenses

Section 1861(s)(8) of the Act provides for part B coverage of prosthetic devices (other than dental) that replace all or part of the function of a permanently inoperative or malfunctioning internal body organ when furnished on a physician's order. Under Medicare policy, the term "internal body order" includes the lens of the eye. Thus, medicare covers prosthetic lenses when required by an aphakic individual; that is, an individual lacking the natural lens of the eye because of surgical removal or congenital absence. Current Medicare coverage extends to implanted IOLs, including IOLs considered investigational by the Food and Drug Administration (FDA) as explained below.

Under our program operating guidelines contained in section 65–7 of the Medicare Coverage Issues Manual (HCFA Pub. 6), IOLs, including investigational ones, are currently covered by Medicare when furnished to aphakic patients. Coverage of investigational IOLs has been an exception to the general rule that Medicare payment may only be made for medical devices that have received FDA approval for marketing.

D. Medical Device Amendments of 1976

Under section 520(g) of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress directed FDA to collect safety and effectiveness data on certain devices and to decide whether they should be approved for general marketing. Specifically, Congress directed FDA to ensure that IOLs continue to be "reasonably available" to qualified investigators (that is, surgeons who agreed to review IOLs) and patients while FDA reviewed the data that firms collected and made approvals concerning which IOLs should be marketed. (Although IOLs were already widely used, they did not yet have FDA approval.)

To respond to the congressional directive, FDA allowed a dual investigational system involving a small number of intensively studied "core" patients and a larger number of less intensively studied "adjunct" patients. Core studies were traditional, well-controlled clinical investigations with full recordkeeping and reporting requirements intended to establish the basic safety and effectiveness of the IOLs. Adjunct studies were investigations, following core studies, that simply collected data on infrequently-occurring complications (which could be detected only in the larger adjunct study populations). These IOLs, which were the objects of these adjunct studies, are, in some instances, only slightly different from an already approved IOL. Under adjunct studies, manufacturers were able to distribute investigational IOLs without the numerical limits that usually apply to investigational devices.

IOLs have been in use since 1949. By the enactment date of Pub. L. 94–295 in 1976, their use was widely accepted medical practice. Although IOLs lacked full FDA approval, they were under close review and study by the FDA.

Under the standard premarket approval process, FDA determines the safety and effectiveness of a device by "weighing any probable benefit to health from the use of the device against any probable risk of illness or injury from such use," and effectiveness "on the basis of well-controlled investigations, including clinical investigations where appropriate, * * * from which investigations it can fairly and responsibly be concluded by qualified experts that the device will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling of the device." When the adjunct studies began, there was some routine reporting of patient data; this routine reporting was later discontinued. Some lens models, which were minor variations of other investigational models, were not required to undergo core studies and were allowed to be distributed under adjunct studies alone.

Because the elderly are the recipients of most IOL implantations, the congressional mandate to make IOLs "reasonably available" affected directly the Medicare population. To allow for the use of IOLs by Medicare beneficiaries, Medicare policy was revised to permit coverage of lenses that were being studied by FDA but for which full market approval had not been granted. In accordance with this revised policy, section 65–7 of the Medicare Coverage Issues Manual (HCFA Pub. 6) established instructions to permit payment for investigational IOLs. Coverage of investigational IOLs has been the only exception to the longstanding Medicare policy that requires FDA approval of medical devices before considering Medicare coverage of a device.

Over time, the number of patients receiving IOLs under adjunct status has burgeoned and the assortment of IOL models has proliferated. In 1987, FDA embarked on a three-stage plan for phasing out the use of adjunct studies. During the first two stages, FDA accelerated reviews of pending IOL applications in order to maximize the supply of FDA-approved lenses, after which the intitiation of new adjunct investigations was stopped. Under the third and final phase, IOL manufacturers wishing to continue adjunct studies for given models into 1989 were required to submit premarket applications (PMAs) for those models to FDA before January 1, 1989. If a manufacturer failed to submit a PMA, or if an application was grossly deficient, the manufacturer was precluded from continuing the adjunct study in 1989.

Also, under this final phase-out, a manufacturer precluded from conducting an adjunct study in 1989 could have been allowed to continue its ongoing IOL study under a "modified core" program. Unlike the IOLs in an adjunct study, which have a PMA under review for approval with no limit on distribution, the IOLs under a modified core program have restrictions on numbers of allowable lens implantations, and they are subject to some mandatory reporting of data.

Since 1976, FDA has approved for marketing approximately 900 IOL models, most of which are currently available. Many more IOLs are expected to be fully approved in the near future.

II. Provisions of This Proposed Notice

We believe we have achieved the congressional intent of Public Law 94–295 by maintaining the availability of IOLs while IOL manufacturers sought FDA approval for marketing. Also, in addition to the approximately 900 FDA-approved IOLs that are currently available, FDA is continuing to consider IOL models for approval.

Since the congressional directive to make IOLs reasonably available has been met, we believe we must reassess our policy of covering investigational IOLs. In 1976, IOLs were generally considered investigational because they had not received FDA approval for marketing. Today, we believe the 900 FDA-approved IOLs provide an ample supply to warrant our reverting to our longstanding policy of covering only

medical devices that have been approved for marketing by FDA and that are determined to meet the reasonable and necessary criteria in section 1862(a)(1)(A) of the Act for a particular beneficiary. Moreover, some new IOLs are considered significantly different than other IOLs already subjected to safety and efficacy studies. Existence of these lenses in the core study group changes the character of that group so that safety and efficacy is yet to be determined. Furthermore, the FDA phase-out program beginning January 1, 1989, will result in an ever decreasing number of devices in the adjunct study with most of these devices phased out within 1 year. Therefore, we would continue to cover those IOLs that have received FDA approval and those IOLs in the adjunct study that are awaiting FDA approval.

We do not believe that this change in policy would have a significant effect on current payment for implant procedures performed in an inpatient hospital setting. Payment for inpatient hospital services are governed by the prospective payment system (see 42 CFR part 412). Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). All patients who receive an IOL are assigned to DRG 39, Lens Procedures with or without Vitrectomy. The IOL procedures that are assigned to DRG 39 are (1) insertion of an IOL at the time of a cataract extraction, one stage and (2) secondary insertion of an IOL. If a patient is admitted to have a cataract removed and an investigational (noncovered) IOL is inserted, the hospital would receive a full DRG payment because a cataract removal (a covered service) was performed in addition to the insertion of the noncovered IOL. If a patient whose cataract had been removed previously were admitted for the sole purpose of having an investigational IOL inserted, the entire admission would be noncovered and no payment would be made to the hospital.

We understand that cataract removal and IOL insertion are done primarily on an outpatient basis (including in ambulatory surgical centers (ASCs)). If an IOL is inserted on an outpatient basis, payment would be mde for the cataract extraction but not for the insertion of an investigational IOL or the investigational IOL itself. Any secondary insertion of an investigational IOL would be noncovered, that is, there would be no payment to the surgeon or the facility.

Medicare-participating ASCs are paid a prospectively determined standard overhead amount for facility services furnished in connection with covered surgical procedures performed in the facility. These same ASC rates are used, in part, when determining the aggregate amount of payment for coverd ASC procedures performed on a hospital outpatient basis. The aggregate amount of payment for facility services furnished by a hospital in connection with covered ASC procedures is based on a comparison of two amounts. That is, Medicare will pay the lesser of one of the following amounts:

(1) An amount equal to the hospital's reasonable costs or customary charges (whichever is lower and which has been reduced by the applicable deductibles and coinsurance).

(2) An amount based on a blend of 50 percent of the hospital's reasonable costs or customary charges (whichever is lower and which has been reduced by the applicable deductibles and coinsurance), and 50 percent of an amount equal to 80 percent of the standard overhead amount for ASC facility services, which has been reduced by the applicable deductibles.

Section 4063(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203, enacted December 22, 1987) amended section 1833(i)(2)(A) of the Act. As amended, section 1833(i)(2)(A) of the Act requires that payment for an IOL inserted in an ASC in conjunction with an approved cataract procedure be included in the facility payment rate effective with services furnished after June 30, 1988.

Therefore, in a hospital outpatient or an ASC setting, the payment for an approved IOL is incorporated into the facility rate for the following three approved IOL procedures expressed in Physicians' Current Procedural Terminology, Fourth Edition codes (commonly referred to as CPT–4 codes):

CPT–4	Description
66983	Intracapsular cataract extraction with insertion of IOL prosthesis (one-stage procedure).
66984	Extracapsular cataract removal with insertion of IOL prosthesis, manual or phacoemulsification technique (one-stage procedure).
66985	Insertion of IOL subsequent to cataract removal (separate procedure).

If a removal of lens material is performed on a Medicare beneficiary and an investigational IOL that is not in the adjunct phase is inserted, the facility would be paid only for the removal of the lens material. The facility would be paid in accordance with one of the following CPT–4 codes:

CPT–4	Description
66840	Removal of lens material; aspiration technique (one or more stages).
66850	Removal of lens material; phacofragmentation technique (mechanical or ultrasonic, e.g., phacoemulsification), with aspiration (one or more stages).
66915	Expression of lens, linear (one or more stages).
66920	Extraction of lens with or without iridectomy; intracapsular, with or without enzymes.
66930	Extraction of lens with or without iridectomy; intracapsular, for dislocated lens.
66940	Extraction of lens with or without iridectomy; extracapsular (other than 66840, 66850, 66915).

If CPT–4 code 66985 is performed on a beneficiary and an investigational IOL that is not in the adjunct phase is inserted, the procedure would not be covered and there would be no Medicare payment to the facility or the surgeon.

We could have withdrawn Medicare payment after a number of IOLs had been approved by FDA and IOLs would have been considered "reasonably available." We preferred to coordinate Medicare policy with FDA procedures to ensure that we fulfilled the obligation to make IOLs "reasonably available." We do not believe that manufacturers would be unreasonably disadvantaged by this proposed notice. Many manufacturers of IOLs in the core study are the same manufacturers that have gained FDA approval of other IOLs. In addition, manufacturers have had since 1987 to prepare for the FDA phase-out of adjunct studies and ample time to meet the December 31, 1988 application deadline for extension of ongoing adjunct status.

We propose to phase out payment for investigational IOL models by no longer paying for core and modified core classified IOLs because these IOLs require more intensive studies to obtain FDA approval. Payment would continue for those IOL models in the adjunct study until those are also phased out by the FDA. This would occur as FDA completes its review of the PMA and either approves or disapproves those IOL models. At that time, Medicare payment for adjunct lenses would also cease and we would have ceased paying for any investigational IOLs. Since Medicare coverage is following FDA's regulation of IOLs, we anticipate that this action would minimize disruption in the ophthalmic community.

III Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed notice would result in Medicare no longer covering or paying for certain IOLs that are considered investigational by the FDA. Under Public Law 94–295, Congress directed FDA to ensure that IOLs, which were already in wide use, would continue to be "reasonably available" to qualified investigators and patients. The purpose was to allow safety and effectiveness data to be collected in order for FDA to decide whether particular models of IOLs should be approved for general marketing. However, the availability of IOLs is markedly different today. There are approximately 900 fully approved IOL models available, and under the FDA revised approval policy, more are expected to be fully approved in the near future. Thus, the mandate to make IOLs reasonably available has been met and there is no valid or compelling need to retain the special exception to the general Medicare rule that payment may not be made for any medical device that has not received FDA approval for marketing. However, Medicare would continue to pay for IOLs under FDA investigational "adjunct" status as of January 1, 1989, provided the IOL manufacturers have filed PMAs by December 31, 1988, and meet other conditions specified by the FDA and HCFA.

Cataract surgery is a common surgical procedure covered by Medicare. Because cataract surgery is performed primarily on the elderly, Medicare pays for about 80 percent of all cataract operations. ("Medicare Reimbursement for Cataract Surgery Hearing Before the Subcomm. on Health of the House Comm. on Ways and Means", 99th Cong., 1st Sess. 121 (1985)). In 1985, 90 percent of all cataract surgery included an IOL implant (Ibid at 119). In 1987, Medicare paid Part B providers a total of approximately $83.5 million for 257,000 IOLs. The average payment for an anterior chamber lens was $302, the average for a posterior chamber lens was $330. We do not have data concerning the breakdown of payment between investigational and approved lenses.

Because we have no data available that would allow us to estimate the number and cost of IOLs that would be eliminated, we are not able to prepare an estimate of the Medicare program cost or savings. We do not expect that program cost or savings would change significantly because we anticipate that approved IOLs would be used in place of investigational IOLs.

Discontinuation of coverage and payment for investigational IOLs would not significantly affect beneficiaries because FDA approved IOLs are readily available by type and quantity for physicians to use when performing cataract surgery on Medicare patients. We believe that this proposed notice would not affect the continued availability of safe and effective IOLs.

We do not have data on the effect of this proposed notice on IOL manufacturers. However, any effect would be dependent upon their sales of investigational lenses, whether or not they seek to obtain FDA approval of their investigational lenses, and how quickly FDA approval is obtained. When FDA embarked upon its plan to phase out adjunct studies of IOLs in 1987, reviews of pending IOL applications were accelerated in order to maximize the supply of FDA-approved lenses. Therefore, we believe that many IOLs that were investigational will be approved by the effective date of the final notice that implements this proposed policy.

For the reasons discussed above, we believe this proposed notice does not meet the $100 million criterion nor does it meet the other E.O. 12291 criteria. Therefore, we have determined that this proposed notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and manufacturers of IOLs are treated as small entities.

We believe this notice would affect only those ophthalmologists who have been extensively inserting investigational IOLs. It is anticipated that these physicians would revise their practice and begin using primarily only approved lenses for their Medicare patients because Medicare would no longer pay for certain unapproved, investigational IOLs.

As stated above, we do not have data to indicate the number of manufacturers of investigational IOLs nor the extent to which manufacturers produce investigational IOLs. We expect that this notice would affect those manufacturers that have significant sales of investigational IOLs. However, we do not believe that a significant number of manufacturers produce primarily only investigational IOLs. Thus, we believe that this proposed policy would not significantly affect the total revenues of most IOL manufacturers because full coverage and payment would continue for approved models. In addition, certain investigational models would continue to be covered reducing the effect of this notice.

Thus, we have determined, and the Secretary certifies, that this notice would not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis under the RFA.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

This proposed notice would not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Responses to Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to

acknowlege or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of the final notice.

(Section 1862 of the Social Security Act (42 U.S.C. 1395y))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 21, 1989.

Louis B. Hays.

Acting Administrator, Health Care Financing Administration.

Approved March 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–11959 Filed 5–22–90; 8:45 am]

BILLING CODE 4120–01–M

Statement of Organization, Functions, and Delegations of Authority; Substructure for the Medicaid Bureau and Other Related Changes

Part F of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) is amended to reflect the establishment of the subordinate organizational structure for the Medicaid Bureau which was recently approved by the Secretary, HHS, and to incorporate the related changes to other HCFA components resulting from the transfer of Medicaid responsibilities to the new Bureau. Included in this document are new functional statements for all subcomponents of the Medicaid Bureau and related changes to functional statements within the Office of Prepaid Health Care, the Bureau of Program Operations, and the Bureau of Policy Development.

The specific changes to part F are:

Changes to the Office of Prepaid Health Care

• Section FC.20.A., Policy, Planning, and Liaison Staff (FC–1), is deleted and replaced by the following amended functional statement which has been modified to reflect the transfer of Medicaid responsibility to the new Medicaid Bureau. The new section FC.20.A. will read as follows:

A. Policy, Planning, and Liaison Staff (FC–1)

Coordinates the Department's efforts to move toward a pluralistic health care delivery system. Conducts special studies of prepaid health plans operations and operating data. Based on such studies identifies trends and develops performance measures which can be used by the Office of Prepaid Health Care staff and by the industry to assess the development and operation of prepaid health plans. Develops and issues technical guidance documents for use by the industry in the development of prepaid health plans and the improvement of operations in existing prepaid health plans. Develops and maintains close relationships with national organizations representing the prepaid health plans industry to enhance technical assistance capability and to establish appropriate performance measures. Plans, coordinates, and directs the development and preparation of related legislative proposals, regulatory proposals, and policy documents. Performs strategic policy and planning functions and other special tasks as required by the Administrator. Provides liaison staff for activities with other Federal programs and agencies, health care professional associations, and trade associations.

• Section FC.20.B., Office of Qualifications (FCA), is deleted and replaced by the following amended functional statement which has been modified to reflect the transfer of Medicaid responsibility to the new Medicaid Bureau. The new section FC.20.B. reads as follows:

B. Office of Qualifications (FCA)

Establishes qualification standards and determines the acceptability of entities seeking to become Federally "qualified." Coordinates and insures the consistency of regional office activities related to the qualification and Medicare prepaid health care contracting processes. Assists the Office of the General Counsel in the development of legal actions concerning qualification status. Develops policy and regulatory proposals related to qualification. Evaluates the impact of policies, legislation, and regulations on the ability of projects to become qualified and provides guidance as to the interpretation of policy guidelines and regulations related to qualification. Oversees all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), Health Care Prepayment Plans, and national organizations. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring Medicare prepaid health care in the areas of contract performance, plan enrollment, and payments. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program. Processes reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a plan's decision on payment and/or the provision of services.

• Section FC.20.B.2., Division of Contract Administration (FCA2), is deleted and replaced by the following new functional statement which has been modified to reflect the transfer of Medicaid responsibility to the new Medicaid Bureau. The new section FC.20.B.2. read as follows:

2. Division of Contract Administration (FCA2)

Administers and promotes prepaid health plan participation in the Medicare program. Develops procedures for evaluating prepaid health plan contract applications, contract negotiation and implementation, and monitoring contractor compliance. Provides oversight of regional office activities related to prepaid health care. Oversees all aspects of Medicare contract administration with Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), Health Care Prepayment Plans, and national organizations which include: (1) Establishing and interpreting contract policy, (2) reviewing initial contract applications, contract renewals, and contract modifications and preparing recommendations for approval/disapproval, (3) coordinating HMO and CMP initiated nonrenewals, (4) preparing recommendations for nonrenewals and terminations initiated by HCFA, and (5) acquiring necessary clearance of contracting activities with the Office of the General Counsel. Reviews and analyzes national data on an ongoing basis for the purpose of monitoring prepaid health care in the area of contract performance. Uses forecasting techniques to determine the trends and future growth of the prepaid health care industry. Analyzes trends in prepaid health care and advises HCFA management of their impact on the Medicare program. Evaluates the impact of policies and legislation on prepaid health care operations and proposes alternative courses of action. Maintains liaison with national prepayment plan associations and represents the Office of Prepaid Health Care at national meetings. Plans, directs, and coordinates the overall processing of reconsideration cases which result when a Medicare HMO or CMP enrollee disagrees with a

plan's decision on payment and/or the provisions of services.

Establishment of the Medicaid Bureau's Organizational Structure

• A new section FM.10., Medicaid Bureau (Organization) is added to read as follows:

Section FM.10., Medicaid Bureau (FM) (Organization)

The Medicaid Bureau (MB), under the leadership of the Director, Medicaid Bureau, includes the following organizational elements:

A. Executive Operations Staff (FM–1).
B. Medicaid Managed Care Office (FMA).
C. Intergovernmental Affairs Office (FMB).
D. Office of Medicaid Management (FMC).
E. Office of Medicaid Policy (FME).

• New Sections FM.20.A., Executive Operations Staff (FM–1), through FM.20.F., Office of Medicaid Policy (FME), are added to reflect the subordinate organizational structure of the Medicaid Bureau. The new sections added read as follows:

A. Executive Operations Staff (FM–1)

Assists and advises all Medicaid Bureau (MB) managers in organizational analysis, design, and implementation; requests to establish positions; and delegations of management and program administration authorities. Establishes and implements integrated and coordinated MB work planning. Plans and monitors the execution of major Bureau program initiatives through the administration of the Bureau's work planning to ensure fairness and equity among components and to assure that measurable and verifiable outputs are provided. Interprets administrative budgetary policies and limitations and develops and issues guidelines and instructions to MB managers for budget formulation and execution. Executes the budget for MB through the issuance of staff and dollar controls, budget allowances for administrative expenditures, and employment ceilings to MB components. Provides services and liaison with the Office of Budget and Administration (OBA) related to procurement; space acquisition, utilization and management; telephone systems; records; publications, forms printing; and reprographics. Directs an integrated and coordinated personnel management program responsive to the needs of MB. Manages MB's equal employment opportunity program. Serves as focal point for public information (i.e., newsletter articles and Freedom of Information and Privacy Act requests). Plans, directs, and coordinates the Bureau's paperwork burden reduction and information collection budget programs. Directs a Bureau-wide tracking and control system on correspondence, policies, regulations, and action documents and provides training and technical assistance on standards for content of written documents. Analyzes a broad range of program operations indicators and key findings from all MB assessment programs. Prepares summary interpretive reports reflecting the overall analysis of key operational performance findings. Serves as the focus for information and analysis to support long-range planning of Bureau activities.

B. Medicaid Managed Care Office (FMA)

Serves as the departmental focal point for all Medicaid managed care activities. Provides oversight of and assistance to State Medicaid agencies on all managed care issues, including Medicaid managed care contracting activities. Works with State Medicaid offices on the development of managed care operations to service Medicaid recipients. Monitors State legislation and regulations and arranges for direct technical assistance to State regulators. Serves as the focal point and repository for State laws and regulations dealing with HMOs, group medical practice, insurance, licensing, foundations, service corporations, certificate of need, and reserve requirement statutes. Develops guidelines, policies, and procedures for use by the regional offices when reviewing and approving/disapproving State Medicaid agency contracts with prepaid health plans. Responsible for liaison, information exchange, and technical assistance regarding Medicaid capitation issues between HCFA and the State agencies.

C. Intergovernmental Affairs Office (FMB)

Provides leadership for HCFA in the area of intergovernmental affairs. Advises the Director, Medicaid Bureau on all policy and program matters which affect other units and levels of government. In coordination with the Deputy Under Secretary for Intergovernmental Affairs, the Principal Regional Officials, and other HCFA offices, meets with key State and local officials in order to strengthen HCFA's relationships with other governmental jurisdictions and to resolve sensitive intergovernmental problems and issues. Reviews and consults with State and local officials regarding proposed HCFA policy and operational issuances. Assesses the impact on State and localities of HCFA actions involving penalties, disallowances, compliance actions, or new performance standards. Assists States and localities in requesting and obtaining technical materials, assistance, and support from appropriate HCFA components. Upon State requests, arranges for the exchange of HCFA staff with State and local agencies. Develops and provides briefings on intergovernmental affairs issues for HCFA staff. Briefs State and local agencies on HCFA's mission, organization, and functions.

D. Office of Medicaid Management (FMC)

Establishes policies and procedures by which Medicaid State agencies and Regional Offices (ROs) submit periodic budget estimates and reports. Analyzes budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Reviews all State expenditure data and claims for Federal payments under title XIX. Reviews RO disallowances of State claims for Medicaid payments. Sets and interprets the fiscal requirements and procedures for use by States and ROs. Directs and coordinates the fiscal aspects of the title XIX program activities. Develops the requirements, standards, procedures, guidelines, and methodologies pertaining to the review, evaluation, and assessment of the operations, development, and funding of State agency automated systems to determine their compliance with published Federal requirements. Designs and conducts studies and surveys to improve Medicaid operational systems, methods, and procedures. Plans, develops, and monitors systems requirements for Medicaid and coordinates systems requirements for related Federal programs such as Child Health Assurance, Child Support Enforcement, Food Stamps, and Aid to Families with Dependent Children. Develops and implements a system for reviewing the State performance of the Income Eligibility Verification System (IEVS) requirements. Assesses, with the Regional Offices, the operation of Freedom of Choice and Home and Community-Based Waivers (HCBW). Directs the Bureau's automated data processing activities.

1. Division of Financial Management (FMC1)

Establishes policies and procedures by which Medicaid State agencies and Regional Offices (ROs) submit quarterly budget estimates and reports. Analyzes

budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Reviews all State claims for Federal payments under title XIX of the Social Security Act. Reviews quarterly State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Reviews and approves RO disallowances of State claims for Medicaid payments. Serves as focal point for defense of disallowance decisions before Department Appeals Board (DAB). Sets and interprets fiscal requirements and procedures for use by States and ROs. Develops HCFA instructions for RO staff concerning the financial review of the Medicaid program and reviews RO performance to assure consistency in implementation of instructions. Directs and coordinates the fiscal aspects of the title XIX program activities. Provides the definitive HCFA interpretation of Medicaid payment policy for administration and training costs. Responsible for operational policies regarding availability of Federal Financial Participation (FFP), designation of appropriate FFP rates, and for issuing interpretations to ROs regarding operational FFP issues. Directs RO financial reviews and audits of State agencies and oversees the Medicaid claims processing review activity. Assesses, with the Regional Offices, the operation of Freedom of Choice and of Home and Community-Based Waivers (HCBW). Develops methodologies for processing HCBW expenditure reports. Conducts analyses of States' administration of HCBW. Oversees the implementation of Medicaid maternal and child health and Early and Periodic Screening, Diagnosis, and Treatment activities and provides technical assistance to States, ROs, and other interested groups. Plans and develops new programs to evaluate the payment functions of State agencies. Directs regional staff conducting feasibility studies to identify opportunities for implementing new Medicaid payment quality control programs. Analyzes collected data to identify regional and geographic trends and determines need for new tracking and evaluation techniques. Reevaluates need for present programs as well as their effectiveness and efficiency. Develops enhancements to existing Medicaid quality control and assessment systems to improve efficiency and effectiveness and to reflect operational, legislative, and administrative changes. Directs Regional Office financial reviews and audits of State agencies.

2. Division of Program Performance (FMC2)

Develops, implements, directs, and operates the national Medicaid eligibility quality control program to determine the effectiveness of Medicaid State agencies' performance in the area of eligibility determinations. Promulgates guidelines and requirements for the operation and direction of the Medicaid eligibility quality control program. Systematically reviews established Medicaid eligibility quality control regulations and policies and develops and implements appropriate enhancements. Establishes and operates systems for reporting and analyzing results of State reviews in the Medicaid eligibility quality control program. Provides documentation and analysis necessary to initiate and support actions on disallowances, penalties, and corrective action requirements, and adjudication of appeals of disallowances and penalties. Develops, implements, and operates a comprehensive system for assessing and assuring adherence to the requirements for operating the Medicaid eligibility quality control system. Conducts performance assessments and prepares recurring and special reports of findings. Develops and implements a system for reviewing the State performance of the Income Eligibility Verification System (IEVS) requirements. Develops and interprets operational regulations and policies for States to establish IEVS. In coordination with the Office of Medicaid Policy develops and promulgates operational policy for utilizing the Systematic Alien Verification for Entitlement (SAVE) system. Provides technical assistance on IEVS and SAVE systems to regional offices (ROs) and serves as liaison between the Immigration and Naturalization Service, Internal Revenue Service, other Federal Agencies, and the ROs. Provides expertise on sampling, precision, universe identification, and other technical statistical issues in support of the Bureau's quality control and assessment programs. Develops and promulgates policies and procedures for the proper maintenance, review, and approval of State plans and their amendments. Monitors State compliance to plans and oversees the compliance process. Develops compliance issues for disallowance reviews. Directs targeted reviews of areas identified as potentially noncompliant due to erroneous plan approval or improper State implementation.

3. Division of Payment Ssytems (FMC3)

Develops the requirements, standards, procedures, guidelines, and methodologies pertaining to the review, evaluation, and assessment of the operations, development, and funding of State agency automated systems to determine their compliance with published Federal requirements. Designs and employs test criteria to determine the accuracy and effectiveness of Medicaid claims processing systems. Reviews State agency Medicaid Management Information Systems (MMIS) for approval of increased Federal Financial Participation (FFP). Provides technical assistance with respect to Electronic Data Processing (EDP) procurement and reviews proposed hardware and software modifications and/or equipment upgrades for approval of increased FFP. Develops and maintains a central State data profile to support States and regions in improving operations and serves as a clearinghouse for technical innovations and cost-effective methodologies pertaining to the state-of-the-art in EDP development. Develops, directs, and coordinates systems plans and studies for the effective integration of all Medicaid automated processing systems at the State agency level. Plans, develops, and monitors systems requirements for Medicaid and coordinates systems requirements for related Federal programs such as Child Health Assurance, Child Support Enforcement, Food Stamps, and Aid to Families with Dependent Children. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicaid program. Develops and approves cost allocation plans involving multi-agency programs. Develops data initiatives which will promote efficiency and uniformity in Medicaid operations and directs the implementation of national title XIX data initiatives such as common coding, uniform bills, and electronic media claims. Develops standards for cost and benefit analysis and monitoring of MMIS design, development, installation, and operations. Ensures adherence to all automated data processing (ADP) security measures, policies, and procedures; assists with the development, modification, and review of HCFA ADP policies. Plans, directs, and implements an information management program. Directs the Bureau's ADP activities relating to documenting requirements and securing

clearances and approvals for ADP systems.

F. Office of Medicaid Policy (FME)

Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid eligibility, coverage, and payment activities. Prepares regulations, manuals, program guidelines, and general instructions related to these areas. Analyzes issues for the Medicaid Bureau Director, the Administrator, and others as they relate to the conditions of eligibility, the scope of benefits offered, and appropriate payment policies under Medicaid, as well as the role that Medicaid can play in the larger area of access to health care for the poor and uninsured. Makes recommendations for legislative changes to improve program outreach and impact. Examples of areas of policy responsibility include eligibility standards and criteria; treatment of recipient income; co-payment, premium, and buy-in policies, confidentiality of data; scope of benefits entitled to Federal financial participation, including policies and activities associated with the Early and Periodic Screening, Diagnosis and Treatment for children under 21 years of age; and policies for payments to providers under the Medicaid program. Develops and evaluates a broad range of Medicaid technical issues, including statewideness, proper and efficient administration of State Medicaid agencies, single State agency requirements and waivers to those requirements under the Intergovernmental Cooperation Act, interagency agreements, prior authorization for Medicaid services, coverage of aliens, residency, and freedom of choice providers. Reviews State plan amendments in those areas and the analysis and processing of State Medicaid Freedom of Choice and Home and Community-Based Services Waivers. Studies and makes recommendations regarding modifications in Medicaid policies to reflect changes in recipient health care needs, program objectives, and the health care delivery system. Providers specifications for assessments of Medicaid policy areas and Medicaid waivers to be conducted by the Office of Medicaid Management and Regional Offices staffs. Reviews, with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid policy.

1. Division of Payment and Coverage Policy (FME1)

Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid payment and coverage activities. Prepares regulations, manuals, program guidelines, state plan preprints, and general instructions related to these areas. Provides interpretations of policies to Regional Offices, congressional staffs, other Departmental offices, other Departments of the Federal government, interest groups, and State agencies. Develops, evaluates, and reviews Medicaid payment and coverage policies, regulations, and procedures pertaining, for example, to long-term care under Medicaid, case management, transportation, coverage of prescription drugs, family planning services, sterilization, hysterectomy, abortion, teenage pregnancy services, alcoholism, drug abuse treatment services, institutions for mental disease, personal care services, medical day care, Indian health services, intermediate care facilities (ICFs) and intermediate care facilities for the mentally retarded (ICF/MR) (including ICF level of care and Special ICF/MR requirements and definitions); and comparability of services and uniform availability for services. Develops, evaluates, and reviews national policies concerning the amount, duration, and scope of services. Develops, reviews, and evaluates policies, regulations, and procedures pertaining to States' requests for approval of waivers of Medicaid requirements to provide home and community-based services and makes recommendations whether the waivers should be approved or disapproved. Develops, evaluates, and reviews national policies concerning Medicaid contracts, interagency agreements, and prior authorizations. Reviews State plan amendment requests under Medicaid. Develops, evaluates, and reviews regulations, guidelines, and instructions pertaining to payments to providers under the Medicaid program including, for example, Medicaid institutional payment plans, Medicaid community provider rates, Medicaid payment of such entities as rural health clinics and Federally qualified centers, and capitated rates for Medicaid managed care organizations. Identifies, studies, and makes recommendations for modifying Medicaid coverage and payment policies to reflect changes in recipient health care needs, program objectives, and the health care delivery system. Analyzes and recommends legislative or other remedies to improve coverage and utilization effectiveness. Reviews, with the Office of Research and Demonstrations, research and demonstration agendas in the areas of Medicaid payment and coverage.

2. Division of Medicaid Eligibility Policy (FME2)

Develops, interprets, and evaluates policies pertaining to conditions under which recipients are eligible to have their health care payments covered under Medicaid and the rights of recipients and applicants, including policies and activities unique to the Early and Periodic Screening, Diagnosis, and Treatment Program for children under 21 years of age. Subject areas include Freedom of Choice (section 1915(b)) waivers, required coverage groups and options; financial eligibility requirements, consideration of resources, dual eligibility, eligibility of suspended and retroactive denial cases; eligibility in section 209(b) States; eligibility of grandfathered groups; optional State supplemental payment programs; eligibility of institutionalized persons; residence requirements; eligibility of the medically needy; citizenship requirements; transfer of resources; post-eligibility treatment of income for institutionalized persons, Medicaid transitional benefits for AFDC families; and other related issues. Evaluates the effect of proposed legislation on current eligibility policies and recommends specifications for new or proposed legislation on eligibility. Reviews, with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid eligibility.

Changes to the Bureau of Program Operations

- A new section FP.20.A.5., Office of Quality Control Programs (FPA9), is added to reflect the transfer of the entire Office of Quality Control Programs, with the exception of the Program Quality Evaluation Branch and the Program Evaluation and Development Branch, from the Bureau of Quality Control to the Bureau of Program Operations. The Program Evaluation and Development Branch is being transferred to the Division of Financial Management and the Program Quality Evaluation Branch is being transferred to the Division of Payment Systems in the Office of Medicaid Management of the new Medicaid Bureau. The new functional statement for the Office of Quality Control Programs in the Bureau of Program Operations reads as follows:

5. Office of Quality Control Programs (FPA9)

Designs and implements statistically based reviews and structural assessment programs to determine the overall effectiveness of Medicare quality control programs operated by carriers,

intermediaries, and other related organizations. Develops and applies policies, standards, and guidelines for quality control programs to provide uniform and comparative assessment of contractor performance in the areas of program eligibility and payment, claims payment, and beneficiary services. Designs and implements new or modified quality control programs to assure proper stewardship of Federal funds by carriers, intermediaries, and other HCFA related organizations. Evaluates Regional Office (RO) performance in monitoring Medicare quality control programs and conducting sample reviews. Develops, conducts, and/or directs RO participation in intensive analyses of selected areas of quality control and assessment policy and operations to document and evaluate the incidence and cause/effect of specific priority problems of other impact resulting from implementation of laws, regulations, policies, or operational procedures and systems. Develops regulations, procedures, guidelines, and studies dealing with program effectiveness, oversight, and improvement. Provides data and systems analysis support for the production and interpretation of program operations and performance indicators.

a. Division of Performance Evaluation (FPA91)

Develops, implements, and directs national quality control programs to determine the effectiveness of Medicare contractors' performance in the area of claims payment. Provides documentation and analysis necessary to initiate and support sanctions that result from established claims payment quality control programs. Reviews and recommends action for adjudicating appeals of these sanctions. Promulgates guidelines and requirements for operation and direction of claims payment assessment and quality control programs. Establishes and operates systems for analyzing results of claims payment assessment and quality control programs identifying performance deficiencies. Develops, implements, and operates a comprehensive system for assessing and assuring adherence to requirements for operating quality control and assessment systems.

b. Division of Institutional Payment Oversight (FPA92)

Develops, implements, directs, and operates national quality control programs to determine the effectiveness of Medicare contractors' payments to institutional providers, including assessment of cost-based, prospective and alternative payment systems, and oversight of chain providers' home office costs. Assures uniform national assessment of Medicare contractors' compliance with institutional payment performance standards and program requirements. Promulgates guidelines and requirements for direction of Medicare payment assessment and quality control programs. Establishes and operates systems for analyzing results of Medicare payment assessment and quality control programs. Assesses performance, identifies performance deficiencies and trends, and determines the need for new tracking and evaluation techniques. Develops, implements, and operates a comprehensive system for assessing and assuring adherence to requirements for operating institutional payment quality control and assessment programs. Systematically reviews established Medicare payment quality control and assessment programs and implements appropriate enhancements reflecting operational, legislative, and administrative changes.

c. Division of Operational Reviews (FPA93)

Conducts indepth assessments of selected programmatic areas to determine whether established policy and operational criteria are effectively met, to thoroughly evaluate the appropriateness and cost-effectiveness of selected HCFA-wide operational procedures and systems, and to supplement available data with additional documentation and understanding of priority problems. Conducts and/or directs Regional Office (RO) participation in these reviews. Consults with HCFA policy and operational components and prepares specific recommendations for regulatory and legislative initiatives to enhance the cost-effective program management. Develops and conducts studies to evaluate the potential impact resulting from the implementation of proposed laws, regulations, and/or policies and determines the need for improved policy or operational controls to assure fiscal accountability and effective program management. Conducts special surveys in critical areas, identifying problems and barriers to problem resolution, and developing and recommending alternative solutions. Develops, conducts, and/or directs RO participation in pilot reviews of selected areas to determine the potential benefit of conducting comprehensive analyses of selected program problem areas.

Changes to the Bureau of Policy Development

• Section FQ.20.A.2., Office of Program Support (FQA–4), in the Bureau of Policy Development, is deleted and replaced by an updated section to read as follows:

2. Office of Program Support (FQA–4)

Directs the planning, development, and coordination of a comprehensive program of management activities including: financial management, management analysis and information, field liaison, Freedom of Information operations, and an executive secretariat for the Bureau. Prepares responses to all Medicare public inquiries addressed to or referred to the Bureau. Serves as principal advisor to the Director, as well as the Bureau's executive staff, on the full range of management and related administrative issues. Responsible for handling highly sensitive and complex assignments requiring the Director's and Deputy Director's personal attention often involving inter-Bureau and office coordination and direction.

• Section FQ.20.A.4., Office of Payment Policy (FQA5), is deleted and replaced by the following updated functional statement:

4. Office of Payment Policy (FQA5)

Establishes national Medicare policy on all payment issues including provider and other facility payment, reporting and accounting policy, and physician and medical services payment policy. Develops, evaluates, and maintains regulations, policies, and standards for payments to hospitals for inpatient services under the prospective payment system. Coordinates with and reviews recommendations from the Prospective Payment Assessment Commission and the Physician Payment Review Commission. Develops policies for physician fee schedules and reasonable charges for physician and medical services payment. Develops and maintains fee schedules for independent laboratory and ambulatory surgical centers. Develops payment policy for special forms of health care delivery such as hospital outpatient departments, health maintenance organizations, rural health clinics, hospices, health care prepayment plans, and comprehensive health centers. Establishes payment policies as they apply to the End-Stage Renal Disease (ESRD) Program. Establishes policy for implementing payment controls and cost containment programs. Reviews requests for exceptions to payment limitations and recommends approval or disapproval. Participates in the development and

evaluation of proposed legislation in the area of health care payment.

• Section FQ.20.A.4.a., Division of Medical Services Payment (FQA54), is deleted and replaced by the following updated functional statement:

a. Division of Medical Services Payment (FQA54)

Formulates and evaluates national policies and standards for Medicare payment and fiscal standards for physician services, practitioner services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, and other medical services. Develops policies for reasonable charges for physician and medical services payment. Drafts program regulations, manuals, guidelines, and other general instructions related to medical services payment. Coordinates with other HCFA bureaus, divisions, and offices, the Social Security Administration, and other Departmental components in the development of payment policies for medical services. Coordinates with and reviews recommendations from the Physician Payment Review Commission. Participates in the development and evaluation of proposed legislation in the area of medical services payment and recommends alternatives to current methods of payment. Provides interpretations of established policies and technical assistance to Departmental and HCFA components, regional offices, fiscal intermediaries, and carriers.

• Section FQ.20.A.4.b., Division of Alternative Payment Systems (FQA55), is deleted in its entirety. The Division's Medicaid responsibilities are transferred to the new Medicaid Bureau, and the remaining functions are transferred to the Division of Dialysis and Transplant Policy.

• Section FQ.20.A.4.d., Division of Payment and Reporting Policy (FQA58), is deleted and replaced by the following updated functional statement:

d. Division of Payment and Reporting Policy (FQA58)

Develops and evaluates national policies, regulations, and standards for payment of the costs incurred by providers of services and other classes of facilities under the health insurance program. Initiates and collaborates in the development and review of legislative proposals on general Medicare payment policies, interprets law (considering intent), and develops policy directives and basic payment policy decision statements which derive from such applicable law and which are reflective of the minimum requirements of such law (i.e., the broad parameters). Develops and issues implementing instructions consistent with overall Medicare payment policy, directives, and specifications. Reviews alternative payment and rate-setting systems for potential adaptation to the health insurance program. Establishes policies, principles and guidelines related to circumstances requiring atypical payment practices. Plans, develops, and maintains a continuing program of surveillance and evaluation of HCFA general payment policies, and billing procedures at Central Office, regional offices, intermediary, and carrier levels which impact on Office functions in order to identify emerging problems and to develop and promulgate corrective policies and procedures. Formulates and evaluates national policies for all Medicare program provider financial filing and reporting requirements. Develops policies pertaining to the use of all cost reporting forms, schedules, and related instructions necessary for paying health care institutions. Develops policies pertaining the validity of accounting policies and procedures. Develops and maintains a system of internal controls for the validation of policy decisions. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Develops and evaluates the criteria for exceptions to the limitations and reviews and makes decisions on the intermediary recommendations on providers' requests for exceptions.

• Section FQ.20.A.4.e., Division of Dialysis and Transplant Payment Policy (FQA59), is deleted and replaced by the following updated functional statement and new organizational title.

e. Division of Special Payment Programs (FQA59)

Formulates and evaluates payment policies for services under the End-Stage Renal Disease (ESRD) program, ambulatory surgical centers and other special delivery systems, including capitation organizations, non-provider based comprehensive health centers, hospices and rural health clinics. Prepares regulations, manuals, program guidelines, and other general instructions in these policy areas. Establishes payment policies and procedures for ESRD services, transplantation, physician payment, kidney acquisition including payments, organ procurement, histocompatibility services, home and self-dialysis training, and other medical items and services related to the ESRD program. Establishes policies, procedures, and criteria for payment exceptions for ESRD facilities. Processes such requests and determines which ESRD facilities should be granted exceptions to national payment rates. Analyzes payment data, develops payment rates for ESRD services and other special payment delivery systems, and updates rates. Maintains continuing liaison with ESRD provider groups, industry associations, patient organizations, medical associations, and other parties that relate to special delivery systems. Participates in the development and evaluation of proposed legislation pertaining to the ESRD program and organ transplant issues. Formulates and evaluates national policies for the payment of special methods of health service delivery. Develops policies pertaining to determining the payment basis, including reasonable costs and charges, where appropriate, for the services of these facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care.

• Section FQ.20.A.3., Office of Coverage Policy (FQA7), and section FQ.20.A.6., Office of Eligibility Policy (FQA6), are deleted in their entirety including all subordinate components. The entire Division of Medicaid Eligibility Policy, as well as the Hearings Staff, are transferred to the Medicaid Bureau. The Division of Medicare Eligibility Policy is transferred to the Office of Coverage Policy which is renamed the Office of Coverage and Eligibility Policy. The new Office of Coverage and Eligibility Policy will include the Division of Provider Services Coverage Policy, the Division of Medical Services Coverage Policy, and the Division of the Medicare Eligibility Policy. The new section FQ.20.A.3, Office of Coverage and Eligibility Policy will read as follows:

3. Office of Coverage and Eligibility Policy (FQA8)

Develops, evaluates, and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the Medicare program provided by hospitals, skilled nursing facilities, hospices, End-Stage Renal Disease facilities, home health agencies, alternative health care organizations, comprehensive outpatient rehabilitation facilities, physicians, health practitioners, clinics, laboratories, and other health care providers and suppliers. Serves as the principal organization with HCFA for evaluating the medical aspects of Medicare coverage issues and for health quality and safety standards. Develops, evaluates, and reviews national

Medicare coverage issues concerning the reasonableness and necessity for medical and related services. Develops, evaluates, and reviews health and safety standards for providers and suppliers of health services under Medicare. Develops common medical coding standards and policy. Participates in the formulation and use of medical codes including: International Classification of Diseases—Ninth Revision—Clinical Modification, HCFA Common Procedure Coding System, and Diagnosis Related Groups. Develops, evaluates, and reviews national Medicare policies concerning the coverage of new and unusual items and services and those medical items and services which are excluded from coverage. Develops, interprets, and evaluates policies relating to the conditions under which aged and disabled individuals and End-Stage Renal Disease patient are eligible to have their health care covered under the Medicare program and the rights available to these beneficiaries. Subject areas include beneficiary eligibility and scope of entitlement to hospital insurance, enrollment and coverage periods of medical insurance, deductibles and coinsurance, overpayments and underpayments to beneficiaries, claims for payment and reopening of claims determinations, and nonmedical exclusions from coverage (e.g., workmen's compensation involvement, services paid for by a government entity, and charges by immediate relatives). Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of Medicare coverage and eligibility policies to program contractors and the health care field. Identifies, studies, and makes recommendations for modifying Medicare coverage and eligibility policies and health and safety standards to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Conducts ongoing analyses of innovative treatment patterns, referral patterns, and activity that improve health care outcomes. Analyses and recommends legislative or other remedies to improve coverage, eligibility, health and safety standards, and utilization effectiveness.

a. Division of Provider Services Coverage Policy (FQA81)

Develops, evaluates, and reviews national Medicare policies and standards concerning the coverage of services and the conditions of participation for hospitals, skilled nursing facilities, home health agencies, hospices, and other providers of services. Develops, evaluates, and reviews national Medicare policies concerning the coverage of mental health, alcoholism and drug treatment, utilization review, and physician certification, and prior authorization requirements. Coordinates Medicare coverage policies and Peer Review Organization requirements. Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors and the health care field. Identifies, studies, and makes recommendations for modifying Medicare coverage policies and providers' health and safety standards to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Analyzes and recommends legislative or other remedies to improve coverage, health and safety, and utilization effectiveness.

b. Division of Medical Services Coverage Policy (FQA82)

Develops, evaluates, and reviews national Medicare policies and health and safety standards concerning the coverage of items and services which are provided by physicians, nonphysician practitioners, ambulatory surgical centers, health maintenance organizations, comprehensive medical plans, rural health clinics, comprehensive outpatient rehabilitation facilities, outpatient physical therapy/occupational therapy/speech pathology providers and other alternative health care organizations. Develops, evaluates, and reviews national Medicare policies and health and safety standards concerning the coverage of medical and other health services including supplies, drugs, rehabilitative services, eyeglasses, laboratory services, x-ray services, ambulance services, second opinions, new and unusual items and services, dialysis and transplant services for Medicare beneficiaries with End-Stage Renal Disease, and those medical items and services which are excluded from coverage. Develops, evaluates, and reviews national Medicare policies concerning reasonableness and necessity for services. Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors and the health care field. Identifies, studies, and makes recommendations for modifying Medicare coverage policies to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Recommends legislative or other remedies to improve coverage, health and safety, and utilization effectiveness. Coordinates with other components responsible for the Medicaid program, health and safety standards, program operations, quality control, and other parties and individuals, as appropriate.

c. Division of Medicare Eligibility Policy (FQA83)

Develops, interprets, and evaluates policies relating to the conditions under which aged and disabled individuals and End-Stage Renal Disease patients are eligible to have their health care covered under the Medicare program and the rights available to these beneficiaries. Subject areas include beneficiary eligibility and scope of entitlement to hospital insurance, enrollment and coverage periods of medical insurance, deductibles and coinsurance, overpayments and underpayments to beneficiaries, beneficiary rights, claims for payment and reopening of claims determinations, and nonmedical exclusions from coverage (e.g., workmen's compensation involvement, services paid for by a governmental entity, and charges by immediate relatives) and policies related to the Medicare secondary payer provisions. Studies and evaluates existing policies to determine their effectiveness and the need to develop new or revised policies. Prepares policy materials for issuance in program manuals and instructional materials and for the development of regulations. Reviews eligibility aspects of special research and demonstration projects as needed. Participates in assessing the needs for legislation and makes recommendations accordingly. Develops and interprets policy related to entitlement aspects of part A and part B buy-in.

Dated: April 30, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-8186 Filed 5-22-90; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June and July 1990.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning

of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(b)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material. and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Pharmacological Sciences Review Committee.

Executive Secretary: Dr. Rodney Ulane, room 9A18, Westwood Building, Telephone: 301–496–4772.

Date of Meeting: June 4.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: June 4, 8:30 a.m.–9:30 a.m.

Closed: June 4, 9:30 a.m.–adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Executive Secretary: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301–496–7125.

Dates of Meeting: June 6–7.

Place of Meeting: Ramada Inn, 8400 Wisconsin Ave., Bethesda, Maryland 20814.

Open: June 6, 8:30 a.m.–9:30 a.m.

Closed: June 6, 9:30 a.m.–5 p.m. and June 7, 8:30 a.m.–adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Executive Secretary: Dr. Arthur Zachary, room 9A14, Westwood Building, Telephone: 301–496–7215.

Date of Meeting: June 8.

Place of Meeting: Building 31C, Conference Room 4, National Institutes of Health, Bethesda, Maryland 20892.

Open: June 8, 8:30 a.m.–9:30 a.m.

Closed: June 8, 9:30 a.m.–adjournment.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Access to Research Careers Review Subcommittee.

Executive Secretary: Dr. Norka Ruiz Bravo, room 9A18, Westwood Building, Telephone: 301–496–7585.

Date of Meeting: June 15.

Place of Meeting: Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: June 15, 8:30 a.m.–9:30 a.m.

Closed: June 15, 9:30 a.m.–adjournment.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Biomedical Research Support Subcommittee.

Executive Secretary: Dr. Lorrita Watson, room 9A13, Westwood Building, Telephone: 301–402–0635.

Dates of Meeting: July 19–20.

Place of Meeting: Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: July 19, 8:30 a.m.–9:30 a.m.

Closed: July 19, 9:30 a.m.–5 p.m.; July 20, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 13–859, 13–862, 13–863, 13–880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: May 14, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–11923 Filed 5–22–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–4212–11; AZA–24512]

Arizona: La Paz County, Realty Action, Lease/Conveyance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes Act Classification; Arizona.

SUMMARY: The following public lands in the town of Quartzsite, Arizona, La Paz County, Arizona, have been examined and found suitable for classification for lease or conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.).

Gila and Salt River Meridian

T. 4 N., R. 19 W.,

Sec. 15, E½, E½NW¼, NW¼NW¼, E½SW¼NW¼, NW¼SW¼NW¼, E½SW¼, NW¼SW¼, N½SW¼SW¼;

Sec. 17, all;

Sec. 20, all;

Sec. 21, W½NE¼, N½NW¼, N½SW¼NW¼, NE¼SE¼NW¼, S½S½NW¼ excluding 23.969 acres under R&PP classification AZA–22501;

Sec. 22, NE¼, E½SE¼, E½E½NW¼SE¼, SW¼SE¼;

Sec. 23, N½, N½S½, S½NE¼SW¼SW¼, NW¼SW¼SW¼, SE¼SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, N½S½SE¼, N½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, SE¼SE¼SW¼SE¼, E½SW¼SE¼SE¼, W½SE¼SE¼SE¼;

Sec. 26, S½NE¼NE¼NE¼NE¼, NW¼NE¼NE¼NE¼, S½NE¼NE¼NE¼, E½NW¼NE¼NE¼, S½NW¼NW¼NE¼NE¼, SW¼NW¼NE¼NE¼, S½NE¼NE¼, NE¼NE¼NW¼NE¼, S½NE¼NW¼NE¼, NE¼NW¼NW¼NE¼, S½NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, S½NE¼NE¼NW¼, NW¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼;

Sec. 28, NW¼SE¼;

Sec. 29, N½NE¼NE¼, W½SW¼NE¼NE¼, NW¼NE¼, N½NW¼, S½SW¼;

Containing 3,476.031 acres, more or less.

This action is a motion by the Bureau to make lands available to support community expansion. These lands were identified in the Yuma District Resource Management Plan, as amended, as having potential for disposal. Lease or conveyance of the lands for recreational or public purposes use would be in the public interest.

Lease or conveyances of the lands will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. Rights-of-way for ditches and canals constructed by the authority of the United States.

3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit

comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Upon the effective date of classification, the lands will be open to the filing of an application under the R&PP Act by any interested, qualified applicant. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Mike Taylor, Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300.

Dated: May 14, 1990.

Herman L. Kast,

District Manager.

[FR Doc. 90–11890 Filed 5–22–90; 8:45 am]

BILLING CODE 4310–32–M

[AZ–050–00–4212–11; AZA–24242]

Arizona: La Paz County, Realty Action, Lease/Conveyance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes Act Classification; Arizona.

SUMMARY: The following public lands in La Paz County, Arizona, have been examined and found suitable for classification for lease or conveyance to the Town of Quartzsite under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.), for use as a town park.

Gila and Salt River Meridian

T. 4 N., R. 19 W.,
Sec. 22, E½NW¼;
Containing 80.00 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations;

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A Right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to La Paz County by BLM right-of-way permit AZA–22113.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mike Taylor, Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300.

Dated: May 14, 1990.

Herman L. Kast,

District Manager.

[FR Doc. 90–11891 Filed 5–22–90; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–00–4520–12; 0–00160–ILM–94]

Filing of Plats of Survey; California

May 10, 1990.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the California State Office Public room.

FOR FURTHER INFORMATION CONTACT: Clifford Robinson, Branch Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 23N., R. 4E.—Supplemental plat of the East ½ Section 20, accepted March 23, 1990, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest and Plumas National Forest.

T. 25S., R. 19E.—Dependent Resurvey, and Subdivision of Section 33, (Group No. 977) accepted March 19, 1990, to meet certain administrative needs of the Bureau of Land Management, Bakersfield District, Caliente Resource Area.

San Bernardino Meridian, California

T. 3N., R. 4W.—Supplemental plat of Section 19, accepted March 23, 1990, to meet certain administrative needs of the Bureau of Land Management, California Desert District, Barstow Resource Area.

T. 3N., R. 4W.—Supplemental plat of Section 30, accepted March 23, 1990, to meet certain administrative needs of the Bureau of Land Management, California Desert District, Barstow Resource Area.

All of the above listed surveys are now the basic record for decribing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90–11892 Filed 5–22–90; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of Agency Draft Recovery Plan for Relict Trillium for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of an agency draft recovery plan for relict trillium. This species is found primarily on privately owned lands in Alabama, Georgia, and South Carolina. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be recevied on or before July 23, 1990. to receive consideration by the Servcie.

ADDRESSES: Persons wishing to review the draft recovery plan mey obtain a copy by contacting the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801,

telephone 704/259–0321, FTS 672–0321. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the address and telephone number shown above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endanagered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the rececovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a pulblic notice and an opportunity for public review and comment to provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The agency draft recivery plan for the relict trillium outlines a mechanism that provides for the recovery and eventual delisting of this federally endangered species. Relict trillium was listed as an endangered species primarily because of loss of its habitat to residential development, conversion to agricultural use, and timber harvesting. The plan requires that the Service and other cooperators in the recovery of this species determine the biological requirements of the species, determine the number of individuals that constitutes a viable population, determine the size of the land area needed to support a self-sustaining population, and provide for the long-term protection of 12 self-sustaining populations. Two of these populations must be in Alabama, seven in Georgia, and three in South Carolina. This darft of the relict trillium recivery plan was preceded by a technical review draft that was reviewed by species experts and by experts in the protection of rare plants. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 14, 1990.

Brian P. Cole,

Field Supervisor.

[FR Doc. 90–11889 Filed 5–22–90; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

[DES 90–14]

Alaska Region Availability of Draft Environmental Impact Statement and Locations and Dates of Public Hearings on the Proposed Navarin Basin Lease Sale 107

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Navarin Basin. The proposed Navarin Basin Sale 107 will offer for lease approximately 28.2 million acres. Single copies of the draft EIS can be obtained from Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261–4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Faibanks, Alaska; Alaska State Library, Juneau, Alaska, Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114–4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Clacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Brinkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Cambell Community Library/Learning Center, Gambell, Alaska; Colovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kianna Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska, Koyuk City Library, Koyuk, Alaska; Kegoayah Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska, Savoonga Community Library, Savoonga, Alaska; Shatkoolik School Library, Shatoolik, Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska, Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqset, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will be held on the following dates and times indicated:

June 25, 1990, City Hall, St. Paul, Alaska, 7:30 p.m.

June 27, 1990, City Hall, Council Chamber, Unalaska, Alaska, 1 p.m.

June 26, 1990, Community Recreation Center, St. George, Alaska, 7:30 p.m.

June 29, 1990, University Plaza Building, 949 East 36th Avenue, room 601, Anchorage, Alaska, 1 p.m.

The hearings will provide the Secretary of the Interior with information from Government agencies

and the public which will help in the evaluation of the potential effects, including effects on subsistence uses, of the proposed lease sale.

Interested individuals, representatives, of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or Glen Yankus by telephone, (907) 261–4664, by Monday, June 18, 1990.

Time limitation may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplementated by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until July 17, 1990. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until July 17, 1990, and should be addressed to the Regional Director, Minerals Managment Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Dated: May 18, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90–12007 Filed 5–22–90; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–228]

Certain Fans With Brushless DC Motors; Institution of Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission, pursuant to a petition filed on behalf of Matsushita Electric Industrial Co., Ltd and Matsushita Electric Corporation of America (Respondents), has instituted an advisory opinion proceeding relating to the limited exclusion order issued on August 30, 1988, in connection with the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1103.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of sections 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 211.54(b) (19 CFR 211.54(b)).

In the original investigation, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding that certain claims of the patent in controversy (U.S. Letters Patent 4,494,028) were invalid, as anticipated or obvious, but that if those claims had been valid then complainant Rotron, Inc. (now Comair Rotron) would have established a violation of section 337 by Respondents. The Commission reviewed and affirmed the ID's findings that claims 2–4, 7, and 9–12 of the patent in controversy were invalid as obvious, and determined not to review the remaining findings of the ID.

In *Rotron, Inc.* v. *U.S.I.T.C.*, 845 F.2d 1034 (Fed. Cir. 1988), the U.S. Court of Appeals for the Federal Circuit reversed the Commission's finding of patent invalidity respecting claims 3 and 9–12 of the patent in controversy and, in light of the Commission's other findings, found a violation of section 337 of the Tariff Act of 1930 as a matter of law. The Court remanded the investigation to the Commission for appropriate further proceedings.

On August 30, 1988, the Commission issued a limited exclusion order prohibiting the importation into the United States of infringing brushless DC motors and fans with infringing brushless DC motors manufactured abroad by or on behalf of Matsushita Electrical Industrial Company, Ltd., or any related entity, except under license from the patent owner.

On February 15, 1990, a petition for institution of an advisory opinion proceeding or, in the alternative, for modification of the limited exclusion order was filed with the Commission on behalf of Respondents. The petition requested advice as to whether three types of fans with brushless DC motors—Two-Piece MEI Fans, Axially Magnetized MEI Fans and Reluctance Type MEI Fans—infringe the patent in controversy.

Copies of the Commission's order and all other nonconfidential documents filed in connection with this proceeding are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on the limited exclusion order and this investigation can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

By order of the Commission.

Issued: May 15, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–11973 Filed 5–22–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–310]

Certain Pyrethroids and Pyrethroid-Based Insecticides; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Roussel-Uclaf, S.A., Uclaf Corporation, and Roussel Bio Corporation and Respondents Imperial Chemical Industries, PLC, and ICI Americas, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders rview of the initial determination. The initial determination in this matter was served upon the parties on May 17, 1990.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission 500, E Street SW., Washington, DC 20436, no later than 10 days after publication of

this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1802.

By order of the Commission.

Issued: May 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–11979 Filed 5–22–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub. 1)]

Intrastate Rail Rate Authority; Alabama; Recertification

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Alabama for a 5-year period.

EFFECTIVE DATE: The recertification will be effective June 22, 1990 and will expire June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: May 16, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–11975 Filed 5–22–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 15, 1990.

The Office of Management and Budget (OMB) has been sent the following collection of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether Section 3504(h) of Public Law 96–511 applies. Comments and or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated public burden and the associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a previously approved for which approval has expired

(1) Request for recognition as a nonprofit religious, charitable, social service, or similar organization established in the United States under 8 CFR 292.2.

(2) G–27. Executive Office for Immigration Review.

(3) On occasion.

(4) Non-profit institutions. This information is needed from applicants for the Board of Immigration Appeals to make recognition determinations under 8 CFR 292.2.

(5) 46 estimated respondents at 1 hour each.

(6) 46 estimated annual burden hours.

(7) Not applicable under 3504(h).

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

(1) DEA/USMA/USSS Drugs of Abuse Chain of Custody form.

(2) No form number. Drug Enforcement Administration, Office of Personnel, Health Services Unit.

(3) On occasion.

(4) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free Federal workplace.

(5) 1,200 estimated annual responses at .083 hours per response.

(6) 100 estimated annual public burden hours.

(7) Not applicable under 3504(h).

New collection

(1) National Prosecutor Survey Program (NPSP).

(2) NPSP–1. Bureau of Justice Statistics, Office of Justice Programs.

(3) Biennially.

(4) State or local governments. The purpose of this survey is to obtain from prosecutors information concerning felony sentencing, which will be used in conjunction with the National Judicial Reporting Program (NJRP) to analyze sentencing patterns in the United States. Respondents are States' attorneys in the 300 jurisdictions selected for the NJRP sample.

(5) 300 estimated annual responses at .5 hours per response.

(6) 150 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 90–11943 Filed 5–22–90; 8:45 am]

BILLING CODE 4410–18–M

Antitrust Division

United States v. North American Salt Co.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois in *United States* v. *North American Salt Company.*

The Complaint of the United States in this case alleges that the 1988 acquisition of Carey Salt, Inc. ("Carey") by a predecessor of North American Salt Company ("NAMSCO"), through an affiliate of NAMSCO's wholly owned subsidiary American Salt Company ("American"), violated section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the acquisition violated the Clayton Act because its effect may be to substantially lessen competition in the production and sale of rock salt used for highway deicing and agricultural applications in the central United States, an area encompassing Kansas, Nebraska, Missouri, Iowa, central and eastern South Dakota, southern Minnesota, and western Illinois.

Rock salt, which is mined from underground salt deposits, is generally used in applications where cost is the primary purchasing criterion. The American/Carey merger combined two of only three rock salt mines in Kansas and substantially increased concentration of rock salt markets in the central United States.

The proposed Final Judgment requires that NAMSCO divest to a qualified purchaser all of its interests in either Carey's rock salt business in Hutchinson, Kansas or American's rock salt business in Lyons, Kansas. The proposed Final Judgment also enjoins NAMSCO from acquiring another rock salt mine in which it has expressed interest, the Cote Blanche, Louisiana mine of Domtar Inc., unless NAMSCO first divests to two qualified purchasers all of its interests in both Carey's and American's rock salt businesses in Kansas.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the court. Comments should be directed to Kent Brown, Chief, Midwest Field Office, Antitrust Division, U.S. Department of Justice, Room 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604 (telephone: 312/353–7530) within the next 60 days.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Civil No. 90–C–2631.
Filed: May 8, 1990.
Judge Plunkett.

Stipulation

In the matter of: *United States of America,* Plaintiff, v. *North American Salt Co.,* Defendant.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

2. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For the United States of America
Dated: May 7, 1990.

James F. Rill,
Assistant Attorney General.
John W. Clark,
Ann M. Gales,
Attorneys, U.S. Department of Justice, Antitrust Division.

For North American Salt Co.
Dated: April 25, 1990.

Sutton Keany,
Aileen Meyer,
Attorneys, Winthrop, Stimson, Putnam & Roberts.
William T. McGrath,
Attorney, Burke, Wilson & McIlvaine.

Final Judgment

Whereas plaintiff, United States of America, has filed its Complaint herein on May 8, 1990, and plaintiff and defendant, North American Salt Company, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

And Whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas injunction and prompt and certain divestiture are the essence of this Final Judgment and defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or injunction provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "NAMSCO" means North American Salt Company, each of its divisions, subsidiaries, affiliates, predecessors and successors, each other person directly or indirectly, wholly or in part, owned or controlled by it, each joint venture to which any of them is a party, each officer, director, and stockholder of any of them, and each employee, attorney, agent or other person acting for or on behalf of any of them (specifically including American Salt Company and Carey Salt, Inc. and each stockholder of Great Salt Lake Minerals & Chemicals Corp. that also has any direct or indirect interest in NAMSCO).

B. "Cargill" means Cargill, Inc., each of its divisions, subsidiaries, affiliates and successors, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "Cote Blanche mine and related assets" means Domtar's rock salt mine in Cote Blanche, Louisiana and any of the other assets that were to be transferred pursuant to the U.S. Asset Purchase Agreement between Domtar

and defendant dated September 26, 1989.

D. "Domtar" means Domtar Inc., each of its divisions, subsidiaries, affiliates and successors, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

E. "Hutchinson rock salt business" means the following assets:

(1) NAMSCO's rock salt mine in Hutchinson, Kansas;

(2) All other tangible assets that are used or planned by NAMSCO to be used in connection with NAMSCO's business operation of researching, developing, mining, processing, packaging, distributing, or selling rock salt from the Hutchinson mine, including but not limited to: real property and mineral deposits; facilities and equipment used in mining, processing, packaging, storing and distributing rock salt; customer and supplier contracts and lists; loading docks for truck and rail and access to switching services; access to utility lines; and office buildings; but excluding sales personnel and the assets listed in Schedule 1 to this Final Judgment;

(3) All intangible assets, wherever located, that relate in any way to the tangible assets described in sections II.E.(1) and II.E.(2), including but not limited to: exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the tangible assets; nonexclusive, assignable rights to all related proprietary technology and other proprietary business information not solely dedicated to the tangible assets; and NAMSCO's rights in real and personal property and mineral rights.

F. "Hutchinson rock salt and rock salt-related employees" means all of the employees listed in Schedule 2 to this Final Judgment.

G. "Lyons rock salt business" means the following assets:

(1) NAMSCO's rock salt mine in Lyons, Kansas;

(2) All other tangible assets that are used or planned by NAMSCO to be used in connection with NAMSCO's business operation of researching, developing, mining, processing, packaging, distributing, or selling rock salt from the Lyons mine, including but not limited to: Real property and mineral deposits; facilities and equipment used in mining, processing, packaging, storing and distributing rock salt; customer and supplier contracts and lists; loading docks for truck and rail and access to switching services; access to utility lines; and office buildings; but excluding sales personnel and the assets listed in Schedule 3 to this Final Judgment;

(3) All intangible assets, wherever located, that relate in any way to the tangible assets described in sections II.G.(1) and II.G.(2), including but not limited to: Exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the tangible assets; nonexclusive, assignable rights to all related proprietary technology and other proprietary business information not solely dedicated to the tangible assets; and NAMSCO's rights in real and personal property and mineral rights.

H. "Lyons rock salt and rock salt-related employees" means all of the employees listed in Schedule 4 to this Final Judgment.

I. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

J. "Purchaser" means a person obtaining ownership of assets pursuant to this Final Judgment and any successor to, or assignee of, all or substantially all of the assets obtained by the purchaser pursuant to this Final Judgment.

K. "Qualified purchaser" means, with respect to either the Hutchinson rock salt business or the Lyons rock salt business, a prospective purchaser of the business for whom it is demonstrated to the Department's satisfaction that:

(1) The purchase is for the purpose of competing effectively in the production and sale of rock salt;

(2) The prospective purchaser has the managerial, operational, and financial capability to operate the purchased business as an effective competitor in the production and sale of rock salt;

(3) After the purchase is completed, the prospective purchaser will not have, and does not plan to have, any direct or indirect ownership, controlling, managerial or other type of operational interest in any rock salt production facility in Louisiana or any other rock salt production facility in Kansas.

III. Applicability

A. The provisions of this Final Judgment shall apply to NAMSCO, each of its successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for section V.E., with respect to prospective purchasers, and sections IV.D., IV.E. and IV.F., with respect to the purchaser, nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. NAMSCO shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Required Divestiture

A. NAMSCO is hereby ordered and directed to divest to a qualified purchaser all of its direct and indirect ownership and control of either the Hutchinson rock salt business or the Lyons rock salt business in accordance with the procedures specified in this Final Judgment.

B. NAMSCO may divest less than all of the Hutchinson rock salt business or less than all of the Lyons rock salt business, but only with the prior written approval of plaintiff. In the event that plaintiff approves a sale to a purchaser pursuant to this section IV.B., such sale shall fully discharge NAMSCO's divestiture obligation under section IV.A.

C. The divestiture ordered in section IV.A. shall not be made to Cargill, except with the prior written approval of plaintiff.

D. For twelve (12) months following the date of the divestiture, NAMSCO shall provide to the purchaser of the business divested pursuant to section IV.A., if requested by the purchaser, any technical assistance that is useful in the operation of the business, for which assistance NAMSCO will be reimbursed for its costs in an amount equal to the salaries, benefits, and out of pocket expenses incurred in providing such assistance.

E. Within one (1) month of the divestiture ordered in section IV.A., NAMSCO shall notify customers who, at any time since January 1, 1987, purchased rock salt produced by the divested business: (1) That the rock salt they purchased from NAMSCO was produced by the divested business; and (2) that the divested business was sold to the purchaser. NAMSCO shall provide such notice by sending to each applicable customer a letter approved by plaintiff that is substantially in the form of Schedule 5 to this Final Judgment.

F. For each Hutchinson rock salt or rock salt-related employee if the Hutchinson rock salt business is being divested, or for each Lyons rock salt or rock salt-related employee if the Lyons rock salt business is being divested:

(1) No later than twenty-five (25) days before the closing date of the divestiture, NAMSCO shall identify the

employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description, salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;

(2) Upon the request of the purchaser at any time within a period beginning twenty (20) days before the closing date of the divestiture and ending on the closing date of the divestiture, NAMSCO shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employee for the purpose of discussing the purchaser's potential hiring of the employee, and NAMSCO shall encourage the employee to participate in any such meeting with the purchaser.

G. NAMSCO shall use its best efforts to accomplish quickly the divestiture ordered in section IV.A.

V. Appointment of Trustee

A. In the event that NAMSCO has not divested all of its interests required by section IV.A. by August 15, 1990, then Stephens Inc. shall be appointed to act as a trustee with full power and authority to effect the divestiture ordered in section IV.A., provided, however, that plaintiff may, at its sole discretion, extend the time period before the trustee's appointment for an additional period of time not to exceed ninety (90) days if defendant requests such an extension and demonstrates to plaintiff's satisfaction that ongoing negotiations are likely to result in the required divestiture. The trustee shall divest the Hutchinson rock salt business, unless plaintiff and NAMSCO agree in writing, on or before the date on which the appointment of the trustee becomes effective, that the trustee shall instead divest the Lyons rock salt business. The purpose of the trust will be to effect the required divestiture. The divestiture shall be made by the trustee within six months from the date on which the appointment of the trustee becomes effective, and shall be made at such price and on such terms as are then obtainable.

B. After the date on which the appointment of the trustee becomes effective, only the trustee, and not NAMSCO, shall have the right to effect the divestiture ordered in section IV.A. NAMSCO may not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objection by NAMSCO must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has provided notice of the proposed divestiture under the procedures specified in section VII.A. The trustee shall commence efforts to find a qualified purchaser and to effect the required divestiture immediately after the date on which the appointment of the trustee becomes effective. After its appointment becomes effective, the trustee shall at all times use its best efforts to effect the required divestiture. NAMSCO shall use its best efforts to assist the trustee in accomplishing the divestiture. NAMSCO shall promptly notify the trustee of any contact it has had with any person that has made an offer, or expressed any interest or desire, to acquire the rock salt business, and provide the trustee with full details of the contract.

C. The trustee shall serve at the cost and expense of NAMSCO, on terms and conditions agreed to by NAMSCO, plaintiff and the trustee and any additional or modified terms and conditions that the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to NAMSCO and the trust shall then be terminated. The compensation of the trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Upon reasonable notice to defendant, the trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have such full and complete access to the personnel, books, records, and facilities of the rock salt business to be divested as may be useful in accomplishing the divestiture, and NAMSCO shall develop such financial or other information as may be useful in accomplishing the divestiture that the trustee may request. NAMSCO shall take no action to interfere with or to impede the trustee's accomplishment of the required divestiture.

E. In an effort to accomplish a divestiture, the trustee shall make known in the United States and elsewhere the availability of the rock salt business for sale. The trustee shall notify any perons making an inquiry regarding the possible purchase of the rock salt business that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The trustee, with NAMSCO's cooperation as limited by section V.F., also shall furnish to all prospective purchasers who so request, and subject to confidentiality assurances of the type specified in section V.F., all pertinent information (including all financial and operational records, documents and information) regarding the rock salt business, all pertinent inspections of the physical assets of the business, and access to NAMSCO personnel who have had responsibility for any part of the business. At the time it furnishes such information to any person, the trustee shall notify plaintiff of the name, address, and telephone number of the person to whom the information was provided.

F. The trustee and NAMSCO may refuse to furnish or grant any prospective purchaser access to the assets of the rock salt business or to any confidential or proprietary information relating to the business, unless such person shall have executed an appropriate confidentiality agreement that shall prohibit such person from disclosing or using (except for purposes of evaluating the acquisition of the assets to be divested under section IV.A., or unless such person purchases the assets to be divested under section IV.A.) any confidential information of NAMSCO for a period of ten (10) years from the date of the confidentiality agreement.

G. After its appointment, the trustee shall file monthly reports with plaintiff, NAMSCO and the Court setting forth the trustee's efforts to accomplish the divestiture ordered in section IV.A. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accompish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not yet been accomplished, and (3) the trustee's recommendations for any action necessary to complete the required divestiture. The trustee shall at the same time furnish such report to plaintiff and NAMSCO, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter extend the trust and the term of the trustee's appointment and enter such additional orders as may be necessary to ensure that the required divestiture is accomplished within the next three months, or as soon thereafter as possible, which orders may include supplementing the business to be divested with additional assets or facilities of NAMSCO, including but not limited to any assets listed in Schedule 1 or Schedule 3 to this Final Judgment, whichever is applicable. The trust shall

not be terminated until the required divestiture is consummated.

VI. Injunction

A. NAMSCO is enjoined from acquiring any direct or indirect ownership or control of toe Cote Blanche mine and related assets.

B. The injunction set forth in section VI.A. shall expire in the event that NAMSCO satisfies both of the following conditions:

(1) The divestiture ordered in Section IV.A. is effected under the terms of this Final Judgment; and further

(2) NAMSCO also divests to a qualified purchaser all of its direct and indirect ownership and control of whichever business, the Hutchinson rock salt business or the Lyons rock salt business, was not divested pursuant to section IV.A. A sale will satisfy the condition specified in this section VI.B.(2) only if it is made in accordance with the procedures and requirements specified in Sections VII. and VIII. A sale will not satisfy the condition specified in this section VI.B.(2) if it is made to Cargill without the prior written approval of plaintiff.

VII. Notification

A. NAMSCO or the trustee, whichever is then responsible for effecting the divestiture ordered in section IV.A., or NAMSCO in the event of a second divestiture to satisfy the condition specified in section VI.B.(2), shall notify plaintiff of any proposed divestiture under section IV.A. or section VI.B.(2). If the trustee is responsible, it shall similarly notify NAMSCO. The notice shall set forth all available details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the rock salt business to be divested, together with full details of the same. Within twenty (20) days after receipt of the notice, plaintiff may request from the trustee, NAMSCO. and the proposed purchaser additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Each party from which plaintiff requests information shall provide all responsive information in its possession, custody or control within twenty (20) days of receiving the request, unless plaintiff agrees in writing to extend the time. Until plaintiff certifies in writing that it is satisfied that it has received the available information requested from all parties, the propsosed divestiture shall not be consummated. Within thirty (30) days after receipt of the notice of the proposed divestiture or within fifteen (15) days after receipt of all of the additional requested information, whichever is later, plaintiff shall notify in writing NAMSCO and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing NAMSCO and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to NAMSCO's right to object to the sale on the limited ground specified in section V.B. Upon objection by plaintiff, the proposed dievestiture under section IV.A. or section VI.B.(2) shall not be consummated. Upon objection by NAMSCO under Section V.B., the proposed divestiture shall not be consummated unless approved by the Court and plaintiff. In any such court proceeding involving any objection by NAMSCO, NAMSCO shall have the burden of proof.

B. On the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture ordered in section IV.A. has been completed, NAMSCO shall deliver to plaintiff a written report as to the fact and manner of compliance with NAMSCO's obligations under section IV. Each such report shall include, for each person who during the period preceding the delivery of the report made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in either the Hutchinson rock salt business or the Lyons rock salt business, the name, address, and telephone number of that person and a detailed description of each previously unreported contact with that person during that period. NAMSCO shall maintain full records of all efforts made to effect any divestiture under section IV.A. or section VI.B.(2).

VIII. Financing

NAMSCO shall not finance all or any part of any purchase made pursuant to section IV.A. or section VI.B.(2) without the prior written approval of plaintiff.

IX. Preservation of Assets

Until the divestiture ordered in section IV.A. is completed:

A. NAMSCO shall continue to operate the Hutchinson rock salt business and the Lyons rock salt business as ongoing businesses.

B. NAMSCO shall take all steps necessary to assure that all facilities and assets included in either the Hutchinson rock salt business or the Lyons rock salt business are fully maintained in operable condition at their current capacity configurations, and shall maintain and adhere to normal repair and maintenance schedules for all such facilities and assets and at least preserve and adhere to such schedules as they existed on January 1, 1990.

C. Except as described in Schedule 6 to this Final Judgment, NAMSCO shall refrain from altering or selling, without the prior written approval of plaintiff, any of its facilities or assets in Hutchinson or Lyons, other than in the ordinary course of business.

D. NAMSCO shall refrain from taking any action that would jeopardize the sale of the Hutchinson rock salt business or the sale of the Lyons rock salt business as a viable competitor in any market for rock salt.

E. NAMSCO shall not terminate or reduce one or more current employment, salary, or benefit agreements for any of the Hutchinson rock salt or rock salt-related employees or Lyons rock salt or rock salt-related employees, as listed on Schedules 2 and 4 to this Final Judgment, or transfer any such employee, except with the prior written approval of plaintiff: *Provided, however,* That NAMSCO may discharge an employee for misconduct with contemporaneous notice to plaintiff.

F. NAMSCO shall take no steps to further integrate either the Hutchinson rock salt business or the Lyons rock salt business with any of its other assets or business operations.

G. NAMSCO shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), any assets included within the Hutchinson rock salt business or the Lyons rock salt business, except that any component of such assets that is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified to plaintiff as a replacement component.

X. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to NAMSCO made to its principal offices, be permitted:

(1) Access during office hours to inspect and copy all books, ledgers,

accounts, correspondence, memoranda, and other records and documents in the possession or under the control of NAMSCO, which may have counsel present, relating to any matters contained in this Final Judgement; and

(2) Subject to the reasonable convenience of NAMSCO and without restraint or interference from NAMSCO, to interview NAMSCO's officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to NAMSCO at its principal offices, NAMSCO shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section X. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by NAMSCO to plaintiff, NAMSCO represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and NAMSCO marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to NAMSCO prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to the NAMSCO is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

This Final Judgment shall expire on the tenth anniversay of the completion of the divestiture ordered in section IV.A. herein.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

United States District Judge.
Dated:

Schedule 1—Assets Excluded From the "Hutchinson Rock Salt Business"

1. All tangible assets owned by NAMSCO which are not located in Hutchinson, Kansas, except computer programs, files, records, and documents to the extent useful for the production or sale of rock salt from the Hutchinson mine.

2. All assets owned by NAMSCO which are located in Hutchinson, Kansas and which are used solely in connection with the operation of NAMSCO's evaporation facility.

3. The assets identified below in Hutchinson, Kansas:

a. Office building located at 1800 Carey Boulevard, Hutchinson, Kansas (the "Office Building"), and all office equipment, furniture, print machine, telephone system, data processing equipment, files, training materials and other assets located in the Office Building, except computer programs, files, records, and documents to the extent useful for the production or sale of rock salt from the Hutchinson mine.

b. Data processing equipment located at the NAMSCO evaporation plant in Hutchinson, Kansas.

c. Backup power line, except that the purchaser shall have access to the line as specified in section II.E.(2) of the Final Judgment and as negotiated with the purchaser.

d. All property, assets and equipment owned by the Hutchinson & Northern Railway Company, except that the purchaser shall have access to switching services as specified in section II.E.(2) of the Final Judgment and as negotiated with the purchaser.

e. Five 50-foot bulk boxcars, numbers CSM 15, 16, 17, 18 and 19.

f. Laboratory building located at the NAMSCO evaporation plant in Hutchinson, Kansas (the "Lab Building") and all laboratory equipment, data processing equipment, materials, samples and other assets located in the Lab Building, except any such assets that are used solely in connection with rock salt and any files, records or documents located in the Lab Building to the extent useful for the production or sale of rock salt from the Hutchinson mine.

g. All real property and salt rights identified on Attachment A hereto as land owned and salt rights included with the Hutchinson evaporation facility.

h. Above-ground buildings owned by Underground Vaults and Storage Inc. located at the NAMSCO rock salt mine in Hutchinson, Kansas.

i. All spare parts, tools and supplies located in the NAMSCO evaporation plant store room and maintenance shop, except items used or planned by NAMSCO to be used solely in connection with the production or sale of rock salt from the Hutchinson mine.

k. Grain harvested in 1989 or 1990 pursuant to farm lease with Richard Walsten, effective August 1, 1989 through July 31, 1990.

Attachment A

North American Salt Company, Hutchinson Mine Divesture

Property and Salt Rights

The attached map, titled "Salt Rights and Property"* describes the property held in Reno County, Kansas, by the North American Salt Company.

The dark line running East-West through the centers of sections 7, 8, and 9, and North-South through the centers of sections 9, 16, 21, and 28, designate the separation of the properties to be retained by the evaporation plant and divested with the salt mine. The 12 acre parcel designated SW¼ Sec. 15 T23 R5W will be retained by the evaporation plant.

The properties to be included with the salt mines are:

Land Owned: SE¼ Sec. 16 T23 R5W, West Mine Road
Approximate Acres: 78

Salt rights	Approximate acres	Approximate unmined acres
NE¼ Sec. 28 T23 R5W	148	148
NW¼ NW¼ Sec. 23 T23 R5W	40	40
NE¼ Sec. 22 T23 R5W	160	160
NW¼ Sec. 22 T22 R5W	160	80
SE¼ Sec. 22 T23 R5W	158	158
SW¼ Sec. 22 T23 R5W	60	60
NE¼ Sec. 21 T22 R5W	148	20
SE¼ Sec. 21 T23 R5W	148	25
NE¼ Sec. 16 T23 R5W	117	0
SE¼ Sec. 16 T23 R5W	[1] 114	10

* Copy of Salt Rights and Property map available upon request within the next 60 days to: Kent Brown, Chief, Midwest Field Office, Antitrust Division, U.S. Department of Justice, Room 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604 (telephone: 312/353-7530).

Salt rights	Approximate acres	Approximate unmined acres
NE¼ Sec. 15 T23 R5W	155	155
NE¼ Sec. 15 T23 R5W	65	65
NW¼ Sec. 15 T23 R5W	138	138
SW¼ Sec. 15 T23 R5W	92	0
SW¼ Sec. 14 T23 R5W	40	40
NE¼ Sec. 10 T23 R5W	160	160
SE¼ Sec. 10 T23 R5W	159	159
NW¼ Sec. 10 T23 R5W	160	160
SW¼ Sec. 10 T23 R5W	160	160
N½ NW¼ Sec. 9 T23 R5W	80	80
SE¼ Sec. 9 T23 R5W	[2] 2	2
NE¼ Sec. 8 T23 R5W	[3] 57	57
SE¼ Sec. 4 T23 R5W	160	160
SE¼ Sec. 3 T23 R5W	[4] 5	5
SW¼ Sec. 2 T23 R5W	20	20
Total	2,706	2,062

[1] Excludes Santa Fe property.
[2] Several small plots.
[3] (Plots).
[4] Small plots.

Note: 5 Entryways under Santa Fe Railroad located in Sections 15 and 16.

Schedule 2

Hutchinson Rock Salt Employees:

Max Liby
Lane Johnston
Kris Lindenberger
Gary Honeycutt
Al Cooper
Davis Owens
Margaret Young

Hourly employees who work in the Hutchinson rock salt mine.

Related Hutchinson Rock Salt Employees (sales personnel employed by NAMSCO who sell salt products for NAMSCO, includng rock salt products produced from the Hutchinson mine).

Howard Hammond
Mike McMurdo
Rodney Longhofer
Bill Cowan
Frank Steele
Tim Dworak
Andrew Burr
Earl Barker
Joe Ureill
Herman Popp
Dick Kortemeier
Rich McMullin
Aaron Hill
Ed Cox
George Gomoll
John Schrock
Victor Carnero
Paul Crosley
Jim Mowry
Jack Novacek
Corky Marshall
Jack Gibboney, Jr.
Charley Mylander
Bob Essmeyer
Larry Engelkemier

Assets Excluded From the "Lyons Rock Salt Business"

1. All tangible assets owned by NAMSCO which are not located in Lyons, Kansas, except computer programs, files, records and documents to the extent useful for the production or sale of rock salt from the mine in Lyons, Kansas.

2. All assets owned by NAMSCO which are located in Lyons, Kansas and which are used solely in connection with the operation of NAMSCO's evaporation facility.

3. The assets identified below in Lyons, Kansas:

a. Plant office building (the "Office Building") and all office equipment, furniture, telephone system, data processing equipment, files, and other assets located in the Office Building, except computer programs, files, records, and documents to the extent useful for the production or sale of rock salt from the Lyons mine.

b. Data processing equipment located at the NAMSCO evaporation plant in Lyons, Kansas, excluding computer programs to the extent useful for the production or sale of rock salt from the Lyons mine.

c. Electrical power supply lines owned by NAMSCO, except that the purchaser shall have access to such lines as specified in section II.G(2) and Schedule 6 to the Final Judgment and as negotiated with the purchaser.

d. Railroad sidetracks owned by NAMSCO, except that the purchaser shall have access to switching services as specified in section II.G(2) of the Final Judgment and as negotiated with the purchaser.

e. Laboratory and Technical Services Building located in Lyons, Kansas (the "Lab Building") and all furniture, equipment, print machine, files, training materials and other assets located in the Lab Building, except any such assets that are used solely in connection with rock salt and any files, records or documents located in the Lab Building to the extent useful for the production or sale of rock salt from Lyons mine.

f. All real property and salt rights identified on Attachment A hereto as land owned and salt rights included with the Lyons evaporation facility.

g. Water supply system including emergency fire supply and pumping system, except that provision shall be made for the purchaser to have access to such systems or their equivalent as indicated in Schedule 6 to this Final Judgment and as negotiated with the purchaser.

h. All spare parts, tools and supplies located in the store room, maintenance shops, and package material warehouse, except items used or planned by NAMSCO to be used solely in connection with the production or sale of rock salt from the Lyons mine.

j. Grain harvested during 1990 pursuant to farm leases.

j. All processing and storage buildings and facilities owned by NAMSCO in Lyons, Kansas, except the buildings and facilities identified below and any other buildings or facilities that are used or planned by NAMSCO to be used solely in connection with the production or sale of rock salt from the Lyons mine:

(1) Rock salt processing plant
(2) Bulk rock salt rail loading canopy and scales, loading system
(3) Bulk rock salt truck loading building, scales and equipment
(4) A-frame rock salt storage building and equipment
(5) 4750-square foot finished goods storage building
(6) 15,000-square foot packaging material storage building
(7) Tipple building, hoist structure, conveyor system
(8) Hoist building and equipment.

k. All ground-based mobile processing and material handling equipment owned by NAMSCO in Lyons, Kansas, except the equipment identified below and any other equipment that is used or planned by NAMSCO to be used in connection with the production or sale of rock salt from the Lyons mine:

(1) 1 front end loader
(2) 3 forklifts
(3) 2 of 3 sewing machine systems in the rock mill (one sewing machine system and plastic bag sealer, for the exclusive use in the evaporation production process, to be moved as described in Schedule 6 to this Final Judgment, is not included).

1. All roadways and parking areas, except that provision shall be made for the purchaser to have rights of way and easements to such roadways and parking areas that are useful for the operation of the Lyons rock salt business, as negotiated with the purchaser.

m. Natural gas supply and distribution

piping other than in buildings included in the Lyons rock salt business, except that provision shall be made for the purchaser to have access to natural gas supply and distribution piping as indicated in Schedule 6 to this Final Judgment and as negotiated with the purchaser.

Attachment A

North American Salt Co., Lyons Mine Divestiture

Property and Salt Rights Rights—Map Dated 4/9/90 *

The heavy line running along the east side of Section 3 then along the South side of Section 3 to the half section point then South along the half section of Section 10, then West along the South side of Section 10, then south between Sections 15 and 16 designates the separation of properties to be divested with the mine and retained by the evaporation plant.

The property descriptions included with the mine are:

	Annual rate	Expires	Approx. acres	Approx. unmined acres
Land Owned:				
Tract E½, NW¼, Section 10: Plant Site—Parcels under buildings and structures. Map dated 4/9/90			41	0
Salt Rights:				
Owned:				
West ½, Section 9			320	320
S½ NE¼, Section 9			80	60
W½ NW¼, Section 16			80	80
N½, Section 17			320	320
Leased:				
SE¼, Section 9	$60	2010	160	140
N½, NE¼, Section 9	50	(1)	80	0
Tract NW¼, Section 10	70	2009	69	0
Tract SW¼, Section 10	130	2009	210	180
Tract E½, SW¼, Section 3	(2)	2047	24	0
S½, SE¼, Section 3	40	2009	80	0
Total			1,464	1,100

[1] Cont.
[2] One time pmt.
Note: Also area mined under UP/MOP R/W in Sections 10 and 13.

Lyons Rock Salt Employees:

Robert Asher

Hourly employees who work in the Lyons rock salt mine.

Related Lyons Rock Salt Employees (sales personnel employed by NAMSCO who sell salt products for NAMSCO, including rock salt products produced from the Lyons mine):

Howard Hammond
Mike McMurdo
Rodney Longhofer
Bill Cowan
Frank Steele
Tim Dworak
Andrew Burr
Earl Barker
Joe Uriell
Herman Popp
Dick Kortemeier
Rich McMullin
Aaron Hill
Ed Cox
George Gomoll
John Schrock
Victor Carnero
Paul Crosley
Jim Mowry
Jack Novacek
Corky Marshall
Jack Gibboney, Jr.
Charley Mylander
Bob Essmyer
Larry Engelkemier

Schedule 5

[Letterhead of North American Salt Company]

[Date]

[Customer Name & Address]

RE: Sale of [Hutchinson or Lyons] Rock Salt Business to [Purchaser]

We are pleased to announce that we have completed the sale of our [Hutchinson or Lyons] rock salt business to [Purchaser] effective [Date]. [Purchaser] has been in business for years and has the managerial, operational and financial strength to successfully continue this business.

Your territory manager will be in contact with you this week to answer any questions. In addition, you can contact [Purchaser] at [telephone number] with any questions. We appreciate your past business and want to ensure that the transition goes smoothly.

Very truly yours,

North American Salt Company.

Timothy J. Sullivan,

Vice President, Sales and Marketing.

Schedule 6—American Salt Company

March 30, 1990.

Ms. Chuca Meyer,

Winthrop, Stimson, Putnam & Roberts, 1133 Connecticut Avenue—Suite 1200, Washington, D.C. 20036.

Dear Ms. Meyer:

Re: Lyons Mine—Action Plan.

We have reviewed the steps necessary to convert the Lyons mine to a stand alone facility. We believe the following items, descriptions, cost estimates and time schedules reflect the best preliminary look at accomplishing this effort. Obviously, the estimates used are very rough, and we hope contain enough contingency to cover incidentals we've overlooked, or items we've underestimated. Attached to this letter is a time schedule for the items discussed below.

1. Utilities—Provide potable water, fire protection water, waste water disposal, natural gas, compressed air and electrical service for the separate facility.
   Estimate $50,000
2. New Telephone System—
   Estimate $10,000
3. Move evaporated salt mini-cube screening, cooling and bagging system to the south end of plant away from the rock salt mill.
   Estimate $150,000 minimum
4. Construct space for a mine office, maintenance shop, and storeroom. This space to be inside existing bag warehouse and includes rest rooms, heating and cooling systems, and basic maintenance equipment and office equipment.

* Copies of NAMSCO-Lyons Plant Site and NAMSCO-Lyons Plant Property and Rights maps available upon request within the next 60 days to: Kent Brown, Chief, Midwest Field Office, Antitrust Division, U.S. Department of Justice, Room 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604 (telephone: 312/353-7530).

Estimate $100,000

5. Construct 15,000 sq. ft. of warehouse spaqce for the evaporation plant to replace the 25,000 sq. ft. in the bag warehouse sold with the mine. It would not be necessary to complete this project prior to the sale of the mine.

Estimate $300,000

Total minimum cost to separate the mine and replace the space lost to the evaporation plant is estimated at $600,000 based on this preliminary look. Some of the items which are included in these general categories are as follows:

1. Compressed air needed for bagging and dust collection.
2. Potable water supply.
3. Fire protection.
4. Disposal of waste water from the wet dust collector and from the mine water collection system.
5. Natural gas supply from the existing line through an existing meter for drying and building heating.
6. Now telephone system for the mine facilities.
7. Electrical supply from the existing system through three meters.
8. Mine office, shop and parts storage space within the existing bag storage area.

If you have any questions concerning these items, please call me.

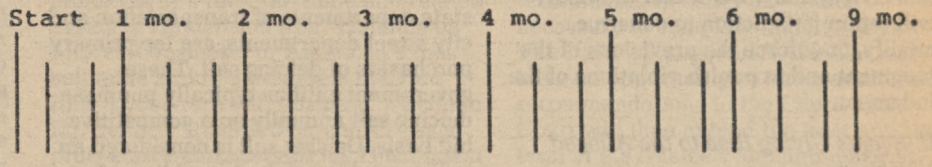
Sincerely yours,

Chuck Sheppard,

Vice President/Manufacturing.

CS/sn
Attachment
cc: George Harris

TIME SCHEDULE



1. Compressed Air _____
2. Potable Water _____
3. Fire Protection _____
4. Telephone System _____
5. Electrical System _____
6. Office, Shop, Storage _____
7. Move Minicube System _____

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendant North American Salt Company ("NAMSCO") in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 8, 1990, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, challenging the August 1988 acquisition of Carey Salt, Inc. ("Carey") by NAMSCO, through one of its predecessors, as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. Both Carey and another NAMSCO subsidiary, American Salt Company ("American"), produce rock salt, a type of dry salt (sodium chloride) that is mined from underground salt deposits for use in highway deicing, agricultural feed and other applications. The complaint alleges that the effect of NAMSCO's acquisition of Carey (hereinafter the "American/Carey merger") may be to substantially lessen competition in the production and sale of deicing rock salt and agricultural rock salt in two geographic markets in the central United States: (1) A "West Central" market encompassing Kansas, Nebraska, western Missouri and Iowa, and central and eastern South Dakota; and (2) an "East Central" market encompassing eastern Missouri and Iowa, southern Minnesota, and western Illinois. The complaint requests that NAMSCO be ordered to divest to a qualified purchaser all of its interest in either Carey's rock salt mine and related assets in Hutchinson, Kansas or American's rock salt mine and related assets in Lyons, Kansas.

In addition, the complaint requests that NAMSCO be enjoined from acquiring another rock salt mine in which it has expressed interest, the Cote Blanche, Louisiana mine of Domtar Inc. ("Domtar"), unless NAMSCO first diverts to two different qualified purchasers all of its interests in both Carey's and American's rock salt businesses in Kansas. The complaint alleges that Domtar sells deicing rock salt produced at its Cote Blanche mine in the East Central market in competition with deicing rock salt produced at Carey's and American's

mines. NAMSCO's acquisition of Domtar's Cote Blanche mine would further reduce competition in the East Central deicing rock salt market unless NAMSCO first divests its interest in both Carey's and American's rock salt businesses in Kansas.

The United States and NAMSCO have agreed that the proposed Final Judgment, which embodies the relief requested in the complaint, may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. NAMSCO has agreed to comply with the provisions of the proposed Final Judgment pending its approval by the Court. Entry of the proposed Final Judgment will terminate this civil action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Judgment and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violations

1. The Acquisition

The American/Carey merger occurred on August 19, 1988, when an affiliate of American acquired all of the salt operations of Carey. Following the merger, American and Carey became wholly-owned subsidiaries of NAMSCO's predecessor, Carey Salt Holdings, Inc. ("CSH") (hereinafter "NAMSCO" refers to NAMSCO, CSH and all other predecessors of NAMSCO). The American/Carey merger combined under NAMSCO's ownership Carey's rock salt mine and other salt operations in Hutchinson, Kansas and American's rock salt mine and other salt operations in Lyons, Kansas, about 30 miles from Hutchinson. In 1988, NAMSCO reported net sales of about $51 million from its salt operations.

On March 30, 1990, NAMSCO purchased the Canadian salt production facilities and related distribution assets of Domtar. As the transaction was initially structured, NAMSCO also would have acquired Domtar's rock salt mine in Cote Blanche, Louisiana and related distribution assets. However, NAMSCO and Domtar restructured the transaction to exclude the Cote Blanche mine and related assets in order to resolve antitrust concerns expressed by the United States Department of Justice. NAMSCO continues to express an interest in acquiring the Cote Blanche mine, and Domtar has previously expressed a willingness to sell the mine to NAMSCO.

2. Market Conditions

Salt is a low-value, high bulk commodity which is an essential input in a wide variety of end uses. Rock salt is the least pure and least expensive type of salt available in the central United States. Rock salt generally is used in the central United States in applications where rock salt is capable of filling a salt need and cost is the primary purchasing criterion, such as highway deicing and certain agricultural feed applications.

The largest segment of rock salt usage by volume in the central United States is deicing salt, which is applied to roadways to melt ice and snow. Deicing rock salt generally is of a medium grain size and contains an anti-caking additive. Government entities, such as state departments of transportation and city street departments, are the primary purchasers of deicing salt. These government entities typically purchase deicing salt annually on a competitive bid basis. Deicing salt is considered an indispensable safety item. Alternative deicing products are significantly more expensive than rock salt in the central United States, and deicing purchasers in the area do not view any other means of ice control as an economic substitute for rock salt.

Agricultural applications account for the second largest segment of rock salt usage by volume in the central United States. Agricultural rock salt generally is one of a fine grain size. Salt is an essential nutrient in the diets of livestock and poultry. Agricultural salt purchasers include feed mix companies, agricultural cooperatives and farmers. The purchasers in the central United States who currently buy rock salt for animal feed applications do so because rock salt meets their salt specifications and is significantly less expensive than other available types of salt. A small but significant increase in the price of agricultural rock salt would not cause these purchasers to replace rock salt with other types of salt.

Transportation costs comprise a substantial portion of the delivered price of rock salt and limit the area that is served by the mines in each rock salt production region. The mines in the Kansas and Louisiana production regions are the only mines capable of serving customers in the central United States with deicing and agricultural rock salt at competitive delivered prices. Carey's mine in Hutchinson and American's mine in Lyons are two of only three salt mines in Kansas. There are also three rock salt mines in Louisiana, including Domtar's Cote Blanche mine.

The Kansas mines ship rock salt by rail or truck transportation throughout the West Central and East Central markets. The Louisiana mines barge rock salt up the Mississippi River to customers located in the East Central market. The Kansas and Louisiana mines compete with one another in the East Central market, but the Kansas mines are the only mines able to serve the West Central market.

The delivered prices of Kansas deicing and agricultural rock salt in the West Central market, and the delivered prices of Kansas and Louisiana deicing and agricultural rock salt in the East Central market, are substantially less than the delivered prices of other types of salt, including vacuum pan evaporated salt, solar salt, imported rock salt, and rock salt from other North American production regions. These other types of salt would continue to be substantially more expensive than rock salt in the central United States in the event of small but significant nontransitory increases in the f.o.b. mine prices of Kansas deicing and agricultural rock salt destined for the West Central market, or of Kansas and Louisiana deicing and agricultural rock salt destined for the East Central market.

Deicing and agricultural purchasers of Kansas and Louisiana rock salt in the central United States buy such rock salt primarily because it is the least expensive salt available to them. Because Kansas and Louisiana rock salt would continue to be the least expensive available salt in the event of small but significant nontransitory increases in the f.o.b. mine prices, such price increases would cause few, if any, deicing and agricultural purchasers to begin substituting other types of salt for Kansas rock salt in the West Central market, or for Kansas and Louisiana rock salt in the East Central market.

The complaint alleges that the production and sale of deicing rock salt and the production and sale of agricultural rock salt constitute lines of commerce and relevant product markets for antitrust purposes. The complaint further alleges that the West Central market and the East Central market constitute relevant geographic markets for antitrust purposes.

The West Central markets for the production and sale of deicing rock salt and agricultural rock salt, served by the Kansas mines, were highly concentrated before the American/Carey merger and became substantially more concentrated as a result of the merger. The merger reduced from three to two the number of independent rock salt producers able to

serve these markets at competitive delivered prices. The resulting increase in concentration is demonstrated by the Herfindahl-Hirschman Index ("HHI"), an indicator of market concentration. If the HHI is calculated by assigning equal market shares to the firms that serve the West Central deicing and agricultural rock salt markets, the merger increased the HHI by 1667 points, from 3333 to 5000. If the HHI is calculated by assigning market shares based on the relative capacity of each firm that serves the markets, the merger increased the HHI by 1280 points, from 3728 to 5008. A market with an HHI of 1800 points is considered highly concentrated.

In the East Central markets, served by the Kansas and Louisiana mines, the American/Carey merger has increased concentration by reducing from seven to six the number of firms able to supply deicing rock salt throughout the area, and from six to five the number of firms able to supply agricultural rock salt throughout the area. The merger has increased the HHI for the East Central deicing rock salt market by 238 points, from 1429 to 1667 (if equal market shares are assigned to the firms serving the market), or by 46 points, from 2150 to 2196 (if market shares are assigned based on the relative capacity of each firm serving the market). The HHI for the East Central agricultural rock salt market has increased by 333 points, from 1667 to 2000 (if equal shares are assigned to the firms serving the market), or by 73 points, from 2736 to 2809 (if shares are assigned based on the firms' relative capacities). The acquisition by NAMSCO of Domtar's Cote Blanche mine would further increase concentration in the East Central deicing rock salt market.

The complaint alleges that substantial time and expense is required to establish a rock salt mine and a marketing and distribution network for the production and sale of deicing and agricultural rock salt. New entry therefore is unlikely to deter noncompetitive performance in the West Central and East Central rock salt markets.

III. Explanation of the Proposed Final Judgment and its Anticipated Effects on Competition

The United States brought this action because, as described above, the effect of the American/Carey merger may be to substantially lessen competition in the West Central and East Central markets for the production and sale of deicing rock salt and agricultural rock salt, in violation of section 7 of the Clayton Act. The proposed Final Judgment will restore competitive conditions in these deicing and agricultural rock salt markets to the *status quo* that existed before the American/Carey merger by requiring NAMSCO to divest one of its two Kansas rock salt businesses to a qualified purchaser approved by the United States. The proposed Judgment provides additional protection for competitive conditions in the East Central deicing rock salt market by enjoining NAMSCO from acquiring Domtar's Cote Blanche mine unless NAMSCO first divests to two different qualified purchasers all of its interests in both of its Kansas rock salt businesses.

Section IV.A. of the proposed Final Judgment requires NAMSCO to divest to a qualified purchaser all of its interest in either Carey's rock salt mine and related assets in Hutchinson (the "Hutchinson rock salt business) or American's rock salt mine and related assets in Lyons (the "Lyons rock salt business"). Section II.J. defines "qualified purchaser" as a prospective purchaser of the Hutchinson or Lyons rock salt business who demonstrates to the satisfaction of the United States that: (1) It is purchasing the business for the purpose of competing effectively in the production and sale of rock salt, (2) it has the managerial, operational and financial capability to operate the purchased business as an effective competitor in the production and sale of rock salt, and (3) following the purchase, it will not have or plan to have any interest in any other Kansas or Louisiana rock salt mine. The United States' review of the purchaser's qualifications under this provision will ensure that the rock salt business is divested to a firm possessing the intention and ability to compete effectively in the production and sale of deicing and agricultural rock salt in the East Central and West Central markets.

The proposed Judgment specifies that a divestiture may not be made to Cargill, Inc. without the prior written approval of the United States. In addition, section VIII. prohibits NAMSCO from financing all or any part of any purchase made pursuant to the proposed Judgment without the United States' prior written consent.

Section IV.G. of the proposed Judgment obligates NAMSCO to use its best efforts to accomplish the required divestiture quickly. If NAMSCO has not accomplished the divestiture by August 15, 1990, or within any extension granted by the United States in the event of ongoing negotiations between NAMSCO and a prospective purchaser, then Stephens Inc. of Little Rock, Arkansas will be appointed to act as trustee with full power and authority to effect the required divestiture. The trustee will divest the Hutchinson rock salt business, unless the United States and NAMSCO have agreed that the trustee will instead divest the Lyons rock salt business. Under sections V.A. and V.B., the trustee must use its best efforts to accomplish the divestiture within six months, at such price and on such terms as are then obtainable.

Pursuant to section VI.G. of the proposed Judgment, if the trustee has not accomplished the divestiture within six months after its appointment, the trustee must file with the Court and the parties a report detailing the trustee's efforts to accomplish the divestiture, its views as to why the divestiture has not been accomplished, and its recommendations for any action necessary to complete the divestiture. The United States and NAMSCO will have an opportunity to make additional recommendations to the Court. The Court will then extend the trust and the term of the trustee's appointment and enter whatever additional orders may be necessary to ensure that the divestiture is accomplished within the next three months or as soon thereafter as possible. The Court's orders may include supplementing the rock salt business to be divested with additional assets or facilities of NAMSCO. The trust will not terminate until the required divestiture is consummated.

Section VI.A. of the proposed Judgment enjoins NAMSCO from acquiring any interest in Domtar's Cote Blanche mine and related assets. As provided in section VI.B., the injunction will expire in the event that NAMSCO (1) completes the divestiture ordered in section IV.A., and (2) also divests to a second qualified purchaser all of its interest in whichever of its two rock salt businesses it has not already divested pursuant to section IV.A.

Section VII.A. of the proposed Judgment establishes the procedure for review and approval of any proposed divestiture under section IV.A. or section VI.B.(2). NAMSCO or the trustee, whichever is then responsible for effecting a divestiture, must notify the United States of any proposed divestiture. The United States may then request additional information from the trustee, NAMSCO, and the proposed purchaser. Within thirty days after receiving notice of the proposed divestiture or within fifteen days after receiving all of the additional requested information, whichever is later, the United States will notify NAMSCO and the trustee (if applicable) if it objects to the proposed divestiture. If the United

States objects, then the divestiture may not be consummated. If the United States does not object to a proposed divestiture, then the divestiture may be consummated, subject only to NAMSCO's limited right to object to a divestiture proposed by the trustee on the ground of the trustee's malfeasance, as specified in section V.B.

The proposed Judgment contains several provisions that are intended to facilitate a purchaser's efforts to assume control over the divested business and begin competing effectively in the production and sale of rock salt to all of the customers that were served by the business before the divestiture. Once a divestiture has been consummated under section IV.A., NAMSCO is obligated by section IV.D. of the proposed Judgment to provide the purchaser with any requested technical assistance that is useful in the operation of the divested business. The purchaser must reimburse NAMSCO for its costs in providing such services. In addition, within one month of the divestiture's consummation, section IV.E. requires NAMSCO to notify customers of the divested business that the business has been sold to the purchaser. NAMSCO must also provide the purchaser with information about any NAMSCO employees who have responsibilities related to the divested business (including sales personnel), and must make such employees available for interviews by the purchaser, during office hours, within the twenty-day period immediately preceding the closing date of the divesture.

Until the divestiture ordered in section IV.A. is completed, section IX. of the proposed Judgment requires NAMSCO to preserve all facilities and assets included in the Hutchinson and Lyons rock salt businesses and refrain from taking any action that would jeopardize the sale of either business.

Section XII. provides that the proposed Judgment will expire on the tenth anniversary of the completion of the divestiture ordered in section IV.A.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against NAMSCO.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and NAMSCO have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Kent Brown, Chief, Midwest Field Office, Antitrust Division, U.S. Department of Justice, Room 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Under section XI. of the proposed Final Judgment, the Court will retain justification over this matter for the purpose of enabling the United States or the defendants to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment provides all of the relief necessary to cure the Clayton Act violation alleged in the complaint. The American/Carey merger eliminated one competitor in the West Central and East Central markets for the production and sale of deicing rock salt and agricultural rock salt. The divestiture to a qualified purchaser of one of NAMSCO's rock salt mines in Kansas, as ordered in section IV.A. of the proposed Judgment, will create a new competitor in these deicing and agricultural rock salt markets, thereby restoring competitive conditions in the markets to their premerger status. The proposed Judgment further protects competition in the East Central deicing rock salt market by ensuring that NAMSCO will not acquire Domtar's mine in Cote Blanche, Louisiana so long as NAMSCO retains any ownership interest in either of its Kansas mines.

The United States did not seriously consider any alternatives to the proposed Final Judgment. Although the proposed Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act, 15 U.S.C. 15(b)–(h), have been satisfied, the public will benefit immediately from the safeguards in the Judgment because NAMSCO has stipulated to comply with the Judgment's terms pending its entry by the Court.

VII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

Dated: _____

Ann M. Gales,
Jennifer K. Silvis,
Barry J. Kaplan,
Attorneys, Antitrust Division, U.S. Department of Justice, Rm. 3820, Kluczynski Fed. Bldg., 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 353–7530.

[FR Doc. 90–11974 Filed 5–22–90; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under section 1–5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279), will meet on June 5, 1990, starting at 10 a.m. in

room S4215 ABC, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Approval of Minutes of July 13, 1988 Meeting
III. Appointments and Reappointment to FACOSH
IV. Election of Vice Chairman
V. Forty-fifth Annual Federal Safety and Health Conference
VI. Update on Taskforce to Revise Executive Order 12196
VII. Status of President's Injury/Illness Reduction Goals (Recognition of the agencies that reduced their injury/illness cases under the old goal and the status of the new Presidential goal.)
VIII. The Occupational Safety and Health Administration's Ergonomics Initiative
IX. Federal Agency Targeting Program
X. Update on OSHA Evaluation of Federal Agencies' Safety and Health Programs
XI. Status of Federal Hazard Communication Program
XII. New Business
XIII. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business May 29, 1990, will be provided to the members of the Council and included in the record of the meeting.

If time permits, the Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business May 29, 1990. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, room N3112, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-9329.

Signed at Washington, DC this 17th day of May 1990.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 90-11928 Filed 5-22-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Meetings: Science and Engineering Education Directorate Advisory Committee

The National Science Foundation announces the following meeting:

Name: Advisory Committee to the Directorate for Science and Engineering Education.

Date and Time: Monday, June 11, 1990, 9 a.m.–5 p.m. Tuesday, 9 a.m.–5 p.m.

Place: National Science Foundation, room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Robert L. Russell, Executive Secretary, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550, (202) 357–7926.

Purpose of Committee: To provide advice and recommendations concerning NSF support for science and engineering education.

Agenda: Review of FY 1990 Programs and Initiatives, Review of FY 1991 Programs and Initiatives, Strategic Planning for FY 1992 and Beyond.

Dated: May 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-11998 Filed 5-22-90; 8:45 am]

BILLING CODE 7555-01-M

Meeting: Science and Engineering Equal Opportunities Committee

Name: Committee on Equal Opportunties in Science and Engineering.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Date/Times/Room: June 7 and 8: 8:30 a.m.–5 p.m.—room 540.

Type of Meeting: Open.

Contact: Mary M. Kohlerman, Executive Secretary of the CEOSE, National Science Foundation, room 639 Telephone Number: 202–357–7051.

Purpose of Meeting: To provide advice to the Foundation on policies and activities to encourage full participation of groups currently underrepresented in scientific, engineering, professional and technical fields.

Agenda: June 7—Presentations: 8:30 a.m.–11:30 a.m., Minorities' Issues: 11 a.m., Women's Issues: 11:30 a.m., Lunch: 12 noon. Presentations: 1:30 p.m.–2:15 p.m., Persons with Disabilities' Issues: 2:15 p.m., Presentations: 3 p.m.–5 p.m.

June 8—Full Committee Meeting: 8:30 a.m.–9:30 a.m. Presentations: 9:30–12 noon. Lunch: 12 noon. Presentations: 1:30 p.m.–5 p.m.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Dated: May 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-11999 Filed 5-22-90; 8:45 am]

BILLING CODE 7555-01-M

Meeting: Informal Science Education Panel

The National Science Foundation announces the following meeting:

Name: Informal Science Education, Panel Meeting.

Date and Time: June 14–15, 1990, from 8:30 a.m. to 5 p.m.

Place: The River Inn Board Room, 924 25th Street, NW., Washington, DC.

Type of Meeting: Closed Meeting.

Contact Person: Robert Russell or Kenneth Starr, National Science Foundation, 1800 G, St., NW, Washington, DC 20550, Informal Science Education, room 635–A, Phone (202) 357–7076.

Purpose of Meeting: To provide advice and recommendations concerning Informal Science Education proposals.

Agenda: To review and evaluate Informal Science Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 b (c). Government in the Sunshine Act.

Dated: May 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-12000 Filed 5-22-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

Illinois Power Co., et al., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensees) for the Clinton Power Station,

Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

The licensees have requested a license amendment that would revise the Technical Specification (TS) to add an ACTION for an inoperable ADS accumulator low pressure alarm.

This revision to the Clinton Power Station's license would be made in response to the licensees' application for amendment dated October 30, 1987.

The Need for the Proposed Action

Pursuant to 10 CFR 50.50, IP, et al. have proposed an amendment to Facility Operating License No. NPF–62 which consists of changes to the Technical Specifications. Currently Section 3/4.5 of the Clinton Power Station (CPS) Technical Specifications (TS) contains surveillance requirements for the Automatic Depressurization System (ADS) accumulator low pressure alarm system. However, there is no ACTION included in the Limiting Condition for Operation section that addresses the alarms. Therefore, the licensees have proposed an ACTION to be included when the ADS accumulator low pressure alarm(s) are inoperable.

Environmental Impacts of the Proposed Action

The proposed ACTION statement would require verifying adequate pressure every 12 hours and restoring the alarm(s) to operable within 30 days or to submit a Special Report to the NRC. In addition, the provisions of TS 3.0.4 would not be applicable. The failure of the ADS accumulator low pressure alarm does not necessarily constitute inoperability of the associated ADS valves. Therefore, the proposed change is intended to add an appropriate ACTION when the ADS accumulator low pressure alarm(s) are inoperable.

The Commission has concluded that these changes do not significantly increase the probability or consequences of any accident and that potential radiological releases during normal operations or transients would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located within the restricted areas as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 18, 1988 (53 FR 4916). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Actions

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Nuclear Regulatory Commission's Final Environmental Statement for the Clinton Power Station, Unit 1, dated May 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request of October 30, 1987 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated October 30, 1987 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 15th day of May 1990.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 90–11971 Filed 5–22–90; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee; Meeting

In accordance with the requirements of the Federal Advisory Committee Act (FACA), the Nuclear Safety Research Review Committee (NSRRC) will hold a full committee meeting on June 4 and 5, 1990. The meeting will be held at the Days Inn—Congressional Park Hotel, 1775 Rockville Pike, Rockville, Maryland.

Monday, June 4, 1990

9 am
Call to Order—NSRRC Chairman Todreas.
9:10 am
Review of Responses to NSRRC 3rd and 4th Reports.
Research Management Development.
Research Peer Review Report.
10:30 am
Research Program Update.
11:30 am
Plan for TMI–2 Accident Assessment Report following OECD/NEA Reactor Vessel Sampling Program.
12 Noon
Lunch.
1 pm
High Level Waste Program Plan Review.
2:30 pm
Source Term: Review of Development, Consideration of Revision, and Research Activity.
6 pm
Adjourn.

Tuesday, June 5, 1990

8 am
Advanced Reactor Research Program Planning.
10:30 am
Election of NSRRC Chairman for 1990–1992.
10:45 am
Committee Review of RES Budget Planning.
12 Noon
Lunch.
1 pm
NSRRC Plans for the Coming Year: Appropriations of Existing Subcommittees; Planning of Topics and Meetings; Discussion of Members' Views on Research Programs.
3 pm
Adjourn.

In accordance with the FACA procedures, those portions of the meeting that are open will be transcribed and the transcription will be placed in the Public Document room

(PDR). Members of the public desiring to make oral statements should notify the NSRRC Chairman as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted can be obtained by calling the Designated Federal Offical (DFO), Dr. Robert L. Shepard (telephone: 301/492–3723), between 8:15 am and 5 pm

Dated: May 17, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–11968 Filed 5–22–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Cleveland Electrical Illuminating Co., et. al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 148 to Facility Operating License No. NPF–3, issued to Toledo Edison Company and Cleveland Electric Illuminating Company, which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station located in Ottawa County, Ohio. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications to increase the allowable response time for the High Flux/Number of Reactor Coolant Pumps On (power/pumps) trip function of Table 3.3.–2 of the Reactor Protection System from 451 milliseconds to 631 milliseconds. In addition, a change is made to a footnote to Table 3.3–2 to clarify the identification of the pump monitor.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 26, 1989 (54 FR 43636). 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 not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated February 21, 1989, and supplemented July 19 and September 1, 1989, (2) Amendment No. 148 to License No. NPF–3, (3) the Commission's related Safety Evaluation dated May 16, 1990 and (4) the Environmental Assessment dated May 1, 1990 (55 FR 19374). All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. 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 16th day of May 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Divison of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–11970 Filed 3–22–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–2 (50–280 and –281)]

Virginia Electric and Power Co.; Issuance of Amendment to Materials License SNM–2501

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to Materials License No. SNM–2501 held by the Virginia Electric and Power Company (VEPCO) for the receipt and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation, located on the Surry Power Station site, Surry County, Virginia. The amendment adds Technical Specifications for the use of the Nuclear Assurance Corporation intact 28 assembly (NAC–I28) spent fuel storage cask. The amendment is effective as of the date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), and environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) The application for amendment dated June 21, 1989, and (2) Amendment No. 4 to Materials License No. SNM–2501, and (3) the Commission's letter to the licensee dated May 16, 1990. All of these items are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 16th day of May 1990.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 90–11972 Filed 5–22–90; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, June 7, 1990, from 9 a.m. to 5:30 p.m., and Friday, June 8, 1990, beginning at 8:30 a.m. The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., in the Dupont I, II, and III Meeting Rooms.

An agenda for the meeting will be available on June 1, 1990.

ADDRESSES: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220

Paul B. Ginsburg,

Executive Director.

[FR Doc. 90-11924 Filed 5-22-90; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28015; File No. SR-CBOE-90-08]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Trading in Stocks, Warrants, and Other Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing rules governing the trading of stocks, warrants, and other securities instruments and contracts on the Exchange. The exact text of the proposed rule change is available at the CBOE and the Commission at the address noted in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to expand the scope of its market by authorizing the trading on the Exchange of stocks, warrants, and other securities instruments and contracts on either a listed or unlisted basis. The CBOE proposes to add two new chapters to its Rules of the Board of Governors, Chapter XXX, entitled *Stocks, Warrants and Other Securities*, and Chapter XXXI, entitled *Approval of Securities for Original Listing*. Proposed Chapter XXX would set forth new rules governing trading in stocks, warrants, and other securities on the Exchange, the Intermarket Trading System ("ITS") Plan, and procedures for the settlement of securities transactions. Proposed Chapter XXXI would deal with listing and delisting criteria, listing application procedures and fees, and other matters pertaining to securities proposed to be listed on the Exchange and their issuers. In addition, the Exchange proposes modifications to many of the existing CBOE rules.

The new rules proposed as Chapter XXX would be applicable only to the trading of stocks and warrants, including currency and index warrants, and such other securities instruments and contracts as the CBOE Board of Directors may from time to time declare to be subject to these rules. Securities subject to the Chapter XXX rules would also be subject to the existing CBOE rules in chapters I through XIX to the same extent as those rules presently apply to options contracts, unless otherwise supplemented by the new rules in chapter XXX.[1] In instances where existing CBOE rules have been replaced by particular rules in chapter XXX or where the context otherwise requires, stocks, warrants, and other securities would be governed only by the rules in proposed Chapter XXX.

The existing rules of the Exchange that apply to options already comprehensively address many of the subjects that are required of a national securities exchange engaged in the trading of securities other than options. Consequently, CBOE has amended its rules only as necessary to incorporate any additional or differing standards that may be applicable to the trading of such securities. For example, and as already provided in the CBOE rules with respect to options, there will be a separation of principal and agency functions on the trading floor, subject to an exception for the Designated Primary Market-Maker ("DPM") in those securities for which a DPM, rather than an Order Book Official, has been appointed by the Exchange's Board of Directors. In like manner, the definition of the term "Clearing Corporation" has been amended to provide that when used in reference to any security subject to the rules in new chapter XXX, that term means a securities clearing agency that is registered with the Commission as such under section 17A of the Act and maintains facilities through which transactions in such securities may be compared or settled. Similarly, the definition of the term "Exchange Transaction" would be broadened to include references to the purchase or sale of securities other than options admitted to trading on the Exchange.

The CBOE has made a number of modifications to its current rules to accommodate new equity and equity hybrid products. The following is a description of the more significant proposals.

In chapter III of its rules, the CBOE has added an Interpretation and Policy to existing Rule 3.15 which relates to the disposition of the proceeds from the sale of Exchange memberships. The new Interpretation and Policy provides that the Clearing Corporation priority that is set forth in that Rule shall inure to the benefit of each such Clearing Corporation pro rata if more than one Clearing Corporation is seeking reimbursement.

Existing Rule 4.7 of chapter IV would be amended to prohibit manipulative operations. This prohibition would supplement CBOE's existing anti-manipulation prohibition and would apply to all transactions on the Exchange and not merely the securities that are subject to the new rules in chapter XXX. Rule 4.8, relating to the circulation of rumors, similarly has been amended to prohibit rumors of a character which might affect trading in any security admitted to trading or unlisted trading privileges on CBOE.

In chapter VI, Rules 6.3, 6.3A and 6.4, relating to trading halts, equity market trading halts, and suspensions of trading, have been amended to clarify their application with respect to options and other securities and also to extend the Rule 6.3A provisions relating to trading halts in equity markets to trading in index warrants. New Rule 6.3B provides for "circuit breaker" trading halts in the event of unusual

[1] Appendix A to the chapter XXX rules lists the Exchange rules in chapters I through XIX that apply to the trading of stocks, warrants, and other securities and, where applicable, indicates that a rule in chapter I through XIX is supplemented by a rule in chapter XXX.

market volatility. Rule 6.55, which generally prohibits a member from maintaining with more than one broker orders for the purchase or sale of the same option on behalf of the same principal, has been broadened to apply to all securities traded on CBOE.

Also, in chapter VI, the Exchange has supplemented its rules relating to the comparison of trades. New Interpretations and Policies .06 and .07 to Rule 6.61 establish special requirements and procedures for unmatched trades. Rule 6.63 has been amended to provide that trades that are not submitted to a Clearing Corporation for settlement are to be settled in accordance with the Rules of the Exchange. Rule 6.65 establishes an obligation to exchange written contracts with respect to certain types of transactions that are not submitted to the Exchange for comparison; Interpretations and Policies following that Rule set out samples of the form of such contracts. Finally, Rule 6.66 provides generally that the comparison of trades shall not have the effect of either creating or extinguishing any contract or liability.

Rule 8.8, in chapter VIII, which deals with the activities of market-makers, generally prohibits a member from acting in both a principal and agency capacity on the same business day with respect to any of the securities traded at a given station on the floor of the Exchange. CBOE is amending that Rule to make that restriction applicable to any of the securities traded subject to the rules in new chapter XXX, as well as any security that is related to such a security. An Interpretation and Policy following Rule 8.8 would make clear that index options, market baskets, index participation, and index warrants based on either the Standard & Poor's 100-Stock Price Index or the Standard & Poor's 500-Stock Index are all related to each other, so that a member could not act as a Market-Maker and as a Floor Broker in any of the foregoing securities on the same business day. A separate Interpretation and Policy would provide that a member who issues a commitment to trade through ITS [2] would, for purposes of Rule 8.8, be deemed to be engaged in a transaction in that security.

Amendments to Rule 8.80 would extend the DPM system to stocks and the other securities which would be subject to the new Chapter XXX rules. An Interpretation and Policy following that Rule would make clear that a DPM in those securities must continuously maintain on the floor of the Exchange a two-sided market in the securities for which he has been appointed, consisting of a current bid and a current offer for his account, at prices reasonably calculated, under existing circumstances, to contribute to the maintenance of a supply of and demand for such securities to afford liquidity to other buyers and sellers of such securities whose orders are represented on the Exchange floor. Separately, Interpretation and Policy .04, of Rule 8.80, would provide that the DPM shall be responsible to assure that each disseminated market quotation in any security traded subject to the rules in chapter XXX is honored up to the unit of trading for such security (*e.g.*, 100 shares of stock).

In view of the differing sales practice standards that have evolved over the years with respect to options and securities other than options, a number of CBOE's rules relating solely to doing an options business with the public have been amended to make explicit that they apply only to options transactions. Under the CBOE proposal, customer protection and sales practices rules applicable to securities other than options would generally be set forth in Rule 30.50 except that, as provided in Rule 30.50(h), certain rules of general application in chapter IX would also apply to stocks, warrants, and other securities traded subject to the rules in new chapter XXX. In addition, Rules 9.17, 9.18 and 9.19 of chapter IX have been amended to make them expressly applicable to securities other than options. Rule 9.20, relating to the transfer of customer accounts, also is being amended to establish specific procedures and requirements for the transfer of an account at the request of a customer.

Chapter X of the CBOE Rules would also be amended. Existing Rules 10.1 through 10.3 would continue to apply solely to option contracts. New Rules 10.10 through 10.22 would establish procedures for the closing of contracts in securities other than options, including the suspension of a member or member organization (Rule 10.11), failures to deliver or to receive securities (Rule 10.12), and cases where the securities that are to be delivered are suspended from trading (Rule 10.21).

Under the CBOE proposal, new chapter XXX would contain Rules 30.1 through 30.135. Rules 30.1 through 30.60 would set forth specific rules governing the trading of stocks, warrants, and other securities on the Exchange. Rules 30.70 through 30.77 would govern trading through ITS. Finally, Rules 30.90 through 30.135 would address the settlement of securities transactions. The following paragraphs describe some of the new rules in chapter XXX.

Rule 30.2 provides that Exchange members would be eligible to seek approval to participate in the trading of all or any of the securities subject to the chapter XXX rules.

Rule 30.3 specifies that the securities that will be dealt in on the Exchange would include listed securities, as well as any security to which unlisted trading privileges apply. Those securities would be traded only on an "issued," "when issued," or "when distributed" basis, subject to the requirements of Rule 30.30 applicable to "when issued" and "when distributed" trading.

Rule 30.4 provides that the hours of business for the trading of stocks on the Exchange are 8:30 a.m., Central Time, until 3 p.m., Central Time. That Rule further states that stock warrants and currency warrants would be traded during the same hours as stock options, but the index warrants would have the same trading hours an index options (*i.e.*, 8:30 a.m. Central Time until 3:15 p.m. Central Time).

Rule 30.5 supplements existing Rule 6.6 and provides Floor Officials with the power to supervise and regulate active openings and unusual business situations that may arise on the Exchange floor, as well as the operation of the ITS or any application of that System during active openings and unusual situations.

Rule 30.11 establishes firmness and dissemination requirements for securities quotations. Specifically, it provides that recognized quotations shall be bids and offers in lots of one or more trading units (*e.g.*, 100 shares of stock). It further provides expressly that all bids and offers for reported securities are to be made in accordance with the provisions of Rule 11Ac1–1 under the Act.

Rule 30.12 defines certain types of bids and offers and orders for purposes of trading in stock and other securities subject to the chapter XXX rules. These types of orders (*e.g.*, day orders and percentage orders) are in addition to the orders defined in existing Rule 6.53.

Rules 30.13 and 30.14 establish rules of priority, parity, and precedence. In general, the highest bid and lowest offer have precedence, except that market orders have precedence over limit orders at an opening and generally are to be executed at one price. Orders left on the public order book are entitled to priority and have precedence over bids and offers at the same prices in the

[2] Under the CBOE proposal, Rules 30.70 through 30.77 of new chapter XXX would establish trading through ITS.

trading crowd. In addition, these rules establish a time priority so that a bid or offer that is the first made at a particular price is entitled to priority and shall have precedence on the next transaction at the price up to the number of shares of stock or other securities specified in the bid or offer.

Rule 30.15 incorporates the standards of section 11(a) of the Act relating to trading by members and member organizations on the floor of the Exchange. It provides, however, that the exceptions provided in section 11(a)(1)(A) through (H) or regulations thereunder also apply to trading on the Exchange.

Rule 30.16 prohibits Floor Brokers from buying or selling securities for their own account or for the account of any other member or member organization if the Floor Broker, member or member organization is holding an unexecuted market or executable limit order to buy or sell such securities for a customer. Rule 30.17 complements the Rule 30.16 provisions by providing generally that no member of member organization may take or supply the securities named in a sell or buy order for any account in which the member, member organization, or any other member, partner, officer, or employee of the member organization has any direct or indirect interest. Similarly, Rule 30.18 prohibits an Exchange member from initiating the purchase or sale of any security for his or her own account or for the account of another member or member organization where the member holds such security, or has sold or granted an option or warrant on that security, or has knowledge that his or her member organization or a person affiliated therewith holds or has sold or granted any such option or warrant. Similar prohibitions apply to joint accounts and to the execution of transactions for accounts as to which the member has investment discretion.

Rule 30.19 provides that no member organization that has any publicly-held securities outstanding may effect any transaction for the account of the customer in any such security except on an unsolicited basis.

Rule 30.20 implements the requirements of section 10(a) of the Act and Rule 10a–1 thereunder relating to short sales. An Interpretation and Policy following that rule reflects the decision of the Exchange to adopt the "equalization exemption" afforded by paragraph (e)(5) of Rule 10a–1. As a consequence, a Market-Maker would be permitted to sell short for his or her own account on the Exchange any security for which he or she has an appointment at a price equal to the last regular way sale reproted by the consolidated last sale reporting system.

Rule 30.31 establishes procedures for bids and offers when a stock is admitted to dealing on a "when issued" basis. Rule 30.32 establishes procedures for the adjustment of bids and offers and the determination of when stocks shall be deemed to ex-dividend.

Rule 30.33 specifies the fractional changes for bids and offers, providing that all stock transactions shall be in variations of not less than ⅛ of $1.00 per share (except where a stock trades at a price below $1.00 per share). An Interpretation and Policy following that Rule provides that the Board of Directors shall determine the minimum fractional change for securities other than stock.

Rule 30.34 provides generally that dealings on the Exchange in an issue of warrants shall cease at the close of business on the expiration date (in the case of book-entry warrants) or at the close of business on the last business day preceding the expiration date (in the case of all other warrants).

Rule 30.40 establishes the obligations of Market-Makers in stocks and other securities that are subject to the Chapter XXX Rules. In general, it parallels the obligations presently applicable to Market-Makers under existing CBOE Rules.

Rule 30.41 establishes margin requirements for Market-Makers and additionally specifies certain "haircuts" to a carrying member organization's adjusted net capital for positions carried on behalf of Market-Makers.

Rules 30.70 through 30.77 establish requirements and procedures for participation in ITS. Rule 30.90 establishes requirements and procedures for the settlement, through one or more Clearing Corporations, of transactions in the securities that are subject to the Chapter XXX Rules. Rules 30.100 through 30.135 relate to the settlement of transactions that for any reason are not settled as provided in Rule 30.90.

The Exchange has also amended its Educational Circular No. 23 pertaining to "front-running" of blocks in order to make it clear that the prohibitions of that circular apply to transactions in stocks when a member has learned about the actual or imminent execution of any block transaction on the Exchange involving 10,000 or more shares of stock. As amended, the circular provides that a member may continue to supply quotations and the size of the market in particular stocks when such information has been requested or when that information is furnished in the normal course of servicing customer business. A member may also enter an order to participate in a block transaction, may respond to the invitation of a Floor Official to participate in a difficult market situation, may reduce or liquidate a position acquired by so participating, may engage in bona fide arbitrage transactions and may offset trades made in error.

Under the CBOE proposal, new chapter XXXI would contain Rules 31.1 through 31.96. Rules 31.1 through 31.23 would set forth the listing criteria for new and existing issues on the Exchange. Rules 31.24 through 31.88 would set forth mandatory requirements for companies listing on the Exchange regarding, among other things, disclosure policies, dividends and stock splits, annual and quarterly reports, requirements for shareholder' approval, and proxy requirements. Rules 31.90 through 31.93 would deal with the transfer and registration of securities to be traded on the Exchange. Rule 31.94 would provide the suspension and delisting policies of the Exchange. Finally, Rules 31.95 and 31.96 would set forth rules addressing additional issues not previously covered, such as rules governing the relationship between the DPM and the company whose stock he or she deals with and changes in the status of companies listed on the Exchange.

The proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-90-08 and should be submitted by June 13, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-11966 Filed 5-22-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28019; File No. SR-MSRB-90-1]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Technical Amendments to Certain Board Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 1, 1990, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange 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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board ("Board") is filing technical amendments to certain Board rules to delete outdated information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Board seeks to ensure that its rules are written in as clear and concise a manner as possible to assist the dealer and investor community in understanding the Board's rules. Many of the Board's rules contain language indicating the effective dates of the rules or the effective date of certain provisions of the rules. Most of these effective dates were in the late 1970s or early 1980s (rules A-9, G-7, G-8, G-12, G-15, G-23, G-28, G-29, G-33 and G-35). In addition, certain rules contain language concerning renumbering of the rules upon their effective dates or rescinding of previous rules (rules A-1, A-4 and D-1). At this point in time, the information is supplemental and does not make for a concise presentation of the rules. The purpose of the proposed rule change is to delete this outdated information. By removing this information, the meaning or intent of the rules will not be altered.

(b) Board has adopted the proposed rule change pursuant to section 15B(2)(C) of the Securities Exchange Act of 1934, as amended, 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 proposed rule change does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 because it is concerned solely with the administration of the Board and is consistent with the public interest. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 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. Copies of such filing also will 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 June 13, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 15, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–11964 Filed 5–22–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28020; File No. SR–NASD–90–22]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Disclosure of Payment for Order Flow Practices on Customer Confirmations

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 April 18, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the terms of Substance of the Proposed Rule Change

The proposed rule change amends Article III, section 12 of the Rules of Fair Practice of the NASD to require enhanced disclosure of payment for order flow practices on customer confirmations.

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 propose 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 section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the past several months the subject of broker-dealer compensation for sending customer orders to particular market makers has come under scrutiny by the NASD and the Commission. In June, 1989, the NASD issued a questionnaire to market makers that, among other things, requested information about their "hard dollar" payment practices. In July, 1989, the SEC hosted the "Roundtable on Commission Dollar and Payment For Order Flow Practices," which featured participants from broker-dealers, self-regulatory organizations, money mangers and pension plan sponsors.

The NASD survey and SEC roundtable revealed that although payment for order flow practices exist, they are generally well documented in Broker-dealer records and are usually disclosed to customers with boiler plate language on the back of confirmations. In order to study to issue further, and to determine if any NASD regulatory action were warranted, the NASD established a member committee to review current compensation practices. The committee found that, while disclosure to customers was being made, the quality and method of disclosure varied from firm to firm.

In the interest of improving disclosure to customers and making it more uniform, the Association is proposing a change to the NASD Rules of Fair Practice, Article III, Section 12, "Disclosure on Confirmations." The NASD believes that payment for order flow practices should be more specifically disclosed and highlighted on customer confirmations. In addition, in Notice To Members 90–11 in which the Association requested a member vote on the proposed rule change, the NASD reminded members of their obligations to assure best execution for customer trades processed under these arrangements.

Rule 10b–10 under the Act prescribes information that a broker or dealer must disclose to its customer on the confirmation form. The rule requires, among other things, that the broker-dealer disclose whether additional remuneration has been or will be received in connection with a tranaction, and that the source and amount of such payment be furnished to the customer upon written request.[1] Under this rule, therefore, payments received by a retail firm from a market maker in return for directing its order flow to the market are considered additional compensation and must be disclosed to the customer. The NASD believes that this disclosure must be more specifically stated than is the current practice, and therefore is proposing to amend section 12 to require that the following language appear in bold typeface, in a prominent location, on each customer confirmation where the transaction has been subject to a compensation plan:

> The firm may receive remuneration for directing orders to a particular broker or dealer, through which your transaction is executed. Such remuneration is considered compensation to us and the source and amount of any compensation will be disclosed upon request.

The NASD believes that the proposed language, appearing prominently in bold print on customer confirmations, will more clearly disclose these compensation arrangements for the benefit of consumers who want more information on broker/dealer rate structures, and has highlighted best execution concerns in Notice To Members 90–11.[2]

The Interpretation of the Board of Governors on Execution of Retail Transactions,[3] the "Best Execution Interpretation," requires that: "[i]n any transaction for or with a customer, a member and persons associated with a member shall * * * buy or sell * * * so that the resultant price to the customer is as favorable as possible under prevailing market conditions." In accordance with longstanding NASD policy, this requirement is particularly applicable to situations in which firms direct their order flow to a selected dealer. Although examinations by the NASD indicate that firms that have entered into agreements for payment for order flow are obtaining the best execution of their customers' transactions, the NASD reminded members in Notice To Members 90–11 of the importance of obtaining best execution of trades subject to these arrangements. This area will continue to be reviewed by NASD examiners during on-site examinations to ensure ongoing compliance.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Act which requires, among other things, that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

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[1] Rule 10b–10(a)(7), 17 CFR 240.10b–10(a)(7).

[2] The Commission notes that the NASD's proposed disclosure would not by itself satisfy the compensation disclosure requirement of Rule 10b–10(a)(7). Rule 10b–10 requires a broker-dealer to disclose "whether" additional compensation has been received. The NASD's proposed disclosure that the firm "may" receive remuneration does not indicate whether this compensation has in fact been received. The Commission requests comment on whether the proposed disclosure should be modified so that it can be used to satisfy the Rule 10b–10 requirement.

[3] NASD Manual (CCH) p. 2037.

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." The NASD believes that improved disclosure on customer confirmations is appropriate in light of the mandate of section 15A(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was approved by member vote in response to Notice To Members 90–11.

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 NASD 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. In particular, as more fully described in footnote 2 above, the Commission solicits comment on whether the proposed disclosure should be modified so that it can be used to satisfy the Rule 10b–10 requirement. 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 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 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–90–22 and should be submitted by June 13, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 15, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–11965 Filed 5–22–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28018; File No. SR–NASD–90–29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage with the Stock Exchange of Singapore Limited for 90 Days

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the NASD. 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 NASD has filed, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, for Commission authorization to extend for 90 days the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES"). The Pilot Program consists of an interchange of closing price and volume data on 27 NASDAQ securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. Hence, the end-of-day information being exchanged under the Pilot Program mainly assists the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD–SES Pilot Program for a two-year term [1] that was recently extended to May 14, 1990.[2] Commission approval of the instant filing would permit continuation of this Pilot Program through August 13, 1990. During this interval, the NASD will assemble certain additional information requested by the Commission staff regarding the future operations of the NASD–SES linkage. This information will be incorporated into another Rule 19b–4 filing dealing with this Pilot Program.

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 NASD–SES Pilot Program commenced operation with the Commission's approval of File No. SR–NASD–87–40 on March 14, 1988. The principal features of this Program were fully described in section 1 of that Form 19b–4, which description is hereby incorporated by reference.[3]

The interim authorization of the NASD–SES Pilot Program will expire on May 14, 1990. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a brief extension of the present Pilot Program for 90 days. This period will be used to gather additional statistical information and to formalize a longer term plan respecting the future operation of the Pilot Program. These matters will be addressed in a subsequent Rule 19b–4 filing.

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[1] *See* Release No. 34–25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

[2] *See* Release No. 34–27800 (March 13, 1990), 55 FR 10338 (March 20, 1990) approving File No. SR–NASD–90–12 that authorized the Pilot Program's operation through May 14, 1990.

[3] *See also* Release No. 34–25065 (October 28, 1987), 52 FR 42167 (November 3, 1987).

During the proposed extension, the Pilot Program will continue operating in its present form. Specifically, each market will transmit to the other static price/volume information compiled at the end of each trading day on selected NASDAQ securities.[4] The SES will transmit the closing inside quotation and cumulative reported volume (collectively referred to as "SES information") respecting each Pilot security quoted on the SES. Similarly, the NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price (for NASDAQ/NMS issues only) and the closing quote of every NASDAQ market maker in each of the 27 Pilot securities (collectively referred to as "NASD information"). Because the SES now employs an order-driven system rather than a system of competing market makers, SES information received under the Pilot Program no longer includes the closing quotes of individual market makers in Pilot securities.[5] Although some SES members continue to function as market makers, they are not obligated to maintain continuous, two-sided quotes in any of the NASDAQ securities designated as Pilot securities. Hence, the closing inside quotes received from the SES in these securities (which might entirely represent the open limit orders of public investors) may be somewhat wider than the corresponding inside quotes calculated from the bids/offers of NASDAQ market makers that are transmitted to the SES.

The exchange of static, end-of-day information will remain the principal function of the Pilot Program for the duration of the proposed extension. Nonetheless, subject to mutual agreement of the NASD and the SES, the number of Pilot securities may be inceased to 35, the number originally authorized by the Commission in 1988. SES information will continue to be provided only to subscribers of NASDAQ Level 2/3 services. Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's order driven trading system. Finally, the original agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. This agreement, which provides for the sharing of reglatory information as needed, is believed adequate given the nature and limited scope of the ongoing Pilot Program.[6]

Regarding the statutory basis for the extended Pilot Program, the NASD relies on sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Finally, section 17A(a)(1) reflects the congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that the extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of NASDAQ securities, between the NASD and the SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by SES and NASD member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present Pilot Program imposes any burden on competition. The brief extension being sought will enable the sponsoring markets to formalize the future objectives and structure of the Pilot Program. These matters will be addressed in a subsequent Rule 19b–4 filing that will provide a further opportunity for public comment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD did not solicit or receive comments on File No. SR–NASD–90–29.

III. Date of Effectiveness of the Proposed Rule Change And Timing for Commission Action

The Association requests that the Commission find good cause pursuant to section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. As indicated above, the NASD's request for approval of this rule change regards only a temporary, short-term extension of a previously approved Pilot Program, pending the NASD's submission of a new plan for future operation of the Program.

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 sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The nature of the Pilot Program is limited; no substantive changes will be implemented during the proposed extension period. The Commission believes that accelerated approval is appropriate to avoid termination of the Pilot Program pending formalization of the sponsors' plans for the future operation of this Program. The brief extension being approved should allow sufficient time for the NASD to prepare another Rule 19b–4 filing regarding this program, which filing will incorporate certain statistical information germane to the Commission's deliberations on this matter. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

[4] When the Pilot Program commenced operation, 35 NASDAQ securities were selected for inclusion. These securities were listed in Exhibit 2 to File No. SR–NASD–87–40. Over time, 8 securities were deleted for reasons unrelated to the Pilot Program, *e.g.*, mergers and listing on a national securities exchange. At this point, end-of-day information continues to be exchanged on the remaining 27 NASDAQ securities.

[5] This modification in the SES's market structure was not contemplated when the NASD submitted File No. SR–NASD–87–40.

[6] The NASD notes that any substantive enhancement to the Pilot Program, including introduction of an automated order routing and/or execution system, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement will be implemented during the requested extension.

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 wirtten communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 13, 1990.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of ninety days, until, and including, August 13, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 C.F.R. 200.30–3(a)(12).

Dated: May 14, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–11967 Filed 5–22–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17497; File No. 812–7465]

Application for Order; Ameritas Variable Life Insurance Co. ("AVLIC") et al.

May 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Ameritas Variable Life Insurance Company ("AVLIC"), Ameritas Variable Life Insurance Company Separate Account V ("Separate Account"), and Ameritas Investment Corp. ("AIC").

Relevant 1940 Act Sections: Order requested pursuant to sections 11(a), 11(c) and 26(b).

Summary of Application: Applicants seek an order approving (1) an exchange offer regarding certain flexible premium variable life insurance contracts, and (2) the substitution of shares of certain portfolios of the Variable Insurance Products Fund for shares of certain portfolios of the Sower Series Fund, Inc. held by the Separate Account.

Filing Date: The application was filed on January 29, 1990, and amended on March 30, April 27, and May 14, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on June 11, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by a writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Ameritas Variable Life Insurance Company, 5900 "O" Street, Lincoln, NE 68510.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney, at (202) 272–2622 or Heidi Stam, Assistant Chief, Office of Insurance Products and Legal Compliance, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch (when applying in person) or the SEC's commercial copier at (800) 231–3282 (in Maryland, (301) 258–4300).

Applicants' Representations:

1. AVLIC, a stock life insurance company, was organized in the State of Nebraska on June 27, 1983. The Separate Account was established by AVLIC on August 28, 1985 under Nebraska law and is the issuer of three variable life insurance policies, including SEC registration numbers 33–1978 (the "Old Policies") and 33–30019 (the "New Policies"). The Separate Account has a subaccount for each of the corresponding available portfolios of the Sower Fund, the Variable Insurance Products Fund ("Fidelity Fund I"), the Zero Coupon Bond Fund ("ZCB Fund") and/or the Variable Insurance Products Fund II ("Fidelity Fund II"). AIC, a registered broker/dealer, is the principal underwriter of the Policies. AIC is a wholly-owned subsidiary of Ameritas Life Insurance Corp.

2. Approximately 245 policies have been sold since the Old Policy's initial registration was declared effective on January 29, 1987. Initially, only Sower Fund served as the underlying investment medium for the Old Policy. Certain of the shares of Fidelity Fund I, ZCB Fund and Fidelity Fund II were made available to corresponding subaccounts as of March 1, 1989. Effective March 1, 1990, the Old Policy was withdrawn from the market and effective March 1, 1990, the Sower Fund portfolios and the corresponding subaccounts of the Separate Account were withdrawn as eligible investment options for new applicants or for the transfer of funds from Fidelity Fund I, ZCB Fund, Fidelity Fund II and the fixed account of AVLIC.

3. Charges under the Old Policies are deducted from premiums for sales load (8.5% of the minimum first year premium and 7.5% of excess first year premiums and of all premiums thereafter), premium taxes (2.5% of each premium) and, during the first contract year, for the administrative costs of initial underwriting and contract issuance. Daily deductions at an annual rate of .70% are made from Separate Account assets for mortality and expense risks. For each transfer among subaccounts over nine in a given contract year, a charge of $10 is made. A contingent deferred sales load based upon amounts paid in the first two policy years (up to 21.5% of the minimum first year premium and up to 2.5% of additional amounts paid during the first two years, up to a second minimum first year premium) is deducted upon surrenders prior to the sixteenth policy anniversary. The surrender charge deducted upon surrenders made during years three through eleven equals that in existence at the end of year two, then grades off to zero as of the sixteenth policy anniversary.

4. The New Policy was designed to improve and replace the Old Policy. It offers the following funding options: Fidelity Fund I, Fidelity Fund II, and the ZCB Fund. Applicants state that while the policy provisions and the overall level of charges under the Old and New Policies are similar, the charge structures are different, with the changes under the New Policies designed to replace many front-end charges on the Old Policy with contingent deferred charges on the New Policy. In this regard, front-end sales loads on the New Policies have been reduced to 5% of premiums, while contingent deferred sales loads have been increased and restructured on the New Policy. The deferred sales load is based upon premiums actually received in the first two years. The surrender

charge under the New Policies is 25% of premiums paid up to the Guaranteed Death Benefit Premium (generally premiums for the first three policy years), and 5% of premiums in excess of that amount, subject to an overall limit of $12 per $1000 of insurance. In years three through five this charge equals that at the end of year two, then grades down to 0% in year fifteen. Nothing is deducted from payments to pay for the administrative costs of underwriting and issuing the New Policies, but a contingent deferred charge based upon an amount per $1,000 of face amount may be deducted from surrenders made during the first fourteen policy years.

5. The guaranteed rates for mortality and expense risk deductions are .90% in the New Policies. By deferring more charges, AVLIC has assumed greater expense risks under the New Policies and thus has raised its current mortality and expense risk rates under the New Policies to .85% (from .70%) for the first 20 policy years and .60% thereafter. While guaranteed rates for cost of insurance are the same for the New Policy as for the Old Policy, current rates for the New Policy are generally lower.

The Exchange Offer

6. Applicants propose to offer Old Policy owners the option to exchange their Old Policies for the New Policies. Applicants assert that this offer is on a basis that is better than one based on relative net asset value. AVLIC will refund all acquisition charges to the Old Policy owners (except premium taxes) plus 12% interest, compounded annually, on the refunded amount and will not charge surrender charges at the time of the exchange. AVLIC will issue the exchanged New Policies as of the date the exchanged Old Policies were originally issued without charging any front-end sales load or additional premium taxes. Further, all contingent deferred administrative charges and/or contingent deferred sales charges on the exchanged New Policy will be computed as if it was issued on the policy date of the exchanged Old Policy. The contingent deferred administrative charges on the New Policy will be cost based and deducted in accordance with Rule 6e–3(T)(b)(13)(iii)(A). AVLIC will bear the costs of the exchange. Applicants represent that AVLIC does expect to recover a portion of the refunded acquisition charges (*i.e.*, the difference between the premium charges on the Old Policies and the premium charges on the New Policies and the first year administrative charges on the Old Policies) through the increased surrender charges on the New Policies if surrendered before the 15th policy year dating from the issue of the Old Policies. Old Policy owners who exchange their policies will not be assessed additional administrative charges on the New Policy for administrative charges assessed on the Old Policy. Applicants further state that AVLIC does not expect to recover the remainder of the amounts refunded. In all cases, the contingent deferred sales charge on the New Policy will not exceed 100% of the amounts refunded. AVLIC will, upon the request of the Old Policy owner, provide mathematical comparisons between the Old Policies and the New Policies after adjustments for monies refunded and amounts not charged. In a cover letter to the prospectuses disclosing the exchange offer, Old Policy owners will be informed that they may request a mathematical comparison.

7. Applicants make the following additional representations respecting the proposed exchange offer. As a result of the exchange offer, if accepted, the Old Policy owners will have a higher accumulation value in their New Policies after the exchange than they had in the Old Policies before the exchange. The exchange will take place without tax liability, as an exchange pursuant to section 1035 of the Internal Revenue Code. All current Old Policy owners and prospective New Policy owners will receive disclosure of the proposed exchange offer in prospectuses dated May 1, 1990 or in supplements thereto, as well as in notices given in connection with the related proposed substitution.

8. The New Policy offers essentially the same investment portfolios that are offered by the Old Policy. The Old Policy offers Fidelity Fund I and the ZCB Fund and until March 1, 1990, the Sower Fund which is the subject of the requested substitution order. The New Policy offers the Fidelity Fund I, except the Overseas Portfolio, the ZCB Fund and the Asset Manager Portfolio of Fidelity Fund II.

9. Applicants request that the Commission issue an order pursuant to Sections 11(a) and 11(c) of the 1940 Act approving the terms of the offer to exchange the Old Policies for the New Policies. Applicants state that the fact that they propose to go beyond the "no double-loading" provisons under Rule 11a–2 is strong evidence that the terms of the proposed exchange are ones that should be approved. Applicants assert that the "switching" motive that prompted the enactment of Section 11 of the 1940 Act is not present in the circumstances of the proposed offer.

The Substitution

10. The Separate Account is divided into subaccounts which invest in a designated portfolio of Sower Fund, Fidelity Fund I, ZCB Fund or Fidelity Fund II. Sower Fund, a Maryland corporation, is registered as an open-end, diversified management investment company. Ameritas Investment Advisors is the investment adviser for Sower Fund. Sower Fund consists of four portfolios: the Money Market Portfolio, the Growth Portfolio, the Bond Portfolio, and the Discretionary Portfolio. Fidelity Fund I, a Massachusetts business trust, is also an open-end, diversified management investment company. Fidelity Fund I's investment adviser is Fidelity Management and Research Company ("FMR"). Fidelity Fund I currently consists of five portfolios, three of which, the money Market, the Equity Income and the Growth Portfolios are relevant to the application.

11. Applicants propose to substitute in the Old Policy shares of three portfolios of Fidelity I for shares of the four corresponding portfolios of the Sower Fund. The substitution was proposed after the Board of Directors of AVLIC determined that under the present circumstances the substitution was in the best interest of the Old Policy owners who have invested in Sower Fund shares. These circumstances include the amount of monies allocated to the subaccounts corresponding to the Sower Fund ($233,396) by Old Policy owners, in relation to the amount projected as necessary, without AVLIC's seed money investment, to (1) be adequate to meet statutory portfolio diversification requirements in a cost-effective manner; (2) lower the shareholder's investment risk; and (3) reduce relatively fixed expenses to acceptable levels on a per share basis.

12. Applicants request an order of the Commission pursuant to section 26(b) of the 1940 Act approving the substitution of shares as proposed. Under the terms of the transaction, the Separate Account will substitute shares of the Sower Fund's Money Market, Growth, Bond and Discretionary Portfolios with, respectively, shares of Fidelity Fund I's Money Market, Growth, Money Market and Equity Income Portfolios. The substitution will be effected at simple relative net asset value. The Old Policy owners' cash value in the various Sower Fund portfolios will be established pursuant to section 22(c) of the 1940 Act and Rule 22c–1 thereunder, as of the day the substitution is approved. The cash values thus established will be

transferred to the corresponding Fidelity portfolios. AVLIC will bear the costs of the substitution. All current and prospective policy owners will receive notice of the proposed substitution in a letter to Old Policy owners and in the form of a supplement to the prospectus to the Old Policy. At any time prior to the proposed substitution, Old Policy owners may transfer cash values from the subaccount investing in the Sower Fund portfolios to any of the subaccounts not investing in the Sower Fund or into the AVLIC Fixed Account without incurring any transaction fees and without the transfer(s) counting as one of the nine free transfers permitted annually. In addition, AVLIC will notify in writing all Old Policy owners whose cash values were transferred from the Old Policy subaccount as set out above of their right to make "free transfers" for another thirty days.

13. The Old Policy contract reserves to AVLIC the right, subject to Commission approval, to substitute shares for another management investment company for shares of any management investment company held by a subaccount of the AVLIC separate account or to add or eliminate one or more subaccounts.

14. Applicants state that the interests of the Old Policy owners would be better served if the amounts currently invested in the Sower Fund were transferred to Fidelity Fun I. As of December 31, 1988, FMR had assets in excess of $79 billion under management. The ratios of fees and expenses to average daily net assets for the period ended December 31, 1989, were as follows:

Money Market Portfolio	.67%
Equity Income Portfolio	.85%
Growth Portfolio	1.24%

The Fidelity Fund I, April 30, 1989 prospectus discloses that its adviser has voluntarily agreed to temporarily limit total expenses for the Equity Income and Growth Portfolios to 1.50% of each portfolio's daily net assets. The Fidelity Funds are of sufficient size to provide the economies of scale which will be passed onto Fidelity Fund portfolio owners in the form of reduced fees. The Applicants' proposed substitution will transfer the Policy owners' investment from a presently existing subaccount to another presently existing subaccount which is experiencing expense levels similar to or lower than the expense levels that will be experienced after discretionary subsidization ceases.

15. Applicants submit that the investment objectives of the Fidelity Fund I portfolios to be substituted are suitable and appropriate as investment vehicles for Policy owners currently invested in the Sower Fund. The Money Market Portfolios have essentially identical investment objectives, while the investment objectives of Fidelity Fund I's Growth and Equity Income Portfolios are similar to those for the Sower Fund's Growth and Discretionary Portfolios respectively. The proposed substitution of Fidelity's Money Market Portfolio for Sower's Bond Portfolio offers relative safety even though it does not offer very similar investment objectives. However, in light of the widely reported concerns with the high-yield bond market and the fact that Fidelity does not offer a portfolio with investment objectives very similar to the Sower Bond Portfolio, the Applicants believe that Policy owners' rights are substantially protected by the substitution of the Fidelity Money Market Portfolio for Sower's Bond Portfolio coupled with the Policy owners' right to transfer to the other available Fidelity Fund Portfolios without cost before and after the substitution. In addition, Applicants represent that the proposed substitution will not impose any tax liability on the Old Policy owners.

16. Applicants assert that the substitution will be only temporary in nature because the Policy owners may exercise their contract right to transfer from the Sower Fund subaccount to any of the available Fidelity Fund I, ZCB Fund or Fidelity Fund II subaccounts without charge or the substitution counting as one of the free yearly transfers both during the period prior to the substitution and again during the 30 days after the substitution. Applicants state that the substitution will not result in the type of costly forced redemptions which section 26(b) was intended to prevent.

17. For the reasons set forth above, Applicants respectfully request (1) an order of the Commission pursuant to sections 11(a) and 11(c) of the 1940 Act approving the terms of the proposed exchange offer; and (2) an order of the Commission pursuant to section 26(b) of the 1940 Act approving the terms of the proposed substitution of the Fidelity Fund I Portfolios for the corresponding Sower Fund Portfolios.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-11562 Filed 5-22-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17496; 812-7335]

Application for Exemption; Berkshire Partners III, L.P., et al.

May 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Berkshire Partners III, L.P. ("Fund III"), Berkshire Partners III (Retirement Fund), L.P. (the "Retirement Fund," and together with Fund III, the "Funds"), Berkshire Managers, L.P. (the "Managing General Partner"), and BP III Advisers, Inc. (the "Advisory General Partner").

RELEVANT 1940 ACT SECTIONS: Exemption requested (i) under sections 6(c), 17(d), and 57(i) and Rule 17d-1 from sections 17(d) and 57(a)(4), and (ii) under section 57(c) from section 57(a)(1) and under sections 17(d) and 57(i) and Rule 17d-1 from section 57(a)(4).

SUMMARY OF APPLICATION: Applicants seek an order (i) under sections 6(c), 17(d), and 57(i) of the 1940 Act and Rule 17d-1 thereunder permitting the purchase of securities by the Funds and Berkshire Affiliates (defined below) in joint transactions otherwise prohibited by sections 57(a)(4) and 17(d) (the "Rule 17d-1 Order"); and (ii) under section 57(c) of the 1940 Act for exemption from section 57(a)(1) and under sections 17(d), 57(i) and Rule 17d-1 permitting the Funds to acquire one or more initial investments from Berkshire Affiliates (as defined below), the Advisory General Partner or an affiliate thereof (the "Section 57(a)(1) Order"). The term "Berkshire Affiliates" refers to the Managing General Partner and any affiliated person thereof within the meaning of section 2(a)(3) (C) or (D) of the 1940 Act.

FILING DATE: The application was filed on June 2, 1989 and amended on October 6, 1989, April 6, 1990, April 19, 1990, and April 27, 1990.

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 June 12, 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. BP III Advisers, Inc., 1345 Avenue of the Americas, 46th Floor, New York, New York 10105. Other Applicants, One Boston Place, Suite 3425, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Funds are limited partnerships organized under Delaware law, each governed by an Agreement of Limited Partnership (the "Partnership Agreement"). Each Fund has filed an election to be regulated as a business development company under section 54(a) of the 1940 Act and, therefore, will be subject to sections 55 through 65 Act and those sections of such Act made applicable to business development companies by Sections 59 through 65 thereof. The Funds have been designed to provide individuals the opportunity to participate in the investment of established, private middle market companies through the purchase of "mezzanine" level debt and preferred stock and related equity investments issued in connection with the acquisition or corporate recapitalization of such companies.

2. The Funds have filed a joint registration statement on Form N–2 under the Securities Act of 1933 with respect to an offering of up to 100,000 units of limited partnership interest (the "Units"). The public offering price will be $1,000 per Unit, with a maximum aggregate offering price of $100 million. The maximum aggregate offering price may, subject to market conditions, be increased to $200 million by means of an amendment to the registration statement. Smith Barney, Harris Upham & Co. Incorporated, a subsidiary of Smith Barney, Inc., will act as the selling agent for the Units on a best efforts basis. Investors desiring to become limited partners in the Funds will be required to subscribe for at least five Units (two Units for Individual Retirement Accounts and Keogh Plans) and to meet certain suitability standards set forth in the application.

3. The Funds' investment objectives will be to provide a combination of current income and significant long-term capital appreciation over the terms of the Funds through investment in mezzanine loans, equity and other securities ("Portfolio Company Investments"). Fund III and the Retirement Fund have the same investment objectives, policies, and restrictions, except that Fund III may borrow to purchase or refinance its investments. The Retirement Fund may not borrow for such purposes. Portfolio Company Investments will consist of the following:

(a) *Mezzanine Investments:* These are investments in unrated subordinated debt and/or preferred stock linked with equity participations in the form of common stock or the right to acquire common stock (the equity component is referred to as the "Equity Kicker"). Neither Fund will purchase Mezzanine Investment if the aggregate amount of Mezzanine Investments held by such Fund would exceed as a result of such purchase, 80% of each Fund's Total Assets.[1]

(b) *Equity Investments:* These are investments in equity (not including Equity Kickers), generally arising from the same type of transactions as Mezzanine Investments. Neither Fund will purchase Equity Investments if the aggregate amount of Equity Investments held by such Fund would exceed, as a result of such purchase, 30% of such Fund's Total Assets.

(c) *Bridge Investments:* These are debt or equity securities issued to provide interim financing in an acquisition where permanent financing is incomplete. Berkshire Affiliates shall make a meaningful equity investment in each Bridge Investment (i) equal to at least $2 million, or (ii) by the acquisition of, or the right to acquire, 50% or more of the equity remaining after any common equity acquired by management, the Funds, and mezzanine or other lenders.

In order to attain portfolio diversification, the Funds may not invest more than 20% of their respective Total Assets in Mezzanine and Equity Investments in a single portfolio company. In addition, the Funds may not invest more than 5% of their respective Total Assets in Equity Investments in a single portfolio company. Finally, the aggregate amount of all Bridge Investments held by a Fund shall not exceed 50% of such Fund's Total Assets.

[1] As used in the application, Total Assets is defined as a Fund's total assets. In the case of Fund III, the term also includes, during the first two years from initial closing, anticipated borrowings equal to 50% of Fund III's net offering proceeds or such lesser amount as the Managing General Partner expects Fund III to borrow, and thereafter, amounts actually drawn down from Fund III's line of credit.

4. The general partners of each Fund will consist of three Independent General Partners (defined as individuals who are not "interested persons" of such Fund within the meaning of the 1940 Act), the Managing General Partner, and the Advisory General Partner (collectively the "General Partners"). The Funds have applied for a separate exemptive order determining that the Independent General Partners are not "interested persons" of the Funds. *See* Berkshire Partners III, L.P., Investment Company Act Release No. 17423 (April 12, 1990). Upon issuance of the order, and consistent with sectiojn 56(a), a majority of the General Partners of each Fund will be Independent General Partners.

5. The Managing General Partner is a limited partnership organized under Delaware law and is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Under an investment advisory contract with each Fund, the Managing General Partner will identify all investments for the Funds and perform other functions typically carried out by investment advisers to business development companies. The general partners of the Managing General Partner are Bradley M. Bloom, J. Christopher Clifford, Russell L. Epker, Carl Ferenbach III and Richard K. Lubin, who are also the general partners (the "Individual Berkshire Partners") of Berkshire Partners, a general partnership. Berkshire Partners is a private investment firm engaged primarily in acquiring or making significant equity investments in established companies, often through leveraged acquisitions or recapitalizations. The Individual General Partners are also the general partners of Berkshire Capital Associates, L.P., the general partner of the Berkshire Fund, A Limited Partnership, a company excepted from the definition of investment company by section 3(c)(1) of the 1940 Act. The Managing General Partner will be responsible for purchasing investments for each Fund which meet certain guidelines (the "Guidelines") or otherwise have been approved by the Advisory General Partner and the Independent General Partners. The Managing General Partner will receive certain allocations under each Partnership Agreement and will receive $50,000 annually for providing administrative services to the Funds.

6. Each Fund will be managed by the Independent General Partners thereof, except with respect to those activities for which the Advisory General Partner,

in its capacity as an independent investment adviser to each Fund, or the Managing General Partner in its capacity as the managing general partner of or investment adviser to each Fund, will be responsible. The Independent General Partners of a Fund will provide overall guidance and supervision of Fund operations and will perform the same functions as directors of a corporation. The Independent General Partners will also assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on non-interested directors of a business development company.

7. The Advisory General Partner, a wholly-owned subsidiary of Smith Barney, Inc., is a Delaware corporation and is a registered investment adviser under the Advisers Act. The Advisory General Partner will be responsible, in conjunction with the Independent General Partners, for confirming that proposed investments meet the Guidelines or approving all Portfolio Company Investments which do not meet the Guidelines, and for certain other investment advisory services as set forth in the conditions below.

8. Under each Fund's advisory agreement, the Managing General Partner will receive an annual fee of 1.2% of each Fund's assets under managment for the first three years and thereafter a fee of 1.2% of the cost basis of securities held by a Fund. Such fees are subject to reductions if certain other fees, such as break-up fees, commitment fees, or investment banking fees, are paid to affiliates of the Managing General Partner. In addition, the Partnership Agreement provides for distributions, on a cumulative basis, to the Managing General Partner and the Advisory General Partner of income and capital gains in proportion to their relative capital contributions and of incentive distributions of up to 20% of cumulative ordinary income and net realized capital gains which is subordinated to a priority return to the limited partners (as further described in the application). The incentive distributions will be paid 90% to the Managing General Partner and 10% to the Advisory General Partner. The Applicants are relying on an opinion of counsel that such allocation is permissible under Section 205 of the Advisers Act.

The Rule 17d–1 Order

9. Applicants request an order pursuant to Sections 6(c), 17(d), and 57(i) of the 1940 Act and Rule 17d–1 thereunder permitting the purchase of securities by the Funds in joint transactions with each other and in transactions in which a Berkshire Affiliate is a participant. Sections 17(d) and 57(a)(4) of the 1940 Act prohibit such co-investments between affiliated persons absent an exemptive order. The Managing General Partner and the Advisory General Partner will establish the Guidelines for the Funds' Portfolio Company Investments which are based on criteria generally employed by institutional mezzanine funds that are exempt from registration under the 1940 Act and by other business development companies. The Guidelines serve to inform prospective investors of the parameters of the Funds' investments. In addition, Applicants believe that the Guidelines limit potential conflicts of interest by delineating specific categories of investments eligible for investment. Any changes in the Guidelines, resulting, for example, from changes in the structure of Portfolio Company Investments, would require the approval of both the Advisory General Partner and the Independent General Partners, as well as an amendment to the order permitting these transactions.

10. In addition to the Guidelines, the Managing General Partner and the Advisory General Partner have established a number of conditions which will govern certain aspects of the operations of the Funds, including the investment criteria for proposed Mezzanine Investments that do not meet the Guidelines, Equity Investments not made in connection with Guideline Mezzanine Investments, and Bridge Investments. The conditions are thus intended to be applied independently of the Guidelines.

11. The two principal categories of proposed investments for the Funds are referred to as "Managed Companies" and "Non-Managed Companies," the distinction being whether a Berkshire Affiliate intends to "make available significant managerial assistance" to that company.[2] A Mezzanine Investment must meet the applicable Guidelines or be approved in advance by a Fund's Advisory General Partner and the Independent General Partners in accordance with the conditions set forth below. In connection with each Guideline Mezzanine Investment, the Funds will also acquire Equity Investments in an amount constituting 30% of the equity securities held by Berkshire Affiliates, all of which will be purchased on the same terms and conditions, subject to an overall cap on all Equity Investments made by each Fund of 30% of its Total Assets and a cap on each Equity Investment in any one portfolio company of 5% a Fund's Total Assets. Subject to the advance approval requirements, the Funds may also make other Equity Investments and Bridge Investments. The Guidelines, among other things, provide that, with respect to Managed Companies in which a Fund makes a Mezzanine Investment, (a) Berkshire Affiliates shall make a meaningful equity investment (i) equal to at least $2 million or (ii) by acquisition of, or the right to acquire, 50% or more of the equity remaining after any common equity acquired by management, the Funds, and mezzanine or other lenders; (b) each Fund's investment is on terms no less favorable in all respects than any corresponding investments in the same company by third parties, including any Berkshire Affiliate; and (c) at least 70 percent of a Fund's Total Assets be invested in Managed Companies. With respect to Non-Managed Companies, the Guidelines require that (a) the investment be structured by third parties that are not Berkshire Affiliates; (b) Berkshire Affiliates not acquire more than 25% of the non-management equity of a Non-Managed Company; (c) each Fund's investment is on terms no less favorable in all respects than any corresponding investments in the same company by third parties, including any Berkshire Affiliate; and (d) not more than 30% of the Fund's Total Assets will be invested in Non-Managed Companies.

12. The Rule 17d–1 Order is also requested in conjunction with section 6(c) of the 1940 Act because it would also cover a class of transactions and not individual specified transactions. Applicants argue that the Rule 17d–1 Order authorizing co-investments between the Funds and with affiliated persons on a prospective basis is supported by a number of factors. First, the rationale for establishing the Funds is to provide access to mezzanine-level debt or preferred stock and related equity securities, and common stock investments not generally available to individuals. Suitability standards have been established which, in the Applicants' view, are appropriate in light of the risks and other considerations involved in an investment in the Funds. In addition, Applicants believe that the substantive ongoing obligations imposed on the Independent General Partners and the Advisory General Partner provide significant protection to investors. Moreover, the Advisory General Partner

[2] The 1940 Act requires business development companies to make such assistance available to certain issuers representing at least 70% of the value of its total assets.

and the Independent General Partners must determine that Portfolio Company Investments meet the applicable Guidelines unless a particular investment identified by the Managing General Partner has been approved in advance by the Independent General Partners and the Advisory General Partner. The Guidelines, which are based on criteria typically used by partnerships with similar investment objectives, include minimum yield requirements on Mezzanine Investments in companies qualifying as Managed Companies. In addition, the distribution of income and capital gains from Portfolio Company Investments to the Managing General Partner and the Advisory General Partner is subordinated to a priority return to be received by the limited partners. Accordingly, Applicants believe that the Funds' operating policies, in conjunction with the structure of their management arrangements, support the issuance of the Rule 17d–1 order.

13. *Rule 17d–1 Conditions:* The following conditions apply to the Funds' co-investments with each other and with Berkshire Affiliates:

(A) Other than temporary investments and investments described below, each investment made by the Funds will have to meet, in the determination of the Advisory General Partner and the Independent General Partners of each respective Fund, the Guidelines for Mezzanine Investments (including Equity Investments made in connection with Mezzanine Investments) or be otherwise approved as provided below.

(B) Each Portfolio Company Investment that is structured by a Berkshire Affiliate and approved for investment by it after the initial closing of the Funds' public offering (except with respect to portfolio companies as to which firm commitments for mezzanine financing are then in place) and until the end of each Fund's Investment Period (as defined in the application), will be brought to the attention of the Advisory General Partner and the Independent General Partners of such Fund for review, subject to the limitations on Equity Investments in item (C) below. If such Advisory General Partner and Independent General Partners determine that the investment meets the applicable Guidelines, the investment would be eligible for investment by the Funds, and each such investment will be acquired by the Funds to the extent that the Funds have available funds to make such acquisition. If there are presented to the Advisory General Partner and the Independent General Partners more investments than the Funds have available funds to acquire, the Advisory General Partner and the Independent General Partners will have to determine, with the advice of the Managing General Partner, the order of priority of such investments. If a proposed investment does not meet the Guidelines, the Advisory General Partner and the Independent General Partners will have to determine that the investment is appropriate for the Funds in light of their objectives and policies and does not involve overreaching of the Funds and then determine whether to acquire such investment for the Funds.

(C) In connection with every Mezzanine Investment in a portfolio company which meets the Guidelines, and in which Berkshire Affiliates makes an equity investment, the Funds shall purchase Equity Investments equal in amount to 30% of the equity investments purchased by Berkshire Affiliates on the same terms and conditions. In addition, in connection with all other equity investments made by Berkshire Affiliates, the Funds shall have the right, at the option of the Advisory General Partner and the Independent General Partners, to purchase Equity Investments in an amount up to 30% of the equity investments purchased by the Berkshire Affiliates on the same terms and conditions.

(D) If Berkshire Affiliates do not otherwise purchase equity securities of a portfolio company in which the Funds make a Mezzanine Investment, Berkshire Affiliates will co-invest in each class of security purchased by the Funds in an amount equal to 2% of such class purchased by the Funds on the same terms and conditions, except that if such investment by the Funds is in a Non-Managed Company, Berkshire Affiliates shall not co-invest at a time when a Fund has less than 15% of its Total Assets invested in Non-Managed Companies none of whose securities are held by Berkshire Affiliates.

(E) With respect to any Bridge Investment made by the Funds, Berkshire Affiliates shall co-invest with the Funds in such Bridge Investment, the amounts of such co-investment to be allocated between the Funds and Berkshire Affiliates in proportion to their actual ownership of equity securities in the portfolio company with respect to which such Bridge Investment is made.

(F) Prior to committing to a particular Mezzanine Investment that does not meet the Guidelines, to an Equity Investment (other than an Equity Investment described in the first sentence of item (c) above), or to a Bridge Investment, the Advisory General Partner and the Independent General Partners would be required to determine that (i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Funds and do not involve overreaching of the Funds or such partners on the part of any person concerned and (ii) the proposed transaction is consistent with the interests of the limited partners of the Funds and is consistent with the policy of the Fund as recited in filings made by the Funds under the 1933 Act, their registration statement and reports filed under the Securities Exchange Act of 1934, and their reports to partners.

(G) Each Portfolio Company Investment will be allocated among the Funds based on the ratio of each Fund's available capital.

(H) Neither the Individual Berkshire Partners nor any additional or successor general partners of the Managing General Partner, shall, in their capacity as general partners of the Managing General Partner, either (i) participate in the deliberations or approval of any investment by the Funds; or (ii) receive and comment on information with respect to any potential investments.

(I) Neither the Advisory General Partner nor any other affiliate of Smith Barney, Harris Upham & Co. Incorporated will participate in a transaction in which a Fund invests unless such participation is permitted by the 1940 Act or a separate exemption is obtained thereunder.

(J) To the extent a Berkshire Affiliate purchases a security of the same class as any component of a Portfolio Company Investment to be acquired by the Funds, the terms of purchase of each such security (including terms as to purchase price, settlement date, registration rights (if any), and other rights provided to the purchasers of such Portfolio Company Investment) must be the same as, or no more favorable than, the Funds' terms.

(K) The Funds will participate in the disposition of securities held by them as co-investments on a proportionate basis and on the same terms and conditions (a "lock-step" disposition). If a Fund or any Berkshire Affilitate elects to dispose of a security purchased in a co-investment by such Fund with a Berkshire Affilitate, notice of the proposed sale will be given to the Advisory General Partner and Independent General Partners at the earliest practical time. Each Fund and any Berkshire Affiliate holding such security will participate in the disposition of such security on a lock-step basis, unless and Advisory General Partner and the Independent General Partners determine that a Fund should not participate in such sale or not participate on a lock-step basis. A Fund may not participate on a lock-step basis in the disposition of securites to be sold by Berkshire Affiliates only if the Advisory General Partner and the Independent General Partners find that the retention or sale, as the case may be, of the securities is fair to the Fund and that such Fund's participation or non-participation in the sale is not the result of overreaching by Berkshire Managers or a Berkshire Affiliate. If the Advisory General Partner or the Independent General Partners of a Fund do not make such a finding, then such Fund must participate in such sale on the basis of a lock-step disposition. If at any time the result of a proposed disposition of any portfolio security held by a Fund would be to alter the proportionate holdings of each class of securities held by a Fund and any Berkshire Affilitate, the Advisory General Partner and the Independent General Partners of the Fund must determine that such result is fair to the Fund and is not the result of overreaching by a Berkshire Affiliate. Neither the Individual Berkshire Partners nor any additional or successor general partners of Berkshire Managers shall, in their capacity as general partners of the Managing General Partner, participate in such deliberations. The Independent General Partners will record in their records the basis of their decision as to whether to participate in such sale.

(L) The Independent General Partners and Advisory General Partner will be provided with information quarterly to enable them to determine whether all investments made

during the preceding quarter comply with the conditions set forth above, and to determine on a quarterly basis the continuing appropriateness of the standards established for investments by the Funds. None of the Individual Berkshire Partners, nor any additional or successor general partners of the Managing General Partner, will participate in such deliberations to the extent that any such investment was recommended to the Fund by the Managing General Partner. In this regard, the Independent General Parthers will consider whether use of such standards continues to be in the best interests of the Funds and the limited partners and does not involve overreaching of the Funds or their limited partners on the part of any party concerned.

(M) The Independent General Partners will maintain the records required by Section 57(f)(3) of the 1940 Act and will comply with Section 57(h) of the 1940 Act and each of the Applicants will otherwise maintain all records required by the 1940 Act.

The Section 57(a)(1) Order

1. Applicants also request an order under section 57(c) of the 1940 Act for exemption from the provisions of section 57(a)(1) of such Act and pursuant to sections 17(d), 57(i) and rule 17d–1 permitting the proposed acquisition by the Funds of one or more interim investments from the Advisory General Partner, Berkshire Affiliates or an affiliate thereof (such investor is referred to as the "Interim Investor"). Such transactions may be prohibited by section 57(a)(1) of the 1940 Act and may constitute a joint transaction under sections 17(d) and 57(a)(4) of the 1940 Act. Applicants believe that a period of four to six months may elapse before the public offering of the Units is consummated and the Funds received the proceeds from the sale of such Units. During this period, it is expected that investment opportunities suitable for the Funds may come to the attention of the Managing General Partner. The Funds will not have capital available to make such investments during this period and such investment opportunities could be lost to the Fund if not then acquired. Therefore, it is proposed that the Interim Investor may acquire such investments as if the Funds were acquired such investments directly, although the Interim Investor has no obligation to acquire such investment.

2. Any investment acquired by the Funds pursuant to the exemption requested herein will, at the time the Interim Investor makes an investment, (a) be a Portfolio Company Investment which has been determined by the Advisory General Partner and the Independent General Partners to meet the Guidelines, or (b) have been approved in advance by both the Advisory General Partner and the Independent General Partners. The Interim Investor would hold such investments on behalf of the Funds until the sale of the Units take place, at which time the Funds would acquire such investments on a pro-rata basis from the Interim Investor at the lesser of (a) the value of the investment at the time it is acquired by the Funds, or (b) the cost to the Interim Investor of purchasing and holding such investment (reduced by the amount of any dividends or interest received by such entity with respect to such investment). With respect to clause (b), such cost shall be the original purchase price paid by the Interim Investor, plus permitted carrying costs as described below. No carrying costs will be paid by the Funds in respect of the period prior to the later of (a) the date of acquisition of the proposed investment by the Interim Investor, or (b) the date of the Advisory General Partner and the Independent General Partners approve such investment for purchase by the Funds. Carrying costs consist of interest charges computed at the lower of (a) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are permitted to be paid until the date the Fund acquires the investment, or (b) the effective costs of borrowings by the Interim Investor during the period.

3. If either Fund acquires any such interim investmetns, it will do so within 90 days after the closing of its public offering. Market value of such investments will be determined by the Managing General Partner, subject to review by the Independent General Partners. The Funds will not be obligated to acquire any such investment unless approved by the Independent General Partners and the Advisory General Partner. If the Funds do not acquire the investments, the Interim Investor will retain the investments for its own account. If the investment is approved by the Advisory General Partner and the Independent General Partners, the Interim Investor must transfer each investment so acquired in its entirety to the Funds following the sale of the Units to the public. Each such investment and the cost thereof shall be disclosed in the Prospectus or a supplement thereto.

4. The Applicants argue that the statutory standards of subsection 57(c) are satisfied. The Interim Investor would acquire investments suitable for the Funds, holds such investments for the Funds during an interim period, and sell such investments to the Funds at the lower of market value or cost (which may include carrying charges). The exemption would benefit the Funds by permitting them to acquire investments they otherwise might not be able to acquire. Since the Interim Investor would retain the investments for its own account if either the acquisition is not approved by the Independent General Partners and the Advisory General Partner, or if the public offering of the Units is not consummated, there is no incentive for overreaching or unfairness with respect to the Funds, and the transactions are not potentially subject to the abuses section 57(a) is designated to prevent. Any possibility for abuse will be ameliorated further by disclosure of the investments in the Partnership's Prospectus. The Interim Investors acquires these investments for the benefit of the Funds as, in effect, a nominee. Moreover, the Interim Investor bears the risk of decline in value of these investments and does not benefit from any increase in value between the time of investment and the purchase of the investment by the Funds. In light of the limitations on carrying costs, the Applicants believe it is appropriate for the Funds to pay such costs on the terms set forth above.

5. The order permitting the Funds to acquire interim investments is also requested under section 17(d) of the 1940 Act and Rule 17d–1 thereunder, because Berkshire Affiliates may be co-investors in these transactions. However, the procedures to be followed in acquiring such investments are the same as outlined above with respect to the Rule 17d–1 Order.

Applicants' Other Conditions

If the requested Orders are granted, Applicants also agree to the following conditions:

1. No changes will be made in the Guidelines or conditions until an amendment to the Rule 17d–1 Order is obtained from the SEC.

2. Under each Partnership Agreement, a Fund is authorized to make in-kind distributions of portfolio securities to its partners. Applicants agree not to make any in-kind distributions of securities to partners of a Fund until such Fund has either obtained a no-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to section 206A of the Advisor Act permitting such distribution.

3. At least 15% of the assets of each Fund will be invested in Non-Managed Companies in which the Berkshire Affiliates do not own any securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–11963 Filed 5–22–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1207]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 18 in room 1105, and on June 19 in room 1207, at the Department of State, 2201 C Street NW., Washington, DC. The meeting on June 18 will meet from 10 a.m. to 4 p.m. The meeting on June 19 will begin at 9 a.m.

The agenda for June 18 meeting will include consideration of optical fiber and optical fiber system issues with the meeting on June 19 to include consideration of all other issues in preparation for the meeting of CCITT Study Group XV in Geneva, Switzerland beginning July 16, 1990. These subjects include speech processing, systems management, synchronous digital hierarchy and video teleconferencing.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: May 8, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90–11895 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1206]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee CCITT Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 4 and 5, 1990 in the Department of State, 2201 C Street NW., Washington, DC. The meeting on June 4 will be in room 1205 beginning at 1 p.m. and the meeting on June 5 will be in room 1517 beginning at 10 a.m.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be the final preparations for the June 12–22 meeting of CCITT Study Group II in Geneva, and to continue preparations for the September 10–14 meeting of the ad hoc group for CCITT Resolution No. 18.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC.; telephone 202–647–5220. All attendees must use the C Street entrance to the building.

Dated: May 3, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 90–11893 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1197]

The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 7, 1990 at 10 a.m. in room 1912, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting will be to review results of the recent meeting of Study Group XVII, April 1990, prepare and review contributions for the meeting of CCITT Study Group VIII, September, 1990, and Study Group XVII, October, 1990, and consider any other business relevant to U.S. Study Group D.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: April 30, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90–11894 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1205]

Shipping Coordinating Committee Council and Associated Bodies; Meeting

The Shipping Coordinating Committee, (SHC), will conduct an open meeting at 9 a.m. on May 30, 1990, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 64th Session of the Council and associated bodies of the International Maritime Organization, (IMO), which is scheduled for June 11–15, 1990 at the IMO Headquarters in London.

Among other things, the items of particular interest are:

—Reports of the Major Committees
—Financial Matters
—Personnel Matters

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard (G–CI), 2100 Second Street SW., Washington, DC 20593 or by calling: (202) 267–2280.

Dated: May 8, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90–11896 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–07–M

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold

its Annual meeting on Thursday, June 14, 1990, at 9:30 a.m. in Conference room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting, chaired by Dr. Ernest L. Boyer, President of Carnegie Foundation for the Advancement of Teaching, will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, telephone 703–875–7800, prior to June 14. All attendees must use the C Street entrance to the building.

Dated: April 20, 1990.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 90–11944 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 1208]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on June 5, 1990 at 9:30 a.m. in room 2415 at United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to discuss the results of the 33rd Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held April 23–27, 1990, and to prepare for the 34th Session of IMO DE, tentatively scheduled for the Spring of 1991. Items of discussion will include the following: Use on board ships of ozone-depleting halons; guidelines on standard calculations for MODU anchoring and dynamic positioning systems; materials other than steel for pipes; maneuverability of ships; helicopter facilities offshore; revision of design and construction requirements in the 1977 Torremolinos Convention; requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel; harmonization of alarm provisions; amendments of regulations II–1/41 and 45 of SOLAS 1974, as amended; ventilation of vehicle decks during loading and unloading; review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee; underpressure in cargo tanks due to the application of vacuum systems to minimize the effect of pollution of oil after damage; maximum stowage height of survival craft; and, carriage of dangerous goods on vehicle decks of cargo ships.

Members of the public may attend up to the seating capacity of the room.

The IMO DE Subcommittee works to develop international agreements, guidelines, and standards for machinery, equipment and systems as these relate to the marine industry. In most cases, these international agreements, guidelines, and standards form the basis for national standards/regulations and class society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the IMO DE Subcommittee in developing the U.S. position on those issues raised at the IMO DE Subcommittee meetings. Because of the impact on domestic regulations through development of these international guidelines, standards and regulations, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas. All shipping companies, shipyards, design firms, naval architects, marine engineers and consultants are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within IMO DE. Since these meetings are open to the public, anyone may attend.

For further information contact Captain J. C. Maxham at (202) 267–2967, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001.

Dated: April 18, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90–11945 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1209]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes, Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on June 14, 1990 at 9:30 a.m. in room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to discuss a draft U.S. paper which proposes amending the entry for coal in the International Maritime Organization Code of Safe Practice for Solid Bulk Cargoes. This paper was drafted by the Coast Guard based on the final report of the Chemical Transportation Advisory Committee, Subcommittee on Coal Transportation.

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mr. Joseph Angelo, U.S. Coast Guard Headquarters (G–MVI), at the above address, or telephone (202) 267–2978.

Dated: April 16, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90–11946 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–07–M

Bureau of Administration

[Public Notice 1201]

Announcement of Amendment to University of Miami Grant Number 1006–820001

The Department of State intends to amend the existing grant number 1006–820001 with the University of Miami to provide FY 1990 funds for the Latin American and Caribbean Data Base project (INFO–SOUTH).

Dated: April 27, 1990.

Robert B. Dickson,

Director, Office of Acquisitions.

[FR Doc. 90–11939 Filed 5–22–90; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Approval of Automobile Gasoline (Autogas) Instead of Aviation Gasoline (Avgas) in Part 23 Airplanes With Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a revised AC which provides information and guidance concerning approval of automobile gasoline (autogas) instead of aviation gasoline (avgas) in part 23 airplanes with reciprocating engines.

DATE: Comments must be received on or before June 23, 1990.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Roland H. West, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426–6941 or FTS 867–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23.1521–1A, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

Advisory Circular 23.1521–1 was issued on January 25, 1985. Subsequent to this date, the American Society for Testing and Materials (ASTM) issued D 4814 as an automotive fuel standard in 1988; and ASTM D 439, an automotive gasoline standard, is being balloted by ASTM for withdrawal. AC 23.1521–1 is being revised as AC 23.1521–1A. Accordingly, the FAA is proposing and requesting comments on AC 23.1521–1A which will provide an acceptable means of compliance with Part 3 of the Civil Air Regulations (CAR) and part 23 of the Federal Aviation Regulations (FAR), applicable to approval procedures covering use of autogas in part 23 airplanes. These procedures also apply to those airplanes approved under part 4a of the CAR.

Issued in Kansas City, Missouri, May 14, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–11933 Filed 5–22–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; King County, WA

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway bridge project in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Division Administrator, Federal Highway Administration, Evergreen Plaza Building, suite 501, 711 South Capitol Way, Olympia, Washington, 98501, Telephone: (206)753–9413; Dennis B. Ingham, Assistant Secretary for Program Development, Washington State Department of Transportation, Transportation Building, Olympia, Washington, 98504, Telephone: (206)753–7355; or Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15325 Southeast 30th Place, Bellevue, Washington, 98007, Telephone (206)562–4000.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), will prepare an environmental impact statement (EIS) on the proposal to improve State Routes (SR) 99 and 509 in King County, Washington. The proposed improvement would involve the construction of a new bridge across the Duwamish Waterway (navigable) in south Seattle. The project would include approaches, interchanges, and the possible realignment of portions of SR 99 and 509.

Improvements to the corridor are considered necessary to improve safety and to provide for existing and projects multimodal travel demands. Alternatives under consideration include: (1) Taking no action; (2) using alternate travel modes; (3) constructing a new multilane bridge and connecting highway facility either on existing or new alignment. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to citizens and private organizations that have expressed or are known to have interest in this project. A series of meetings with the public, interested community groups, and governmental agencies will be held. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal agency scoping meeting is tentatively scheduled for June 1990.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.502, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Richard C. Kay,

Area Engineer, Olympia, Washington.

[FR Doc. 90–11897 Filed 5–22–90; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 90-04-IP-N01]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation (GM), of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.124, Federal Motor Vehicle Safety Standard (FMVSS) No. 124, "Accelerator Control Systems," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S5.3 of FMVSS No. 124 specifies that the maximum time for the throttle to return to idle position shall be one second for vehicles of 10,000 pounds or less Gross Vehicle Weight Rating (GVWR), and two seconds for vehicle of more than 10,000 pounds GVWR. Maximum time to return to idle position shall be three seconds for any vehicle that is exposed to ambient air at 0 degrees to −40 degrees Fahrenheit during the test or for any portion of the 12 hour conditioning period.

General Motors produced 1,426 vehicles which may not comply with the requirements of FMVSS 124. These vehicles were built with accelerator assemblies which exhibit increased friction at the accelerator pedal pivot and GM believes this may cause a noncompliance with FMVSS No. 124. These noncompliant 1989 General Motors vehicles are as follows:

Chevrolet—Celebrity
Pontiac—6000, Grand Prix and Bonneville
Oldsmobile—Cutlass Ciera, Cutlass Supreme, Delta 88, and 98 Regency
Buick—Century, Regal, Le Sabre, and Electra
Cadillac—Fleetwood and Deville

GM evaluated the effect of the increased friction on the force necessary to return the pedal assembly to the idle position. It was determined from this study that "wear-in" quickly reduced the likelihood that the friction would significantly affect accelerator pedal return. The study also concluded that for the worst case engine/accelerator assembly configuration at the time of shipment, the engine would return to idle within three seconds (as specified in the requirement of S5.2 of Standard No. 124 for testing at −40 degrees Fahrenheit) for 70 percent of the vehicles equipped with the affected assemblies. Therefore, GM believes that in the worst case only 428 vehicles may be in noncompliance with Standard No. 124.

General Motors Corporation supports its petition with following:

"1. Driving an affected vehicle results in a "wear-in" that quickly reduces the accelerator lever friction such that the pedal return will be consistent with the requirements of FMVSS 124. General Motors believes that because of the "wear-in", it is very unlikely that any affected vehicles in use now have the cited throttle return condition.

2. No field incidents attributable to this condition have been reported. General Motors is not aware of any field or customer reports. Furthermore, both warranty and parts sales records show no indication of repairs to correct the cited condition.

3. At the time of shipment, all of the 428 suspect parts performed within the requirements specified by FMVSS 124–S5.2 at, or above, ambient temperatures (50 to 70 degrees Fahrenheit).

4. The throttle system, with any of the 428 parts installed, would return to within 10 percent or less of its normal idle position within the 3 seconds specified by S5.2 at a temperature of −40 degrees Fahrenheit. The resulting engine speed is somewhat higher than cold fast idle. The driver can easily drive and control the vehicle at this engine speed and normal application of service brake easily would stop the vehicle. The delay in idle return would only exist at extremely low temperatures, and as the automobile or the environment warmed the delay would be eliminated.

5. Even though the throttle system may only return to within 10% of normal idle position within three seconds at extremely low temperatures, it does not stop at that point. The throttle continues to close and further decreases the effects described in item 4.

6. If the throttle system does not return to normal idle in cold weather, the condition would be repeatable, until relieved by "wear-in," and the cause would be easily diagnosed. As previously stated, no field reports have been attributed to this condition."

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 22, 1990.
(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on May 17, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-11922 Filed 5-22-90; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 17, 1990.

The Department of the 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: 1545-0172.
Form Number: 4562.
Type of Review: Revision.
Title: Depreciation and Amortization (Including Information on Listed Property).
Description: Taxpayers use Form 4562 to: (1) Claim a deduction for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).
Respondents: Individuals or households, Farms, Businesses or other for-profit,

Non-profit institutions, Small businesses or organizations.
Estimated Number of Respodnents: 11,500,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—33 hours, 43 minutes
Learning about the law or the form—3 hours, 41 minutes
Preparing and sending the form to IRS—4 hours, 23 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 480,470,000 hours.
OMB Number: 1545–0351.
Form Number: 3975 and 3975A.
Type of Review: Revision.
Title: Tax Practitioner Annual Mailing List Application/Update; Tax Practitioner Order Blank.
Description: Form 3975 Series allows a practitioner a systematic way to remain on the mailing file (TPMF) and to order copies of tax forms materials.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 585,000.
Estimated Burden Hours Per Response:
3975—2 minutes
3975A— 3 minutes
Frequency of Response: Annually.
Estimated Total Reporting Burden: 22,864 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 90–11899 Filed 5–22–90; 8:45 am]
BILLING CODE 4830–01–M

Office of the Secretary

[Supplemental to Department Circular—Public Debt Series—No. 14–90]

Treasury Bonds of 2020

Washington, May 11, 1990.

The Secretary announced on May 10, 1990, that the interest rate on bonds designated Bonds of 2020, described in Department Circular—Public Debt Series—No. 14–90 dated May 3, 1990, will be 8¾ percent. Interest on the bonds will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 90–11885 Filed 5–22–90; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 13–90]

Treasury Notes, Series B–2000

Washington, May 10, 1990.

The Secretary announced on May 9, 1990, that the interest rate on the notes designated Series B–2000, described in Department Circular—Public Debt Series—No. 13–90 dated May 3, 1990, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 90–11886 Filed 5–22–90; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Dept. Circular—Public Debt Series—No. 12–90]

Treasury Notes, Series T–1993

Washington, May 9, 1990.

The Secretary announced on May 8, 1990, that the interest rate on the notes designated Series T–1993, described in Department Circular—Public Debt Series—No. 12–90 dated May 3, 1990, will be 8⅝ percent. Interest on the notes will be payable at the rate of 8⅝ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 90–11887 Filed 5–22–90; 8:45 am]
BILLING CODE 4810–40–M

Customs Service

[T.D. 90–41]

Revocation of Corporate Broker License No. 11455 D.A.T.E. International, Inc.

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

ACTION: General notice.

SUMMARY: Notice is hereby given that on April 21, 1990, pursuant to section 641(b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(5)), the corporate license (No. 11455) for D.A.T.E. International, Inc., to conduct Customs business was revoked by action of law.

Dated: May 9, 1990.

William Leubkert,
Acting Director, Office of Trade Operations.

[FR Doc. 90–11905 Filed 5–22–90; 8:45 am]
BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 16, 1990.

By direction of the Secretary.

Frank E. Lalley,
Acting Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Request to Creditor Regarding Applicant's Indebtedness.
3. VA Form Letter 26–250.
4. This form letter is used to obtain credit information from landlords and other creditors of veteran-applicants for guaranteed and direct loans, potential purchasers of VA-acquired properties, and potential assumers of guaranteed

and direct loans to determine applicant's eligibility for the loan.

5. On occasion.

6. Individuals or households—Businesses or other for-profit—Small businesses or organizations.

7. 95,000 responses.

8. ⅛ hour.

9. Not applicable.

[FR Doc. 90–11925 Filed 5–22–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 11, 1990.

By direction of the Secretary.

B. Michael Berger,

Acting Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.

2. Claim for Disability Insurance Benefits.

3. VA Form 29–357.

4. The form is used by a National Service Life Insurance (NSLI) or U.S. Government Life Insurance (USGLI) policyholder to claim disability insurance benefits.

5. On occasion.

6. Individuals and households.

7. 8,100 responses.

8. 1¾ hours.

9. Not applicable.

[FR Doc. 90–11926 Filed 5–22–90; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (23), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 11, 1990.

By direction of the Secretary.

B. Michael Berger,

Acting Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.

2. Counseling Record—Personnel Information.

3. VA Form 28–1902.

4. The form is used to collect information to assist a counseling psychologist in VA to determine the claimant's eligibility for counseling services. The information then becomes the basis for development of approaches to explore the claimant's rehabilitation, training, employment or adjustment needs.

5. On occasion.

6. Individuals or households.

7. 60,000 responses.

8. ½ hour.

9. Not applicable.

[FR Doc. 90–11927 Filed 5–22–90; 8:45 am]

BILLING CODE 8320–01–M

Veterans Health Services and Research Administration

Scientific Review and Evaluation Board for Health Services Research and Development; Meetings

The Department of Veterans Affairs, Veterans Health Services Research Administration, gives notice under Pub. L. 92–463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Washington Vista Hotel, 1400 M Street, NW., Washington, DC, on June 26–27, 1990. The meetings will convene at 8:30 a.m. on June 26 and 27 and adjourn at 4:30 p.m. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assitant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the June 26th session for approximately one hour to cover administrative matters and to discuss

the general status of the program. The closed portion of the meetings involves: Discussion, examination, reference to, an oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b (c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue NW., Washington, DC, 20420, (phone: 202/233–6935) at least 5 days before the meetings.

Dated: May 16, 1990.

By direction of the Secretary:

Laurence M. Christman,

Executive Assistant.

[FR Doc. 90–12008 Filed 5–22–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 100
Wednesday, May 23, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2 p.m. on Tuesday, May 22, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC:

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which prohibit the acceptance or renewal of brokered deposits by any undercapitalized insured depository institution after December 7, 1989, except on specific application to and waiver of the prohibition by the Corporation.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 18, 1990.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary (Operations).

[FR Doc. 90–12113 Filed 5–21–90; 12:20 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, May 29, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 18, 1990.

Jennifer J. Johnson,

Associated Secretary of the Board.

[FR Doc. 90–12054 Filed 5–18–90; 4:24 p.m.]

BILLING CODE 6210–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 2–90]

Commission Meetings and Hearings

The Foreign Claims, Settlement Commission, pursuant to its regulations (45 CFR part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Wed., May 30, 1990 at 10:00 a.m..	Consideration of Proposed and Supplemental Proposed decisions on claims against Egypt. Hearings on the record on objections to Supplemental Proposed decisions on claims against Egypt. Consideration of a claim under Section 6 of the War Claims Act of 1948.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC on May 21, 1990.

Judith H. Lock,

Administrative Officer.

[FR Doc. 90–12159 Filed 5–21–90; 3:38 pm]

BILLING CODE 4410–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 4:00 p.m., Friday, May 18, 1990.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Procedural issues related to case processing.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: May 21, 1990.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 90–12161 Filed 5–21–90; 3:51 pm]

BILLING CODE 7400–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, June 4, 1990, and at 8:30 a.m. on Tuesday, June 5, 1990, in Anchorage, Alaska. The June 4 meeting, at which the Board will discuss possible strategies in collective bargaining negotiations, is closed to the public. (See 55 FR 20021, May 14, 1990). The June 5 meeting is open to the public and will be held in the Aft Deck Room of the Hotel Captain Cook, Fifth and K Streets, Anchorage. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

June 4—1:00 p.m. (Closed)

1. Status Report on Preparations for Collective Bargaining. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group, and Joseph J. Mahon, Jr., Assistant Postmaster General, Labor Relations Department)

Tuesday Session

June 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 7–8, 1990.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Chief Inspector's Report on Consumer Protection. (Charles R. Clauson, Chief Postal Inspector)

4. Report on the Western Region. (Joseph R. Caraveo, Regional Postmaster General)
5. Report on the Anchorage Division. (Robert J. Opinsky, Field Division General Manager/Postmaster)
6. Technology Resource Center Contract Renewal. (Karen T. Uemoto, Assistant Postmaster General, Technology Resource Department)
7. Capital Investments: (Mr. Caraveo)
   a. Cupertino, California, Main Post Office, Additional Funding.
   b. Goleta, California, Main Handling Annex Lease.
8. Tentative Agenda, for July 9–10, 1990, meeting in Hartford, Connecticut.

David F. Harris,

Secretary.

[FR Doc. 90–12146 Filed 5–21–90; 2:41 pm]

BILLING CODE 7710–12–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 10:30 a.m. on Thursday, May 24, 1990 to consider the following matters:

Summary Agenda:

No Cases

Discussion Agenda:

RTC Procedures for Solicitation and Selection of Contractors
RTC Standard Asset Management and Disposition Agreement
RTC Delegations of Authority to Private Sector Assets Managers
Retention of Thrift Branches Acquired by Banks in Emergency Acquisitions
RTC Representations and Warranties

The meeting will be held in the Auditorium of the RTC Building located at 801—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: May 17, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–12135 Filed 5–21–90; 1:48 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that Corporation business requires the addition to the "Summary Agenda" for the open session of the Thursday, May 24, 1990, meeting of the Resolution Trust Corporation the following:

Report of Committee

Quarterly report of actions taken under delegated authority by the RTC Committee on Mangement and Disposition of Assets and the RTC Senior Committee on Management and Disposition of Assets (October 1, 1989–December 31, 1989)

The Change was required with less than seven days notice to the public and no earlier notice was practicable.

The meeting will be held in the Auditorium of the RTC Building located at 801—17th St., NW., Washington, DC.

Request for further infomation concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 416–7282.

Dated: May 18, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90–12136 Filed 5–21–90; 1:48 pm]

BILLING CODE 6714–01–M

federal register

Wednesday
May 23, 1990

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia; Permanent Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia; Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: The Secretary of the Interior is announcing his approval, with certain exceptions, of an amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the removal or modification of the remaining conditions placed on his approval of the program. The amendment consists of numerous modifications to the State's surface mining reclamation regulations and is intended to satisfy five of the remaining six conditions of program approval and make the provisions of the West Virginia program no less effective than the corresponding Federal requirements, as revised since program approval. The State also has made numerous editorial changes to conform with State rule drafting requirements, improve clarity and specificity, and address assorted issues of concern to the State.

EFFECTIVE DATE: May 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program.
II. Submission of Proposed Amendments.
III. Secretary's Findings.
IV. Summary and Disposition of Comments.
V. Secretary's Decision.
VI. Procedural Determinations.
VII. Codification of Decision.

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the initial conditions of approval of the West Virginia program can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 948.11, 948.12, 948.13, 948.15, and 948.16.

II. Submission of Proposed Amendments

On June 30, 1986, West Virginia submitted a proposed amendment consisting of a policy statement establishing inspection frequency requirements, establishing procedures for determining when an operation may be considered inactive for inspection purposes, defining the terms "complete inspection" and "partial inspection" and establishing requirements governing the conduct of aerial inspections. The proposed amendment also included a directive clarifying the impoundment inspection requirements of Section 4B.05(c) of the State's surface mining reclamation regulations. In addition, the State submitted a revised version of its Code of Violations, which OSM originally approved on July 11, 1985 (50 FR 28324–28342), to clarify how it is to be implemented and to revise the statutory citations to reflect passage of the West Virginia Energy Act, Article 3 of which contains numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act (WVSMCRA). OSM also approved this Act, with certain exceptions, on July 11, 1985 (50 FR 28316–28324) (Administrative Record No. WV 709).

On September 18, 1986 (51 FR 33066–33067), OSM announced receipt of this proposed amendment (Administrative Record No. WV 716–B) and opened the public comment period, which closed on October 20, 1986. Because West Virginia subsequently indicated a desire to incorporate the policy statements into its regulations, OSM delayed making a final decision on the proposed amendment. The policy statements included in this amendment have since been incorporated into the State's proposed surface mining reclamation regulations (the primary subject of this rulemaking). Also, the revisions to the Code of Violations remain a subject of the rulemaking.

Pursuant to 30 CFR 732.17 (c) and (e), by letter dated August 19, 1986 (Administrative Record No. WV 711), OSM notified the State of 221 areas in which its program was less effective than Federal requirements, primarily because of revisions to the Federal regulations promulgated between the date the program was originally approved and September 30, 1983. This letter is commonly referred to as the Regulatory Reform I part 732 notification.

On October 22, 1986, the Commissioner of the West Virginia Department of Energy (DOE), the state regulatory authority, responded to this list of concerns. Of the 221 deficiencies, the State indicated that 166 could be satisfied by revisions of regulations, 8 would require statutory amendments, 10 would require policy changes, 26 were already considered to be as effective as the Federal requirements and eleven would require lengthy deliberation (Administrative Record No. WV 712).

On June 9, 1987, OSM notified the State of seven more program deficiencies relating to Historic Preservation (Administrative Record No. WV 749). West Virginia advised OSM on July 10, 1987, that the requested changes relating to Historic Preservation were being addressed together with the Regulatory Reform I issues for submission to the West Virginia Legislative Rulemaking Review Committee in late August (Administrative Record No. WV 750).

On October 20, 1987, DOE submitted its proposed surface mining reclamation regulations to OSM for informal review. The submittal was intended to satisfy all of OSM's Regulatory Reform I issues of August 19, 1986, and the Historic Preservation concerns of June 9, 1987. On December 18, 1987, OSM advised DOE that the informal review of its proposed regulations identified 204 remaining issues that had to be addressed by the State (Administrative Record No. WV 748).

On July 7, 1988, DOE submitted a proposed amendment to OSM that contained surface mining reclamation regulations and coal refuse disposal regulations which were also filed with the Secretary of State on an emergency basis on July 15, 1988 (Administrative Record No. WV 756). On August 10 and November 29, 1988, DOE submitted revisions to its amendment of July 7, 1988. An announcement concerning the emergency regulations appeared in the **Federal Register** on April 21, 1989 (54 FR 16136–16138) (Administrative Record No. WV 776).

On August 9, 1988, DOE formally submitted to OSM a copy of its new proposed surface mining reclamation regulations which had been submitted to the Secretary of State's Office on August 5, 1988. The revisions were intended to satisfy all of OSM's regulatory concerns and five of the State's program conditions (Administrative Record No. WV 760).

On September 9, 1988, DOE held a public hearing on the revised legislative

rules, and on September 19, 1988, DOE submitted its revised rules to the Legislative Rulemaking Review Committee for consideration. Because these regulations were to repeal the emergency regulations that were adopted on July 15, 1988, and subsequently revised on August 5, 1988, these regulations were commonly referred to as the "repealer package".

On November 9, 1988, OSM identified thirteen other State regulations which were determined to be less effective than the Federal regulations that were promulgated between October 1, 1983, and June 15, 1988. This letter is commonly referred to as Regulatory Reform II (Administrative Record No. WV 762).

On December 28, 1988, DOE submitted additional revisions to its regulations which were intended to satisfy OSM's Regulatory Reform II concerns of November 9, 1988. The State included the proposed revisions in the repealer package so that they would receive consideration by the Legislative Rulemaking Review Committee during the 1989 regular session (Administrative Record No. WV 769).

On April 8, 1989, the West Virginia Legislature adopted DOE's legislative regulations with approximately fifty-four revisions. The Governor signed Senate Bill 341 authorizing the finalization of DOE's surface mining reclamation regulations on April 26, 1989.

On April 17, 1989, DOE provided OSM a partial copy of the regulations that were approved by the Legislature (Administrative Record No. WV 772). Because the submittal did not include the State's proposed regulatory reform revisions of December 28, 1988, DOE resubmitted its revised regulations on April 26, 1989. The final legislative rules were formally submitted by DOE as an amendment to its permanent program and preempt the July 7, August 10 and November 29, 1988, submittals which contained emergency regulations. The amendment constitutes a major reform to the State's surface mining regulatory program and is intended to satisfy five of the remaining six conditions of program approval concerning augering on previously mined lands, coal refuse disposal, applicant violator information, coal exploration, revegetation and show cause orders (Administrative Record No. WV 775).

On May 11, 1989, OSM notified DOE of seventeen more deficiencies in its approved program concerning ownership and control (Administrative Record No. WV 783).

On May 26, 1989, OSM published a notice in the **Federal Register** soliciting public comments on DOE's revised surface mining reclamation regulations of April 26, 1989, to determine whether they were no less effective than the Federal regulations and no less stringent than SMCRA. The public comment period closed on June 26, 1989 (54 FR 22783–22785). At the request of the National Wildlife Federation, on June 26, 1989, OSM extended the comment period through July 11, 1989. The public hearing scheduled for June 15, 1989, was not held since no requests to testify were received from the general public (Administrative Record No. WV 795).

On September 20, 1989, OSM informally notified DOE of thirty-three additional deficiencies in its program as a result of Federal rule changes since June 8, 1988. This letter is commonly referred to as Regulatory Reform III.

After completing its review of the State's proposed amendment of April 26, 1989, OSM notified DOE that there were approximately 300 instances in which the proposed amendment appeared to be less effective than the Federal requirements. OSM provided the State its list of concerns on October 12, 1989, which included all relevant public comments received on the proposed amendment and all remaining unresolved issues identified in OSM's Regulatory Reform I letter of August 19, 1986, as revised on December 18, 1987, Historic Preservation letter of June 9, 1987, Regulatory Reform II letter of November 9, 1988, Ownership and Control letter of May 11, 1989, and proposed Regulatory Reform III letter of September 20, 1989. Because the State indicated a willingness to revise its proposed amendment, OSM gave DOE until November 13, 1989, to submit additional modifications or clarifying materials to satisfy all remaining deficiencies. OSM requested that the State promulgate these revisions as emergency rules (Administrative Record No. WV 799).

On October 24, 1989, OSM and State officials met to discuss the status of the State's program. On November 7, 1989, DOE was advised that promulgation of its revised regulations on an emergency basis would not be necessary so long as DOE submitted them to the West Virginia Legislature in January 1990 for ratification (Administrative Record No. WV 801).

In response to concerns raised by Congressman Rahall, on November 9, 1989, OSM extended the State's program amendment submission deadline to December 10, 1989 (Administrative Record Nos. WV 802 and WV 805).

On December 7, 1989, DOE submitted revisions to its initial program amendment of April 26, 1989, in response to OSM's issue letter of October 12, 1989 (Administrative Record No. WV 806). OSM identified several unresolved issues as a result of an informal review of the revised proposed amendment. On December 12 and 13, 1989, OSM and State officials met to discuss the remaining issues. Since the State had only received informal notification of the proposed Regulatory Reform III issues, OSM advised the State that those issues would not have to be addressed in the current submission. However, OSM encouraged the State to continue developing a package for submission to the West Virginia Legislature that would address all program deficiencies, including Regulatory Reform III. As a result of the meetings, State officials agreed to make additional revisions to the December 7th submission.

On December 19, 1989, DOE submitted a revised program amendment which is intended to satisfy all remaining program deficiencies, except Regulatory Reform III issues (Administrative Record No. WV 807).

On January 2, 1990, OSM published a notice in the **Federal Register** announcing receipt of the State's proposed program amendment of December 19, 1989, and reopening the public comment period (55 FR 34–35). The public comment period closed on February 1, 1990 (Administrative Record No. WV 810).

On January 23, 1990, the West Virginia Legislative Rulemaking Review Committee made modifications to DOE's proposed surface mining reclamation regulations which had been submitted to OSM on December 19, 1989. On February 7, 1990, DOE provided OSM a listing of all modifications which were made by the Legislative Rulemaking Review Committee to its surface mining reclamation regulations. The State submitted the modifications as a revision to its proposed program amendment of April 26, 1989, as revised on December 19, 1989 (Administrative Record No. WV 821). The twelve pages of modifications are intended to correct several typographical and editorial errors contained in DOE's proposed legislative rules.

On February 20, 1990, OSM published a notice in the **Federal Register** announcing receipt of West Virginia's submittal of February 7, 1990, and reopening of the public comment period (55 FR 5859–5861). The public comment period closed on March 7, 1990 (Administrative Record No. WV 828).

On March 10, 1990, the West Virginia Legislature approved DOE's proposed surface mining reclamation regulations with one substantive modification

relating to the reclamation of bond forfeiture sites. Senate Bill 243 authorizing promulgation of the State's surface mining reclamation regulations was signed by the Governor on March 28, 1990.

On March 30, 1990, DOE advised OSM that it plans to make its final legislative rules effective by June 1, 1990 (Administrative Record No. WV 836). The final legislative rules will be reviewed by OSM upon receipt to ensure conformity with the proposed amendments being considered today, and any differences will be subject to further public review and comment.

III. Secretary's Findings

Set forth below, pursuant to 30 CFR 732.15 and 732.17, are the Secretary's findings concerning the amendment submitted by West Virginia on April 26, 1989, which was subsequently revised on December 19, 1989, and February 7, 1990. This amendment contains modifications to DOE's proposed surface mining reclamation regulations, Title 38, Series 2, as approved by the West Virginia Legislative Rulemaking Review Committee on January 23, 1990. The State has been advised that any additional legislative modifications to these rules will have to be submitted to OSM for approval as a program amendment.

Unless otherwise indicated, the amendment fully satisfies OSM's Regulatory Reform I part 732 notification of August 19, 1986, as revised on December 18, 1987; the historic preservation part 732 notification of June 9, 1987; the Regulatory Reform II part 732 notification of November 9, 1988; the ownership and control part 732 notification of May 11, 1989; and the issue letter of October 12, 1989. Five deficiencies identified in OSM's issue letter of October 12, 1989, relating to exemptions, permit revisions, the definition of surface mining operations, temporary relief, and appeals to the Reclamation Board of Review concerning prospecting approvals and permit transfers will require statutory revisions by the State. The State expects to submit these revisions to the Legislature with the statutory modifications needed to satisfy the requirements of 30 CFR 948.16(c). In addition, pursuant to 30 CFR 732.17(c) and (e), OSM formally notified West Virginia on February 7, 1990, and March 6, 1990 (Administrative Record Nos. WV 827 and WV 834, respectively), of additional program changes needed as a result of revisions to the regulations promulgated since June 8, 1988. These letters are commonly referred to as the incidental extraction exemption part 732 notification and the Regulatory Reform III part 732 notification. Further changes to the West Virginia program may be required in the future as a result of court decisions, OSM oversight findings, or additional revisions to SMCRA or the Federal regulations.

The following findings discuss only those amendment provisions of particular interest. Any provisions not specifically discussed herein either are substantively identical to the corresponding Federal regulations in effect on June 9, 1988, or, where the Federal rules have not been revised since July 11, 1985, contain language essentially identical to the State rules approved on that date (50 FR 28316–28345) and found to be no less effective than the Federal requirements in existence at that time. Except as discussed in the findings below, when viewed in their entirety with WVSCMRA, the revised rules are substantively identical to the corresponding Federal regulations in effect on June 9, 1988, with minor changes to improve clarity and specificity and to incorporate State references and terms where deemed necessary or useful. None of the amendment provisions adversely affects the original findings, made at the time of program approval as required by section 503 of SMCRA and 30 CFR 732.15 (b) through (d), concerning the State's authority and capability to implement, administer and enforce a program to regulate coal exploration and surface coal mining and reclamation operations (46 FR 5954, January 21, 1981). Furthermore, except as provided herein, this amendment does not affect the specific provisions of the West Virginia program that have been disapproved or set aside by OSM at 30 CFR 948.12 and 948.13.

1. Section 38–2–1: General

1.1. As discussed in Finding 19 of the July 11, 1985, **Federal Register** notice the Secretary found that Subsections 1.02 (a) and (c) of the State's regulations are less effective than 30 CFR 784.20 in that they do not require the submission of subsidence control plans with all permit applications for existing underground mining operations (50 FR 28335–28336). The Secretary disapproved subsection 1.02(a) of the State's regulations to the extent that it provides:

> Such acknowledgement shall be deemed sufficient to make the permit or application complete for any new permit requirements contained in these regulations and shall become a part of the permit;

and section 1.02(c) of West Virginia's regulations to the extent that it provides:

> Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in these regulations and shall become a part of the permit.

West Virginia revised its regulations at Subsection 1.2(a) to delete the requirement concerning the acknowledgement letter for existing operations. Such acknowledgement is still required by subsection 1.2(b) of the proposed regulations for new operations with pending surface mining applications. Because subsection 1.2(a) has been revised to delete that portion of section 1.02(a) which was found to be inconsistent with 30 CFR 784.20, the Secretary finds that the revised provisions at subsection 1.2(a) are no longer less effective than the Federal requirements at 30 CFR 784.20. Therefore, the adoption of the revised regulations by the State will satisfy that part of the Secretary's disapproval at 30 CFR 948.12(h) relating to section 1.02(a) of the State's regulations. However, since subsection 1.2(b) of the proposed State regulations contains similar provisions to section 1.2(c) which were found to be less effective than 30 CFR 784.20, the Secretary is retaining and revising that portion of his disapproval at 30 CFR 948.12(h) to ensure that such provisions do not authorize the waiver of subsidence control plans by the State in the future and that such applications are complete and accurate at the time of approval.

2. *Section 38–2–2: Definitions.*

2.1. *Acid Mine Drainage.* West Virginia revised its definition of acid mine drainage at subsection 2.3 to mean water discharged from an active, inactive, or abandoned surface mine and reclamation operations or from areas affected by surface mining and reclamation operations with said water having a pH of less than six (6.0) in which total acidity exceeds total alkalinity. Since the proposed definition is substantively identical to the Federal definition of acid drainage, the Secretary finds that subsection 2.3 of the State's proposed rules is no less effective than Federal regulations at 30 CFR 701.5.

2.2. *Active Surface Mining Operation.* Subsection 2.8 of the proposed regulations was revised to define "active surface mining operation" to mean, for the purpose of permit renewal as provided in subsection 3.27, an operation where a Phase I bond reduction for the entire permit area has not been approved. subsection 3.27(a) provides that all active surface mining operations and all operations which have been granted inactive status in

accordance with subsection 14.11 shall be subject to the renewal requirements of section 22A–3–19 of WVSCMRA. The Federal rules contain no counterpart definition. However, on April 5, 1989 (54 FR 13814–13823), OSM revised its rules to clarify that an operator need not be required to renew a permit to conduct reclamation activities on a site where no further coal extraction is planned. Since the definition proposed by West Virginia would be used only in support of permit renewal requirements, and since it would not include any sites on which further coal extraction is planned, the Secretary finds that it is not inconsistent with SMCRA or the Federal rules at 30 CFR 773.11(a) and 800.60(b).

2.3. *Administratively Complete Application.* DOE amended its regulations at subsection 2.9 to define "administratively complete application" to mean, an application for permit approval or approval for prospecting which the Commissioner determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review. This definition is essentially identical to the Federal definition of "administratively complete application." Therefore, the Secretary finds that the definition at subsection 2.9 of the proposed State regulations is no less effective than the Federal definition at 30 CFR 701.5.

2.4. *Affected Area.* Subsection 2.10 of the State's proposed regulations was revised to define "affected area" to mean, (1) when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining and reclamation activities, or (2) when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit by surface operations or facilities incident to underground mining activities or by underground operations. The term also includes other lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations; any areas covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property; material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. As indicated in its submittal of February 7, 1990, the definition was revised to conform with the State's statutory definition of affected area at Section 22A–3–3(b) of WVSCMRA. Although the language proposed by the State is different from the Federal language, the State's definition of affected area, like the Federal definition, includes any land or water resources within the permit area and the adjacent area which may be utilized or affected by the surface mining reclamation operation. Because OSM suspended its definition of affected area on November 20, 1986, (51 FR 41960) insofar as it excludes roads which are included in the definition of surface coal mining operations, West Virginia has revised its definition accordingly. Therefore, the Secretary finds that the State's proposed definition of affected area at Subsection 2.10 is no less effective than the Federal definition at 30 CFR 701.5.

2.5. *Auger Mining.* Subsection 2.12 of the proposed State regulations was revised to define "auger mining" to mean a method of mining coal at the surface by drilling or cutting horizontally into the exposed seam at the highwall. The State added the phrase "at the highwall" at the end of the definition to make it clear that augering operations occur below exposed highwalls. The Federal definition contains a similar phrase relating to highwalls. Therefore, the Secretary finds that the State's definition of auger mining at Subsection 2.12 is no less effective than the Federal definition at 30 CFR 701.5.

2.6. *Bench Control System.* West Virginia has defined "bench control system" at Subsection 2.14 to mean a series of elongated basins with a holding capacity of less than five acre-feet which are located along the toe of the backfill on haulback-type mining operations. Such systems are utilized by operators in lieu of sedimentation ponds to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area. These systems are preferred alternatives to sedimentation ponds in many areas of the State, especially steep slope areas, because less area is disturbed in constructing them and surface runoff from the disturbed area is contained onsite. Further discussion of the State's sediment control requirements and the State's proposed use of bench control systems is contained in Finding 5.3. While the Federal rules do not define or use the term "bench control system", the Secretary finds that the State's definition of this subset of impoundments adds specificity to the West Virginia rules in response to conditions found within the State and that it is not inconsistent with any requirements of SMCRA or the Federal regulations.

2.7. *Coal Preparation Plant.* The term coal preparation plant at Subsection 2.22 of the proposed State regulations has been redefined to mean a facility operated in connection with a mine where coal is subjected to chemical or physical processing or cleaning, crushing (by any means), concentrating, screening or sizing, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to, loading facilities; storage and stockpile facilities, sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas. DOE redefined the term to clarify that any coal preparation plant operated in connection with a mine that physically or chemically processes coal must be permitted and regulated by the State. West Virginia previously only required the regulation of activities involving the separation of coal from its impurities. In response to OSM's revised rule of November 22, 1988, DOE also revised its definition to clarify that only coal preparation activities which are carried out "in connection with" a coal mine are to be permitted and regulated by the State (53 FR 47384–47391). Therefore, the Secretary finds that the State's definition of coal preparation plant at Subsection 2.22 of the proposed regulations is no less effective than the Federal definition in 30 CFR 701.5 and 785.21(a).

2.8. *Collateral Bond.* West Virginia has redefined collateral bond at Subsection 2.27(g) of its proposed regulations to mean an indemnity agreement in sum certain executed by the permittee and supported by a whole life insurance policy assigned to the Department of Energy and in the possession of the Commissioner, said policy having been issued by only those companies with an independent financial rating of A+, Aaa, or the equivalent which are authorized to do business in the State of West Virginia and which are member insurers of the West Virginia Life and Health Insurance Guaranty Association. The revision is intended to allow operators to post

whole life insurance policies as collateral for performance bonds. Further discussion of this alternative bonding mechanism is contained in Finding 11.4. The Federal regulations at 30 CFR 800.5(b) define collateral bond to include such things as cash, certificates of deposit, bonds, letters of credit, first-lien security interests in real property, and other investment-grade securities. Although the Federal regulations do not define collateral bond to include whole life insurance policies, Finding 11.4 sets forth the Secretary's reasons for allowing whole life policies as a form of collateral bond. Since whole life policies are a form of collateral bond and such policies, as discussed in Finding 11.4, are found to provide the protection equivalent to that of other bonding mechanisms as defined in 30 CFR 800.5, the Secretary finds that the State's definition of collateral bond at Subsection 2.27(g) is no less effective than the Federal definition of collateral bond at 30 CFR 800.5(b).

2.9. *Complete and Accurate Application.* West Virginia has revised its definition of "complete and accurate application" at subsection 2.35 to include an application for either a surface mining permit or prospecting approval. Also, the State clarified that such an application would have to contain all materials necessary for the Commissioner to make a decision on approval or denial. Because the proposed State definition is substantively identical to the Federal definition of "complete and accurate application" at 30 CFR 701.5, the Secretary finds that subsection 2.35 of the proposed State regulations is no less effective than the Federal regulations at 30 CFR 701.5.

2.10. *Cumulative Impact/Cumulative Impact Area.* West Virginia has defined "cumulative impact" at subsection 2.38 of the proposed regulations to mean the hydrologic impact that results from the cumulation of flows from all coal mining sites to common channels or aquifers in a cumulative impact area. Subsection 2.39 defines "cumulative impact area" as the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include the entire projected lives through bond releases of: (a) the proposed operation; (b) all existing operations; (c) any operation for which a permit application has been submitted to the Commissioner; and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available. Although the Federal regulations do not specifically define cumulative impact, the Federal requirements at 30 CFR 780.21(g) and 784.14(f) contain provisions regarding the cumulative impact of mining on the hydrologic balance which form the basis for the State's definition. Furthermore, the State's definition of "cumulative impact area" is identical to the corresponding Federal definition at 30 CFR 701.5. Therefore, the Secretary finds that subsections 2.38 and 2.39 of the proposed State regulations are not inconsistent with the Federal requirements at 30 CFR 701.5, 780.21(g) and 784.14(f).

2.11. *Downslope.* The State has revised its definition of "downslope" at subsection 2.43 of the proposed regulations to mean the land surface between the projected outcrop of the lowest coal seam permitted to be mined and the valley floor. The Federal regulations at 30 CFR 701.5 define downslope to mean the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor. In a multiple-seam mining situation, the proposed State definition would allow an operator to place spoil downslope of the seam being mined when two or more lower seams also have been permitted to be mined. Under the Federal rule, an operator could not place spoil downslope of the lowest seam being mined, even if lower coal seams have been permitted for future mining as part of the same operation. The Federal rule thus provides a safeguard against the uncontrolled downslope placement of spoil that could otherwise result if the mining plan changes and one or more of the lower seams ultimately is not mined. Therefore, the Secretary finds that the State's proposed definition of downslope at subsection 2.43 is less effective than the Federal definition at 30 CFR 701.5. Accordingly, he is not approving the proposed State definition to the extent that it could be applied to allow uncontrolled placement of spoil downslope of the lowest coal seam being mined. He also is requiring West Virginia to redefine downslope in a manner no less effective than the corresponding Federal definition at 30 CFR 701.5.

2.12. *Embankment.* West Virginia revised its definition of "embankment" at section 2.44 of the proposed regulations to mean a manmade deposit of earth or waste materials five feet or greater in height as measured from the upstream toe, usually exhibiting at least one sloping face. The Federal rule at 30 CFR 701.5 defines "embankment" to mean an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water, support roads or railways, or for other similar purposes. It includes no height threshold. Since the proposed State regulations limit embankments to those five feet or greater in height, the Secretary finds that the State's definition of embankment at subsection 2.44 is less effective than the Federal definition at 30 CFR 701.5. Accordingly, he is not approving it to the extent that it includes the phrase "of five feet or greater in height as measured from the upstream toe." He also is requiring that the State amend its definition to be no less effective than its Federal counterpart.

2.13. *Haulageway or Access Road.* The definition of haulageway or access road at subsection 2.59 of the proposed regulations was revised by the State to mean a surface right-of-way for purposes of travel by land vehicles used in surface mining and reclamation or prospecting operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, ditches, and other related structures. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface mining and reclamation or prospecting operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas. On November 8, 1988, OSM reinstated and revised its definition of road at 30 CFR 701.5 (53 FR 45192–45194). West Virginia revised its definition of haulageway to include roads used in prospecting operations and to conform with the revised Federal definition. Therefore, the Secretary finds that the State's definition of haulageway at subsection 2.59 of the proposed regulations is no less effective than the revised Federal definition at 30 CFR 701.5.

2.14. *Fragile and Historic Lands.* In response to a decision rendered by the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79–1144), on May 19, 1987, OSM revised its definitions of "fragile lands" and "historic lands" at 30 CFR 762.5 to eliminate the requirement of a finding of irreparable damage (52 FR 18792–18795). West Virginia revised its regulations at subsections 2.53 and 2.62 to eliminate similar provisions relating

to irreparable damage to fragile and historic lands. In addition, West Virginia further clarified that historic lands include properties for which historic designation is pending and properties eligible for, but not listed on the National Register of Historic Places. The Secretary finds that the revised definitions of fragile and historic lands at subsections 2.53 and 2.62 are no less effective than the Federal definitions at 30 CFR 762.5.

2.15. *Impoundment or Impounding Structure.* The State revised its definition of "impoundment" or "impounding structure" at subsection 2.66 of the proposed regulations to mean a closed basin constructed for the retention of water, sediment, or waste, and which consists in part of an embankment, dike or other constructed barrier. At OSM's request, West Virginia revised its proposed definition so as not to limit such structures to those with an embankment greater than five feet in height and which results in a basin of ten acre-feet or more. However, the proposed definition still does not include depressions or sedimentation control structures such as dugout ponds which are usually built at ground level without an embankment or barrier. Therefore, the Secretary finds that the State's proposed definition at subsection 2.66 is less effective than the Federal definition at 30 CFR 701.5. Accordingly, the Secretary is requiring West Virginia to redefine impoundment in a manner which is no less effective than the Federal definition at 30 CFR 701.5.

2.16. *Irreparable Damage to the Environment.* West Virginia revised its proposed regulations at subsection 2.70 to include a definition of "irreparable damage to the environment." The term was defined to mean any damage to the environment in violation of the Act and these regulations which cannot be corrected by activities of the responsible person. The proposed State definition is substantively identical to Federal definition of "irreparable damage to the environment." Therefore, the Secretary finds that the proposed definition at subsection 2.70 is no less effective than the Federal definition at 30 CFR 701.5.

2.17. *Owned or Controlled or Owns or Controls.* On October 3, 1988, OSM revised its regulations at 30 CFR 773.5 to define "owned or controlled" and "owns or controls" (53 FR 38890). On May 11, 1989, OSM advised the State that it would have to revise its regulations accordingly. In response, West Virginia has amended its regulations at subsection 2.83 to define "owned or controlled" and "owns or controls" in a manner substantively identical to and therefore no less effective than the corresponding Federal definitions.

2.18. *Person Having an Interest Which is or May be Adversely Affected or Person with a Valid Legal Interest.* West Virginia has revised its proposed regulations at subsection 2.86 to define "person having an interest which is or may be adversely affected" or "person with a valid legal interest" to mean any person (a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by prospecting or surface mining and reclamation operations or any related action of the Commissioner; or (b) whose property is or may be adversely affected by prospecting or surface mining and reclamation operations or any related action of the Commissioner. The Secretary finds that the State's proposed definition at subsection 2.86 is substantively identical to and therefore no less effective than the Federal definition at 30 CFR 700.5.

2.19. *Prospecting.* The State has revised its regulations at subsection 2.94 to define "prospecting" to mean the field gathering of surface or subsurface geologic, physical, or chemical data by trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area. In addition, the corresponding Federal definition of "coal exploration" at 30 CFR 701.5 includes the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations. Since the proposed State definition of prospecting does not include the gathering of environmental data to establish conditions of an area prior to mining, the Secretary finds that subsection 2.94 is less effective than 30 CFR 701.5. Accordingly, the Secretary is requiring West Virginia to redefine prospecting in a manner no less effective than the Federal definition at 30 CFR 701.5.

2.20. *Protected Structure.* West Virginia revised its definition of "protected structures" at subsection 2.95 to mean, for purposes of blasting, dwellings, public buildings, schools, churches, or community or institutional buildings. The Secretary finds that the revised definition of protected structure at subsection 2.95 of the proposed State regulations includes all structures protected under 30 CFR 816/817.67(d), and that it is therefore no less effective than the Federal rules.

2.21. *Reasonably Available Spoil.* West Virginia revised its regulations at subsection 2.98 to define "reasonably available spoil" to mean spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment. The proposed State definition of reasonably available spoil is identical to the Federal definition at 30 CFR 701.5. Therefore, the Secretary finds that the State's definition at subsection 2.98 is no less effective than the Federal definition of reasonably available spoil at 30 CFR 701.5.

2.22. *Remined Area/Coal Remining Operations.* The State has revised its regulations at subsection 2.101 to define "remined area" to mean that area of any coal remining operation on which coal mining was conducted before the effective date of SMCRA. In addition, West Virginia has defined "coal remining operation" at subsection 2.25 to mean a coal mining operation which begins at a site where previous coal mining was conducted before August 3, 1977. These terms and their definitions are derived from P.L. 100–4, which amended the Federal Water Pollution Control Act to authorize the issuance of modified National Pollutant Discharge Elimination System (NPDES) permits for preexisting discharges. The Secretary has no jurisdiction over the NPDES program, which is overseen by the U.S. Environmental Protection Agency, and he is therefore rendering no decision as to their consistency with that program's requirements.

However, the State also uses these terms in establishing certain relaxed backfilling, grading and revegetation requirements in subsection 14.16 for previously mined areas on which there is a preexisting highwall. These standards are comparable to those allowed under the Federal regulatory program for previously mined areas. The Federal rules, at 30 CFR 701.5 define "previously mined area" to mean land previously mined on which there were no surface coal mining operations subject to the standards of SMCRA. The State rules contain no counterpart definition. On February 12, 1990, the U.S. District Court for the District of Columbia remanded the Federal definition as being contrary to SMCRA because it includes lands mined after SMCRA's enactment date (August 3, 1977) and can be interpreted as allowing an operator to remine an area that had been fully and satisfactorily reclaimed and then reclaim it only to the lesser standards applicable to remining

operations *(National Wildlife Federation* v. *Lujan* (Civil Action Nos. 87–1051, 87–1814 and 88–2788, D.D.C. February 12, 1990). Since West Virginia uses the term "previously mined areas" only in conjunction with the term "remining operation", which is defined as including only those lands mined prior to August 3, 1977, the Secretary finds that the proposed State regulations are consistent with the court's decision in this respect. In addition, since the remining provisions of subsection 14.16 apply only to those previously mined areas on which there is a preexisting highwall, the Secretary finds the State program to be consistent with the court's decision insofar as it requires the exclusion of areas that have been fully and satisfactorily reclaimed.

2.23. *Renewable Resource Lands.* West Virginia has revised its definition of "renewable resources lands" at subsection 2.102 of its proposed regulations to mean aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. OSM requested that the State make this revision because its previous definition was applicable only to the process used to designate areas as unsuitable for mining. The revised definition, like the Federal definition, is applicable to permitting and enforcement activities, most notably the provisions relating to subsidence. Therefore, the Secretary finds it to be no less effective than the corresponding Federal definition at 30 CFR 701.5.

2.24. *Sediment Control Structure or Sediment Pond.* The State has revised regulations at subsection 2.107 to define "sediment control structure" or "sediment pond" to mean an impoundment designed, constructed, and maintained in accordance with these regulations for the purpose of removing solids from water in order to meet applicable water quality standards or effluent limitations before the water is discharged into the receiving stream. West Virginia revised the definition to satisfy OSM's concerns of October 12, 1989. The Secretary finds that the revised definition at subsection 2.107 of the proposed State regulations is substantively identical to and therefore no less effective than the Federal definition of "sedimentation pond" at 30 CFR 701.5.

2.25. *Structure.* Subsection 2.116 of the proposed State regulations has been revised to define "structure" to mean, except as used in the context of subsection 3.8 of these regulations, any man-made structures within or outside the permit areas including, but not limited to, dwellings, outbuildings, commercial buildings, public buildings, community buildings, institutional buildings, underground mines, tunnels and dams. The term does not include structures built and/or utilized for the purpose of carrying out the surface mining operation. OSM requested that the term be revised to include public buildings, community buildings, institutional buildings, underground mines and tunnels to ensure that such structures were afforded protection under the State's blasting regulations. Since the State's definition has been revised to do so, the Secretary finds that it is now no less effective than the Federal rules at 30 CFR 816.67(d) and 817.67(d) in identifying structures in need of protection from blasting damage.

2.26. *Subsidence.* West Virginia has revised its definition of "subsidence" at subsection 2.118 to mean a sinking, collapsing or cracking of a portion of the earth's surface caused by voids beneath the surface created by underground mining or auger mining. As originally proposed, West Virginia limited its definition to the effects of underground mining. However, the Federal rules at 30 CFR 819.17 also certain performance standards concerning subsidence resulting from auger mining. Therefore, at OSM's request, the State subsequently revised its definition to include subsidence resulting from auger mining. Accordingly, although the Federal rules do not define subsidence, the Secretary finds that the State's definition is consistent with the generally accepted meaning of this term in the context of mining and that is not inconsistent with any Federal requirements concerning subsidence.

2.27. *Substantially Disturb.* At OSM's request, West Virginia revised its definition of substantially disturb at subsection 2.120 to include the removal of more than 250 tons of coal during prospecting. Since the proposed State definition is identical to the Federal definition of substantially disturb, the Secretary finds that subsection 2.120 of the State's proposed regulations is no less effective than the Federal requirements at 30 CFR 701.5.

2.28. *Surface Mining Reclamation Operation.* West Virginia revised its regulations at subsection 2.123 to define "surface mining and reclamation operation" to mean surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. The Secretary finds that the State's definition is substantively identical to and therefore is no less effective than the corresponding Federal definition at 30 CFR 700.5.

2.29. *Topsoil.* At subsection 2.125 of its regulations, the State has redefined "topsoil" to mean the A and E horizons (soil layers) of the four major soil horizons. This revision was made to conform with changes in the Federal regulations relating to topsoil. The Secretary finds that the revised definition is substantively identical to and therefore is no less effective than the corresponding Federal definition of "topsoil" at 30 CFR 701.5.

2.30. *Toxic Mine Drainage.* West Virginia has revised its definition of "toxic mine drainage" at subsection 2.127 to clarify that such drainage could be caused by surface mining operations and reclamation operations. The Secretary finds that the revised definition is substantively identical to and therefore no less effective than the corresponding Federal definition of "toxic mine drainage" at 30 CFR 701.5.

2.31. *Transfer, Assignment or Sale of Rights.* West Virginia revised its definition of "transfer, assignment or sale of rights" at subsection 2.128 to mean a change in ownership pursuant to subsection 2.83 or other effective control over the right granted in a permit or approval to conduct surface mining operations. As explained in OSM's issue letter of October 12, 1989, the definition of "transfer, sale or assignment of permit rights" at 30 CFR 701.5 is based on the common understanding that these terms include any effective shift in control over rights to mine, in addition to technical changes in ownership. For example, the terms include changes such as a new officer, director, or owner of ten percent or more of any class of voting stock, as well as the addition of a new operator (subcontractor) who actually performs the surface coal mining operations, but was not listed in the original permit application. In its submittal of February 7, 1990, DOE stated that it revised this definition to make it clear that such transactions are subject to the ownership and control provisions set forth in its regulations. Since, like the corresponding Federal definition, the revised State definition includes any change in ownership or effective control of a permit, the Secretary finds it to be no less effective than the Federal definition in 30 CFR 701.5.

2.32. *Violation, Failure or Refusal.* West Virginia revised its regulations at subsection 2.132 to define violation, failure or refusal to mean a violation of a condition of a permit issued pursuant to the Act or these rules and regulations; or a failure or refusal to comply with

any order issued under sections 15, 16, or 17 of the Act, or any order incorporated in a final decision issued by the Commissioner under the Act, except an order incorporated in a decision issued under paragraph (1), subsection (d), section 17 of the Act. West Virginia adopted the proposed definition in response to OSM's Regulatory Reform II letter of November 9, 1988. The Secretary finds that the proposed definition at subsection 2.132 is no less effective than the Federal definition at 30 CFR 846.5.

2.33. *Woodlands.* West Virginia has revised its regulations at subsection 2.134 to define "woodlands" to mean commercial forest lands where flat or gently rolling land is essential for the operation of mechanical harvesting equipment. The purpose of this definition is to limit the extent to which postmining land uses involving woody plants qualify for a variance from approximate original contour (AOC) restoration requirements.

Under section 515(c)(3) of SMCRA and the corresponding Federal rules at 30 CFR 785.14(c)(1), such a variance may be granted only if the planned postmining land use is a public facility or of an industrial, commercial, agricultural or residential nature. Section 22A–3–12(b)(3) of WVSCMRA contains a similar provision, but it also lists "woodland" as an acceptable postmining land use, thus necessitating the limitations proposed in this definition. The preamble to the revised Federal definition of "land use" at 30 CFR 701.5 states that, in this context (AOC restoration variances for mountaintop removal operations), "agricultural use" shall be interpreted to include "croplands, pasture lands or land occasionally cut for hay, grazing lands *and forestry*" (48 FR 39893, September 1, 1983, emphasis added), a change from the preamble to the definition of "agricultural use" at 44 FR 14925 (March 13, 1979), which does not include the italicized language. The Federal definition of "forestry" at 30 CFR 701.5, as explained in the preamble (44 FR 14934, March 13, 1979), involves a combination of land use and management, i.e., lands dedicated to forestry cannot include unmanaged woodlands. Thus, forestry land uses under the Federal rules are equivalent to the term "woodlands" as defined by West Virginia; the proposed State definition will not allow the approval of any variances which could not be granted under the provisions of SMCRA. Accordingly, the Secretary finds the State definition to be no less stringent than SMCRA and no less effective than the Federal rules. However, as discussed in the preamble to 30 CFR 785.16, any such variances should be narrowly applied to achieve specific, limited objectives, not broadly construed in a manner that would effectively nullify the general AOC restoration requirements (44 FR 15083–15084, March 13, 1979). In addition, the Secretary points out that, to fully comply with these requirements, the selection of woodlands as a postmining land use requires compliance with the commercial reforestation requirements of subsection 9.3(h) of the proposed State regulations.

3. *Section 38–2–3: Permitting.*

3.1. *Applicant Information.* In response to Federal rule changes, the State has revised subsection 3.1 of its regulations, which sets forth the legal, financial and compliance information that must be included in permit applications. Except as discussed below, subsection 3.1 is identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 778.13 and 778.14.

Subsection 3.1(i), although different in wording from the corresponding Federal rule at 30 CFR 778.14(a), contains no difference in meaning. The Federal rule uses the phrase "persons controlled by or under common control with the applicant." Neither the State nor the Federal regulations define "common control." Therefore, to ensure consistency in terminology and usage throughout its regulations, the State has replaced the phrase quoted above with "persons owned or controlled or under control or ownership with the applicant." Since the phrase "under control or ownership with the applicant" is equivalent in meaning to "under common control with the applicant", the Secretary finds that the revised State rule is no less effective than the corresponding Federal rule. (See also Finding 2.17).

As discussed in Finding 5 of the July 11, 1985, **Federal Register** notice (50 FR 28330) and codified at 30 CFR 948.11(a)(19), the Secretary required that the State amend its program to require permit applicants to list all violation notices received by any subsidiary, affiliate or person(s) controlled by or under common control with the applicant during the three-year period prior to the date of application. To address this deficiency, West Virginia has revised its regulations at subsection 3.1(k). Except as discussed below, the proposed revisions are substantively identical to the corresponding Federal regulations at 30 CFR 778.14(c). Therefore, the Secretary is removing the condition placed on his approval of the West Virginia program at 30 CFR 948.11(a)(19). However, because the revised State rule requires the applicant to list all "abated", rather than "unabated" air and water quality violation notices, the Secretary finds that subsection 3.1(k) is still less effective than the Federal requirements in this respect and he is requiring the State to amend its regulations to correct this deficiency.

3.2. *Advertisement.* Subsection 3.2 of the State rules establishes requirements concerning the advertisement and filing of permit applications and comments thereon and provision of notice to governmental agencies. The revised rules are substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 773.13(a), 773.19(b), and 778.21. The State also has added criteria defining the degree to which an application may be revised before it must be readvertised and agencies renotified. Since the Federal rules are silent on this matter, the Secretary finds that the proposed revisions concerning readvertisement and renotification are not inconsistent with any Federal requirements.

3.3. *Occupied Dwellings.* Subsection 3.3 of the proposed State rules contains requirements regulating mining within 300 feet of any occupied dwelling. These requirements are essentially identical to the corresponding Federal rule at 30 CFR 761.12(e), except that the proposed State rule also requires that the owner's or lessee's signature on any document waiving the prohibition on mining within this distance be notarized. Since this requirement provides an additional safeguard no less protective of the environment and property rights than the Federal rule, the Secretary finds that subsection 3.3 of the proposed State rules is no less effective than the Federal requirements.

3.4. *Maps and Operation Plans.* Subsections 3.4, 3.5 and 3.6 of the proposed State rules contain requirements for the maps, preplans, cross sections, and operation and reclamation plans that must be submitted as part of a permit application. In combination with the existing provisions of sections 22A–3–9 and 22A–3–10 of WVSCMRA, these rules contain requirements substantively identical to those of the corresponding Federal rules at 30 CFR 779.24, 779.25, 780.11, 780.14, 780.18 [except paragraph [(a)(5)], 780.25(a)(1) (ii)–(v), 783.24, 783.25, 784.11, 784.13 [except paragraph (a)(5)], 784.16(a)(1) (ii)–(v) and 784.23, except as noted below. (Counterparts to

30 CFR 780.18(a)(5) and 784.13(a)(5) are included in subsection 9.2 of the State rules.) The State rules also include supplemental requirements concerning map sizes, color codes and underground mine maps, none of which conflict with any Federal requirements. In addition, the State rules replace the Federal requirement for identification of surface and mineral owners contiguous to the proposed permit area with a requirement for identification of all surface and mineral owners within 100 feet of any part of the proposed permit area. While the Federal rules do not define "contiguous," the State definition lies well within the commonly accepted meaning of this term ("touching, adjacent, next or near"), and is consistent with the intent of SMCRA to protect the interests of landowners adjacent or proximate to the proposed mining operation.

Therefore, except as discussed below, the Secretary finds that Subsections 3.4, 3.5 and 3.6 of the State's proposed regulations are no less effective than the corresponding Federal rules. However, unlike the Federal regulations at 30 CFR 780.14(b) (2), (5), and (10) and 784.23(b) (2), (5), and (9), the State rules do not require identification of each topsoil and noncoal waste storage area, each explosive storage and handling facility, and the lands to be affected according to the sequence of mining and reclamation. Therefore, the Secretary finds that the State program is less effective than the Federal rules in this respect, and he is requiring the State to amend its proposed regulations to correct this deficiency.

3.5. *Air Pollution Control Plan.* Unlike the Federal rules at 30 CFR 780.15(b)(2) and 784.26(b) the proposed State rules do not require submission of a plan for stabilizing exposed surfaces to effectively control air pollution attendant to erosion. Therefore, the Secretary finds the State program less effective than the Federal rules and he is requiring the State to adopt air pollution control plan requirements no less effective than those contained in 30 CFR 780.15(b)(2) and 784.26(b).

3.6. *Excess Spoil Disposal.* As discussed in OSM's issue letter of October 12, 1989, West Virginia's proposed regulations originally did not require geotechnical investigations of all excess spoil disposal sites. The State subsequently revised its regulations to do so. As revised, subsection 3.7 of the State's rule is substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 780.35. However, on February 7, 1990, DOE submitted a revision to subsection 3.7(a) to allow the approval of unspecified alternative designs for excess spoil disposal structures where such designs meet the applicable performance standards of WVSCMRA and the State regulations. Since the Federal regulations do not allow unspecified alternative designs for excess spoil disposal structures, the Secretary finds that portion of paragraph (a) of subsection 3.7 which reads:

> Where alternative designs will achieve equivalent stability and meet all applicable requirements of the Act, these regulations, and the terms and conditions of the permit, the Commissioner may approve such alternative design.

to be less effective than 30 CFR 780.35 and he is not approving the quoted language. Specific alternative design standards and construction techniques may be approved as part of the State program through the program amendment process if the State demonstrates that they are no less effective in protecting the environment and public health and safety than the design standards and construction techniques specified in the Federal rule. Detailed alternative designs and construction methods also may be submitted on a case-specific basis for consideration as an experimental practice pursuant to subsection 3.10 of the proposed regulations.

3.7. *Existing Structures.* Paragraph (a) of subsection 3.8 of the proposed regulations contains permit application requirements relating to structures and facilities in existence at the time of application. These requirements are substantively identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 780.12 and 784.12. West Virginia also has proposed to add a new paragraph (b), which provides that structures and facilities designed, constructed or in use pursuant to an approved surface mining permit or prospecting approval prior to the effective date of the revised regulations may be subject to revision or reconstruction where the Commissioner determines that such revision or reconstruction is necessary to comply with the performance standards set forth in WVSCMRA and the revised regulations. The Secretary finds this proposed rule to be no less effective than the corresponding Federal rules at 30 CFR 774.11(b), which authorizes the regulatory authority to, at any time, require reasonable revision of a permit to ensure compliance with the regulatory program, and 30 CFR 701.11(e), which provides that existing structures need not comply with the design requirements of new or revised regulations if they can meet all new or revised performance standards.

3.8. *Mining Near Public Road.* Subsection 3.9 of the State regulations contains requirements and procedures governing mining within 100 feet of the outside right-of-way of any public road and the relocation or closure of a public road for mining purposes. In combination with Section 22A–3–22(d)(3) of WVSCMRA, these rules are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 761.12(d). In addition, the State rules require that each participant in any public hearing be notified of the Commissioner's written findings, a requirement which the Secretary finds is not inconsistent with any Federal requirement.

3.9. *Experimental Practices.* To ensure consistency with the Federal requirements, West Virginia has revised its regulations at Subsection 3.10 to include provisions regarding experimental practices (variances from performance standards for experimental or research purposes). In general, when read with Section 22A–3–30 of WVSCMRA, these rules are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 785.13. However, the State requires more frequent reviews of such practices (annual versus a minimum of every 2.5 years in the Federal rules) and specifies that all revisions of such practices must receive prior approval from OSM. (The Federal rules do not require OSM concurrence for nonsignificant revisions.) Since these provisions provide additional safeguards to ensure protection of the public health and safety and the environment, the Secretary finds that they are not inconsistent with any Federal requirements.

3.10. *In Situ Processing.* West Virginia has revised its regulations at Subsections 3.11, 15.3, and 15.4 to include permitting requirements and performance standards for in situ processing operations. Because the proposed State rule is subtantively identical to the Federal requirements, the Secretary finds the State regulations to be no less effective than the corresponding Federal regulations at 30 CFR 785.22 (a) and (b) and 30 CFR Part 828.

The State has proposed no counterpart to 30 CFR 785.22(c), which provides that no permit for in situ processing shall be issued unless the regulatory authority first finds in writing that the operation will be conducted in compliance with all underground mining

requirements and 30 CFR Parts 817 and 828 although it does have permitting requirements and performance standards mandating such compliance. Also, Subsection 3.32(d)(8) requires a finding, prior to permit approval, that the applicant has satisfied all requirements for any proposed in situ processing operations. Therefore, the Secretary finds that the State's omission of a finding corresponding to 30 CFR 785.22(c) does not render the State program less effective than that Federal rule.

When the Secretary previously approved revisions to West Virginia's regulations on November 16, 1983 (48 FR 52034–52054), he specifically disapproved the State's former in situ processing requirements at Section 8B.10 to the extent that it provided only that any in situ mining would be conducted in accordance with Sections 3, 4, 7, and 8 of the State regulations. Since the State is now proposing specific in situ processing regulations that are no less effective than the Federal requirements, the Secretary is removing his earlier disapproval of the State's in situ processing requirements at 30 CFR 984.12(b).

3.11. *Subsidence Control Plan.* Subsection 3.12 of the State's proposed rules contains requirements for the subsidence control plan which is to be submitted with each underground mining application. At OSM's request, the State is proposing minor revisions relating to the identification of areas where measures will be taken to prevent or minimize subsidence or subsidence-related damage and, where appropriate, to correct subsidence-related damage. As discussed in Finding 16, the U.S. District Court for the District of Columbia recently ruled that SMCRA obligates an operator to repair material structural damage caused by subsidence without regard to the limitations of State law (*National Wildlife Federation* v. *Lujan*, Civil Action Nos. 87–1051, 87–1814 and 88–2788, D.D.C. February 12, 1990). Subsection 3.12(c) of the State's proposed rules provides that an applicant claiming the right to subside shall provide adequate documentation of same. This provision shall not be interpreted by the State as absolving an operator with the right to subside of his or her obligation to correct material damage to structures or land caused by subsidence. Although an applicant may possess the right to subside under State law, the court ruling cited above makes it clear that OSM cannot approve any State program provision that would exempt an operator from correcting any material damage caused by subsidence. Because the State's subsidence control plan requirements are substantively identical to those previously approved by OSM as no less effective than the corresponding Federal requirements at 30 CFR 784.20, (see Finding 19, 50 FR 28335, July 11, 1985), the Secretary finds that Subsection 3.12 of the proposed State regulations is no less effective than those Federal rules.

3.12. *Underground Mine Abandonment Plan.* Subsection 3.13 contains provisions regarding the content of the underground mine abandonment plan, which is to be submitted with the permit application to ensure compliance with the regulations of the Mine Safety and Health Administration (MSHA) at 30 CFR 75.1711. There is no corresponding OSM rule; however, the State rule is consistent with section 702(a) of SMCRA, which provides that SMCRA and the regulations promulgated pursuant thereto cannot supersede those promulgated by MSHA.

3.13. *Removal of Abandoned Coal Refuse Piles.* Section 22A–3–28(d) [formerly Section 20–6–31(d)] of WVSCMRA provides that:

> The Commissioner may, in the exercise of his sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a special permit solely for the reprocessing of existing abandoned coal processing waste piles. The Commissioner shall promulgate specific regulations for such operations: Provided, That a bond and a reclamation plan shall be required for such operations.

Most reprocessing operations affected less than two acres and hence were not subject to regulation under SMCRA at the time the State program was approved. However, on May 7, 1987, Public Law 100–34 repealed the two-acre exemption originally located in section 528 of SMCRA and nullified all State program counterparts to that exemption. Under this law, no new two-acre or less operations could begin after June 5, 1987, and such all ongoing operations were to obtain a permit or cease mining by November 7, 1987. On May 26, 1987, DOE issued a directive repealing the exemptions relating to two-acre operations and incidental operations affecting one-acre or less of privately owned land. However, no action was taken with respect to the special permits for reprocessing operations because the State viewed them as filling a void in the Federal rules, which have no separate regulations governing reprocessing operations.

However, 30 CFR 700.5 defines "surface coal mining operations" as meaning, in part, the extraction of coal from coal refuse piles. In its Regulatory Reform I Part 732 notification of August 19, 1986, OSM thus advised the State that reprocessing activities must be regulated as surface mining operations in a manner which achieves the objectives of the Act and is no less effective than the Federal rules.

On December 19, 1989, and February 7, 1990, DOE revised its reprocessing regulations. Under the revised rules, reprocessing activities which involve the disposal of coal refuse generated either on or off the site must be regulated as coal refuse disposal operations under Section 22 of the proposed regulations. The revised regulations at Subsections 3.14 and 22.5(1) restrict the issuance of what were formerly known as "reprocessing permits" to the removal of coal refuse from abandoned coal refuse disposal areas. Activities involving chemical or physical processing of coal refuse on site or the disposal of coal refuse (including that generated by the reprocessing operation) on site are prohibited under Subsection 3.14 and must comply with the standard State program requirements of Subsections 3 and 22.

As proposed, Subsection 3.14(d) requires that a bond and insurance be provided by the applicant in accordance with Section 22A–3–11 of WVSCMRA before issuance of a special permit to remove abandoned coal refuse piles. The proposed bonding and insurance requirements are the same as the State's other bonding and insurance requirements which, as discussed in Finding 11, are no less effective than the Federal requirements. Application requirements for special permits are set forth at Subsection 3.14(b). Under the proposed regulations, the application is required to contain the ownership and control information required by Subsection 3.1; a public notice, which is to be published once and provide for a 30-day comment period; a statement concerning right of entry; a waiver when the coal refuse removal operation will be conducted within 300 feet of an occupied dwelling; a project narrative; an emergency plan as required by Subsection 22.4(e); a description and sampling results of the physical and chemical properties of the coal refuse pile; a statement of probable hydrologic consequences (PHC), except that seasonal water quantity and quality data is not required; a hydrologic reclamation plan as required by Subsection 3.22(f); a surface water monitoring plan as required by Subsection 3.22(g); a revegetation plan which conforms with the requirements

of Subsection 14.16(o); a fire control plan as required by Subsection 22.5(m); a procedure for inspecting and certifying the removal of the abandoned coal refuse disposal piles which conforms with the applicable requirements of Subsection 22.6; a map identifying manmade features; land to be affected by the removal operation, property boundaries, drainage patterns, sediment control structures and water monitoring sites as required by paragraphs (a), (b) and (c) of Subsection 3.4; cross sections, plans and specifications prepared by or under the direction of a registered professional engineer of the existing and final surface configurations of all areas affected by the removal operation, drainage and sediment control structures, roads to be utilized during the operation, the proposed removal operations and a stability analysis of the existing pile; a reclamation plan which conforms with paragraphs (b), (c), (d), (f), (g), and (h) of Subsection 3.6; and additional plans and specifications when the existing pile will only be partially removed and where existing coal refuse impoundments are to be reconstructed so that they do not impound water. Subsection 22.5(1) sets forth the performance standards applicable to these operations.

The proposed regulations differ from the Federal rules in four respects. First, the public notice for the special permit is published only once with a 30-day comment period, whereas other permits require a 4-week legal advertisement. Operations that involve more than coal refuse removal must be advertised for four weeks as required by Subsection 3.2(b) of the proposed regulations. Seasonal water quantity and quality baseline information, groundwater monitoring, and the standard written findings and permit conditions required by Subsections 3.32 and 3.33 are not required. Generally, removal of an abandoned coal refuse pile will improve environmental conditions and water quality and benefit most individuals living in the vicinity of the refuse pile. To approve special permits, Subsection 3.14(a) requires the Commissioner to find that removal of the abandoned coal refuse pile would bring about a more desirable land use, result in greater protection of the safety and welfare of the public, or result in greater protection of the environment. Finally, except for occupied dwellings, none of the distance prohibitions in Subsections 3.9 and 3.21 are applicable to these operations since the reclamation of an abandoned coal refuse pile within an area designated unsuitable for mining will only enhance and benefit such areas. Also, as previously mentioned, any operations involving the reprocessing or disposal of coal refuse will be subject to all standard permitting requirements and performance standards.

As discussed above, OSM has not promulgated specific regulations for the reprocessing of coal refuse disposal piles. However, the extraction of coal from coal refuse piles is defined at 30 CFR 700.5 as surface coal mining operations and must be regulated accordingly. Therefore, the Secretary finds that Subsection 3.14 is less stringent than SMCRA and less effective than the Federal rules to the extent that it would exempt operations removing material meeting the definition of coal from abandoned coal refuse piles from the standard permitting requirements and performance standards of the approved program. However, the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of "coal" set forth in 30 CFR 700.5, i.e., ASTM Standard D 388–77, is not subject to regulation. Therefore, the Secretary is disapproving Subsection 3.14 only to the extent that it would apply to the removal of abandoned coal mine refuse piles where the material in the aggregate meets the definition of coal in 30 CFR 700.5 and will require West Virginia to apply the full regulatory program to the removal of such refuse piles.

3.14. *Approved Persons.* Like Section 3E.01 of its current approved regulations, the State's proposed rules at Subsection 3.15 allow "approved persons" to prepare, sign or certify permit applications, maps, plans and design specifications or other similar materials necessary to complete a permit application. As discussed in Finding 17 of the July 11, 1985, **Federal Register** notice (50 FR 28335) and codified at 30 CFR 948.12(i), the Secretary disapproved Section 3E.01 to the extent that it did not require the construction of sedimentation ponds and impoundments to be certified by a registered professional engineer as required 30 CFR 816.46(b)(3) and 817.46(b)(3) and section 515(b)(10)(B)(ii) of SMCRA.

On October 30, 1986, Public Law 99–591 amended section 515(b)(10)(B)(ii) of SMCRA to allow the construction of siltation structures to be certified by a qualified registered professional engineer or a qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans. On October 27, 1988, OSM amended its regulations to authorize qualified registered professional land surveyors in such States to inspect small impoundments and to certify the construction of siltation structures (53 FR 43584–43608).

Subsection 3.15(a) of the proposed State rules provides that, for the purposes of Section 22A–3–9(a)(13) and 22A–3–12(b)(10) of WVSCMRA, an approved person shall be a registered professional engineer or licensed land surveyor. As proposed, Subsection 3.15 only allows a registered professional engineer or licensed land surveyor to certify the construction of siltation structures and to prepare and certify cross sections, maps or plans for such structures. Since SMCRA and the Federal regulations promulgated pursuant thereto have been amended to allow licensed land surveyors to certify the construction of siltation structures, the Secretary finds that Subsection 3.15 is now no less effective than 30 CFR 816.49(a)(10) and 817.49(a)(10) and that Section 22A–3–12(b)(10) of WVSCMRA is now no less stringent than section 515(b)(10)(B)(ii) of SMCRA. Since the revised State provisions at Subsection 3.15 are no longer less effective than the Federal requirements, the Secretary is removing his earlier disapproval of them at 30 CFR 948.12(i). However, the Secretary is approving Subsection 3.15 and removing the disapproval only with the understanding that licensed land surveyors will not be allowed to certify the construction of impoundments that meet the size or other criteria of 30 CFR 77.216(a). MSHA rules provide that such impoundments may be certified only by a qualified registered professional engineer.

3.15. *Fish and Wildlife Resources.* On February 7, 1990, West Virginia revised and recodified its regulations to update and consolidate all permitting requirements concerning fish and wildlife. Subsection 3.16 requires that each permit application include fish and wildlife resource information for the permit and adjacent areas and a description of how impacts on fish and wildlife, including threatened or endangered species, will be minimized. Upon request, this information is to be made available to State and Federal fish and wildlife agencies for review. Subsection 3.16 also includes provisions to ensure compliance with the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act and Bald Eagle Protection Act, as required by 30 CFR 773.12. Since Subsection 3.16 contains provisions substantively identical to those of the corresponding Federal regulations at 30 CFR 773.12, 780.16 and 784.21, the Secretary finds it to be no less effective than the Federal rules.

Subsection 3.18, for which there is no direct OSM counterpart, contains supplemental requirements necessary to ensure compliance with the Endangered Species Act. Since compliance with this act is required by 30 CFR 773.12, the Secretary finds it to be no less effective than the Federal rules.

3.16. *Parks and Historic Lands.* In response to OSM's historic preservation Part 732 notification of June 9, 1987, West Virginia revised its regulations at Subsection 3.17 to require that permit applications include information on the nature of cultural, historic and archeological resources listed on or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. Under the revised regulations, the Commissioner may require the applicant to identify and evaluate known archeological sites and important historic and archeological resources within the proposed permit and adjacent areas that may be eligible for listing on the National Register of Historic Places. Under the revised regulations, the Commissioner may require the applicant to identify and evaluate these through the collection of additional information, by conducting field investigations, or other appropriate analyses. The State also revised this subsection to clarify that adverse impact to publicly owned parks and any places listed on the National Register of Historic Places must be minimized even when an applicant possesses valid existing rights. Since the proposed State rules are substantively identical to the corresponding Federal requirements at 30 CFR 779.12(b), 780.31, 783.12(b), and 784.17, the Secretary finds that they are no less effective than the Federal rules.

3.17. *Historic Places and Archeological Sites.* West Virginia has revised Subsection 3.19 of its proposed regulations to protect archeological sites and both privately owned and publicly owned sites listed on the National Register of Historic Places. The proposed regulations provide for coordination with other State and Federal agencies with jurisdiction over such sites prior to permit issuance. Since the State's requirements are substantively identical to the corresponding Federal requirements at 30 CFR 761.11(c), 761.12(f) and 773.12, the Secretary finds that Subsection 3.19 is no less effective than these Federal rules.

3.18. *Prime Farmland.* Subsection 3.20 of the proposed regulations has been revised by the State to require the Commissioner to make a specific written finding prior to issuing any permit involving prime farmland. The Secretary finds that the revised State rule is substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 785.17(e). For further discussion of the State's prime farmland requirements, see Finding 10.

3.19. *Prohibitions and Limitations on Mining.* Subsection 3.21 identifies areas where mining is prohibited or limited. The State revised these provisions to limit or prohibit mining when such activities would affect study rivers or study river corridors established by guidelines pursuant to the Wild and Scenic Rivers Act. This revision was made in response to Federal rule changes promulgated on July 16, 1986 (51 FR 25818–25819). The Secretary finds that subsection 3.21 as revised, in combination with subsections 3.3, 3.9, 3.17 and 3.19 and the provisions of section 22A–3–22 of WVSCMRA, is substantively identical to and therefore no less effective than those aspects of the corresponding Federal regulations at 30 CFR 761.11 and 761.12 for which State program counterparts are required.

3.20. *Hydrologic Information.* In response to OSM's regulatory reform I part 732 notification of August 18, 1986, subsection 3.22 of the State rules has been revised to require that permit applications include baseline groundwater information within the proposed permit and adjacent areas, surface water ownership and usage, information on water availability and alternative water sources, findings relative to the probable hydrologic consequences determination, a site-specific hydrologic reclamation plan, and surface and ground water monitoring plans. In addition, the revised rules specify that the Commissioner must prepare the cumulative hydrologic impact assessment (CHIA). Except as noted in finding 3.26 of this notice, the Secretary finds that the proposed State rules are substantively identical to and therefore no less effective than the corresponding Federal regulations 30 CFR 780.21 and 784.14.

3.21. *Geology.* Subsection 3.23 contains requirements regarding the geologic information that must be included in permit applications. These rules were revised to require areal and structural geologic descriptions of the permit and adjacent areas, a statement of the result of test boring or core samples from the permit and adjacent areas (unless the collection and analysis of such data is unnecessary because the Commissioner finds in writing that other equivalent data is available to the Department in satisfactory form), and lithologic logs showing the physical properties and thickness of each stratum encountered. Because alkaline drainage is not a problem or potential problem in West Virginia, the State has elected not to require analyses for alkalinity-producing materials, as is permitted by the Federal rules at 30 CFR 780.22(b)(2)(ii) and 784.22(b)(2)(ii). Since the proposed rules otherwise are substantively identical to the corresponding Federal rules at 30 CFR 780.22 and 784.22, the Secretary finds that subsection 3.23 is no less effective than the Federal rules.

3.22. *Protection of Adjacent Operations.* Subsection 3.24 of the proposed regulations provides that surface mining activities shall be designed to protect disturbed surface areas, including spoil disposal sites, so as not to endanger any present or future operations of either surface or underground mining activities. While the Federal regulations do not have a similar requirement, the Secretary finds that the proposed State rule is in keeping the purposes of SMCRA and is not inconsistent with any Federal requirement.

3.23. *Transfer, Assignment or Sale of Permit Rights.* As discussed in finding 2.31, any change in ownership or effective control of a permit requires the Commissioner's written approval. Subsection 3.25 of the proposed regulations sets forth the conditions and procedures under which a permittee may transfer, assign or sell permit rights to another individual. West Virginia has revised these regulations to require that written approval be received prior to the transfer, assignment or sale of any permit; that the transfer, assignment or sale of permit rights be subject to the ownership and control requirements of subsection 3.1; and that an applicant submit a performance bond or other guarantee prior to the transfer, assignment or sale of permit rights.

To clarify an ambiguity in the Federal rules, the State rules also provide that the person assuming control of the operation becomes responsible for the correction of all outstanding unabated violations, while the prior permittee remains responsible for any delinquent coal penalties or unpaid Federal reclamation fees. Except as discussed below, the Secretary finds that the proposed State rules are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 774.17.

Subsection 3.25(a)(4) provides that an application for transfer, assignment or sale of permit rights may be granted

upon a written finding by the Commissioner that the applicant is eligible to receive a permit in accordance with paragraphs (b) and (c) of subsection 3.32. The corresponding Federal regulation at 30 CFR 774.17(d)(1) requires a finding that the successor is eligible to receive a permit in accordance with 30 CFR 773.15 (b) and (c). The State's counterparts to the cross-referenced Federal regulations are paragraphs (c) and (d) of subsection 3.32. Therefore, the Secretary finds that subsection 3.25(a)(4) is less effective than 30 CFR 774.17(d)(1) and he is requiring that West Virginia amend it to include the correct cross-reference.

Furthermore, the cross-reference to paragraph (c) of subsection 3.1 in subsection 3.25(a)(2) is incomplete. To include all the ownership and control requirements specified by the corresponding Federal rule at 30 CFR 774.17(b)(1)(iii) (all legal financial compliance and related information required of the applicant by 30 CFR part 778), the State must revise this rule to reference paragraphs (a), (b), (c), (d), (i), (j), and (k) of subsection 3.1. Therefore, the Secretary finds that subsection 3.25(a)(2) is less effective than the Federal regulations at 30 CFR 774.17(b)(i)(iii) and he is requiring that West Virginia amend it to include the correct cross-references.

3.24. *Agreement.* Subsection 3.26 of the proposed regulations requires the Commissioner's approval whenever a permittee wishes to retain the permit but assign the mining operation to another person through an agreement, contract, job contract, etc. Under this arrangement, the permittee remains subject to all provisions of the State Act and regulations and the terms and conditions of the permit. Because the permittee retains control of the permit, the State does not require that such assignments comply with all provisions of Subsection 3.25. However, to be no less effective than the Federal rules as explained in Finding 2.31 concerning the definition of "transfer, assignment or sale of permit rights," the assignment or reassignment of permit rights to a subcontractor who functions as an operator as that term is defined must comply with the applicable requirements of subsection 3.25. The proposed State regulations require that prior to assigning mining rights to a subcontractor, the applicant apply to the Commissioner as provided in subsection 3.26. However, West Virginia does not require that this application be advertised in accordance with Subsection 3.25(a)(3), nor that the subcontractor be subject to the ownership and control and eligibility requirements at paragraphs (a), (b), (c), (d), (i), (j), and (k) of subsection 3.1 and paragraphs (c) and (d) of subsection 3.32. Therefore, the Secretary finds that subsection 3.26 is less effective than the Federal requirements at 30 CFR 774.17, and he is requiring that West Virginia amend its program to correct these omissions.

3.25. *Permit Renewals and Extensions.* Subsection 3.27 contains requirements governing permit renewals and extension of permits terms. As discussed in Finding 2.2, West Virginia has revised its regulations to require permit renewal only for active surface mining operations and those operations granted inactive status (temporary cessation of operations). These revisions conform with the Federal rule changes promulgated on April 5, 1989 (54 FR 13814–13823). At OSM's request, the State also revised its permit renewal regulations to require that each application be administratively complete prior to public notice and to provide an opportunity for an informal conference on each application for permit renewal. The State also corrected and clarified references to its statutory requirements concerning the approval and periodic review of permit extensions (permit terms in excess of five years). Since the revised regulations at Subsection 3.27 are substantively identical to the corresponding Federal requirements at 30 CFR 773.13 (c) [informal conferences], 774.15 [renewals], and 774.11(a)(1) and 778.17(b) [permit terms in excess of five years], the Secretary finds them to be no less effective than these Federal rules.

3.26. *Permit Revisions.* Subsection 3.28 of the proposed regulation sets forth additional requirements governing permit revisions. Except for the specific public notice exemption provided for nonsignificant permit revisions in paragraph (b)(2), all the standard application notice, public participation, review procedures and decision criteria of Section 3 also apply. West Virginia has redefined "significant revision" in paragraph (b) to mean a significant departure from the terms and conditions of the original permit which may result in a significant impact on the health, safety or welfare of the public; the hydrologic balance in the area of operation; the postmining land use; areas in which mining is prohibited pursuant to Section 22A–3–22(d) of WVSCMRA; or an individual's legal right to receive notice. In so doing, the State has complied with 30 CFR 774.13 (b)(2), which indirectly requires each regulatory authority to establish guidelines for significant permit revisions.

The State also revised its regulations at paragraph (c) to provide that the Commissioner may require reasonable revisions to surface mining permits or prospecting approvals where such revisions are necessary to assure compliance with the State Act and regulations, provided that where such permits and approvals were granted prior to the effective date of new or revised regulations, such revisions shall be required only where compliance with the new or revised regulations is necessary to assure adequate protection of the environment or public health or safety. However, the corresponding regulations at 30 CFR 774.11(b) provide that, at any time, the regulatory authority may, by order, require reasonable revision of a permit to ensure compliance with the Act and the regulatory program. Since, the State regulations are more limiting, the Secretary finds subsection 3.28(c) to be less effective than the Federal rules. Accordingly, he is requiring the removal of, and is not approving, the following proviso of the proposed State rule:

> Provided that where such permits and approvals were granted prior to the effective date of these regulations, such revision shall be required only where compliance with these regulations are necessary to assure adequate protection of the environment or public health and safety.

In addition, unlike the corresponding Federal rules at 30 CFR 780.21 (f)(4) and (g)(2) and 784.14 (e)(4) and (f)(2), subsection 3.28 does not require that each application for a permit revision be reviewed by the regulatory authority to determine whether a new or updated PHC determination or CHIA is needed. Therefore, the Secretary finds that Subsection 3.28 is less effective than these Federal rules, and he is requiring that the State amend its program to correct this deficiency.

3.27. *Incidental Boundary Revisions.* Section 22A–3–19(b)(3) of WVSCMRA, like Section 511(a)(3) of SMCRA and 30 CFR 774.13(d), provides that any extensions to an area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit. However, neither the State or Federal statutes nor the Federal rules defines the term "incidental boundary revisions," a void which the State rules propose to fill with the regulations in subsection 3.29.

Incidental boundary revisions as described in these rules would include shifts or modifications in permit boundaries with no increase in acreage, deletion of bonded acreage which is

overbonded by another valid permit for which full liability is assumed by the successive permittee, and extensions of the permit boundary or increases in permit acreage provided coal extraction is incidental to and not the primary purpose of the incidental boundary revision. For surface mining operations, the additional acreage permitted under incidental boundary revisions during the life of the permit could not exceed a cumulative total of 20 percent of the original permitted acreage or 50 acres, whichever is less. Incidental boundary revisions for underground mining operations, for which surface disturbances are generally smaller, more static and longer term than for surface mines, would be limited to a cumulative total of 150 percent of the original permitted acreage or a maximum of 50 acres, whichever is less. In 1989, the average size of a permitted surface mining operation in the State was 138 acres; the average underground mining operation covered 18 acres. Using the proposed criteria, the average surface or underground mine permit in the State can increase in size by no more than 27 acres during its lifetime. In addition, the regulations provide that no incidental boundary revision can be approved if it constitutes a change in the postmining land use; involves land for which the approved PHC determination is not applicable; constitutes a change in the method of mining; results in adverse environmental impacts of a larger scope or different nature than those described in the approved permit; fails to facilitate the orderly and continuous conduct of mining and reclamation operations; or is not contiguous to the original permitted area (except for underground operations). Because the proposed State criteria recognize the distinct differences between surface and underground mining as required by Section 516(a) of SMCRA and give reasonable meaning to the term "incidental boundary revisions" in that such revisions would result in only minor or insignificant changes to the permit area, the Secretary finds that Subsection 3.29 is not inconsistent with SMCRA or the Federal regulations, which do not define or otherwise discuss the term "incidental boundary revisions".

3.28. *Variance.* Subsection 3.30 contains requirements governing variances from approximate original contour and contemporaneous reclamation. Except as discussed below, the proposed revisions together with the State's existing statutory provisions at section 22A–3–12(b)(16) of WVSCMRA are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 774.11(a), 785.16 and 785.18.

The regulations at 30 CFR 785.18(c)(9) require that permits involving variances from delay in contemporaneous reclamation contain specific conditions. Subsection 3.30 should be revised to require that any permit for which a variance applies must contain specific conditions delineating the particular surface areas for which the variance is authorized, identifying the applicable provisions of the Act and these regulations, and providing a detailed schedule for complying with the provisions of this subsection. Neither subsection 3.30 nor section 22A–3–12–(b)(16) of WVSCMRA contain these requirements. Therefore, the Secretary finds that subsection 3.30 is less effective than 30 CFR 785.18(c)(9). Accordingly, the Secretary is requiring the State to amend its regulations in a manner which is no less effective than the Federal requirements.

3.29. *Exemption for Federal or State Highway or Other Construction.* Section 22A–3–26(c) of WVSCMRA provides that a person or operator shall not be subject to the reclamation requirements of the State program when engaged in the removal of borrow and fill material for grading in Federal or State highway or other construction projects if the provisions of the construction contract require the furnishing of a suitable bond which provides for reclamation, wherever practicable, of the area affected by such recovery activity. To implement this provision, West Virginia has revised subsection 3.31 to specify the conditions under which an exemption for highway or other construction projects funded by the Federal or state governments will be granted. The proposed rule is more stringent than SMCRA, since, unlike the Federal rules, financing by non-Federal, non-State governmental bodies would not qualify the project for exemption. Since all other procedures and requirements governing the authorization and regulation of government-financed construction projects are substantively identical to those of the corresponding Federal regulations at 30 CFR part 707, the Secretary finds that subsection 3.31 of proposed State rules to be no less effective than the Federal requirements.

3.30. *Required Findings for Permit Issuance and Permit Conditions.* As discussed in Finding 7 of the July 11, 1985, **Federal Register** notice (50 FR 28331), the Secretary found that the State's "Addendum to Permit" form contained standards for permit approval or denial no less effective than those of 30 CFR 773.15 and permit conditions no less effective than those set forth in 30 CFR 773.17. However, the Secretary requested that the State submit to OSM a legal opinion confirming that the substantive requirements, which were only enumerated in the proposed permit addendum, were legally enforceable under State law. Since DOE was subsequently unable to obtain such an opinion from the Attorney General, OSM requested that the State include the required permit findings and conditions in its regulations. In the amendment now under consideration, West Virginia has done so.

Subsection 3.32 contains permit approval and issuance proceedings, including the written findings that the Commissioner must make prior to approval of an application for a permit, revision or permit renewal, while subsection 3.33 lists the conditions which must be attached to each permit. Except for the two cross-reference errors discussed below, the Secretary finds subsection 3.32 to be substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 773.15. In addition, the Secretary finds the permit conditions in subsection 3.33, except for the condition in paragraph (h), which references a nonexistent subsection 3.1(p) when identifying the ownership and control information to be updated by the permittee, to be substantively identical to and therefore no less effective than the corresponding Federal permit conditions set forth in 30 CFR 773.17. To be no less effective than 30 CFR 773.17(i), the Secretary is requiring that the State correct this error by referencing subsection 3.1(c), the State counterpart to the reference to 30 CFR 778.13(c).

Subsection 3.32(b) requires the State to establish and maintain, in accordance with certain criteria, a computerized database of all persons (and owners and controllers thereof) with outstanding unabated cessation orders, delinquent civil penalties or reclamation fees, or bond forfeitures in the State since May 3, 1978. It also requires that this database be used in the compliance review conducted as part of the permit application review process and states that the Commissioner must verify by letter with all bordering States whether any owners or controllers of the applicant, operator or lessor have unabated cessation orders, delinquent civil penalties or bond forfeitures in these States. The Federal rules have no such requirements; however, since these provisions supplement rather than

replace the compliance review required by paragraph (c) of this subsection, which corresponds to the Federal compliance review requirements at 30 CFR 773.15(b)(1), the Secretary finds that subsection 3.32(b) is not inconsistent with any pertinent Federal rules. Subsection 3.32(b) also states that, where the information in the databases is incomplete and unavailable or has not been made available to the Commissioner prior to issuance of the permit, the Commissioner shall not be held in violation of the State program. The rule further requires the Commissioner to initiate the procedures set forth in subsection 3.34, which corresponds to the Federal rules at 30 CFR 773.20 concerning improvidently issued permits, in all such cases. Given this requirement and the rule's stipulation that the State's database include OSM's applicant violator system, which is designed to provide all information needed by State and Federal regulatory authorities to complete the compliance review, the Secretary finds that this provision does not render the State program less effective than any Federal requirement.

Subsection 3.32(d)(12) requires a finding for remining operations substantively identical to that required by the corresponding Federal rule at 30 CFR 773.15(12). However, the proposed State rule references the special remining reclamation requirements of subsection 14.15(i) when, in fact, those requirements are set forth in subsection 14.16. Therefore, to ensure that there is no undue confusion as to the operations subject to this finding, the Secretary is requiring that the State correct this erroneous cross-reference.

Subsection 3.32(f) provides that, after an application is approved, but before a permit is issued, the Commissioner shall reconsider his decision based on the compliance review required by paragraph (b) in light of any new information submitted by the applicant under subsection 3.1(p) following his receipt of the notice of approval.

Except for the cross-references, this State rule is substantively identical to its Federal counterpart at 30 CFR 773.15(e). However, the State counterpart to the compliance review referenced in both the State and Federal rules is located at subsection 3.32 (c), not (b), which contains procedural details for which there is no Federal counterpart. Also, subsection 3.1(p) does not exist; the State counterpart to the applicant information update requirements referenced in both the State and Federal rules is subsection 3.1(n). Therefore, the Secretary is requiring that the State correct these cross-reference errors to be no less effective than the Federal rules. Subsection 3.32(f) also contains a provision stating that this paragraph does not apply to applications for permit revisions or renewals. Since the corresponding Federal rule and the referenced applicant information update requirement apply only to the permit issuance process, the Secretary finds that this express exclusion in the State rule does not render it less effective than the Federal rule.

3.31. *Improvidently Issued Permits.* On April 28, 1989, OSM promulgated rules at 30 CFR 773.20 and 773.21 establishing criteria to determine when a permit has been improvidently issued and specifying the procedures to be taken to correct or rescind improvidently issued permits (54 FR 18438–18464). Proposed subsection 3.34 of the State regulations contains provisions substantively identical to and therefore no less effective than those of the Federal rules. In approving these rules, the Secretary expects West Virginia to apply its general criteria in a manner consistent with the specific violation review criteria set forth in the preamble to the Federal rules (54 FR 18440–18441, April 28, 1989).

4. *Section 38–2–4: Haulageways or Access Roads.* On November 8, 1988 (53 FR 451290–45214), OSM promulgated new regulations concerning haul roads at 30 CFR 780.37, 784.24, 815.15, 816.150, 816.151, 817.150 and 817.151 to replace those suspended on February 21, 1985 (50 FR 7274). Except for the deficiencies identified in OSM's March 6, 1990, part 732 notification letter to West Virginia, the State's revised road rules in section 4 include requirements substantively identical to and therefore no less effective than the new Federal rules. In addition, as encouraged by 30 CFR 816.150(c) and 817.150(c), the State rules contain specific design and construction criteria for grade, surface drainage control, culvert placement and culvert size, none of which, except for the storm-sizing standards noted in the part 732 notification are inconsistent with any Federal requirements.

5. *Section 38–2–5: Drainage and Sediment Control Systems.*

5.1. *Natural Drainways and Intermittent or Perennial Streams.* Subsections 5.1 and 5.2 contain standards applicable to mining within 100 feet of or through a stream. Among other things, subsection 5.2 provides that, when mining within 100 feet of an intermittent or perennial stream, the Commissioner shall only authorize such operations upon a finding that mining activities will not adversely affect the normal flow or gradient of the stream, fish migration or related environmental values and not materially damage the water quantity or quality of the stream. Except as noted below, the Secretary finds these rules substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 816.57 and 817.57. However, the Federal rules also require that the regulatory authority make a finding that such activities will not cause or contribute to the violation of applicable State or Federal water quality standards. Since the finding is missing from the State rules, the Secretary finds that subsection 5.2 is less effective than the 30 CFR 816.57(a)(1) and 817.57(a)(1), and he is requiring the State to amend its program to correct this deficiency.

5.2. *Stream Channel Diversions and Diversion Ditches.* Subsection 5.3 contains requirements governing the design, construction maintenance and use of stream channel diversions and diversions for overland flows. Because the proposed State rules are substantively identical to the corresponding Federal requirements at 30 CFR 816.43 and 817.43, the Secretary finds them to be no less effective than the Federal regulations.

Unlike the revised Federal rules for diversions and impoundment spillways, which prescribe use of design events with a 6-hour duration, West Virginia has elected to retain design events with a 24-hour duration. OSM conducted two studies of the differences in peak flows generated by event of these durations under the various conditions encountered in (West Virginia Administrative Record Nos. WV 840 and WV 841). Both studies concluded that under most conditions the peak runoff from a 24-hour event would exceed that from a 6-hour event or that the difference was insignificant in terms of design considerations. In fact, the most extensive study, which examined 26 watersheds ranging in size from 3 to 760 acres, found only one where the 6-hour precipitation event resulted in a higher peak flow than the 24-hour event. Based on the studies, the Secretary finds that the State's use of the 24-hour design event rather than the 6-hour event for diversions and spillways in subsections 5.3, 5.4, 14.14, 22.3 and 22.5 is no less effective than the corresponding Federal requirements at 30 CFR 816/817.43 (b) and (c), 816/817.46(c) 816/817.49(c), 816/817.72(a) and 816/817.73(f).

5.3. *Sediment Control and Impoundments.*—(a) *General.* In general, the State's proposed sediment control provisions at subsection 5.4 contain

requirements substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 780.25, 784.16, 816.45, 816.46, 816.49, 817.45, 817.46 and 817.49, except as discussed below and in OSM's Regulatory Reform III Part 732 notification of March 6, 1990. This statement does not apply to those portions of the cited Federal rules specific to coal mine waste disposal structures since West Virginia has established separate rules for such structures in Section 22. Also, noted Finding 5.2, the Secretary finds the State's use of the 24-hour storm duration for spillway design and construction no less effective than the Federal 6-hour standard.

(b) *Permit application requirements.* Although paragraphs (b) and (h) of Subsection 3.6 contain permit application requirements for sediment control systems which are substantively identical to and therefore no less effective than those set forth in 30 CFR 780.25 (a)(1)(ii)–(v), (2)(ii)–(iv) and (3)(ii)–(iv) and 784.16(a)(1)(ii)–(v), (2)(ii)–(iv) and (3)(ii)–(iv), the State program contains no counterparts to 30 CFR 780.25(f) and 784.16(f), which require that the plans submitted for all structures 20 feet or higher or impounding more than 20 acre-feet include a stability analysis, a description of each engineering design assumption and calculation, and a discussion of each alternative considered in selecting the specific design parameters and construction methods. However, Subsection 5.4(b)(9)(G) requires that all such structures be designed, constructed, inspected and abandoned in accordance with the Federal regulations set forth in 30 CFR 77.216, and that all design plans and specifications prepared pursuant to these and other MSHA requirements be made a part of the permit application. The referenced Federal rules at 30 CFR 77.216–2 require that such plans include a stability analysis (with assumptions and calculations) and detailed descriptions of construction methods and the physical and engineering properties of the foundation materials and materials to be used in construction. They thus include all requirements of 30 CFR 780.25(f) and 784.16(f) except a discussion of each alternative considered. Since the State rules, by reference to 30 CFR 77.216, require that the plans include sufficient data and technical documentation to explain and support the selected design, the Secretary finds that omission of the requirement for a discussion of design alternatives does not render the State program less effective than the Federal rules. Furthermore, since the regulatory authority could not require adoption of an alternative design unless its analysis of the applicant's proposed design found that it did not comply with regulatory program requirements and design criteria, the omission of this provision has no practical implications.

(c) *Design certification.* The Federal rules at 30 CFR 780.25(a) (1)(i) and (3)(i), 784.16(a) (1)(i) and (3)(i), 816.49(a)(2) and 817.49(a)(2) require that the general and detailed design plans for sediment control structures and impoundments be certified as being designed to meet regulatory program requirements and any design criteria established by the regulatory authority. West Virginia has revised Subsection 5.4(c) to require that sediment control structures be certified as to the design and construction in accordance with the preplan. However, there is no clear requirement that the preplans contained in the application be certified by a qualified person prior to construction or what standards are applicable to such a certification. Therefore, the Secretary finds the State rules at Subsections 3.6 (b) and (h) and 5.4(c) to be less effective than the Federal regulations, and he is requiring that the State amend its program to require that impoundment designs be certified prior to construction as being designed to meet regulatory program requirements and any design criteria established by the regulatory authority.

(d) *Design and construction criteria.* Subsection 5.4(a) of the proposed rules provides that sediment control structures shall be designed, constructed, located, maintained and used in accordance with the criteria set forth in the Handbook or other approved criteria. "Handbook" refers to the "Technical Handbook of Standards and Specifications for Mining Operations in West Virginia" as published by the State. It is not a part of the approved program. On February 16, 1983, and again on December 19, 1989, the State informed OSM that the Handbook served only as a technical guideline, did not carry the force of regulation, and was not intended to supersede any regulation (Administrative Record No. WV–807). The Secretary recognizes the value of a technical handbook and he encourages its development and use. However, as the U.S. Environmental Protection Agency has noted in its May 9, 1990, letter of conditional concurrence with the proposed amendment, the State rule does not specify that the Handbook and "other approved criteria" may not be used in place of approved program requirements. Therefore, the Secretary finds that Subsection 5.4(a) is less effective than the Federal regulations at 30 CFR 780.25, 784.16, 816.46, 816.49, 817.46 and 817.49 to the extent that it could be interpreted as allowing siltation structures to be designed, constructed and maintained in accordance with criteria inconsistent with those set forth in the approved State program counterparts to the cited Federal regulations. Accordingly, he is requiring that West Virginia either (1) modify this rule to clarify that the Handbook and "other approved criteria" may be used only in support of, not in place of, the approved program requirements, or (2) delete the phrase "or other approved criteria" and submit the Handbook to OSM for review as a program amendment to ensure that it is consistent with Federal requirements.

As explained in the preamble to the revised Federal rules concerning siltation structures (48 FR 44032 and 44048, September 26, 1983), OSM deleted most sedimentation pond design criteria from these rules in response to two studies which concluded that a pond designed to meet these criteria would not necessarily meet the effluent limitations for total suspended solids. The specific criteria were replaced by more general performance standards on the premise that this action would allow engineers more flexibility in designing structures to meet effluent limitations based on site-specific conditions. However, the revised Federal regulations at 30 CFR 816.46(c)(1)(iii) and 817.46(c)(1)(iii) do require that sedimentation ponds be designed, constructed and maintained to (A) provide adequate sediment storage volume, (B) provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations, and (C) contain or treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and a demonstration by the operator that all effluent limitations will be met.

In lieu of these requirements, subsection 5.4(b)(4) of the State rules requires that all sediment control structures have the capacity to store 0.125 acre-feet of sediment for each acre of disturbed area in the structure's watershed. West Virginia maintains that this standard, coupled with the requirements of subsection 5.4(b)(7) that all structures be cleaned out when sediment accumulation reaches 60 percent of the design capacity, will provide adequate sediment/storage volume and detention time to meet effluent limitations and that it is

therefore no less effective than the Federal rules. However, the State has submitted no technical data supporting this claim and EPA has previously expressed concern that the 0.125 acre-feet standard may not always be adequate to meet effluent limitations. At the same time, these standards have been part of the West Virginia program since its approval and OSM has no data indicating that the standard is inadequate. Both the Federal rules and their preambles encourage States to develop design criteria specific to the State needs and conditions. Therefore, since these State rules (paragraphs (b)(4) and (b)(7) of subsection 5.4) are substantively unchanged from current program provisions, the Secretary is allowing this standard to remain a part of the approved program at the present, but he is directing OSM to conduct a study to determine whether changes are needed for the State program to be no less effective than the Federal requirements at 30 CFR 816.46(c)(1)(iii) and 817.46(c)(1)(iii).

The foregoing discussion notwithstanding, the Secretary has determined that subsection 5.4(b)(4) is less effective than 30 CFR 816.46(c)(1)(iii)(C), 816.46(d)(1), 817.46(c)(1)(iii) (C) and 817.46(d)(1). Unlike the other paragraphs in this rule, it references only "structures", not "structures and bench control systems." Hence, it is not clear that the requirement of this paragraph will be applied to bench control structures. Since bench control systems are considered siltation structures under the Federal definition of the latter term at 30 CFR 816.46(a)(1) and 817.46(a)(1), they must comply with requirements no less effective than those of either paragraph (c)(1) (sedimentation ponds) or (d)(1) (other treatment facilities) of 30 CFR 816.46 or 817.46. Both of these rules require that any reduction of siltation structure capacity be based, in part, on a demonstration by the operator that all effluent limitations will be met. The State rule currently allows storage volume to be reduced where the preplan and site conditions reflect controlled placement, concurrent reclamation practices or bench control structures; it has no counterpart to the demonstration required by the Federal rules. Therefore, the secretary is requiring that West Virginia amend subsection 5.4(b)(4) to apply it to bench control systems and to require that, before the Commissioner can approve a reduction from the 0.125 acre-feet standard, the permit applicant demonstrate that any sediment control structure or bench control system for which such a reduction in sediment storage volume is sought would meet all effluent limitations.

The Federal regulations at 30 CFR 816.46(b)(4) and 817.46(b)(4) require all siltation structures that impound water to be designed, constructed and maintained in accordance with the impoundment requirements of 30 CFR 816.49 and 817.49. As proposed, paragraph (d)(1), (e), and (g)(3)(D) of subsection 5.4 of the State rules would exempt all non-embankment-type impoundments from annual inspection and quarterly examination requirements and compliance with the permanent impoundment requirements of subsection 5.5. OSM has previously determined as a matter of internal policy that completely incised impoundments do not present the type of potential risk to public health or safety that the quarterly examinations required by 30 CFR 816.49(a)(11) and 817.49(a)(11) are intended to monitor. Therefore, the Secretary finds the exemption of non-embankment structures from the quarterly examination requirements contained in subsection 5.4(e) is no less effective than the cited Federal rules. However, the preamble to 30 CFR 816.49(a)(10)(i) and 817.49(a)(10)(i) notes that the annual inspection requirement is also intended to evaluate the suitability of the impoundment for its intended use (48 FR 43999, September 26, 1983). Since this aspect is unaffected by the presence or absence of an embankment, the Secretary finds subsection 5.4(d)(1) of the State rules to be less effective than the corresponding Federal rules and he is requiring that the State amend this rule to require annual inspections of all impoundments.

Similarly, the permanent impoundment requirements of 30 CFR 816.49(b) and 817.49(b) also are unrelated to the presence or absence of an embankment. Therefore, the Secretary finds subsection 5.4(g)(3)(D) to be less effective than the cited Federal rules in that it would exempt non-embankment type structures from compliance with subsection 5.5, the State counterpart to 30 CFR 816.49(b) and 817.49(b). Accordingly, he is requiring that West Virginia amend subsection 5.4(g)(3)(D) to apply to all impoundments. Furthermore, the Secretary finds the remainder of subsection 5.4(g)(3) no less effective than the corresponding Federal abandonment requirements only on the condition that it not be interpreted as excluding bench control systems. The Federal rules at 30 CFR 816.56 and 817.56 contain no such exclusion, nor would it be consistent with the reclamation requirements of SMCRA. Finally, subsection 5.4(c) needs to be revised to clarify that, as stated in subsection 5.4(b)(1), bench control systems are subject to its certification requirements.

5.4. *Permanent Impoundments.* Subsection 5.5 contains standards concerning permanent impoundments. Except as discussed in OSM's Regulatory Reform III part 732 notification of March 6, 1990, the Secretary finds that the proposed State rules are substantively identical to and therefore no less effective than the corresponding Federal corresponding requirements at 30 CFR 816.49(b) and 817.49(b).

6. *Section 38–3–6: Blasting*

6.1. *General Requirements.* Subsection 6.1 contains general requirements regarding the use of explosives. Since the proposed State rules are substantively identical to the corresponding Federal rules at 30 CFR 816.61 and 817.61, the Secretary finds that subsection 6.1 is no less effective than the Federal requirements.

6.2. *Blasting Plan.* Subsection 6.2 requires each permit application to contain a blasting plan. The Secretary finds that the proposed State requirements are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 780.13.

6.3. *Public Notice of Blasting Operations.* The proposed State rules at Subsection 6.3 require publication of the blasting schedule and set forth its contents. Like the Federal requirements, paragraph (b) of Subsection 6.3 only requires advanced written notice of blasting activities incident to underground mining operations. Since the proposed State rules are substantively identical to the corresponding Federal regulations at 30 CFR 816.64 and 817.64, the Secretary finds them to be no less effective than the cited Federal rules.

6.4. *Blast Record.* Subsection 6.4 sets forth requirements concerning information that must be recorded in the blasting log book and the retention of blasting records. The Secretary finds these requirements to be substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816.68 and 817.68.

6.5. *Blasting Procedures.* Subsection 6.5 of the proposed State rules sets forth requirements concerning the timing of blasting activities, safety precautions, airblast limits, monitoring, fly rock, access control to the blast site, blast design, blasting within 500 feet of underground mines and ground

vibration. Except as discussed below, the Secretary finds that the proposed blasting procedures at Subsection 6.5 are substantively identical to and therefore, no less effective than the corresponding Federal regulations at 30 CFR 780.13(c), 816.61, 816.64, 816.66, 816.67, 817.61, 817.64, 817.66 and 817.67.

Paragraphs (i) and (j) of Subsection 6.5 establish maximum ground vibration limits for protected structures based on use of either a scaled distance formula or a seismograph. As is its authority to do so, West Virginia has elected not to adopt the blasting level chart option provided in 30 CFR 816.67(d)(4) and 817.67(d)(4). Subsection 6.6 provides for a variance from the ground vibration requirements set forth in paragraphs (i) and (j) of Subsection 6.5 for all structures other than protected structures as defined in Subsection 2.95. Because the ground vibration limits set forth in paragraphs (i) and (j) of Subsection 6.5 are limited to protected structures and the State has failed to establish maximum ground vibration limits for other structures, the Secretary finds that, in this respect, Subsection 6.5 is less effective than the Federal requirements at 30 CFR 816.67(d)(1) and 817.67(d)(1), which require that all structures such as water towers, pipelines, utilities, tunnels, dams, impoundments and underground mines be protected from damage by establishment of a maximum allowable ground vibration submitted by the operator and approved by the regulatory authority prior to the initiation of blasting. Accordingly, the Secretary is requiring the State to amend Subsection 6.5 to either include such limits or require that they be established in the permit prior to the initiation of blasting.

6.6. *Variance.* As discussed above, Subsection 6.6 of the proposed State rules allows the Commissioner to grant a variance from the maximum ground vibration limits of Subsection 6.5 for all structures other than protected structures. Since the Federal rules do not establish numerical vibration limits for such structures, they do not contain any variance procedures. However, the State evidently plans to apply the limits for protected structures in Subsection 6.5 to all structures. In the event it does so, the Secretary finds the variance procedures of Subsection 6.6 to be no less effective than 30 CFR 816.67(d)(1) and 817.67(d)(1) since it would still require the establishment and prior approval of maximum ground vibration limits.

6.7. *Certified Blasting Personnel.* Subsection 6.7 of the proposed State rules requires that a certified blaster be responsible for the blasting operation and be familiar with the blasting plan and the blasting-related performance standards at the site where he or she is working. The Secretary finds that the State's proposed rule are substantively identical and therefore no less effective than the corresponding Federal rules at 30 CFR 816.61(c) (1), (2) and (4)(i) and 817.61(c) (1), (2) and (4)(i).

6.8. *Preblast Survey.* Subsection 6.8 of the proposed State regulations contains requirements concerning preblast surveys. Preblast surveys are conducted prior to mining to assess the condition of structures and to document any preblasting damage or structural defects. Except as discussed below, the Secretary finds the proposed preblast survey requirements at Subsection 6.8 to be substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 816.62 and 817.62.

Paragraph (a) of Subsection 6.8 provides that all residents or owners of dwellings within one-half mile of the permit area are allowed to request a preblast survey. However, the proposed rules state that, for the purposes of this section, drainage structures, haulroads and access roads are not considered part of the permit area unless blasting is necessary for construction. However, section 515(b)(15)(E) of SMCRA requires an operator to offer every resident or owner within one-half mile of any portion of the permit area the opportunity for a preblast survey. As discussed in the preamble to the implementing Federal rules at 30 CFR 816.62(b) and 817.62(b), some commenters wanted OSM to limit this opportunity to residents with one-half mile of the "blasting site". OSM declined to do so stating any language other than "any portion of the permit area" would conflict with the language of the Act (48 FR 9793, March 8, 1983). Because the proposed State rules at Subsection 6.8(a) do not provide all owners or residents within one-half mile of the permit area the right to a preblast survey, the Secretary finds that Subsection 6.8(a) is less effective than 30 CFR 816.62(b) and 817.62(b) and less stringent than section 515(b)(15)(E) of SMCRA. Accordingly, the Secretary is not approving that portion of Subsection 6.8(a) which reads:

> For the purposes of this section, drainage structures, haulroads and access roads are not considered part of the permit area unless blasting is necessary for construction.

He also is requiring that West Virginia amend its rules to delete this proviso.

7. *Section 38–2–7: Premining and Postmining Land Use.*

7.1. *General.* Subsection 7.1 contains reclamation plan requirements concerning premining and postmining land use. The Secretary finds that the proposed State rules, when read with the provisions of Section 22A–3–10 of WVSCMRA, are substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 779.22(a), 783.22(a), 816.133 (a) and (b), and 817.133 (a) and (b).

7.2. *Land Use Categories.* The proposed State provisions at Subsection 7.2 define various land use categories. These categories are more extensive and detailed than those in the corresponding Federal definition of "land use" in 30 CFR 701.5, but since they do not conflict with any aspects of the Federal definition, the Secretary finds that Subsection 7.2 is no less effective than the Federal provisions.

7.3. *Criteria for Approving Alternative Postmining Land Use.* Section 22A–3–12(b)(2) of WVSCMRA requires the operator to restore the affected area to a condition capable of supporting the uses which the land was capable of supporting prior to any mining, or to higher or better uses. Subsection 7.3 of the proposed State rules provides that any change of land use or uses from one of the defined premining land use categories to another constitutes an alternative postmining land use. Subsection 7.3(a) sets forth the criteria for approval of alternative postmining uses. Subsection 7.3(b) also provides that any change in the postmining land use during mining requires a permit revision. Since the proposed State requirements are substantively identical to the corresponding Federal requirements at 30 CFR 784.200, 816.133(c) and 817.133(c), the Secretary finds that Subsection 7.3 is no less effective than these Federal rules.

8. *Section 38–2–8: Fish and Wildlife Considerations.*

8.1. *Protection of Fish, Wildlife and Related Environmental Values.* In response to OSM's Regulatory Reform I Part 732 notification August 18, 1986, West Virginia has revised its rules to require use of the best technology currently available to protect fish and wildlife resources. The Secretary finds that the proposed State rules are substantively identical and therefore no less effective than the corresponding Federal regulations at 30 CFR 816.97(a)–(e) and 817.97(a)–(e).

8.2. *Habitat Development.* Subsection 8.2 requires operators to avoid disturbances to, enhance where practicable, restore or replace habitats of unusually high value for fish and wildlife. The Secretary finds Subsection

8.2 to be substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 816.97(f)–(i) and 817.97(f)–(i).

9. *Section 38–2–9: Revegetation.*

9.1 *General.* Section 9 of the proposed State rules contains revegetation requirements which, although differing in language and organization, are, in general, substantively identical to and therefore no less effective than those of the Federal regulations in 30 CFR 816.95, 817.95, 816.111 through 816.116(c)(3) and 817.111 through 817.116(c)(3), except for those provisions corresponding to Federal rules revised on September 7, 1988 (53 FR 34642), as identified by letter dated March 6, 1990 (Administrative Record No. WV 834). In addition, the State has retained previously approved provisions fleshing out the general requirements of the Federal rules and the specific revegetation success standards established in accordance with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and previously approved on July 11, 1985 (Finding 9, 50 FR 28331).

9.2 *Success Standards.* Subsection 9.3 is entitled "Standards for Evaluating Vegetative Cover", but it also includes standards for stocking. However, as noted in the finding cited in the previous paragraph, the 1985 standards did not address productivity on grazing land, pasture and cropland. The revised rules at Subsection 9.3(f) now require measurement of productivity, but like the 1985 rules they do not establish productivity success standards. Nor has the State selected and submitted its productivity and revegetation sampling techniques to be used in evaluating productivity and revegetation success. Hence, the State program remains less effective than 30 CFR 816.116(a)(1) and 817.116(a)(1), which require that standards for success and statistically valid sampling techniques be included in the approved regulatory program. Also, Subsection 9.3 of the State rules does not require that the determination of revegetation success include an evaluation of whether the general requirements of Subsection 9.1 and of the revegetation plan required by Subsection 9.2 have been met. It is therefore less effective than 30 CFR 816.116(a) and 817.116(a), which require that revegetation success be judged on the vegetation's effectiveness for the postmining land use and the general requirements of 30 CFR 816.111 and 817.111. For these reasons, the condition placed on the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(39) remains largely unsatisfied. Hence, this condition is being modified to reflect the revised State rules and is being recodified as a required amendment in 30 CFR 948.16.

9.3. *Revegetation of Previously Mined Areas.* Subsection 14.16(m) of the State rules authorizes the Commissioner to modify the ground cover requirements of Section 9 on a case-by-case basis for previously mined areas, provided the cover is adequate to control erosion and no less than that existing prior to remining. The Secretary finds that this provision is no less effective than the corresponding Federal rules at 30 CFR 816.116(b)(5) and 817.116(b)(5), which establish identical minimum cover standards for previously mined areas.

10. *Section 38–2–10: Prime Farmland.*

10.1. *General.* Subsection 3.20 and Section 10 of the proposed rules, in combination with the statutory provisions of Sections 22A–3–12(b)(7) and 22A–3–18(d) of WVSMCRA, contain requirements governing mining on prime farmland which, in general, are substantively identical to and therefore no less effective than the corresponding Federal rules in 30 CFR 785.17 and part 823. The State program lacks limitations corresponding to those of 30 CFR 785.17(a)(3) (i)–(iii) and (4) (ii)–(iii) concerning the prime farmland grandfather exemption for existing coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977. However, this omission does not render the State program less effective than the Federal rules because there are no operations in West Virginia qualifying for this exemption. The State rules also lack the exemptions provided by 30 CFR 823.11 (a) and (b) for certain underground mine facilities; however, States need not adopt these exemptions to be no less effective than the Federal rules in regulating operations on prime farmland.

10.2. *Reconnaissance Inspection.* The revised State rules at Subsection 10.1 require that each permit application include the results of a reconnaissance inspection to determine whether all or any part of the proposed permit area is prime farmland. In addition, the rules require a soil survey unless the applicant can demonstrate that a basis exists for making a negative determination with respect to the existence of prime farmland. Subsection 10.2 of the proposed rules contains the criteria for such negative determinations. The corresponding Federal rules at 30 CFR 785.17(b) require a reconnaissance inspection in all cases and a soil survey whenever prime farmland historically used for cropland may be present; but they contain no negative determination criteria other than those used to ascertain whether the land has been historically used for cropland. Instead, they require that the regulatory authority consult with the State Conservationist of the U.S. Soil Conservation Service (SCS) to determine the nature and extent of the reconnaissance inspection. Furthermore, the definition of "prime farmland" at 30 CFR 701.5 vests responsibility for establishing prime farmland qualification criteria with the U.S. Secretary of Agriculture. Although West Virginia's negative determination criteria appear generally consistent with the national criteria established by the Secretary of Agriculture in 7 CFR 657, the Secretary's rules allow the SCS State Conservationist to alter these criteria and establish others. To ensure that the State program is no less effective than the Federal definition of "prime farmland" in 30 CFR 701.5, the Secretary is requiring that West Virginia submit documentation that the SCS State Conservationist has concurred with all negative determination criteria contained in Subsection 10.2 except those of paragraph (a)(1), which pertains to historical use for cropland. In addition, to demonstrate compliance with the consultation requirements of 30 CFR 785.17(b)(1), the Secretary is requiring that West Virginia submit documentation that it has consulted with the SCS State Conservationist in determining the nature and extent of the reconnaissance inspection.

10.3. *Topsoil Substitutes.* Subsection 10.3(a)(4) of the proposed rules allows the Commissioner to approve the use of topsoil substitutes on prime farmland. To be no less effective than the Federal rules at 30 CFR 823.12(c)(1), which permit the use of substitutes only if the final soil will have a greater productive capacity than that existing prior to mining, this provision must be limited by subsection 10.4(a)(1)(A), which contains a requirement identical to that of the Federal rule. The Secretary is approving these rules only on the condition that they be interpreted in this fashion.

11. *Section 38–2–11: Insurance and Bonding*

11.1. *General.* Except as noted in the following subfindings, the provisions of the State's rules at section 11 are substantively identical to and therefore no less effective than the corresponding Federal rules in 30 CFR 800.11 through 800.23 and 800.60. West Virginia has retained its alternative bonding system previously approved under the provisions of 30 CFR 800.11(e). (See Finding 18.1, 46 FR 5954, January 21, 1981). Since participation in this system is mandatory, certain provisions of 30

CFR 800.14 and 800.15 pertaining to determination of bond amounts based on the cost of reclamation are not applicable to the West Virginia program. Also, since West Virginia allows performance bonds to be posted incrementally in an additive fashion, but does not allow incremental releases, i.e., since all bond posted applies to the entire permit area, the State has not adopted and does not need to adopt a counterpart to 30 CFR 800.11(b)(4), which requires that *independent* increments be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary. Independent increments do not exist under the West Virginia program.

11.2 *Insurance.* Subsection 11.1 of the State's revised rules contains insurance requirements which, in general, are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 800.60. However, it differs in one important aspect: Rather than requiring that insurance coverage be maintained throughout the liability period necessary to complete all reclamation operations, as required by 30 CFR 800.60(b), the State specifies only that coverage continue throughout the life of the permit. Since the State is revising subsection 3.27(a) to provide that only active surface mining operations and those which have temporarily ceased operation in accordance with subsection 14.11 must renew their permits, subsection 11.1(a) could allow insurance coverage to lapse after Phase I bond release and before expiration of the reclamation liability period. Although subsection 3.33(j) requires that all permits be conditioned to require that the performance bond and liability insurance remain in effect throughout the life of the permit, any renewal thereof and the liability period, subsection 11.1(a) only requires that liability insurance be maintained during the life of the permit. Because the State's requirements regarding the period of insurance coverage conflict and subsection 11.1(a) could allow insurance coverage to lapse before the end of the liability period, the Secretary finds that subsection 11.1(a) is less effective than the Federal requirements at 30 CFR 800.60(b). Accordingly, the Secretary is requiring that West Virginia amend its rules to correct this deficiency.

Subsection 11.1(c) allows insurance coverage for blasting damage to be terminated after blasting activities have ceased provided the total amount of liability coverage is not reduced below the level required by the Act and regulations. Since insurance coverage for nonexistent activities serves no useful purpose, and since the amount of liability coverage could not be reduced below the minimum levels specified in the Act and regulations, the Secretary finds that this provision does not render the State program less effective than the Federal liability insurance requirements at 30 CFR 800.60.

11.3. *Cash Accounts.* Unlike the Federal rules at 30 CFR 800.21(d), West Virginia does not establish requirements applicable to cash accounts posted as performance bonds. However, such accounts are subject to the general requirements of subsection 11.2(a), which are applicable to all types of collateral bonds. In addition, the definition of "collateral bond" in subsection 2.27 requires that cash be deposited in "one or more Federally insured accounts, payable only to the Commissioner upon demand." Since Section 22A–3–11(c)(1) of WVSCMRA requires that cash deposits be equal to or greater than the sum of the amount of bond required, the State program is no less effective than 30 CFR 800.21(d)(1), which requires that cash accounts be Federally insured or equivalently protected, deposited with or made payable to the regulatory authority, and no less than the amount of bond required. Both Section 22A–3–11(c)(1) of WVSCMRA and the proposed rules at subsection 12.1(a) authorize the Commissioner to approve replacement bonds of various types; they are thus no less effective than 30 CFR 800.21(d)(3), which allows the substitution of certificates of deposit for cash accounts, and 30 CFR 800.30(a), which contains generic bond replacement provisions. Since the provisions of 30 CFR 800.21(d)(2) (retention of interest) are optional, and those of paragraph (d)(4) (prohibition of accounts in excess of the maximum insurable amount) are duplicative of paragraph (d)(1) (accounts must be Federally insured or equivalently protected), the State program as a whole is no less effective than the Federal requirements for cash accounts at 30 CFR 800.21(d).

Section 22A–3–11(c)(1) of WVSCMRA requires that the Commissioner deposit cash, securities and certificates with the State Treasurer to be held in trust for the purpose for which the deposit is made. However, since the State rules implementing this statutory provision require that cash accounts and certificates of deposit be Federally insured, the Secretary is approving these rules with the expectation that the State Treasurer will abide by these requirements and maintain such deposits in Federally insured accounts.

11.4. *Whole Life Insurance Policies.* The State's definition of "collateral bond" at subsection 2.27 and subsection 11.4(a)(9) of its bonding regulations authorize the Commissioner to accept whole life insurance policies as a form of collateral bond under certain conditions. Although the Federal regulations at 30 CFR 800.21 do not expressly include such policies as an acceptable form of collateral bond, the Secretary finds that, under the conditions established by West Virginia, these policies present a risk no greater than that inherent in such other acceptable forms of collateral bond. In addition, whole life insurance policies have a greater degree of liquidity and are not subject to fluctuations in market value as are bonds and other marketable securities which are allowed under the Federal program.

As provided in subsections 2.27(g) and 11.4(a)(9), the State proposes to allow operators to post whole life insurance policies as performance bonds for surface mining reclamation operations. Such policies must be assigned to the Commissioner and can only be issued by companies authorized to do business in the State with an independent financial rating of A+, Aaa or the equivalent and who are member insurers of the West Virginia Life and Health Insurance Guaranty Association. The State will value the policy only on the basis of its net cash surrender value, so that all penalties and administrative expenses incurred at the time of redemption will not lessen the amount of the bond required to be posted. At this time, only whole life insurance policies will be accepted as collateral, because they have a guaranteed rate of interest and their net cash surrender value can be more easily determined, as opposed to universal life or term policies which are subject to market and interest rate fluctuations. In addition, the State proposes to limit the net cash surrender value of each whole life policy to $300,000. This was done to limit the State's liability and to ensure protection by the West Virginia Life and Health Guaranty Association. This association is funded by member insurance companies doing business in the State. Should a member insurer of the West Virginia Life and Health Guaranty Association become insolvent, the association, pursuant to section 33–26A–1 *et seq.* of the West Virginia Code, becomes liable for the contractual obligations of the impaired insurer to the extent that the death benefit coverage on any one life does not exceed

$300,000. Although the association only guarantees the face amount of each policy up to $300,000, West Virginia chose to limit the cash surrender value to $300,000 for the reasons stated above and because, in all likelihood, the cash value of such policies would never exceed the death protection. Because life insurance policies are liquid, they are marketable. According to a State industry spokesman, the default rate on such policies is limited, because other insurance companies are more willing to assume liability for life insurance policies, as opposed to health insurance policies. Although the West Virginia Life and Health Guaranty Association will compensate DOE only for those policies that are assigned to it upon the death of the insured, the association provides whole life policies an extra measure of protection not afforded other forms of collateral bonds. The risk associated with whole life insurance policies is no greater than that for surety bonds, corporate bonds or other marketable securities authorized under 30 CFR 800.5.

To alleviate any unforeseen concerns about the State's proposal to allow whole life insurance policies to be posted as performance bonds for surface mining reclamation operations, OSM solicited comments from the West Virginia Insurance Department and the West Virginia Life and Health Guaranty Association. Although there was some doubt as to the ability of operators to finance these kinds of policies, neither organization had any negative comments about the proposal.

Therefore, for the reasons set forth above, the Secretary finds that the State's proposed requirements at Subsection 11.4(a)(9) authorizing the use of whole life insurance policies as collateral bonds are no less effective than the Federal requirements at 30 CFR 800.21. Since West Virginia will be the only State to accept whole life insurance policies as collateral bonds, OSM will monitor this aspect of the State's program to determine the effectiveness of this new bonding mechanism.

11.5. *Escrow Bonding.* The revised Federal rules no longer contain separate provisions governing escrow bonds, as they are now considered to be cash accounts. Since the State rules concerning escrow bonds at Subsection 11.5 include requirements substantively identical to those of the Federal rules for cash accounts at 30 CFR 800.21(d), the Secretary finds the proposed rules to be no less effective than the Federal rules.

11.6. *Self-Bonding.* Subsection 11.6 of the proposed rules contains self-bonding provisions which are substantively identical to those of 30 CFR 800.23, except that the State rules allow only a parent corporation to guarantee an applicant's self-bond. Since States are not required to accept guarantees from non-parent corporations, the Secretary finds the proposed rules at Subsection 11.6 to be no less effective than the corresponding Federal rules.

11.7. *Combined Surety/Escrow Bonding.* Subsection 11.7 of the proposed rules contains provisions allowing an operator to post a short-term surety bond to meet performance bond amount requirements until his or her contributions to an escrow account reach a level sufficient to do so. The rules require that the contribution rate be adequate to meet these requirements within the term of the surety bond; they also require that the surety bond be forfeited if the contributions are not made or if they do not equal the full bond amount at least 120 days prior to the surety bond's expiration date. Under these rules, surety bonds must be noncancellable and, as provided by definition in Subsection 2.122, they must be executed by the permittee and a corporation licensed to do business in West Virginia. These provisions are substantively identical to the Federal requirements for surety bonds at 30 CFR 800.20. In addition, the State rules require that the escrow accounts comply with the collateral and escrow bond requirements of Subsections 11.4 and 11.5, which, as previously discussed, are no less effective than the Federal rules at 30 CFR 800.21(d) governing cash accounts. Therefore, since 30 CFR 800.12 authorizes the regulatory authority to accept any combination of surety bonds, collateral bonds or self-bonds, the Secretary finds the proposed State rules at Subsection 11.7 to be no less effective than the Federal rules in ensuring adequate bond coverage.

11.8. *Normal Husbandry Practices.* Subsection 11.9 of the proposed State rules authorizes the Commissioner to approve selective husbandry practices without extending the period of bond liability if the permittee can demonstrate that discontinuance of such measures after the liability period expires will not reduce the probability of permanent revegetation success. These measures also must be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use for the area covered by the bond. The corresponding Federal rules at 30 CFR 816.116(c)(4) and 817.116(c)(4) contain virtually identical provisions; however, they also require that specific practices receive prior approval from the Director of OSM in accordance with the State program amendment procedures of 30 CFR 732.17. In compliance with this requirement, the State rule limits the practices the Commissioner may approve to those specifically listed in the Federal rules, namely, pest and vermin control, pruning and any reseeding, and/or transplanting specifically necessitated by such actions. If the Commissioner desires to approve practices other than these, he must first seek approval from OSM through the State program amendment process.

12. *Section 38–2–12: Bond Release and Forfeiture.*

In combination with the requirements of Section 22A–3–23 of WVSCMRA, Section 12 of the proposed State rules contains provisions concerning bond replacement, release and forfeiture which, except as discussed below, are substantively identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 800.30, 800.40, and 800.50. In addition, the State has added new Subsection 12.3, which contains procedures and requirements for the release of performance bonds on undisturbed acreage. These provisions are consistent with the corresponding Federal bond adjustment requirements of 30 CFR 800.15, which also specify that bond releases on undisturbed areas need not comply with the standard bond release requirements and procedures.

Unlike the Federal rules, Subsection 12.2(c) prohibits any release of bond if there is an outstanding violation on any portion of the permitted area. Likewise, also unlike the Federal rules, paragraphs (c) and (d) of Subsection 12.4 require the Commissioner to use bond forfeiture proceeds and the Special Reclamation Fund (bond pool) to treat discharges from forfeited sites to meet effluent limitations. Although there are no Federal counterparts to these provisions, the Secretary finds that they do not conflict with any Federal requirements or adversely impact other aspects of the program and that they are therefore not inconsistent with SMCRA and the Federal regulations at 30 CFR 800.40 and 800.50 governing bond release and forfeiture.

However, Subsection 12.4(d)(2) provides that, where the proceeds of bond forfeiture are less than the actual cost of reclamation and the Commissioner is unable to collect the difference from the permittee, the Commissioner *may* utilize the monies in the Special Reclamation Fund to complete the reclamation. Since West Virginia has an approved alternative bonding system, the Secretary finds this provision to be less effective than the

Federal regulations at 30 CFR 800.11(e), which requires that any alternative bonding system ensure that the regulatory authority has available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Use of Special Reclamation Fund monies to complete the reclamation plan is mandatory, not discretionary as it would be under the proposed West Virginia rule. Accordingly, the Secretary is not approving this proposed rule to the extent that its provisions are not mandatory, and he is requiring that West Virginia amend it further to provide that the Commissioner "shall," rather than "may," use the Special Reclamation Fund to complete the reclamation plan.

13. *Section 38–2–13: Notice of Intent to Prospect.*

13.1. *Notice of Intent to Prospect Less than 250 Tons.* Subsection 13.1 contains requirements for prospecting operations removing 250 tons of coal or less. On December 29, 1988, OSM revised its coal exploration requirements to define the minimum information to be shown when a map is submitted in lieu of a narrative in an application for a notice of intent to prospect (53 FR 52942–52950). West Virginia has revised its mapping requirements at Subsection 13 to include these detailed requirements. West Virginia has also revised Subsection 13 to require any person who intends to conduct prospecting on lands designated unsuitable for mining to file and obtain approval of a notice of intent pursuant to Subsections 13.2 and 13.3. The revised rule requires that prior written approval be obtained from the Commissioner regardless of the tonnage to be removed from areas designated unsuitable for mining. Because the proposed State rules are substantively identical to the Federal requirements, the Secretary finds that Subsections 13.1 and 13.9 are no less effective than the corresponding Federal regulations at 30 CFR 772.11.

13.2. *Notice of Intent to Prospect Greater than 250 Tons.* Subsection 13.2 of the proposed State rules contains requirements for prospecting operations removing more than 250 tons of coal. DOE revised these regulations to comply with a consent order that was signed on April 21, 1987, which requires the State to obtain additional information from applicants to ensure that the sale and removal of more than 250 tons of coal is only for test purposes. On December 29, 1988, OSM revised its regulations at 30 CFR 772.14 to prohibit both the commercial use and sale of coal removed from exploration sites, except for test purposes. In response to the Federal rule changes, West Virginia revised its regulations at Subsection 13.2 to require that the applicant demonstrate that the proposed commercial sale or use of coal under a notice of intent is solely for testing purposes. Except as discussed below, the proposed State revisions at Subsection 13.2 are substantively identical to the Federal requirements. Therefore, the Secretary finds that these rules are no less effective than the corresponding Federal requirements at 30 CFR 772.12(a)–(c) and 772.14.

As discussed in Finding 8 of the July 11, 1985, **Federal Register** notice (50 FR 28331), the Secretary found that the State's regulations did not require the submission of a map showing the location of critical habitats of any endangered or threatened species as required by 30 CFR 772.12(b)(12). West Virginia initially revised its regulations at Subsection 13.2(a)(5) to require the location of any endangered or threatened species identified within the prospecting area, but later modified this subsection to require only a description of such species, which also is required by 30 CFR 772.12(b)(9). The State also revised Subsection 13.2(d) to require the submission of a map containing all information required in Subsections 13.1 and 13.4. Paragraph (m) of Subsection 13.4 provides that the operation shall be conducted so as to provide protection of endangered and threatened species and their critical habitats in compliance with the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*) or habitats of unique or unusually high value for fish and wildlife. Because neither of the State's mapping requirements at Subsection 13.1(c) nor 13.2(d) specifically requires the submission of a map showing the location of critical habitats of any endangered or threatened species, the Secretary finds that the proposed State rules are still less effective than the Federal regulations at 30 CFR 772.12(b)(12). Therefore, the condition placed on the Secretary's approval of the West Virginia program at 30 CFR 948.11(a)(38) remains unsatisfied. To reflect the revised State rules, this condition is being modified and recodified as a required amendment in 30 CFR 948.16.

13.3. *Approval of a Notice of Intent to Prospect.* Subsection 13.3 contains criteria by which an application for prospecting is to be approved or disapproved by the Commissioner. The proposed rule also provides that the Commissioner provide notice of his decision on the application in writing and that any person having an interest which is or may be adversely affected by the decision of the Commissioner shall have an opportunity for administrative and judicial review. The Secretary finds that the proposed rules at Subsection 13.3 are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 772.12 (d) and (e).

13.4. *Performance Standards.* Subsections 13.4 and 13.7 contain minimum performance standards applicable to persons engaged in prospecting operations which, except as otherwise provided in Subsection 13.9, substantially disturb the natural land surface and set forth requirements governing the availability of prospecting approvals. The proposed performance standards relate to prospecting roads; blasting; sediment control; sealing, casing and managing of boreholes or prospecting holes; stream protection; handling of acid or toxic materials; topsoil removal, storage and redistribution; removal of facilities and equipment; backfilling and regrading; revegetation; and protection of endangered or threatened species, their critical habitats or habitats of unique or unusually high value for fish or wildlife. The Secretary finds the proposed State requirements to be substantively identical to and therefore no less effective than the corresponding Federal performance standards at 30 CFR part 815.

13.5. *Expiration.* Subsection 13.5 provides that a notice of intent to prospect shall be valid only for the time period indicated in the application, which cannot exceed two years. Furthermore, the Commissioner may approve an extension to the time period subject to the reclamation requirements of Section 22A–3–7(h) of WVSCMRA. Although neither SMCRA nor the Federal rules establishes a term for notices of intent to prospect, the Secretary finds that the proposed provisions of Subsection 13.5 are in keeping with the intent of section 512 of SMCRA to ensure timely reclamation of prospecting sites and they are therefore not inconsistent with either SMCRA or the Federal regulations concerning coal exploration at 30 CFR parts 772 and 815.

13.6. *Bond Release.* Subsection 13.6 provides that the performance bond or other securities accompanying a notice of intent shall be released upon completion of satisfactory regrading and establishment of a permanent vegetative cover at the prospecting site. Section 22A–3–7(b) of WVSCMRA provides that each notice of intent to prospect shall be accompanied by a bond in the amount of five hundred dollars per acre or fraction thereof for the total estimated

disturbed area. Neither SMCRA nor the Federal rules require that exploration operations be bonded. However, section 505(b) of SMCRA allows States to adopt more stringent environmental controls and regulations. Therefore, since performance bonds are designed to ensure reclamation of prospecting sites, the Secretary finds that Subsection 13.6 is not inconsistent with any Federal requirements concerning coal exploration.

13.7. *Public Records.* Subsection 13.8 of the proposed State rules provides for standards and procedures regarding the extent to which information submitted to the Commissioner in prospecting applications is to be made publicly available. Because the proposed State requirements are substantively identical to the corresponding Federal rules at 30 CFR 772.15, the Secretary finds that Subsection 13.8 is no less effective than those rules.

14. *Section 38–2–14: Performance Standards*

14.1. *Signs and Markers.* As explained in OSM's Regulatory Reform I Part 732 notification of August 18, 1986, and the October 12, 1989, issue letter, the State's proposed and existing regulations did not require that all signs and markers be maintained during the conduct of the activities to which they pertain, that the permanent monument be maintained until after bond release, that the perimeter of the permit area be marked prior to the start of mining activities, and that blast warning signs be posted at all entrances to the permit area and explain the markings of blasting areas and charged holes. West Virginia has revised its regulations at Subsection 14.1 to address these deficiencies. Because Subsection 14.1 of the proposed State rules contains requirements that are substantively identical to the Federal requirements for identification and warning signs and for demarcation of the permit perimeter, buffer zones and topsoil storage piles, the Secretary finds Subsection 14.1 to be no less effective than 30 CFR 816.11, 817.11, 816.66 and 817.66.

14.2. *Casing and Sealing.* In response to OSM's issue letter of October 12, 1989, West Virginia has revised its proposed rules at Subsection 14.2 to provide requirements for temporarily sealing and managing boreholes, prospect holes, wells and underground openings and for permanently sealing all drilled holes and other underground openings. The Secretary finds that the proposed State rules are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.13, 817.13, 816.14, 817.14, 816.15 and 817.15. The Secretary also finds that the proposed provisions for the transfer of exploratory or monitoring wells at Subsection 14.2(a) are substantially identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 816.41(g) and 817.41(g).

14.3. *Topsoil.* Subsection 14.3 specifies requirements governing the removal, storage and redistribution of topsoil and the use of topsoil substitutes and soil amendments. In response to OSM comments, West Virginia revised Subsection 14.3 to require the redistribution of topsoil in a manner which prevents excess compaction and the protection of topsoil from wind and water erosion immediately after redistribution. The State also revised its rules to require that, when an operator proposes to use a topsoil substitute, he or she must first demonstrate that the resulting soil medium would be the best available in the permit area to support vegetation. Since the proposed rules are substantively identical to the Federal requirements, the Secretary finds that Subsection 14.3 is no less effective than 30 CFR 816.22 and 817.22.

14.4. *Diversions.* The State's proposed rules at Subsection 14.4 establish performance and reclamation standards for stream channel diversions and temporary diversions for overland flows. The Secretary finds that, when read with Subsection 5.3, Subsection 14.4 is substantively identical to and therefore no less effective than 30 CFR 816.43 and 817.43.

14.5. *Hydrologic Balance.* Subsection 14.5 establishes minimum water quality standards and effluent limitations and sets standards for discharges into underground workings, breakthroughs into underground workings, comingling of water from underground workings and surface waters, treating discharges, regulating gravity discharges from underground mines and waiving water supply replacement requirements. To ensure protection of the hydrologic balance, West Virginia revised its regulations to require that disturbance of the hydrologic balance within both the permit and adjacent areas be minimized. The State also revised its requirements governing discharges into underground workings to comply with the Federal requirements. Since the proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 816.41, 817.41, 816.42 and 817.42, the Secretary finds that, except as discussed below, Subsection 14.5 is no less effective than these Federal rules.

Section 22A–3–24(b) of WVSCMRA provides that any operator shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately caused by such surface mining operations, unless waived by said owner. In its Regulatory Reform I part 732 notification of August 18, 1986, OSM informed DOE that, to the extent that State law authorizes the sale or transfer of water rights, this waiver appeared to be no less stringent, with respect to water quality, than section 717(a) of SMCRA, which provides that the Act shall not be construed as affecting in any way a person's right to enforce or protect his interest in water resources under State laws governing water rights. However, the letter noted that the State could not, by use of this landowner waiver provision, authorize the operator to pollute water, as opposed to consuming it. To clarify this statutory waiver provision, the State has proposed Subsection 14.5(h), which states that a waiver of water supply replacement rights granted by a landowner as provided by Section 22A–3–24 of WVSCMRA shall not constitute a waiver of the operator's responsibility for maintaining and restoring water quality. However, since the date of its earlier letter, OSM has determined that West Virginia adjudicates water disputes based on the principle of riparian rights, which, unlike the beneficial use doctrine, does not assign an individual discrete water rights subject to sale or transfer. Furthermore, the preamble to 30 CFR 816.54 [now 816.41(h)], which requires that any person who conducts surface mining activities replace the water supply of an owner of interest in real property if the water supply has been adversely impacted by contamination, diminution or interruption proximately resulting from the surface mining activities, contains the following discussion:

> One commenter felt that the Section should be changed to provide that the operator would not have to replace the landowner's water supply, if the landowner indicated replacement was not wanted. The Office rejected this proposal, as section 717(b) of the Act clearly requires replacement in all instances. Moreover, allowing present owners to waive the benefits of 816.54 would not provide adequate protection for present lessees or for future owners of the property involved (44 FR 15175, March 13, 1979).

Therefore, the Secretary finds that Subsection 14.5(h) is less effective than 30 CFR 816.41(h) and less stringent than section 717(b) of SMCRA to the extent

that the proposed waiver is applicable to surface mining activities. (Neither SMCRA nor the Federal rules require replacement of water supplies adversely affected by underground mining activities.) Accordingly, the Secretary is not approving the provision and is requiring the State to amend Subsection 14.5(h) to limit the waiver provision to underground mining activities.

14.6. *Acid-Producing and Toxic Materials.* Subsection 14.6 of the proposed State rules contains requirements governing the storage, burial or treatment of acid and toxic producing materials to prevent adverse effects on water quality and vegetation. The proposed rule also requires all exposed coal seams after mining to be covered with a minimum of four feet of nontoxic and noncombustible material. The Secretary finds that Subsection 14.6 is substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.41(f) 817.41(f), 816.102(f) and 817.102(f).

14.7. *Monitoring Requirements.* In response to comments from OSM, West Virginia has revised its water monitoring requirements at Subsection 14.7 to require that each surface and groundwater monitoring site be monitored quarterly until final bond release, unless the operator can demonstrate that monitoring is no longer necessary to achieve the purposes set forth in the monitoring plans. West Virginia also revised its rules to clarify that groundwater monitoring can be waived only on a water-bearing stratum by water-bearing stratum basis and only after the Commissioner makes a finding that each stratum for which a waiver is proposed is not one which significantly ensures the hydrologic balance within the cumulative impact area. Because the proposed State rules include requirements substantively identical to those of the corresponding Federal rules at 30 CFR 780.21 (i) and (j), 784.14 (h) and (i), 816.41 (c) and (e), 817.41 (c) and (e), 816.46(d) and 817.46(d), the Secretary finds that Subsection 14.7 is no less effective than the cited Federal regulations.

Subsection 14.7 also provides that water treatment facilities may be removed only after an operator demonstrates that the hydrologic balance is being preserved by meeting applicable effluent limitations at the site for a period of at least one year. Since the Federal rules do not prescribe when treatment facilities may be removed, regulatory authorities have the discretion to establish any reasonable standard meeting their needs. The proposed West Virginia standard appears reasonable since it will take seasonal variations into account. Therefore, the Secretary finds that it is not inconsistent with any Federal requirements.

14.8. *Steep Slope Mining.* Subsection 14.8 contains special performance standards for operations which are conducted in areas where the natural slope of the land within the permit area exceeds an average of twenty degrees. In response to comments from OSM, the State revised its steep slope mining regulations to clarify that they prohibit the placement of abandoned or disabled equipment on the downslope. As proposed, spoil from the initial cut is allowed to be placed on the downslope only to the extent authorized under section 22A–3–12(d) of WVSCMRA. As explained in Finding 13.5 of the January 21, 1981, **Federal Register** notice (46 FR 5919), the Secretary found that, because first cut material must be disposed of in accordance with the requirements for excess spoil or used to return the site to its approximate original contour, this provision was consistent with sections 515(d)(1) and 515(b)(22) of SMCRA. The State also revised its steep slope mining regulations to clarify that all stream channel diversions and diversion ditches must be designed and constructed in accordance with the other applicable requirements of its surface mining reclamation regulations. Except as previously noted or discussed below, the Secretary finds that the proposed rules are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.107 and 817.107.

The Federal rules at 30 CFR 816.107(d) and 817.107(d) prohibit placing woody materials in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not adversely affect the long-term stability of the backfilled area. Subsection 14.8(a)(4) of the State rules provide simply that woody material shall be buried in such a manner that it will not deteriorate the stable condition of the backfilled area. It thus requires rather than prohibits placement of woody materials in the backfill and it fails to require that the Commissioner make the appropriate finding before approving their placement in the backfill. Therefore, the Secretary finds that subsection 14.8(a)(4) is less effective than 30 CFR 816.107(d) and 817.107(d), and he is requiring West Virginia to amend its regulations to correct this deficiency.

14.9. *Auger Operations.* As discussed in Finding 1 of the July 11, 1985, **Federal Register** notice (30 FR 28326–28327), the Secretary found that the State rules did not require the backfill on augering operations affecting previously mined areas to be designed by a qualified registered professional engineer nor did they require the backfill to be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long term stability as required by 30 CFR 819.19(b) (1) and (3). The State has revised its regulations at subsection 14.9(f) to resolve this deficiency. In addition, the State has revised subsection 14.9 to require that auger holes discharging acid or toxic water be sealed within 72 hours after coal extraction or that the discharges be treated to meet effluent limitations if sealing is not possible within 72 hours. Auger holes not discharging acid or toxic-forming water must be sealed as contemporaneously as practicable. Furthermore, auger holes need not be sealed if the Commissioner determines that the resulting impoundment caused by sealing of the auger hole may create a hazard to the environment or public health and safety and the discharge will not pose a threat of pollution to surface water and will comply with applicable effluent limitations and water quality standards. West Virginia also revised its regulations to require that auger mining be conducted in a manner so as to prevent or minimize subsidence and, except as provided in subsection 14.13, not be conducted within 500 feet of any abandoned or active underground workings. The Secretary finds that the State's proposed auger mining requirements at subsection 14.9 are substantively identical to and therefore no less effective than 30 CFR part 819. Accordingly, adoption of the proposed rules by the State will satisfy the Secretary's condition of program approval at 30 CFR 948.11(a)(1).

14.10. *Mountaintop Removal.* Subsection 14.10 and section 22A–3–12(c) of WVSCMRA contain specific performance standards for mountaintop removal operations. Taken together, these provisions are substantively identical to and therefore no less effective than the Federal regulations at 30 CFR part 824.

14.11. *Inactive Status.* Subsection 14.11 contains procedures for obtaining inactive status whereby an operator temporarily ceases all mining and reclamation activities. In response to comments from OSM and in accordance with its settlement agreement of July 17, 1989 (Civil Action No. 2:88–1609), West

Virginia made extensive revisions to its inactive status procedures. Under the revised procedures, an operator cannot cease mining and reclamation activities for more than 30 days unless he or she submits an application and the Commissioner finds in writing that there are no outstanding violations or penalties at the site; the site is in full compliance with the State's program; significant coal resources remain to be mined at the site; all disturbed acreage is bonded; all required backfilling, regrading, revegetation, monitoring and water treatment will continue during inactive status; the site will be secured to guard against hazards to the public; cessation is necessary because of temporary market conditions which are likely to change in the period for which inactive status is sought; a color coded mine progress map is submitted for the site; the request for inactive status is signed by an accountable official of the applicant and notarized; and inactive status will not relieve the operator of any responsibility for complying with the State Act, these regulations or the terms and conditions of the permit. The Commissioner may grant inactive status for a period of up to one year, but in no event can the total period exceed three years, unless necessitated by labor strikes or litigation precluding reactivation of the site, or unless substantial equipment necessary for extraction remains on site and is being maintained in working order. The proposed State rules include provisions substantively identical to those of the corresponding Federal regulations at 30 CFR 816.131 and 817.131 governing temporary cessation of operations. As authorized by section 505(b) of SMCRA, the State rules also include additional provisions intended to provide a greater measure of environmental protection by preventing abuse of inactive status. Therefore, the Secretary finds that subsection 14.11 is no less effective than the cited Federal rules.

14.12. *Variance from Approximate Original Contour (AOC).* On December 18, 1987, OSM advised West Virginia that, in accordance with *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, D.D.C. July 15, 1985), the State would have to amend its regulations to clarify that in areas where slopes are less than 20 degrees (non-steep slopes) the Commissioner cannot grant a variance from AOC restoration requirements. West Virginia now has revised its regulations to clarify that the AOC variance provisions at subsection 14.12 apply only to operations in steep slope areas. Except as discussed below, the Secretary finds that subsection 14.12 is now substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 785.16.

However, Subsection 14.12(a)(6) provides that an AOC variance may be granted only if the Commissioner determines that the watershed of the permit and adjacent areas will be improved by reducing pollutants, environmental impacts or flood hazards and "volume of seasonal flows do not adversely affect the environment." The Federal regulations at 30 CFR 785.16(a)(3) provide that the watershed may be deemed improved only if (i) the amount of pollutants discharged from the permit area will be reduced or flood hazards will be reduced by reduction of peak flow discharges from precipitation events or thaws, (ii) the total volume of flow from the proposed permit area during every season of the year will not vary in a way that adversely affects surface water ecology or any existing or planned use of surface or ground waters, and (iii) the appropriate State environmental agency approves the plan. The requirements of subparagraph (i) of the Federal rule are adequately addressed by the similar provisions of subparagraph (6)(A) of the proposed State rule. In addition, DOE maintains that it is the only State environmental agency from which approval is needed. Therefore, a State counterpart to subparagraph (iii) of the Federal rule is not needed since DOE will review the plan as part of the permit application. However, the Secretary finds Subsection 14.12(a)(6)(B) less effective than the corresponding Federal rule at 30 CFR 785.16(a)(3)(ii) since its contextual meaning is unclear and since it does not address surface water ecology, water use or changes in volume. Accordingly, he is requiring that the State amend this rule to correct these deficiencies.

14.13. *MSHA Approval.* Section 22A–3–12(b)(13) of WVSCMRA prohibits surface mining within 500 feet of any active or abandoned underground mines unless certain conditions are met. Subsection 14.13 of the proposed State rules provides that no mining shall occur within 500 feet of an underground mine not totally abandoned without approval by the Federal Mine Safety and Health Administration. The Secretary finds that Section 22A–3–12(b)(13) of WVSCMRA and Subsection 14.13 are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.79.

14.14. *Disposal of Excess Spoil.* (a) *General.* Subsection 14.14 establishes requirements for valley fills, side hill fills, durable rock fills and the disposal of excess spoil on existing benches. Paragraphs (a) and (b) of Subsection 14.14 contain general requirements that are applicable to all excess spoil disposal structures. Paragraph (a) requires that spoil be placed in designated disposal areas within the permit area in a controlled manner; that coal processing waste and underground development waste not be placed in fills, unless the waste contains no toxic or acid-producing materials; that excess spoil which is acid or toxic-forming or combustible be covered with nonacid, nontoxic and noncombustible material; that slope protection be provided to minimize surface erosion and that all disturbed areas be revegetated; and that the final surface configuration of the fill be suitable for the approved postmining land use. Paragraph (b) sets the certification standard for the design of the fill and appurtenant structures, contains basic construction quality control standards, and requires a registered professional engineer or other qualified specialist to conduct inspections of the fill at least quarterly throughout construction, during critical construction periods and regularly during placement of fill materials. The registered professional engineer is to provide the Commissioner with a report after each inspection certifying that the fill has been constructed as designed and is stable. Paragraph (b) also requires that the certified report include color photographs of the underdrain and sets specific conditions for the photographs. The Secretary finds that the requirements set forth in paragraphs (a) and (b) Subsection 14.14 are substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.71 (a), (b), (e), (g), (h), (i) and (j) and their identical counterparts in 30 CFR 817.71.

(b) *Use of excess spoil on abandoned mine lands.* As discussed in Finding 13.3 of the January 21, 1981, Federal Register notice (46 FR 5919), the Secretary found that placement of spoil outside the permit area as allowed by State law is consistent with SMCRA provided the spoil is not needed to restore the approximate original contour of the land and reclaim the permit area and is placed on abandoned mine lands under contract for reclamation under the State's abandoned mine land reclamation program (AMLR) approved pursuant to Title IV of SMCRA. Subsection 14.14(c) establishes the conditions under which excess spoil can be deposited outside the permit area. At OSM's request, the State revised paragraph (c) so as not to allow the

creation of fills on abandoned mine lands. As explained in OSM's issue letter of October 12, 1989, Section 515(b)(22)(B) of SMCRA and Section 22A–3–12(b)(21) of WVSCMRA do not allow the creation of fills on AMLR projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its approximate premining original contour. Furthermore, only projects approved by OSM through the AMLR grant process are eligible for such spoil deposition. If the State wants to allow the disposal of excess spoil on abandoned mine lands by means other than a funded AMLR contract, West Virginia must submit any such "no-cost" reclamation procedures to OSM for approval. Since the proposed State rules provide that the disposal of excess spoil outside the permit area is limited to either another permitted site or an AMLR project site approved under the AMLR program, the Secretary finds that Subsection 14.14(c) is consistent with section 515(b)(22) of SMCRA.

(c) *Design and construction requirements for special types of fills.* (1) *General.* Paragraphs (d), (e), (f) and (g) of Subsection 14.14 contain specific design and construction requirements for the disposal of excess spoil on existing benches, valley fills, side hill fills and durable rock fills. Except as discussed below, the Secretary finds that the proposed State rules are substantively identical to and therefore no less effective than the corresponding Federal requirements at 30 CFR 816.71, 817.71, 816.72, 817.72, 816.73, 817.73, 816.74 and 817.74.

(2) *Fill stability.* Subsection 14.14(e)(2) provides that the foundation of the fill shall be designed to assure a long-term static safety factor of 1.5 or greater. The corresponding Federal regulations at 30 CFR 816.71(b)(2) and 817.71(b)(2) require that the entire fill, not just the foundation, be designed to attain a minimum long-term static safety factor of 1.5. Therefore, the Secretary finds that Subsection 14.14(e)(2) is less effective than the Federal rules and he is requiring West Virginia to revise its program accordingly.

(3) *Maximum size of valley fills with rock core chimney drains.* The Federal regulations at 30 CFR 816.72(b) and 817.72(b) allow the use of rock core chimney drains in a valley fill only if the size of the fill does not exceed 250,000 cubic yards and upstream drainage is diverted around the fill. Subsection 14.14(e)(4) of the proposed State rules allows the use of rock core chimney drains in valley fills that exceed 250,000 cubic yards of material if the valley floor is always above the water table. Based on the argument that location above the water table would render stability concerns largely moot, the Secretary approved an identical provision in a prior program amendment (Finding 9, 49 FR 52038, November 16, 1983). Since the Federal rules have not been changed subsequent to the date of this finding and since no problems from its implementation have been identified, the Secretary is not altering his previous determination that this provision is no less effective than the corresponding Federal rules. However, based on commenter's concerns, he is requiring that OSM study fills constructed under this provision to determine whether stability problems are likely to develop in the future and whether further program amendments are necessary.

(4) *Perimeter diversions.* The Federal regulations at 30 CFR 816.72(b) and 817.72(b) require that upstream drainage be diverted around valley fills constructed with rock core chimney drains. Similarly, the Federal regulations at 30 CFR 816.73(f) and 817.73(f) require that drainage from areas around and above a durable rock fill be directed into diversions capable of safely passing the runoff from a 100-year, 6-hour event. Subsection 14.14(e)(4) of the State rules does not require upstream drainage to be diverted around valley fills constructed with rock core chimney drains; and likewise Subsection 14.14(g)(8) allows drainage to be passed through durable rock fills. Therefore, the Secretary finds that paragraphs (e)(4) and (g)(8) of Subsection 14.14 are less effective than the Federal regulations, and he is requiring that the State amend its program to specify that surface runoff from areas above and around all valley and durable rock fills must be diverted around the fills using diversions capable of safely passing the peak runoff from a 100-year, 6-hour or equivalent.

(5) *Underdrains.* The Federal regulations at 30 CFR 816.72(b)(2) and 817.72(b)(2) require that rock core chimney drains be protected by a filter system to ensure proper functioning of the rock cores. Subsection 14.14(e)(5)(B) of the State's rules allows a rock core "of sufficient capacity * * * to allow for partial plugging" to be used in lieu of a filter system. Paragraphs (e)(1) and (e)(6) clarify that underdrains other than rock cores must always be protected by filter systems. Although this provision remains substantively unchanged from current program provisions, the Secretary is aware of concerns that "partial plugging" designs may provide insufficient long-term stability, especially since the State has no separate sizing criteria for cores designed in this fashion. Therefore, to determine whether a program amendment is needed with respect to this provision, he is directing OSM to conduct an evaluation of rock core valley fills in the State that have been designed to allow for partial plugging and constructed without filter systems.

(6) *Clearing of organic matter.* Section 515(b)(22)(B) of SMCRA and the Federal regulations at 30 CFR 816.71(e)(1) and 817.71(e)(1) require that all vegetative and organic materials be removed from the disposal area prior to the placement of spoil. Paragraphs 14.14(e)(8), (f)(5) and (g)(6) of subsection 14.14 of the proposed State rules provide that all areas upon which the fill is to be placed must be progressively cleared of all trees, brush and other organic material above ground level. Since subsection 14.3(a) of the State rules requires removal of topsoil from the area to be disturbed and stumps and roots would be removed with the topsoil, the issue is whether it is necessary to remove subsurface organic materials, including stumps and roots, from those portions of the disposal area from which topsoil will not be removed because use of a topsoil substitute has been approved. After conducting a technical evaluation, OSM has determined that failure to remove such materials in noncritical areas of the foundation is unlikely to be a factor in long-term stability, while the disturbance associated with removal can contribute substantially to sedimentation and other environmental problems. However, stability problems could very well develop if such materials are not removed from critical foundation areas, such as the toe of the fill, seepage underdrain areas, and downstream portions of the fill that provide a resisting force against massive slope failure.

Therefore, the Secretary finds that paragraphs (e)(8), (f)(5) and (g)(6) of subsection 14.14 are less effective than the Federal rules and he is not approving them to the extent that they do not require the removal of all subsurface organic matter from the critical foundation areas of excess spoil disposal sites. He also is requiring that the State amend these rules to correct this deficiency.

14.15. *Backfilling and Regrading.* The proposed State rules at subsection 14.15 establish requirements, including time and distance standards, for backfilling and grading areas disturbed by surface mining reclamation operations. At OSM's request, the State reinstated its backfilling and grading requirements for mountaintop removal operations. Paragraph (d) allows the time or

distance requirements for backfilling and grading to be extended when site conditions or weather conditions make adherence to the guidelines impractical. According to the proposed rule, the Commissioner is to establish by directive, standards for determining what site conditions or weather conditions will justify an extension. The corresponding Federal regulations at 30 CFR 816.100 were remanded in *In Re: Permanent Surface Mining Regulation Litigation II* (Civil Action 79–1144, D.D.C. 1984) for failure to include time and distance standards. Since paragraph (b) of the State rules includes such standards, the Secretary finds that it is consistent with the court's decision. He also finds that the extension provisions of paragraph (d) are not inconsistent with the decision since the court did not rule on what form the time and distance standards should take. Otherwise, the Secretary finds the State's backfilling and grading requirements at subsection 14.15 to be substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.102 and 817.102.

14.16. *Remining Previously Mined Areas.* Subsection 14.16 contains standards for remining operations on previously mined areas. In response to comments from OSM, West Virginia has revised its proposed regulations to require that all spoil generated by the remining operation and any other reasonably available spoil in the vicinity of the remining operation be included in the permit area and be used to backfill the area. New paragraph (n) also provides that only those remining operations that begin after February 4, 1987, on sites that were mined prior to August 3, 1977, may qualify for modified NPDES permits under Public Law 100–4. Since the Secretary has no jurisdiction over the NPDES program, he is not rendering a decision on paragraph (n). Except for this paragraph, the Secretary finds the revised State rule to be substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.106, 817.106, 816.116(b)(5) and 817.116(b)(5). See also Finding 2.22 for a discussion of the terms "remining operation", "remined area" and "previously mined area".

15. *Section 38–2–15: Underground Mining Operations*

15.1. *Site Development.* Subsection 15.1 contains performance standards relating to site excavation; temporary storage of overburden; temporary and permanent revegetation of topsoil, spoil storage and other disturbed areas; and indiscriminate dumping or discarding of waste materials at underground mining operations. In addition, the State has revised this subsection to regulate the disposal of noncoal mine wastes at underground mining operations. The disposal of noncoal wastes at surface mining operations is prohibited under the proposed State regulations. The Secretary finds that subsection 15.1 includes requirements substantively identical to and therefore no less effective than those of 30 CFR 817.22, 817.99, 817.100 and 817.114, and that the additional State provisions for which there is no Federal counterpart, are not inconsistent with any Federal requirements.

15.2. *Backfilling and Grading.* (a) *General.* Subsection 15.2 of the proposed State rules contains requirements governing backfilling and regrading, revegetation, highwall elimination and excess spoil pile rehandling at underground mining operations. Except as discussed below, the Secretary finds that subsection 15.2 is substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 817.102, 817.106 and 817.116.

(b) *Contemporaneous reclamation standards.* West Virginia has revised paragraph (b) of this subsection to require that backfilling and regrading be initiated within 180 days of completion of the underground mining operations. Because of problems encountered by operators in scheduling the removal of equipment and structures from completed underground mining operations, the State found it necessary to extend the initiation date for backfilling and regrading. Under the revised rule, as in the corresponding Federal rule at 30 CFR 817.100, all backfilling and regrading still must be completed as contemporaneously as practicable. Therefore, since the Federal rule does not establish a numerical timeframe for the initiation of backfilling and regrading, the Secretary finds subsection 15.2(b) to be no less effective than 30 CFR 817.100.

(c) *Variances from highwall elimination.* Paragraph (d) provides that all underground mining operations in existence on August 3, 1977, which created highwalls prior to that date and did not otherwise reaffect such highwalls after that date, may not be required to eliminate the highwall if it is demonstrated to be technologically infeasible to do so because there is insufficient spoil available near the mine site. In addition, all standard backfilling and grading requirements not related to highwall elimination must be observed. Paragraph (e) provides that all operations which were in existence on August 3, 1977, and created highwalls prior to that date, but reaffected them at a later date, must comply with the remining provisions of subsection 14.16. The Secretary finds that, in practical terms, there is no difference between the requirements of these paragraphs since both require use of all available spoil to eliminate the highwall to the maximum extent feasible. The Secretary also notes that, to be consistent with SMCRA and the Federal rules, driving entries into or augering a preexisting highwall must be considered as reaffecting that highwall. Pursuant to *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action 79–1144, D.D.C., July 15, 1985), an activity's effect on the stability of the highwall cannot be considered when determining whether or to what extent a preexisting highwall must be eliminated.

The Secretary previously approved, without comment, two earlier amendment packages containing virtually identical provisions (48 FR 52034, November 16, 1983, and 50 FR 28324, July 11, 1985). In addition, on December 31, 1987 (52 FR 49398), he approved similar provisions in the Kentucky program, using the rationale that approval would provide equitable treatment for pre-SMCRA underground mines which have operated continuously since before the enactment date of SMCRA by affording them the same variance from highwall elimination as is provided in 30 CFR 817.106 for those underground mines which ceased operation prior to August 3, 1977, and resumed operation after the effective date of the Act.

These State provisions address the problems inherent in attempting to reclaim face-up areas for underground mine entries created prior to the passage of SMCRA. These underground mines often have been in existence for many years and the earthen material necessary to eliminate the face-up area is either no longer available or has been completely revegetated and its handling and use would cause new environmental damage and disruption. This problem is unique to underground mines, where highwalls exist in a static state for many years and do not move with the coal removal operation as is the case with surface mines. The problem is not encountered in surface mines where post-SMCRA operations are continually creating new highwalls (and, in so doing, the spoil to reclaim old highwalls) rather than extracting coal from pre-SMCRA highwalls.

In passing SMCRA, Congress dealt with the surface impacts of underground mining and surface extraction of coal in a generally similar manner, but did

provide for important differences. Congress affirmatively established certain performance standards applicable to underground mines in section 516 of SMCRA and incorporated others by reference. One of the performance standards incorporated by reference in section 516(b)(10) is that of highwall elimination. However, section 516(b)(10) also charges that "the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining." In *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, D.D.C., May 1980), the court recognized that one of the distinct differences between surface and underground mining is the length of time for mine operation. This difference is apparent in the present instance since surface mines which continued to create new highwalls after the effective date of the Act were not required to eliminate highwalls created as part of the same operation before the effective date of SMCRA. The Secretary is exercising his authority and responsibility under section 516(b)(1) of SMCRA to consider these distinct differences between surface and underground mining in approving these State rules. Approval of this program amendment constitutes a limited modification of the Federal regulatory requirement that there be complete elimination of highwalls associated with underground mine face-up areas for mines in operation prior to the effective date of SMCRA which continued to operate beyond that date. Exercise of this authority establishes the Federal requirement for the State of West Virginia.

Paragraph (d) also includes a sentence stating that this paragraph does not constitute a variance from the requirement for highwall elimination except on previously mined areas (areas mined prior to May 3, 1978) that would involve exposing one area of highwall completely eliminated during the installation of an underground mine to eliminate other areas of highwall, i.e., the face-up area. It is not at all clear to the Secretary what this sentence means. However, it appears that, in situations where highwalls were created or reaffected prior to May 3, 1978, by underground mining operations which were also in existence prior to that date, and where the spoil from that highwall was used to eliminate another portion of highwall on the previously mined area, the State does not want an operator to use spoil from an area that has been completely reclaimed to eliminate a highwall that has been created or reaffected by the underground mining operation. Provided the rule is interpreted in this fashion, the Secretary finds it to be consistent with 30 CFR 817.102(1), which provides that regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if disturbance of the fill would increase environmental harm or adversely affect the health or safety of the public. Under the circumstances described above, the Secretary agrees that recreation of a previously eliminated highwall to completely eliminate the highwall at the face-up area would be environmentally detrimental and serve no useful purpose. However, the Secretary also notes that this provision must not be interpreted as exempting such operations from compliance with the remainder of paragraph (d) and subsection 14.16, which require that the highwall at the face-up area be eliminated to the maximum extent technically practical.

16. *Section 38–2–16: Subsidence Control.*

16.1. *Public Notice.* Subsection 16.1 requires underground mine operators to distribute a mining schedule by mail to all property owners and residents within the area of the underground workings. It also requires that each person be notified at least six months prior to the start of mining beneath that person's property or residence. At OSM's request, West Virginia revised this subsection to require that the 6-month notification identify the location or locations where the operator's subsidence control plan may be examined and the dates that specific areas will be undermined. Because the proposed State rules are substantively identical to 30 CFR 817.122, the Secretary finds that subsection 16.1 is no less effective than the Federal rule.

16.2 *Surface Owner Protection.* Subsection 16.2 contains general requirements for subsidence control and requires operators to prevent or minimize material damage caused by subsidence. In accordance with OSM's issue letter of October 12, 1989, West Virginia revised this subsection to require the submission of a mine progress map of sufficient detail to ensure compliance with the subsidence control plan. The revised State rules are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 817.121. However, on February 12, 1990, in *National Wildlife Federation* v. *Lujan*, the U. S. District Court for the District of Columbia remanded the Federal regulation at 30 CFR 817.121(c)(2) to the Secretary with instructions to revise it by striking the reference to State law. Because sections 102(b) and 516(b)(1) of SMCRA require that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto be fully protected and that the operator maintain the value and reasonably foreseeable use of surface lands underlain by underground mining operations, the court ruled that the Secretary's limitation on an operator's duty to correct material damage to structures caused by subsidence is contrary to the Act. The court found that an operator has the obligation to repair material structural damage caused by subsidence without regard to the limitations set forth in State law. Subsection 16.2(c)(2) of the State rules contains a limitation similar to the one in 30 CFR 817.121(c)(2) which was remanded by the court. Therefore, in keeping with the court's decision, the Secretary finds the State rule to be less stringent than sections 102(b) and 516(b)(1) of SMCRA, and he is not approving it to the extent that its requirements apply only "to the extent required under applicable provisions of State law." Accordingly, as approved, subsection 16.2(c)(2) now requires operators, regardless of State law, to repair or provide compensation for material structural damage caused by subsidence.

17. *Section 38–2–17: Small Operator Assistance Program*

Section 17 establishes procedures for assisting eligible small coal operators in the preparation of the determination of probable hydrologic consequences and statement of results of test borings or core samplings that are required components of a permit application. On January 18, 1983 (48 FR 2266–2274), OSM revised the eligibility criteria and the standards for small operator assistance. In response, the State revised its small operator assistance program requirements relating to eligibility, filing and liability. Except as discussed below, the State's revised rules are substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR Part 795.

The Federal regulations at 30 CFR 795.6(a)(2)(iii) provide that all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management must be attributed to the applicant. This provision is intended to ensure that applicants for small operator assistance do not exceed the 100,000-ton assistance eligibility ceiling established in section

507(c) of SMCRA. As proposed, subsection 17.3(b)(4) would require attribution of only that coal produced by operations owned or controlled by the applicant. Since the proposed rule does not require that coal produced by persons who own or control the applicant be attributed to the applicant, the Secretary finds that subsection 17.3(b)(4) is less effective than 30 CFR 795.6(a)(2)(iii), and he is requiring that the State amend its program to correct this deficiency.

Also, on August 18, 1986, OSM advised West Virginia that it needed to amend its regulations to require that the map submitted with an application for small operator assistance identify the location of existing and proposed test borings and the location and extent of known workings of any underground mines. West Virginia has revised its regulations at subsection 17.4(n) to require the identification of test borings and referenced section 22A– 3–7 of WVSCMRA with the intent of requiring the identification of underground workings. However, section 22A–3–7 of WVSCMRA pertains to prospecting and does not contain the necessary information requirement. Therefore, the Secretary finds subsection 17.4(n) to be less effective than 30 CFR 795.7(e)(3), and he is requiring that West Virginia amend its program to require that maps submitted with applications for small operator assistance identify the location and extent of known underground mine workings.

18. *Section 38–2–18: Citizen Actions*

18.1. *Notice of Citizen Suits.* Subsection 18.1 establishes procedures to be followed by persons who intend to initiate civil action pursuant to section 22A–3–25 of WVSCMRA. Except for changes needed to reflect the State's administrative and judicial review structure, the proposed State rules are substantively identical to those in the corresponding Federal rule at 30 CFR 700.13. Therefore, the Secretary finds the State's proposed rules to be no less effective than the Federal rules.

18.2. *Citizen Requests for State Inspections.* Subsection 18.2 of the proposed State rules establishes procedures by which citizens can initiate a State inspection. West Virginia revised this subsection to allow a citizen to request an inspection if a violation exists or if a condition or practice exists which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. In addition, the State revised its rules to require the Commissioner to notify citizens if no inspection or enforcement action is taken as a result of a complaint and allow for review of the adequacy and completeness of State inspections of prospecting operations. The proposed State rules include requirements substantively identical to and procedures similar to those of the Federal rules at 30 CFR 842.12 and 842.14, as required by 30 CFR 840.15. Therefore, the Secretary finds subsection 18.2 to be no less effective than the cited Federal rules.

18.3 *Review of Decision Not to Inspect or Enforce.* Subsection 18.3 establishes procedures whereby a person can request the Commissioner to informally review a decision not to inspect or take appropriate enforcement action. West Virginia revised these rules to make them applicable to both prospecting and surface mining operations. The State also revised its rules to require that the results of the review be provided to the person alleged to be in violation and that the decision be appealable to the Reclamation Board of Review. The Secretary finds that the State's revised rules relating to the review of a decision not to inspect or enforce are similar to the Federal procedures in 30 CFR 842.15 and are therefore in compliance with 30 CFR 840.15, which require that the State program provide for public participation in enforcement of the State program consistent with 30 CFR part 842.

18.4. *Availability of Records.* Subsection 18.4 of the proposed State rules identifies the kinds of information and the locations where such information is available for public review. At OSM's request, West Virginia revised its rules to clarify that, at a minimum, such information must include applications for permit approvals; permit revisions; permit renewals; transfers; assignment or sale of permit rights; prospecting approvals; and all inspection and enforcement documents. The revised rules provide that all records relative to surface mining reclamation operations and prospecting operations are to be maintained and made available to the public for a period of at least five years after final bond release. In addition, the State revised paragraph (f) of this subsection to require that the Commissioner develop procedures for persons seeking and opposing the disclosure of confidential information as required by 30 CFR 773.13(d)(3). Since the procedures themselves are not included, the Secretary, through his oversight of the State program, will determine whether such procedures are subsequently developed. Otherwise, the Secretary finds that the State rules include requirements substantively identical to and therefore no less effective than those of the corresponding Federal rules at 30 CFR 700.14, 773.13(d) and 840.14 (b) and (c) concerning the availability of records.

The Federal rules at 30 CFR 840.14(c)(2) provide that the State regulatory authority shall comply with these records availability requirements either by making copies of all documents available for public inspection at a governmental office in the county where mining is occurring or proposed to occur or by providing copies by mail, free of charge, upon request. The State rules require only that permit applications and related materials requiring public notice be made available in the county courthouse or other available local public office. All other documents will be maintained and made available immediately for public review upon request at DOE's regional offices throughout the State. The Secretary finds this arrangement consistent with the Federal rule.

19. *Section 38–2–19: Designation of Areas Unsuitable for Mining.*

Section 19 of the proposed State rules establishes procedures for designating areas within the State unsuitable for surface coal mining operations. At OSM's request, the State made some revisions concerning the right to petition, the notification of receipt of a petition, criteria for designating an area unsuitable for mining and the information to be considered by the Commissioner when making a decision on a petition. Of particular importance is the State's decision to amend its regulations to provide the public prompt notification of the receipt of a petition at the time it is received instead of after it is determined to be complete. Also, the Commissioner must now make copies of the petition available to the public and provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the Commissioner to have an interest in the property. In addition, the State has defined "renewable resource lands" insofar as it relates to designating areas unsuitable for mining. Because the State's revised rules are substantively identical to those portions of the corresponding Federal rules at 30 CFR parts 762 and 764 applicable to State programs, the Secretary finds that section 19 is no less effective than these Federal rules.

20. *Section 38–2–20: Inspection and Enforcement.*

20.1. *Inspection Frequencies.* In response to OSM's Regulatory Reform I part 732 notification of August 18, 1986,

West Virginia made several revisions to its inspection frequency requirements in subsection 20.1. The State also has defined complete and partial inspections. The revised rules require that the Commissioner conduct an average of at least one partial inspection per month of each active surface mining operation and one complete inspection per calendar quarter of each active and inactive surface mining operation. Like the Federal rules, the revised State rules allow the Commissioner to establish different inspection frequencies for active and inactive mine sites because inactive sites generally present fewer problems than active sites.

In addition, the State has revised its rules to establish standards and procedures governing aerial inspections, to clarify right of entry requirements and to require that prospecting operations removing fewer than 250 tons of coal be inspected on a quarterly basis, a frequency consistent with 30 CFR 840.11(c), which does not specify a numerical frequency, but rather requires that exploration operations be inspected as necessary to ensure compliance with the program. Except as noted in OSM's Regulatory Reform III part 732 notification of March 6, 1990, concerning abandoned sites, the Secretary finds that Subsection 20.1 includes requirements substantively identical to and therefore no less effective than the corresponding Federal regulations at 30 CFR 840.11 and 840.12.

For inspection frequency purposes, subsection 20.1(a)(2) defines an inactive operation as one that has requested and received approval to temporarily cease operations pursuant to subsection 14.11, or one that is not contributing suspended solids to streamflow outside the permit area in excess of the requirements set by section 22A–3–12(b)(10) of WVSCMRA, has been granted Phase I bond release and has successfully established revegetation with a minimum ground cover of 60 percent or on which soil productivity on prime farmland has been returned to the same levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined by a soil survey. The Federal rules at 30 CFR 840.11(f) provide that an inactive surface coal mining and reclamation operation is one for which a temporary cessation of operations has been approved or for which a Phase II bond release has been approved. West Virginia's Phase II bond release standards in subsection 12.2(c)(2) are more stringent than those of the Federal rules at 30 CFR 800.40(c)(2) in that they require that revegetation meet success standards for at least two years whereas the Federal rules require only that revegetation be successfully established, with the definition of "established" left to the discretion of the regulatory authority, provided it includes adequacy to control erosion and compliance with the species composition requirements of the reclamation plan. Therefore, for purposes of inspection frequency, West Virginia has defined an inactive operation as one which has met the Federal Phase II bond release standards and has at least partially defined "established" in a manner not inconsistent with the criteria set forth above. Since inspection frequency needs correlate more closely with compliance with Phase II bond release standards than with actual bond releases, the Secretary finds the proposed State standards for inactive sites to be no less effective than the Federal standards for purposes of inspection frequency.

20.2. *Notices of Violation.* In response to comments from OSM, the State has revised subsection 20.2 of its rules to establish criteria for extension of abatement periods beyond 90 days, prohibit the termination of a notice of violation until all violations listed in the notice of violation have been abated and provide for proper service of notices of violation. The Secretary finds that the State's revised rules are now substantively identical to 30 CFR 843.12 and therefore in compliance with 30 CFR 840.13, which specifies the inspection and enforcement requirements applicable to State regulatory authorities.

20.3. *Cessation Orders.* West Virginia has revised its regulations at Subsection 20.3 to establish standards for imminent harm and failure-to-abate cessation orders. In response to OSM's Regulatory Reform I part 732 notification of August 18, 1986, the State modified its rules to clarify that mining operations conducted by any person without a valid surface mining permit or approval for prospecting constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations and the person conducting such operations has filed a timely and complete application for a permit or approval to conduct such operations. In addition, the proposed State rules require that cessation orders be in writing and specify the nature of the condition, practice or violation; the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; the time established for abatement, if appropriate; and a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. To ensure protection of public health and safety and the environment, the proposed rules require that reclamation activities continue during the period of any cessation orders unless otherwise provided in the order. Persons identified as owners or controllers of an operation that is issued a cessation order are to be notified within 60 days of the issuance of such order that they have been identified as an owner or controller. The Secretary finds that the revised State rules are now substantively identical to and therefore no less effective than 30 CFR 843.11, as required by 30 CFR 840.13 (b) and (c).

20.4. *Show Cause Orders.* As discussed in Finding 11 of the July 11, 1985, **Federal Register** notice (50 FR 28333), the Secretary found that the State's program was less effective than the Federal requirements because the Commissioner could decline to issue a show cause order or could vacate an outstanding show cause order due to exceptional factors beyond the operator's control. The State now has modified its regulations at Subsection 20.4 by deleting the provisions authorizing the vacation or termination of show cause orders due to exceptional factors. In addition, the State has redefined the term "unwarranted failure to comply", established standards for and limitations on the use of consent agreements, and clarified that, when a permit is suspended, the operator is responsible for completing all affirmative obligations. Because the proposed State rules include requirements substantively identical to those of the corresponding Federal rules in 30 CFR 843.13, as required by 30 CFR 840.13 (b) and (c), the Secretary finds that Subsection 20.4 is no less effective than those Federal rules. Accordingly, adoption of the proposed revisions by the State will satisfy the Secretary's condition of approval at —30 CFR 948.11(a)(41). The Federal rules contain no counterparts to the provisions concerning consent agreements; however, the Secretary finds that they are not inconsistent with any Federal requirements since they are designed to prevent abuse of the process and maintain the enforcement value of show cause proceedings while achieving abatement in the most expeditious manner feasible.

20.5. *Civil Penalty Assessment.* Subsections 20.5, 20.6 and 20.7 establish procedures for assessing civil penalties for cessation orders and notices of violation. Like the Federal rules, West Virginia's civil penalty assessment process requires the use of four criteria: history of previous violations, seriousness, negligence and good faith. West Virginia has revised its proposed rules to clarify that the Commissioner may assess a civil penalty for each notice of violation if the amount is less than $1,000. Furthermore, if the notice of violation has a seriousness rating of four or greater, the Commissioner must assess it regardless of the amount. Cessation orders also are to be assessed regardless of the amount. In addition, the State revised its procedures concerning the initial assessment and any reassessment of the civil penalty. The revised rules provide for an informal conference on the assessment or reassessment, establish criteria for entering settlement agreements, allow for penalty adjustments and specify assessment rates based on a point system. The Secretary finds that, as required by 30 CFR 840.13 (a) and (c), the revised State civil penalty assessment procedures are similar to the corresponding Federal procedures in 30 CFR part 845 and that the revised State rules provide for penalties no less stringent than those specified in section 518 of SMCRA.

20.6. *Individual Civil Penalties.* On February 8, 1988, OSM published a notice in the **Federal Register** establishing criteria and procedures for assessing individual civil penalties (53 FR 3664–3676). On November 9, 1988, OSM notified West Virginia that it would have to amend its program and adopt similar requirements. In response to OSM's request, West Virginia has revised Subsections 20.8, 20.9, 20.10 and 20.11 of its regulations to establish criteria and procedures for assessing individual civil penalties against officers, directors and agents of corporate permittees in accordance with Section 22A–3–17(f) of WVSCMRA. Since the proposed State rules are substantively identical to and procedurally similar to the corresponding Federal rules at 30 CFR part 846, the Secretary finds that Subsections 20.8, 20.9, 20.10 and 20.11 are no less effective than these Federal regulations.

20.7. *Fees and Costs of Administrative Proceedings.* Subsection 20.12 establishes standards for awarding costs and expenses, including attorney's fees, that are incurred as a result of an individual's participation in any administrative proceeding under the State Act. Because the proposed State rules are substantively identical to the Federal requirements, the Secretary finds that Subsection 20.12 is no less effective than 30 CFR 840.15 and 43 CFR 4.1290 *et seq.*

21. *Section 38–2–21: Reclamation Board of Review*

Section 22–4–2 of WVSCMRA provides that any person having an interest which is or may be adversely affected by an order of the assessment officer or a decision of the Commissioner to grant, deny, modify, renew or significantly revise a permit or a decision concerning a bond release may appeal that decision to the Reclamation Board of Review. Section 22A–3–17(d)(3) of WVSCMRA also provides that any order of the Commissioner relating to a notice of violation or cessation order also may be appealed to the Board. Section 21 establishes procedures for holding open meetings pursuant to the State's Administrative Procedures Act and for filing appeals with the Reclamation Board of Review. At OSM's request, West Virginia revised its rules to prohibit ex parte contacts between representatives of parties appearing before the Board and Board members. Except for some statutory deficiencies relating to temporary relief and appeals concerning prospecting approvals and permit transfers, the State's proposed administrative appeal procedures are similar to the corresponding Federal procedures at 30 CFR 775.11 (b)(3)(iii) and (b)(5). Therefore, the Secretary finds that Section 21 is approvable.

22. *Section 38–2–22: Coal Refuse*

22.1. *General.* West Virginia has revised its surface mining reclamation regulations at section 22 to incorporate the coal refuse disposal regulations that had been promulgated separately and conditionally approved by the Secretary on May 11, 1982 (47 FR 20119–20122). As provided in Subsection 22.1, the construction, operation, enlargement, modification, removal and/or abandonment of any coal refuse site is subject to the requirements of section 22. Subsection 22.2 provides that the coal refuse disposal facility must be designed using current prudent engineering practices and attain a minimum long-term static safety factor of 1.5. Under the proposed rules, only a qualified registered professional engineer, experienced in the design of similar earth and refuse structures, can certify the design of the proposed disposal facility. Because the State's applicability and certification provisions for coal refuse disposal facilities are substantively identical to the corresponding Federal requirements at 30 CFR 816.81(c) and 817.81(c), the Secretary finds that Subsections 22.1 and 22.2 of the proposed State rules are no less effective than the Federal rules.

22.2. *Permitting Requirements.* Subsections 22.3 and 22.4 contain permitting requirements for impounding and non-impounding coal refuse disposal piles. As discussed in Finding 2 of the July 11, 1985, **Federal Register** notice (50 FR 28327–28329), the Secretary found that the State's coal refuse disposal regulations were less effective than the Federal regulations because they provided a waiver of stability analyses for non-impounding coal refuse piles when site conditions indicated that failure would not occur. West Virginia has revised Subsection 22.2 to delete the language at paragraph (h) which allowed the Commissioner to waive stability analyses. The proposed rules require that sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, be performed in order to determine the design requirements for foundation stability of non-impounding coal refuse sites. Accordingly, adoption of the proposed revisions by the State will satisfy that portion of the Secretary's conditional approval at 30 CFR 948.11(a)(8) relating to stability analyses.

In addition, at OSM's request, the State revised its permitting regulations to require that all runoff from areas above the coal refuse pile be diverted around the pile; that all excess material be properly disposed of within the permit area; that all surface runoff or slurry that is diverted into an underground mine comply with Subsection 14.5(e); that sufficient foundation investigations be performed by a registered professional engineer or registered geologist to determine the design requirements for foundation stability of coal refuse impoundments; that the grade of the outslope be no steeper than 2h:1v (50 percent); that plans for sealing abandoned openings comply with 30 CFR 75.1711; that plans for the extinguishment of burning refuse sites be approved by the Mine Safety and Health Administration; that the underground refuse disposal plan include a description of the source and quality of waste to be stowed, the effect of the operation on the hydrologic regime (not just the groundwater), and a description of all monitoring wells to be located in the backfilled area; that the Commissioner may allow less than four feet of cover material to be used on coal refuse disposal sites when it is

demonstrated on the basis of physical and chemical analyses that the revegetation requirements of section 9 can be met; and that all non-impounding coal refuse areas comply with the requirements of 30 CFR 77.214 and 30 CFR 77.215. Except as provided below and in OSM's Regulatory Reform III Part 732 notification of March 6, 1990, the Secretary finds that the State's permitting requirements for impounding and non-impounding coal refuse sites are substantively identical to and therefore no less effective than those of 30 CFR 780.25(e), 784.16(e), 816.15, 817.15, 816.41, 817.41, 816.43, 817.43, 816.71, 817.71, 816.81, 817.81, 816.83, 817.83, 816.84, 817.84, 816.87 and 817.87. For the reasons discussed in Finding 5.3(c) of this notice, the Secretary also finds Subsection 22.3(1) to be no less effective than 30 CFR 780.25(f) and 784.16(f).

West Virginia also revised its requirements regarding open-channel spillways. Under the proposed rules, open-channel spillways shall be designed to carry sustained flows where use of nonerodible materials is proposed for construction or designed to carry short-term infrequent flows at nonerosive velocities when sustained flows are not expected where earth- or grass-lined construction is proposed. The corresponding Federal regulations at 30 CFR 816.84(b)(1), 817.84(b)(1), 816.49(a)(8)(i) and 817.49(a)(8)(i), authorize the use of a single open-channel spillway of nonerodible construction and designed to carry sustained flows or a single earth- or grass-lined spillway designed to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected. Although the proposed State rule specifies design precipitation events for single open-channel spillways, it does not limit single spillways to either nonerodible or earth- or grass-lined construction. Therefore, the Secretary finds that Subsection 22.4(h)(2) is less effective than the Federal rules and he is requiring the State to amend its rule to correct the deficiency.

22.3. *Performance Standards.* At OSM's request, West Virginia revised Subsection 22.5 to require that all organic material be removed from the disposal area prior to placement of coal waste; that no coal refuse impoundment, regardless of size, be permanently retained as part of the approved postmining land use; that slope protection be provided to protect against soil erosion at the site and to protect against sudden drawdown; that faces of embankments and surrounding areas be vegetated; and to make its burning and waste utilization requirements applicable to the construction of active refuse piles. Except as discussed in OSM's Regulatory Reform III Part 732 notification of March 6, 1990, the Secretary finds the revised State rules to be substantively identical to and therefore no less effective than the corresponding Federal rules at 30 CFR 816.81, 817.81, 816.83, 817.83, 816.84 and 817.84.

22.4. *Inspections.* Subsections 22.6 and 22.7 contain requirements for conducting inspections and examinations of non-impounding and impounding coal refuse disposal piles. As discussed in Finding 2 of the July 11, 1985, **Federal Register** notice (50 FR 28327–28329), the Secretary found that the State's coal refuse disposal regulations did not require that regular inspections be conducted during the placement and compaction of coal mine waste materials or that the engineer provide the Commissioner with a certified report promptly after each inspection. West Virginia has revised its rules at paragraphs (b) and (c) of subsection 22.6 to require that regular inspections be conducted of non-impounding coal refuse piles during the placement and compaction of coal waste materials, and that the qualified registered professional engineer provide a certified report to the Commissioner promptly after each inspection. The State also amended paragraphs (a) and (b) of subsection 22.7 to require the prompt submission of a certified report after each inspection of a coal refuse impoundment, and to require that each coal refuse impoundment be inspected regularly during construction, upon completion of construction and at least yearly until removal of the structure or release of the performance bond. The Secretary finds that revised paragraphs (b) and (c) of subsection 22.6 and paragraphs (a) and (b) of subsection 22.7 are substantively identical to and therefore no less effective than 30 CFR 816.83(d)(1), 817.83(d)(1), 816.49(a)(10), 817.49(a)(10), 816.83(d)(2), 817.83(d)(2), 816.84(b)(1) and 817.84(b)(1). Accordingly, adoption of these revised State rules will satisfy that portion of the Secretary's condition of approval at 30 CFR 948.11(a)(8) relating to inspections of coal refuse disposal sites.

In addition, West Virginia has revised subsections 22.6 and 22.7 to require that each inspection report be retained at or near the disposal site, that impoundments meeting the criteria of 30 CFR 77.216 comply with the examination requirements of these rules, and that other impoundments be examined quarterly by a qualified person designated by the operator. Since the revised rules are substantively identical to the corresponding Federal rules at 30 CFR 816.83(d), 817.83(d), 816.84(b) and 817.84(b), the Secretary finds that subsections 22.6 and 22.7 are no less effective than the Federal rules. Both paragraphs (a) and (c) of subsection 22.7 contain examination requirements for non-MSHA size impoundments. Because the last sentence in paragraph (a) concerning examination requirements is redundant and the other provisions of paragraph (a) relate to inspection frequency, the Secretary also recommends that the examination requirements of paragraph (a) be deleted.

23. *Code of Violations.*

As discussed in Finding 20 of the July 11, 1985, **Federal Register** notice (50 FR 28336–28337), the Secretary approved use of the Code of Violations submitted to OSM on October 30, 1984, and found the Code and the State's proposed enforcement and civil penalty sanctions and procedures accompanying the Code to be no less effective than the Federal regulations at 30 CFR 843.12, 843.13, 845.11 and 845.12 and similar to the procedural requirements of sections 518 and 521(a) of SMCRA. Because any revisions to the Code of Violations require OSM approval, on June 30, 1986, West Virginia submitted a revised version of the Code to reflect changes in statutory citations necessitated by passage of a revised and recodified version of WVSCMRA, which also was approved by the Secretary on July 11, 1985 (50 FR 28316–28324). Therefore, since these changes merely correct obsolete references, the Secretary finds that the State's Code of Violations, as revised on June 30, 1986, remains consistent with all Federal requirements. However, the Secretary notes that, upon promulgation of the revised surface mining reclamation regulations discussed in Findings 1–22 of this notice, the State will need again to revise the regulatory citations in its Code of Violations and provide it to OSM for review.

IV. Summary and Disposition of Comments

The Secretary received numerous comments from the public and other government agencies on West Virginia's proposed amendment. All comments were reviewed and considered by the Secretary in making his decision to approve the amendment. Within the next few days, the Secretary intends to publish in the **Federal Register** a summary of the comments received and his disposition of each significant issue.

V. Secretary's Decision

Based on the above findings, the Secretary is approving, with certain exceptions, the proposed program amendment submitted by West Virginia on April 26, 1989, and modified on December 19, 1989, and February 7, 1990. The Federal regulations at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. The Secretary is approving these revised State rules with the understanding that they be fully promulgated by June 1, 1990, in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective on date of publication in the **Federal Register** to expedite the State program amendment process and to encourage West Virginia to bring its program into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

As discussed in Findings 14.9, 20.4, 22.2, and 22.4, certain provisions of this amendment have satisfied the conditions the Secretary originally placed on his approval of the West Virginia program at 30 CFR 948.11(a)(1), (8) and (41). Other amendment provisions, as discussed in Findings 3.1, 13.2 and 9.2, have failed to fully satisfy the conditions of approval codified at 30 CFR 948.11(a)(19), (38) and (39), respectively. As set forth in 30 CFR 948.16, the Secretary is requiring the State to further amend its program to fully correct these deficiencies.

As discussed in Findings 2.11, 2.12, 2.15, 2.19, 3.4, 3.5, 3.6, 3.23, 3.24, 3.26, 3.28, 3.30, 5.1, 5.3(b), 5.3(d), 6.5, 6.8, 10.2, 11.2, 12, 14.5, 14.8, 14.12, 14.14, 17.1 and 22.2, the Secretary also is requiring that West Virginia further amend its program to correct certain other deficiencies identified in the amendment.

As discussed in Findings 2.11, 2.12, 3.6, 3.13, 3.26, 5.3, 6.8, 12, 14.5, 14.14(c), and 16.2, the Secretary is not approving certain proposed provisions in Subsections 2.43 (definition of downslope), 2.44 (definition of embankment), 3.7(a) (alternative designs for excess spoil disposal structures), 3.14 (removal of abandoned coal refuse piles), 3.28(c) (permit revisions), 5.4(a) (sediment control), 6.8(a) (preblast survey notification), 12.4(d)(2) (reclamation of bond forfeiture sites), 14.5(h) (water supply replacement waivers), 14.14(e)(8), (f)(5) and (g)(6) (removal of subsurface organic matter from excess spoil disposal sites), and 16.2(c)(2) (repair of material structural damage caused by subsidence), which have been found to be inconsistent with SMCRA or less effective than the Federal regulations.

As discussed in Findings 1, 3.10 and 3.14, the revised State rules at Subsections 1.2(a), 3.15, 3.11, 15.3 and 15.4 are no longer less effective than the comparable Federal regulations. Therefore, the Secretary is removing his previous disapprovals of these rules at 30 CFR 948.12(b),(h) (except for that portion relating to Subsection 1.2(b), which remains in effect) and (i).

Finally, as discussed in Findings 5.3 and 14.14, the Secretary is requiring OSM to conduct studies to determine the effectiveness of the State's existing sediment control requirements in meeting EPA's effluent limitations, to assess whether increasing the size of underdrains and rock core chimney drains in lieu of enclosing them with filter cloth is sufficient to ensure the long-term stability of valley fills, and to determine whether there is a need to limit the size of valley fills using rock core chimney drains to 250,000 cubic yards. Until these studies are completed, the provisions of the existing State program, which have not been altered by this amendment, will remain in effect.

Effect of Secretary'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, the Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by OSM. The Federal regulations at 30 CFR 732.17(g) also clearly prohibit any unilateral changes to approved State programs. In its oversight of the West Virginia program, OSM will recognize only those statutes, regulations or other program directives approved in 30 CFR 948.15, and will require the enforcement of only such approved provisions by the State.

VI. Procedural Determinations

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.

Executive Order 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.

Environmental Protection Agency (EPA) Concurrence

In accordance with 30 CFR 732.17(h)(11)(ii), on May 11, 1989, OSM solicited EPA's concurrence in the approval of West Virginia's proposed surface mine reclamation regulations of April 26, 1989 (Administrative Record No. WV 781). On July 20, 1989, EPA advised OSM that it was unable to provide such concurrence because the amendment failed to demonstrate the legal authority, administrative capability and technical conformity with controlling Federal National Pollutant Discharge Elimination System (NPDES) regulations necessary to maintain water standards promulgated under the authority of the Clean Water Act (Administrative Record No. WV 797).

Through its issue letter of October 12, 1989, OSM conveyed EPA's concerns to West Virginia. As a result of that letter, West Virginia revised and resubmitted its proposed program amendment on December 19, 1989. On December 22, 1989, OSM requested concurrence from EPA on the revised program amendment (Administrative Record No. WV 809). Additional revisions to the State's proposed surface mining reclamation regulations were made by the West Virginia Legislative Rulemaking Review Committee on January 23, 1990. These revisions were submitted to OSM on February 7, 1990, and were provided to EPA for concurrence on February 9, 1990 (Administrative Record No. WV 823).

On May 9, 1990, EPA responded to OSM's requests of December 22, 1989, and February 9, 1990 (Administrative Record No. WV 842). As discussed below, EPA provided OSM conditional concurrence on certain aspects of West Virginia's proposed program amendments of December 19, 1989, and February 7, 1990, which relate to air or water quality standards promulgated under the authority of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*) and the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

EPA expressed concern about Subsection 5.4(a) of the proposed State regulations because it references the Technical Handbook of Standards and Specifications for Mining Operations in West Virginia. Although the State was to remove all references to the Handbook, the State's final rules at Subsection 5.4(a) still reference it. According to EPA, the legal basis of the Handbook and whether it is a binding regulation still remains unclear in the final submission. Therefore, EPA conditioned its concurrence on clarification of the Handbook's status. As discussed in Finding 5.3, the Secretary is not approving the Handbook or other unspecified criteria to the extent that they would operate in place of, rather than supplement, any approved program provision. Furthermore, he is requiring West Virginia to amend Subsection 5.4(a) to clarify the status of the Handbook, as required by EPA.

EPA also expressed concern about the construction of instream waste treatment impoundments and the placement of valley fills, side hill fills, durable rock fills, refuse slurry impoundments and sedimentation ponds in waters of the United States. Although the State revised its regulations to alleviate some of EPA's earlier concerns, EPA's concurrence on the revised provisions is based upon the understanding that Subsection 14.5(b) of the State's rules, which requires compliance with applicable Clean Water Act requirements, takes precedence over any possible inconsistent applications of State regulations, which may appear to allow instream treatment activities to occur in waters of the United States in violation of the Clean Water Act. The Secretary acknowledges these concerns and emphasizes that section 702(a)(3) of SMCRA provides that nothing in the Act shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality. EPA itself noted that Subsection 14.5(b) of the proposed State rules requires compliance with the Clean Water Act. Furthermore, the Secretary is requiring the State to amend Subsection 5.2 to require that, before approving any mining within 100 feet of an intermittent or perennial stream, the Commissioner first find that such activities cannot cause or contribute to the violation of applicable State or Federal water quality standards. The Secretary is confident that his actions and the resolution of these issues by the State will eventually satisfy all of EPA's concerns.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 16, 1990.

James M. Hughes,

Deputy Assistant Secretary, Land and Minerals Management.

VII. Codification of Decision

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 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 948.11 [Removed]

2. Section 948.11 is removed.

3. In § 948.12, paragraphs (b) and (i) are removed and reserved and the section heading and paragraph (h) are revised to read as follows:

§ 948.12 State regulatory program and proposed program amendment provisions disapproved.

* * * * *

(b) [Reserved]

* * * * *

(h) Subsection 38–2–1.2(b) of West Virginia's surface mining reclamation regulations, as submitted on April 28, 1989, and revised on December 19, 1989, and February 7, 1990, is not approved to the extent that it provides:

Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in these regulations and shall become a part of the permit.

(i) [Reserved]

4. In § 948.15, the first and second paragraphs of paragraph (i) are designated as paragraphs (i)(1) and (i)(2), respectively, and paragraphs (j) and (k) are added to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(j) The Code of Violations, as revised and submitted to OSM on June 30, 1986, is approved effective May 23, 1990.

(k) With the exceptions identified herein and in section 948.12, the following amendment to the West Virginia regulatory program as submitted to OSM on April 26, 1989, and modified and resubmitted on December 19, 1989, and February 7, 1990, is approved effective May 23, 1990. Replacement of all surface mining reclamation and coal refuse disposal regulations (including interpretive regulations) in chapter 20, Article 6, Series VII and VII–A (1985) of the State's Legislative Rules and the Permit Addendum with a new set of Legislative Rules at title 38, Series 2, entitled "West Virginia Surface Mining Reclamation Regulations." The following provisions of the new regulations are not being approved:

(1) The definition of "downslope" at subsection 38–2–2.43 to the extent that it references the lowest seam permitted to be mined rather than the lowest seam actually being mined.

(2) The definition of "embankment" at Subsection 38–2–2.44 to the extent that it requires that such a structure be "of five feet or greater in height as measured from the upstream toe";

(3) Subsection 38–2–3.7(a) to the extent that it provides: "Where alternative designs will achieve equivalent stability and meet all applicable requirements of the Act, these regulations and the terms and conditions of the permit, the Commissioner may approve such alternative design";

(4) Subsection 38–2–3.14 to the extent that it applies to the removal of abandoned coal mine refuse piles where the material being removed meets the definition of coal (ASTM standard D 388–77);

(5) Subsection 38–2–3.28(c) to the extent that it provides: "Provided that where such permits and approvals were granted prior to the effective date of these regulations, such revision shall be required only where compliance with these regulations are necessary to assure adequate protection of the environment or public health and safety";

(6) Subsection 38–2–5.4(a) to the extent that it could be interpreted to allow sediment control structures and bench control systems to be designed, constructed, located, maintained or used in accordance with criteria which replace rather than supplement the

standards set forth in the approved program;

(7) Subsection 38–2–6.8(a) to the extent that it provides: "For the purposes of this section, drainage structures, haulroads and access roads are not considered part of the permit area unless blasting is necessary for construction";

(8) Subsection 38–2–12.4(d)(2) to the extent that it provides that use of Special Reclamation Fund monies to complete the reclamation plan for bond forfeiture sites is discretionary;

(9) Subsection 14.5(h) to the extent that it allows the waiver of water supply replacement rights for operations other than underground mines;

(10) Paragraphs (e)(8), (f)(5) and (g)(6) of Subsection 38–2–14.14 to the extent that they do not require the removal of subsurface organic matter from the critical foundation areas of excess spoil disposal structures prior to the placement of spoil on such areas; and

(11) Subsection 38–2–16.2(c)(2) to the extent that it provides that an operator need repair or compensate individuals for material structural damage caused by subsidence only "to the extent required under applicable provisions of State law."

5. In section 948.16, the section heading is revised and paragraphs (d) through (mm) are added to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(d) By June 29, 1990, West Virginia shall submit proposed revisions to subsection 38–2–2.43 of its surface mining reclamation regulations to define "downslope" to mean the land surface between the projected outcrop of the lowest coal seam being mined (rather than to be mined) along each highwall and the valley floor.

(e) By June 29, 1990, West Virginia shall submit proposed revisions to subsection 38–2–2.44 of its surface mining reclamation regulations to remove the height threshold from the definition of "embankment."

(f) By June 29, 1990, West Virginia shall submit proposed revisions to subsection 38–2–2.66 of its surface mining reclamation regulations to define "impoundment" in a manner that includes water or slurry retention structures built at ground level without embankments.

(g) By June 29, 1990, West Virginia shall submit proposed revisions to subsection 38–2–2.94 of its surface mining reclamation regulations to define "prospecting" to include the gathering of environmental data to establish the conditions of an area prior to mining, or otherwise propose to amend its program to regulate such activities in a manner no less effective than the Federal rules at 30 CFR parts 772 and 815.

(h) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–3.1(k) of its surface mining reclamation regulations to require permit applicants to list all unabated, rather than all abated, air and water quality violation notices.

(i) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–3.7(a) of its surface mining reclamation regulations to remove the provision authorizing the approval of unspecified alternative excess spoil disposal structure designs.

(j) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–3.28(c) of its surface mining reclamation regulations to eliminate the provision limiting the Commissioner's authority to require permit revisions.

(k) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–5.4(a) of its surface mining reclamation regulations to clarify that sediment control structures and bench control systems must always be designed, constructed, located and maintained in accordance with approved program requirements and that the criteria set forth in the "Technical Handbook of Standards and Specifications for Mining Operations in West Virginia" or any other criteria is supplementary to, not in place of, those set forth in the approved program. Alternatively, West Virginia may delete the phase "or other approved criteria" and submit the Handbook to OSM for review as a program amendment.

(l) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–6.8(a) of its surface mining reclamation regulations to eliminate the provisions excluding certain portions of the permit area when determining the applicability of preblast survey notification requirements.

(m) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–5.4(b)(4) of its surface mining reclamation regulations to require that, before the Commissioner approves any proposed reduction in sediment storage capacity from the 0.125 acre-foot standard for sediment control structures or bench control systems, the applicant first demonstrate that discharges from the proposed structure will meet effluent limitations.

(n) By June 29, 1990, West Virginia shall submit proposed revisions to paragraphs (b)(4), (c) and (g)(3)(D) of subsection 38–2–5.4 of its surface mining reclamation regulations to clarify that bench control systems, completely incised sediment control structures and all other impoundments are subject to their requirements. In addition, the State shall, by that date, submit proposed revisions to subsection 38–2–5.4(d)(1) to require that all such impoundments be subject to annual inspection requirements.

(o) By June 29, 1990, West Virginia shall submit proposed revisions to paragraphs (e)(8), (f)(5) and (g)(6) of subsection 38–2–14.14 of its surface mining reclamation regulations to require the removal of all organic matter, not only that above ground level, from the critical foundation areas of excess spoil disposal structures prior to the placement of spoil on such areas.

(p) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–12.4(d)(2) of its surface mining reclamation regulations to clarify that the Commissioner is obligated to use Special Reclamation Fund monies to fully complete the approved reclamation plan on bond forfeiture sites.

(q) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–14.5(h) of its surface mining reclamation regulations to provide that only persons affected by underground mining activities may waive their water replacement rights.

(r) By June 29, 1990, West Virginia shall submit proposed revisions to paragraphs (e)(4) and (g)(8) of subsection 38–2–14.14 of its surface mining reclamation regulations to require that runoff from areas adjacent to and above both valley fills constructed with rock core chimney drains and durable rock fills be diverted into diversion channels designed and constructed to safely pass the peak runoff from a 100-year, 6-hour or equivalent precipitation event.

(s) By April 30, 1991, West Virginia shall submit proposed revisions to its surface mining reclamation regulations to require the submission of a plan to effectively control air pollution attendant to erosion.

(t) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–3.6 of its surface mining reclamation regulations or otherwise propose to amend its program to require that the permit application identify each topsoil and noncoal waste storage area, each explosive storage and handling facility, and the area of land to be affected within the proposed permit area according to the sequence of mining and reclamation.

(u) By April 30, 1991, West Virginia shall submit proposed revisions to:

(1) Subsection 38–2–3.25(a)(2) of its surface mining reclamation regulations to reference paragraphs (a), (b), (c), (d), (i), (j) and (k) of subsection 38–2–3.1, and

(2) Subsection 38–2–3.25(a)(4) of its surface mining reclamation regulations to reference paragraphs (c) and (d) of subsection 38–2–3.32, rather than paragraphs (b) and (c).

(v) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 3.26 of its surface mining reclamation regulations to require that applications for permit assignments be advertised pursuant to subsection 38–2–3.25(a)(3), contain the ownership and control information required by paragraphs 3.1 (a), (b), (c), (d), (i), (j) and (k) of subsection 38–2–3.1, and that subcontractors who will function as operators as that term is defined by the Federal regulations at 30 CFR 701.5 be subject to the eligibility requirements of paragraphs (c) and (d) of subsection 3.32.

(w) By April 30, 1991, West Virginia shall submit subsection 3.28 of its surface mining reclamation regulations or otherwise propose to amend its program to require that each application for a permit revision be reviewed by the Commissioner to determine whether a new or updated probable hydrologic consequences determination or cumulative hydrologic impact assessment is needed and to give the Commissioner the authority to require reasonable revision of a permit at any time.

(x) By April 30, 1991, West Virginia shall submit proposed revisions to subsection 38–2–3.30 of its surface mining reclamation regulations or otherwise propose to amend its program to require that the Commissioner make written findings no less effective than those set forth in 30 CFR 785.18(c)(9) before approving permits authorizing variances from contemporaneous reclamation requirements.

(y) By April 30, 1991, West Virginia shall submit proposed revisions to:

(1) Subsection 38–2–3.32(d)(12) of its surface mining reclamation regulations to reference subsection 14.16 instead of subsection 14.15(i); and

(2) Subsection 38–2–3.32(f) of its surface mining reclamation regulations to reference Subsections 3.32(c) and 3.1(n) instead of Subsections 3.32(b) and 3.1(p).

(z) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 3.33(h)(2) of its surface mining reclamation regulations to reference paragraph (c) of Subsection 3.1, not paragraph (p).

(aa) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–5.2 of its surface mining reclamation regulations to require that, before the Commissioner approves any mining within 100 feet of an intermittent or perennial stream, he make a finding that such activities will not cause or contribute to the violation of applicable State or Federal water quality standards.

(bb) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–5.4(c) and/or paragraphs (b) and (h) of Subsection 38–2–3.6 of its surface mining reclamation regulations to require that, prior to construction, the general and detailed design plans for sediment control structures and bench control systems be certified as being designed to meet regulatory program requirements and any design criteria established by the regulatory authority.

(cc) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–6.5 of its surface mining reclamation regulations or otherwise propose to amend its program to establish, or require that the permit establish, maximum ground vibration limits for all structures, not just those defined in the State rule as protected structures.

(dd) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–9.3 of its surface mining reclamation regulations or otherwise propose to amend its program to establish productivity success standards for grazing land, pasture land and cropland; require use of the 90 percent statistical confidence interval with a one-sided test using a 0.10 alpha error in data analysis and in the design of sampling techniques; and require that revegetation success be judged on the basis of the vegetation's effectiveness for the postmining land use and in meeting the general revegetation and reclamation plan requirements of Subsections 9.1 and 9.2. Furthermore, by that date, West Virginia shall submit for OSM approval its selected productivity and revegetation sampling techniques to be used when evaluating the success of ground cover, stocking or production as required by 30 CFR 816.116 and 817.116.

(ee) By April 30, 1991, West Virginia shall submit documentation that the U.S. Soil Conservation Service (SCS) has been consulted with respect to the nature and extent of the prime farmland reconnaissance inspection required under Subsection 38–2–10.1 of the State's surface mining reclamation regulations. In addition, the State shall either delete paragraphs (a)(2) and (a)(3) of Subsection 38–2–10.2 or submit documentation that the SCS State Conservationist concurs with the negative determination criteria set forth in these paragraphs.

(ff) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 11.1(a) of its surface mining reclamation regulations to require that insurance coverage be maintained throughout the reclamation liability period.

(gg) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 13.2(d) of its surface mining reclamation regulations to require that applications for prospecting permits include a map showing the location of critical habitats of any endangered or threatened species.

(hh) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–14.8(a)(4) of its surface mining reclamation regulations to prohibit placement of woody materials in the backfilled area unless the Commissioner first determines that the proposed method for placing woody material within the backfill will not cause future stability problems.

(ii) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 14.12(a)(6)(B) of its surface mining reclamation regulations to specify that, with respect to variances from approximate original contour restoration requirements, the watershed will be deemed improved only if changes in seasonal flow volumes from the proposed permit area will not adversely affect surface water ecology or any existing or planned use of surface or ground waters.

(jj) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–14.14(e)(2) of its surface mining reclamation regulations to require that the entire fill, not just its foundation, be designed to attain a minimum long-term static safety factor of 1.5.

(kk) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–17.4(n) of its surface mining reclamation regulations to require that all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management be attributed to the applicant.

(ll) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–17.3(b)(4) of its surface mining reclamation regulations to require that applications for small operator assistance be accompanied by a map identifying the location and extent of known workings of underground mines.

(mm) By April 30, 1991, West Virginia shall submit proposed revisions to Subsection 38–2–22.4(h)(2) of its surface mining reclamation regulations to authorize the use of a single open-channel spillway only when it is of nonerodible construction and designed to carry sustained flows or is earth- or grass-lined and designed to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected.

[FR Doc. 90–11753 Filed 5–22–90; 8:45 am]
BILLING CODE 4310–05–M

Federal Register

Wednesday
May 23, 1990

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172, 173, and 179

Performance-Oriented Packaging Standards; Corrections and Supplemental Proposals Concerning Transportation of Hazardous Materials in Tank Car Tanks and Rail Cars

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173 and 179

[Docket No. HM-181C; Notice No. 90-9]

RIN 2137-AB88

Performance-Oriented Packaging Standards; Corrections and Supplemental Proposals Concerning the Transportation of Hazardous Materials in Tank Car Tanks and Rail Cars

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); corrections and supplemental proposals.

SUMMARY: This document amends the notice of proposed rulemaking (NPRM) regarding performance-oriented packaging published on November 6, 1987 (52 FR 42772; Notice 87-4) to provide supplements and corrections to the proposals contained therein addressing the transportation of hazardous materials in tank car tanks and rail cars. The intended effects of this action are to promote safety through better packagings and operational procedures for the rail transportation of hazardous materials and to facilitate commerce by allowing greater flexibility in the choice of packagings for the rail transportation of hazardous materials.

DATES: Comments must be received on or before July 16, 1990.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the docket number (i.e., Docket HM-181C). The Dockets Unit is located in Room 8421 of the Nassif Building, 400 7th Street SW., Washington, DC 20590-0001. Public dockets may be reviewed between the hours of 8:30 a.m., and 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, RRS-2, Washington, DC 20590-0001, Telephone (202) 366-0897.

SUPPLEMENTARY INFORMATION:

I. General Discussion

This document supplements and corrects Docket HM-181, Notice 87-4, published on November 6, 1987 (52 FR 42772). The changes in this document address the transportation of hazardous materials in tank car tanks and rail cars and are generally based on errors and omissions pointed out to RSPA from the publication of the NPRM through November 1, 1989, but also involve supplemental proposals.

RSPA and FRA believe that because of the magnitude of the proposed changes involving tank car tanks and rail cars, this supplemental notice is necessary prior to development of a final rule under Docket HM-181. RSPA is also reviewing comments received concerning bulk packagings other than tank car tanks and rail cars, but has tentatively concluded that a supplemental notice for those packagings is not necessary, because the magnitude of the changes is relatively small and many of the issues concerning cargo tanks have already been addressed in the final rule under Docket HM-183 (54 FR 24982, June 12, 1989).

This preamble discusses only those changes which RSPA and FRA are making to rail car provisions proposed in the November 6, 1987 NPRM. For additional background information concerning Docket HM-181, the interested reader should refer to the preambles of the November 6, 1987 NPRM (52 FR 42772-42778) and the May 5, 1987 NPRM (52 FR 16482-16512).

Materials Extremely Poisonous By Inhalation

The November 6, 1987 NPRM proposed to allow the use of tank car tanks to transport certain materials poisonous by inhalation under conditions approved by the Director, OHMT. Several commenters recommended that this proposal be dropped. RSPA and FRA believe that these materials can be safely transported in tank car tanks as they are comparable in risk with certain other materials that are now being transported in bulk. However, RSPA and FRA believe that the broadest possible public participation (e.g., through an exemption or specific rulemaking) is needed to identify the appropriate equipment and operational conditions, if materials which are poisonous by inhalation are to be transported in tank car tanks. The approval process envisioned in the November 6, 1987 NPRM does not provide for this public participation. Therefore, this supplemental notice proposes to limit the transportation of materials poisonous by inhalation to tank car tanks currently authorized.

Shelf Couplers

The November 6, 1987 NPRM proposed to require coupler vertical restraint systems (i.e., shelf couplers) on certain tank car tanks not now required to be equipped with such systems. However, after the publication of the November 6, 1987 NPRM, RSPA published a final rule under Docket HM-166W (54 FR 38790, September 20, 1989) that incorporates the changes contemplated in the November 6, 1987 rulemaking. Therefore, those portions of the November 6, 1987 NPRM concerning coupler vertical restraint systems are withdrawn in this notice.

Open Top Rail Cars

Several commenters pointed out that the November 6, 1987 NPRM would prohibit the further use of open top rail cars to transport certain low hazard materials that have historically been transported in open top rail cars. These commenters recommended that Docket HM-181 be revised to allow the continued use of open top rail cars for these materials. RSPA and FRA agree and have revised §§ 172.101 and 172.102 accordingly. However, RSPA and FRA did not implement the suggestion of one commenter that there be blanket authorization to transport ORM-E materials that are not susceptible to air dispersion. The commenter did not propose any criteria for evaluating a material's susceptibility to air dispersion nor do RSPA and FRA know of any established test criteria for making such an evaluation.

Watertight Hopper Cars

Several commenters recommended that watertight, sift proof, closed top, metal covered hopper cars continue to be authorized for those commodities for which such cars are now authorized. RSPA and FRA agree and have modified §§ 172.101 and 172.102 accordingly.

AAR Specification Tank Car Tanks

Several commenters pointed out a typographical error in § 173.242 (i.e., "AAR 203W" should be "AAR 206W"). Section 173.242 has been revised to correct this error. One commenter suggested that AAR specification tank car tanks should not be authorized to transport any hazardous materials. RSPA and FRA disagree. AAR specification tank car tanks have long been used to transport low hazard hazardous materials and RSPA and FRA

do not have justification for restricting such usage.

Tank Test Pressure

Several commenters recommended that the 160 percent tank test pressure criteria in proposed § 173.31(a)(10)(i) in the Notice 87–4 (renumbered § 173.31(a)(16)(i) in this notice) be changed to 133 percent. They pointed out that the 160 percent criteria would require the replacement of a large portion of the existing tank car fleet by requiring that tank cars be marked with a higher test pressure than necessary for the commodity to be shipped and that a 133 percent criteria would substantially conform to the current regulations. RSPA and FRA included this provision in the November 6, 1987 NPRM due to their concern about the possible loss of hazardous materials lading through pressure relief valves from a tank car involved in an accident involving a rollover. We believe that a safety factor must be included to ensure that the static head and vapor pressure of the lading, in addition to any gas padding in the tank, do not cause the pressure relief devices to open in a rollover situation, and release product continuously without reseating. Upon review of this matter, RSPA and FRA have concluded that a 133 percent tank test pressure criteria is adequate for the safe transportation of compressed gases and cryogenic liquids. This revision is consistent with the approach taken by RSPA in the final rules for cargo tanks issued under Docket HM–183, 183A. However, RSPA and FRA are concerned that this criteria may not provide a sufficient safety margin for tank cars containing liquids equipped with pressure relief valves set as low as 22 psig. Since the relationship between individual commodities, the pressure relief valve setting and the tank car test pressure requires additional study by both RSPA and FRA and is outside the scope of Docket HM–181, it has not been included in this notice. Because of the significance of this issue, RSPA and FRA have decided to consider the issue in a separate docket (HM–175A). Accordingly, § 173.31(a)(16)(i) has been revised as requested by the commenters.

Several commenters recommended that static head and gas padding pressure not be considered in the calculation prescribed in § 173.31(a)(10)(i) of the November 6, 1987 NPRM (renumbered as § 173.31(a)(16)(i) in this notice), but these commenters did not offer any substantive arguments to support this recommendation. This supplemental notice does not propose any changes in this matter.

Tank Filling Limits

Several commenters recommended that the current filling limits for compressed gases in tank car tanks be retained. RSPA and FRA disagree. The current filling limits are ambiguous (e.g., the current § 173.314 could be read so that the filling limits of subparagraph (d)(2) of that section would supersede the generally more permissive filling limits of paragraphs (c) and (f) of that section) and may not take into account the lading temperatures that might be encountered in transportation. In general, the current regulations require that for liquefied compressed gases, the liquid phase must not completely fill an insulated tank car tank at 105 degrees Fahrenheit, an uninsulated DOT class 112 or 114 tank car tank at 115 degrees Fahrenheit, or an uninsulated tank car tank (other than DOT class 112 or 114) at 130 degrees Fahrenheit. However for some commodities, the current regulations permit tank car tanks to be filled to a greater capacity. For example, in the months of November through March, butadiene, 1-butene, propylene, and anhydrous ammonia may now be loaded in uninsulated tank car tanks so that the tanks would become shell full at lading temperatures of about 87 degrees Fahrenheit, 89 degrees Fahrenheit, 93 degrees Fahrenheit, and 96 degrees Fahrenheit, respectively. Paradoxically, the filling limits for butadiene and anhydrous ammonia in the above examples are less for insulated tank car tanks. After reviewing the history of § 173.314, RSPA and FRA conclude that the current filling limits were developed based upon limited empirical data. Also, the seasonal factors in the current filling limits are inappropriate considering the broad ranges of temperature that can occur in the United States and the delays of many consignees in unloading tank car tanks. RSPA and FRA believe that it is necessary that sufficient outage be provided when tank car tanks are loaded so that, even under extreme but credible scenarios, there will be no release of hazardous materials or distortion of tank car tanks caused by the expansion of the lading due to a rise in temperature in transit. Additionally, the filling limits proposed by RSPA and FRA are supported by the preliminary findings of a joint research project sponsored by the Federal Railroad Administration, the Association of American Railroads and the Railway Progress Institute. This research studied the relationship between pressure surges cause by tank car impacts in nonbaffled tank cars and the presence of outage in the tank.

In the November 6, 1987 NPRM, § 173.248 inadvertently proposed to permit a filling limit for ethylene oxide that was inconsistent with the general filling limits proposed in § 173.24b. This notice proposes to revise § 173.248 to eliminate this conflict.

Special Commodity Requirements

In the November 6, 1987 NPRM, RSPA and FRA proposed to delete certain sections of part 179 that were superfluous because they were duplicated in part 173. Several commenters pointed out that some nonsuperfluous sections were also deleted. RSPA and FRA agree and have modified §§ 172.101, 172.102, 173.248, and 173.314 accordingly.

One commenter incorrectly claimed that certain special commodity requirements had been deleted in the November 6, 1987 NPRM. Specifically, this commenter said that the special impact properties of carbon dioxide tank car tanks had been deleted, but in fact the current § 179.102–1(a)(1) was retained without any change. The same commenter stated that the alternate safety relief option for LPG, anhydrous ammonia, vinyl chloride had been deleted; the special requirements for hydrogen chloride had been deleted; the lining requirements and venting prohibitions in the current § 179.102 had been deleted and the valve protection and safety relief valve requirements for multi-unit tank car tanks had been deleted. The alternative safety relief option for LPG, anhydrous ammonia and vinyl chloride have not been deleted. The option was retained in proposed 173.314(c)(1)(i). The special requirements now required for hydrogen chloride have been retained with one modification. The lining requirements and venting prohibitions currently in § 179.102 have not been deleted and the valve protection and safety relief valve requirements for multi-unit tank cars are now contained in the special provisions column of the Hazardous Materials Table (§ 172.101).

Inappropriate Packagings

Several commenters pointed out that DOT class 107A and 113 tank car tanks might be inappropriate for the commodities for which they would be authorized. One commenter noted that the current loading and unloading arrangements on a 107A tank makes this tank unsuitable for liquids and solids. Another commenter recommended that DOT class 113 tank car tanks be restricted to hydrogen and ethylene, since these tanks are actually "large thermos bottles" and the inner

containers of the tanks might collapse if other commodities were loaded into these tanks.

RSPA and FRA believe that the compatibility requirements of proposed § 173.24(e) and the tank test pressure requirements (§ 173.31(a)(10)(i) in the November 6, 1987 NPRM, renumbered as § 173.31(a)(16)(i) in this notice) would preclude the use of inappropriate packagings to transport hazardous materials. However, as an additional safety measure, RSPA and FRA propose to modify §§ 173.240, 173.241, 173 242, 173.243, and 173.244 by deleting the authorizations for DOT class 107A and 113 tank car tanks.

Hydrogen Fluoride

One commenter pointed out that the reference to the marking of hydrogen fluoride in § 173.314 was out of place since, for hydrogen fluoride, anhydrous, column 8c of the Hazardous Materials Table (§ 172.101 Table) cites § 173.244. RSPA and FRA agree and have added a special provision B12 in the entry for hydrogen fluoride, anhydrous, in the § 172.101 Table to require the marking of hydrogen fluoride tank car tanks. It should be noted that RSPA is reviewing the classification of anhydrous hydrogen fluoride and may reclassify that material as a Division 2.3 material. If such a reclassification occurs, the appropriate changes will be made in the final rule.

Phosphorus Pentasulfide

One commenter recommended that AAR Specification 207W tank car tanks be authorized for shipment of phosphorus pentasulfide. The commenter pointed out that this material is typically in a powder or granular form and is not conducive to loading or unloading in other tank car tanks. FRA and RSPA agree and have modified §§ 172.101 and 172.102 to authorize AAR 207W tank car tanks.

Pressure Relief Device Capacity

Several commenters recommended that for materials poisonous by inhalation, the use of large safety relief valves should not be required. Some commenters contended that large safety valves were unnecessary, the large safety relief valves would make existing emergency response kits obsolete, and the large safety relief valves would release unsafe amounts of hazardous materials. RSPA and FRA believe that the large safety relief valves are necessary to prevent or mitigate tank failure if a tank car tank is engulfed in an intense fire or if the tank car tank is overturned so that it is venting liquid. However, RSPA and FRA believe that an acceptable alternative is to equip the tank car tank with additional thermal protection so that vapor generation is reduced. Therefore, RSPA and FRA are proposing to permit tanks carrying any commodity to use the alternative valve sizing option of proposed § 179.105–7(c).

Head Protection

The November 6, 1987 NPRM inadvertently omitted requirements for head protection on newly-built single-unit tank car tanks transporting bromine; hydrogen cyanide, anhydrous, stabilized, absorbed in a porous inert material; isophorone diisocyanate; nitrogen trifluoride; or, silicon tetrafluoride. This supplemental notice proposes to require head protection for newly-built tank car tanks transporting those commodities.

Comments on head protection generally fell into three areas: (1) What commodities should be protected with head protection, (2) whether full head protection should be the only acceptable head protection, and (3) whether existing tank cars should be retrofitted with head protection. Because of the significance of the issues raised concerning head protection, RSPA and FRA have decided to consider these issues in an advance notice of proposed rulemaking under Docket HM–175A, which appeared in the **Federal Register** of May 15, 1990 (55 FR 20242).

Grandfathering

The November 6, 1987 NPRM proposed to require, for ethyl chloride, ethylamine, and ethyl methyl ether, that all tank car tanks built after August 31, 1981 (and tank car tanks built before September 1, 1981 and with a capacity exceeding 18,500 gallons) be equipped with thermal protection and head protection. Those commodities are now classified as flammable liquids, but the November 6, 1987 NPRM would reclassify them as flammable gases. Upon further consideration, RSPA and FRA believe that the continued use of existing DOT 105A100W, 111A1000W4, 112A200W, and 114A340W tank car tanks for those commodities should be permitted for the present time. Retrofitting of these tank car tanks is considered in Docket HM–175A.

The November 6, 1987 NPRM proposed to require that newly-built tank car tanks carrying materials poisonous by inhalation be equipped with head protection and thermal protection, while allowing the continued use of some tank car tanks presently authorized for those materials. Several commenters recommended that the grandfather provisions be eliminated or restricted. Because of the significance of the issues raised concerning grandfathering, RSPA and FRA have decided to consider changing the grandfather provisions for materials toxic by inhalation in Docket HM–175A rather than Docket HM–181.

Bottom Outlets

Several commenters recommended that proposed special provision B26 be modified to clarify that bottom outlets are not authorized on phosphorus tanks. RSPA and FRA agree and have made the corresponding change to proposed § 172.102.

One commenter recommended that the current prohibition on the use of bottom outlets on tank car tanks carrying amyl mercaptan be continued. Although the irritating nature of amyl mercaptan might justify a prohibition on economic grounds, RSPA and FRA do not believe there is any safety justification for this prohibition and have not proposed any prohibition in this notice.

One commenter recommended a continuation of the prohibition on the use of bottom outlets on tank car tanks carrying commodities listed in the current § 173.247. RSPA and FRA do not believe that those commodities have any peculiar hazards that would justify such a prohibition and have not proposed any prohibition in this notice.

Heaters

One commenter recommended that only electric standpipe heaters be approved for sulfur trioxide. RSPA and FRA agree and have modified proposed special provision B29 accordingly.

Hydrogen Peroxide

Several commenters recommended that the venting arrangements for tank car tanks carrying hydrogen peroxide solutions exceeding 60 percent hydrogen peroxide be approved by the Director, OHMT. RSPA and FRA agree and have modified proposed §§ 172.101 and 172.102 accordingly.

Placarding

Several commenters recommended that the requirements for the placing of poison placards on square backgrounds be restricted to only those Division 2.3 or 6.1 materials that meet the Packing Group I, Zone A criteria, for inhalation toxicity. RSPA and FRA agree and have modified 172.510 accordingly.

Implementation

RSPA anticipates publishing a final rule under Dockets HM–181 and HM–181C in early 1991, pending issuance of this and several other supplemental NPRMs, evaluation of comments thereto,

and development of a final regulatory evaluation. It is proposed that a period of up to three years will be provided for implementing those provisions in Dockets HM–181 and HM–181C related to tank car packagings.

II. Review by Sections

The following review by sections addresses only the corrections and supplements made to the November 6, 1987, NPRM. For a comprehensive review by sections, interested persons should refer to the preambles of the May 5, 1987, NPRM (52 FR 16491 through 16510) and of the November 6, 1987, NPRM (52 FR 42772 through 42774).

Sections 172.101 and 172.102. In §§ 172.101 and 172.102, new special provision B54 has been added to certain low hazard solid materials to authorize the use of open top rail cars. New special provisions B55 and B56 have been added to certain solid materials to authorize the use of watertight hopper cars. New special provision B57 has been added to require that tank car tanks carrying chloroprene are equipped with nonreclosing pressure relief devices. For dimethylhydrazine, unsymmetrical, new special provision B58 replaces special provision B32. For phosphorus pentasulfide, new special provision B59 has been added to permit the use of AAR Specification 207A80W tank car tanks. In order to limit the types of single and multi-unit tank cars used for the transportation of phosgene, hydrogen cyanide, nitrogen dioxide and nitric oxide to those cars presently authorized, new special provisions have been added and other special provisions deleted for those products. New special provision B62 is added to hydrogen peroxide solutions exceeding 60 percent hydrogen peroxide to require that the venting arrangements be approved by the Director, OHMT. New special provision B63 is added to ethyl chloride, ethylamine, and ethyl methyl ether to allow the continued use of existing tank car tanks, not equipped with thermal protection or head protection. The issue of retrofitting these tank cars with thermal protection or head protection will be addressed in HM–175A. These commodities were formerly classified as flammable liquids, but would be reclassified as flammable gases in Docket HM–181. New special provision B64 is added to bromine, isophorone diisocyanate, silicon tetrafluoride, nitrogen trifluoride, and hydrogen cyanide, anhydrous, stabilized, absorbed in a porous inert material to require that tank car tanks built after December 31, 1990 be equipped with head protection. In special provisions B30, B31, B32, and B33 the April 1, 1989 date for grandfathering the use of certain tank car tanks has been changed to January 1, 1991 to conform with RSPA's revised estimate of the earliest date for voluntary compliance with the final rule for Docket HM–181. Typographical errors for nitric oxide, nitrous oxide, and methyl mercaptan are also corrected. Omissions in special provisions B31 and B32 have been corrected. Special provision B26 has been modified to clarify that bottom outlets are not authorized on phosphorus tanks.

Section 172.510. Section 172.510(a) has been revised to require square backgrounds only for Division 6.1 materials that are in Packing Group I, Zone A and Division 2.3 materials having an LC_{50} less than or equal to 200 ppm.

Section 173.31. In § 173.31(a), the numbering of the paragraphs has been changed to correct the inadvertent deletion of current paragraphs a(8), a(9), and a(10). The proposed changes in the requirements that certain tank cars be equipped with coupler vertical restraint systems has been deleted, since those changes were promulgated in the final rule for Docket HM–166W (54 FR 38790). The minimum tank test pressure requirements have been amended to permit the use of tanks whose tank test pressure was at least 133 percent (rather than 160 percent) of the sum of the lading vapor pressure at the reference temperature plus static head plus gas padding pressure and to exempt certain refrigerated or cryogenic liquids from the provisions of § 173.31(a)(16). The paragraph concerning pressure relief devices has been revised to clarify that (a) Multi-unit tank car tanks may be equipped with nonreclosing devices, (b) single unit tank car tanks carrying certain commodities may not be equipped with nonreclosing devices, and (c) single unit tank car tanks built before January 1, 1991 and equipped with nonreclosing devices may continue to be used.

Sections 173.240 through 173.244. In §§ 173.240(a), 173.241(a), 173 242(a), 173.243(a), and 173.244(a), DOT Class 107A and 113 tank car tanks are deleted from the list of bulk packagings authorized. In § 173.242, "AAR Class 203W tank car tanks" is changed to "AAR Class 206W tank car tanks" to correct a typographical error.

Section 173.245. In § 173.245, paragraph (a) is deleted and reserved.

Section 173.248. In § 173.248, paragraph (c) is revised to correct a conflict between that paragraph and § 173.24b(b)(1)(iii) and a new paragraph (h) is added to continue the requirement in the present HMR that ethylene oxide tank car tanks be equipped with thermometer wells.

Section 173.314. In § 173.314(c). Note 4 is revised to require excess flow valves on sampling valves and gaging devices and openings on protective housing covers on single unit tank cars carrying liquefied flammable gas. This change is to correct an inadvertent omission in the November 6, 1987 NPRM and is equivalent to the current requirements of §§ 179.102–3(a)(1), 179.102–3(a)(2), and 179.102–6(a)(2).

Section 179.14. The proposal in the November 6, 1987 NPRM to revise § 179.14 is withdrawn, since those changes were promulgated in the final rule for Docket HM–166W (54 FR 38790).

Section 179.105. In § 179.105(c), "tank car tank" is changed to "insulated tank car tank" and "section A8.01" is amended to "section A8.00" to correct typographical errors. In addition, tanks carrying any commodity would be permitted to use the alternative valve sizing option of § 179.105(c).

Administrative Notices

A. Executive Order 12291

RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. et. seq.). A regulatory evaluation based on the original May 5, 1987 and November 6, 1987 proposals is available for review in the docket.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact on the States, on the Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

C. Regulatory Flexibility Act

The proposed changes would generally affect persons involved in the qualification, maintenance and use of tank car tanks for the transport of

hazardous materials, some of whom may be small entities. The changes would involve becoming familiar with terminology and would impose little or no cost on those entities. Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that the regulations proposed within would not, if promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Explosives, Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172, 173, and 179, as proposed in Docket HM–181, Notice 87–4, published on November 6, 1987 (52 FR 42772), are further proposed to be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In § 172.101, as proposed at 52 FR 42783 on November 6, 1987, in the Hazardous Materials Table beginning at 52 FR 42787, the following "B" Codes would be added to column 7, special provisions:

a. B54 is added to column 7 (special provisions) for Hazardous waste, solid, n.o.s.

b. B55 is added to column 7 (special provisions) for Calcium carbide and for Calcium silicon.

c. B56 is added to column 7 for Magnesium, powder or Magnesium alloys, powder.

d. B57 is added to column 7 for Chloroprene, inhibited.

e. B58 is added to and B32 deleted from column 7 for Dimethylhydrazine, unsymmetrical.

f. B12 is added to column 7 for Hydrogen fluoride, anhydrous.

g. B59 is added to column 7 for Phosphorus pantasulfide, free from yellow and white phosphorus.

h. B60 is added to and B45 deleted from column 7 for Phosgene.

i. B60 is added to and B14, B31, and B45 are deleted from column 7 Nitric oxide.

j. B61 and B65 are added to and B30 is deleted from column 7 for Hydrogen cyanide, anhydrous, stabilized.

k. B61, B66 and B67 are added to column 7 for Nitrogen dioxide, liquefied.

l. B33 is deleted from column 7 for Nitrous oxide, refrigerated liquid.

m. B62 is added to column 7 for Hydrogen peroxide, stabilized or Hydrogen peroxide aqueous solutions, stabilized with more than 60 percent hydrogen peroxide.

n. B63 is added to column 7 for Ethyl chloride, Ethyl methyl ether, and Ethylamine.

o. B64 is added to column 7 for Bromine or Bromine solutions, Silicon tetrafluoride, Isophoronediisocyanate, Nitrogen trifluoride, and Hydrogen cyanide, anhydrous, stabilized, absorbed in a porous inert media.

2a. In § 172.101, as proposed at 52 FR 42783 on November 6, 1987, in the hazardous materials table beginning at 52 FR 42787, for the entry "Nitric oxide", 245 would replace 244 in column 8c.

§ 172.102 [Amended]

3. Section 172.102(c)(3), as proposed at 52 FR 42932 on November 6, 1987, would be amended as follows:

a. Special provision B26 is amended by removing the phrase "When lading is immersed in water," and capitalizing the word "tanks" in the last sentence.

b. Special provision B29 is amended by changing "Standpipe heaters" to "Electric standpipe heaters".

c. Special provisions B30, B31, B32, and B33 are amended by changing "April 1, 1989" to "January 1, 1991".

d. The fourth sentence of special provision B31 is revised to read "Notwithstanding the provisions of §§ 173.243(a) and 173.244(a) of this subchapter only the following tank car tanks are authorized: DOT 105J300W, 112J340W, 112T340W, 114J340W and 114T340W; DOT Class 106 and 110 multi-unit tank car tanks; DOT 105A300W tank car tanks built before January 1, 1991 (for methyl mercaptan see § 173.314); and, only for materials which do not meet the definition for a flammable gas (see § 173.115(a) of this subchapter), DOT 105J300ALW tank car tanks".

e. The fourth sentence of special provision B32 is amended by adding "114T340W," following "114J340W" to the list of authorized tank car tanks.

f. Special provision B36 is amended by deleting "Only".

4. In § 172.102, paragraph (c)(3), as proposed at 52 FR 42932, November 6, 1987, would be amended by adding the following "B" codes in numerical order:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(3) * * *

Code	Special provisions
*	* * * * * *
B54	Open top sift proof rail cars also authorized.
B55	Water tight, sift proof, closed top, metal covered hopper cars, equipped with a venting arrangement (including flame arrestors) approved by the Director, OHMT, are also authorized.
B56	Water tight, sift proof, closed top, metal covered hopper cars are also authorized if the particle size of the hazardous material is not less than 149 microns.
B57	DOT Class 115A tank car tanks shall be equipped with a safety vent of a diameter not less than 30.5 mm (12 inches) complying with § 179.221–1 of this subchapter and the outer shell shall be stenciled "CHLOROPRENE" on both sides in letters not less than 10.1 mm (four inches) high.
B58	The provisions of special provision B32 apply, except that DOT Class 112 and 114 tank car tanks are not authorized, aluminum tank car tanks are not authorized, DOT Class 105A tank car tanks must be stenciled DOT 105A100W and must be equipped with steel or stainless steel safety relief valves of the type and size used on DOT specification 105A100W tank car tanks, DOT Class 105S tank car tanks must be stenciled DOT 105S100W and must be equipped with steel or stainless steel safety relief valves of the type and size used on DOT specification 105S100W tank car tanks, and DOT Class 105J tank car tanks must be stenciled DOT 105J100W and must be equipped with steel or stainless steel safety relief valves of the type and size used on DOT specification 105J100W tank car tanks.
B59	AAR Specification 207A80W tank car tanks are also authorized provided that the lading is completely covered with a moisture free nitrogen blanket.

Code	Special provisions
B60	DOT Specification 106A500X multi-unit tank car tanks that are not equipped with a safety relief device of any type are authorized. For the transportation of phosgene, the outage must be sufficient to prevent tanks from becoming liquid full at 55 °C (130 °F).
B61	Written procedures covering details of tank car appurtenances, dome fittings, safety devices, and marking, loading, handling, inspection, and testing practices must be approved by the Director, OHMT before any single unit tank car tank is offered for transportation.
B62	Single unit tank car tanks must be equipped with a venting arrangement that is approved by the Director, OHMT.
B63	Notwithstanding the provisions of § 173.314 of this subchapter, DOT Specification 105A100W, 111A100W4, 112A200W, and 114A340W tank car tanks, built before January 1, 1991, are also authorized. Specification 114A340W tank car tanks may not be equipped with any bottom outlet, but bottom washouts are permitted.
B64	Each single unit tank car tank built after December 31, 1990 must be equipped with a tank head puncture resistance system that conforms to § 179.105–5 of this subchapter.
B65	DOT Specification 105A500W or 106A500W tank cars. Tank must be restenciled 105A300W and be equipped with safety valves of the type and size used on specification 105A300W tank cars. Tank car tank must be equipped with approved dome fittings and safety devices. The maximum filling density is 63 percent of the water capacity of the tank.
B66	Specification 106A500X or 110A500W tanks. Each tank must be equipped with gas tight valve protection caps. Outage must be sufficient to prevent tanks from becoming liquid full at 55 °C (130 °F). Specification 110A500W tanks must be stainless steel.
B67	Specification 105A500W tank cars. Authorized for nitrogen tetroxide only. Tanks must be lagged with not less than a 10.1 mm (four inch) thickness of cork. All valves and fittings must be protected by a securely attached cover made of metal not subject to deterioration by the lading, and all valve openings, except safety valve, must be fitted with screw plugs or caps to prevent leakage in the event of valve failure.

* * * * * * * *

5. In § 172.510, as proposed at 52 FR 42945, November 6, 1987, paragraph (a)(2) would be revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

(a) * * *

(2) Each POISON, POISON-RESIDUE, POISONOUS GAS, and POISONOUS GAS–RESIDUE placard affixed to a rail car containing a Division 2.3 material having an LC_{50} less than or equal to 200 ppm, or a Division 6.1, Packing Group I, Zone A material meeting the criteria for inhalation toxicity (see § 173.133 of this subchapter), must be placed on a square background as described in § 172.527.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 continues to read as follows

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

7. Amendatory instruction 109 and the following codified text, as proposed at 52 FR 42956, November 6, 1987, would be revised to read:

109. In § 173.31, footnote ᵛ would be removed from Retest Table 1 in paragraph (c), and paragraph (a)(1) would be revised, paragraph (a)(12) would be added and reserved, and paragraphs (a)(13) through (a)(19) would be added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * * (1) Except as otherwise provided in paragraphs (a)(2) and (a)(11) of this section, every tank car used for the transportation of hazardous materials shall meet the requirements of the applicable specification and regulations for the transportation of the particular hazardous material. See paragraph (a)(3) of this section.

* * * * *

(12) [Reserved]

(13) Pressure relief devices on tank car tanks must be of a type and design approved by the AAR Committee on Tank Cars and be made of metal not subject to deterioration by the lading.

(14) A Specification DOT–106A or 110A multi–unit tank car tank may be offered for transportation aboard a passenger vessel only as authorized in § 173.32(a)(4).

(15) Lading temperature must be within the tank design temperature range.

(16) Tank test pressure must be equal to or greater than the greatest of the following:

(i) Except for shipments of carbon dioxide, anhydrous hydrogen chloride, vinyl fluoride, ethylene, or hydrogen, 133 percent of the sum of lading vapor pressure at the reference temperature of 46.1 °C (115 °F) for uninsulated tanks or 40.6 °C (105 °F) for insulated tanks plus static head plus gas padding pressure in the ullage space or dome of tank;

(ii) 133 percent of the maximum loading or unloading pressure, whichever is greater; or

(iii) The minimum pressure prescribed by the specification in part 179 of this subchapter or for the specific hazardous material in the applicable packaging section in subpart F or G of this part.

(17) Air pressure may not be used to load or unload any lading which may create an enriched mixture within the flammability range of the lading in the vapor space of the tank.

(18) Except for shipments of chloroprene in DOT class 115 tank car tanks, single unit tank car tanks used for materials meeting the definition for Division 6.1 liquids, Packing Group I or II. Class 2 gases, or Class 3 or 4 liquids, may not be equipped with nonreclosing pressure relief devices. However, a tank car tank built before January 1, 1991 and equipped with nonreclosing pressure relief devices may be used to transport a Division 6.1 or Class 4 liquid provided that the liquid does not meet the definition of Division 6.1, Packing Group I, for inhalation toxicity (See §§ 173.132 and 173.133 of this subchapter).

(19) For tanks used to transport materials with a primary or secondary hazard of Class 8 which are to be reused for Class 2 materials, both tank and pressure relief valves shall be retested prior to loading with the Class 2 material.

* * * * *

8. In § 173.240, as proposed at 52 FR 42983, November 6, 1987, paragraph (a) would be revised to read as follows:

§ 173.240 Bulk packaging for certain flammable solids (Division 4.1), solid oxidizers (Division 5.1), corrosive solids (Class 8) and other similar low hazard materials.

* * * * *

(a) *Rail cars:* DOT Class 103, 104, 105, 109, 111, 112, 114, or 115 tank car tanks; Class 106 or 110 multi-unit tank car tanks; AAR Class 203W, 206W, and 211W tank car tanks; and metal non-DOT specification, sift proof tank car tanks and sift proof closed cars.

* * * * *

9. In § 173.241, as proposed at 52 FR 42984, November 6, 1987, paragraph (a) would be revised to read as follows:

§ 173.241 Bulk packaging for certain combustible liquids (Class 3), flammable solids (Divisions 4.2 and 4.3), and other similar hazardous materials.

* * * * *

(a) *Rail cars:* DOT Class 103, 104, 105, 109, 111, 112, 114, or 115 tank car tanks; Class 106 or 110 multi-unit tank car

tanks and AAR Class 203W, 206W, and 211W tank car tanks.

* * * * *

10. In § 173.242, as proposed at 52 FR 42984, November 6, 1987, paragraph (a) would be revised to read as follows:

§ 173.242 Bulk packaging for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(a) *Rail cars:* DOT Class 103, 104, 105, 109, 111, 112, 114, or 115 tank car tanks; Class 106 or 110 multi-unit tank car tanks and AAR Class 206W tank car tanks.

* * * * *

11. In § 173.243, as proposed at 52 FR 42984, November 6, 1987, paragraph (a) would be revised to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard liquids which pose a moderate hazard.

* * * * *

(a) *Rail cars:* DOT Class 103, 104, 105, 109, 111, 112, 114, or 115 tank car tanks; and Class 106 or 110 multi-unit tank car tanks. Gauging devices are required on DOT Class 103, 104, and 111 tank car tanks. Riveted tank car tanks are not authorized.

* * * * *

12. In § 173.244, as proposed at 52 FR 42984, November 6, 1987, paragraph (a) would be revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), poisonous liquids with inhalation hazards (Division 6.1) and gases (Class 2).

* * * * *

(a) *Rail cars:* DOT Class 105, 109, 112, or 114 tank car tanks; and Class 106 or 110 multi-unit tank car tanks. Riveted tank car tanks are not authorized.

* * * * *

§ 173.245 [Amended]

13. In § 173.245, as proposed at 52 FR 42984, November 6, 1987, paragraph (a) would be removed and reserved.

14. In § 173.248, as proposed at 52 FR 42984, November 6, 1987, paragraph (c) would be revised and a new paragraph (h) would be added to read as follows:

§ 173.248 Ethylene oxide.

* * * * *

(c) In determining outage, consideration must be given to the lading temperature and solubility of inert gas padding in ethylene oxide as well as the partial pressure exerted by the gas padding.

* * * * *

(h) Tank car tanks built after December 30, 1971 must be equipped with a thermometer well.

§ 173.314 [Amended]

15. In § 173.314(c), as proposed at 52 FR 42986, November 6, 1987, the table would be amended as follows:

a. In amendatory instruction 121 a., "Dimethylamine" and "Methylamine" are removed from the listing.

b. In amendatory instruction 121 l., "March 31, 1989" is replaced by "December 31, 1990".

c. Amendatory instruction 121 m. is added to read as follows:

m. The following sentence is added at the end of Note 4:

"For single unit tank car tanks built after December 30, 1971, the interior pipes of gaging devices with an opening for the passage of lading exceeding 1.52 mm (0.060 inch) diameter, and of sampling valves, must also be equipped with excess flow valves of an approved design; the protective housing cover must be provided with an opening above each safety relief valve which must be concentric with the discharge of the valve and have an area at least equal to the valve outlet area; and each opening must be provided with a weatherproof cover designed for vertical discharge."

PART 179—SPECIFICATIONS FOR TANK CARS

16. The authority citation for part 179 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

17. As proposed at 52 FR 42999, November 6, 1987, amendatory instruction 150 and the proposed revision of § 179.14 are withdrawn.

18. As proposed at 52 FR 43000, November 6, 1987, § 179.105–7(c) would be revised to read as follows:

§ 179.105–7 Safety relief valves.

* * * * *

(c) Notwithstanding the provisions of § 179.100–15, § 179.200–18 or paragraph (a) of this section, the relieving or discharge capacity of the safety relief valve on an insulated tank car tank may be calculated in accordance with the formulas for insulated tank car tanks prescribed in Appendix A of the AAR Specifications for Tank Cars if—

(1) The tank is equipped with a thermal protection system in accordance with § 179.105–4;

(2) In all of three consecutive simulation pool fire tests required by paragraph (d) of § 179.105–4, none of the thermocouples on the uninsulated side of the steel plate indicates a plate temperature in excess of 288 °C (550 °F); and

(3) For tanks used for ethylene oxide, the valve capacity is at least 31.15 cubic meters per minute (1100 scfm) at 586 kPa (85 psig).

* * * * *

Issued in Washington, DC on May 9, 1990, under authority delegated in 49 CFR Part 106, Appendix A.

John J. O'Connell, Jr.,

Acting Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–11198 Filed 5–22–90; 8:45 am]

BILLING CODE 4910–60–M

Federal Register

Wednesday
May 23, 1990

Part IV

Department of Justice

Justice Assistance Bureau
Justice Statistics Bureau

Improvement of Criminal History Record Information and Identification of Convicted Felons; Notice of Program Announcement

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Bureau of Justice Statistics

Improvement of Criminal History Record Information and Identification of Convicted Felons

AGENCY: Bureau of Justice Assistance and Bureau of Justice Statistics.

ACTION: Notice of program announcement.

SUMMARY: The Bureau of Justice Assistance and the Bureau of Justice Statistics are publishing this notice to announce a $9,000,000 program to assist the States in improving the accuracy, completeness and timeliness of criminal history record information residing at centralized State repositories and providing such information to the Federal Bureau of Investigation (FBI) according to newly developed reporting standards. A central aim is to make it possible to accurately identify convicted felons.

The major purpose of this program is to make systemic improvements in the quality and timeliness of State criminal history record information throughout the country. Particular emphasis will be placed on improving disposition reporting to the State's central repository. Funding will be provided to the maximum number of States. It is anticipated that most, if not all, States will participate in the program.

This program is for the development and implementation of systems and procedures designed to: (1) Enhance State criminal history records in order to identify accurately convicted felons; (2) meet the new FBI voluntary reporting standards for identifying such individuals; and, (3) improve the quality and timeliness of criminal history record information. A primary focus of this program is to identify impediments to disposition reporting, to develop plans and procedures to improve such reporting, and to allocate resources to overcome obstacles to complete disposition reporting.

SUPPLEMENTARY INFORMATION:

Background

Section 6213 of the Anti-Drug Abuse Act of 1988 required the Attorney General to report to Congress by November of 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. A Task Force on Felon Identification in Firearms Sales was established to develop a range of options that would comply with the statute. In October 1989, the Task Force completed its final report and forwarded it to the Attorney General for consideration. The Task Force identified several possible options for systems to identify felons who attempt to purchase firearms, but made no specific recommendations. The report also identified major problems in the quality and completeness of criminal history records and the ability to identify individuals convicted of felony offenses.

In his report to Congress of November 20, 1989, the Attorney General recommended a four-part program to enhance efforts to stop firearms sales to felons. One recommendation was to use $9 million of Anti-Drug Abuse Act Discretionary Funds in each of the next three years to fund States for the purpose of achieving compliance with the new FBI reporting standards and to improve the data quality of State criminal history record information. This program is the implementation of the Attorney General's report.

Objectives

The major purpose of this program is to make systemic improvements in the quality and timeliness of State criminal history record information throughout the country. Particular emphasis will be placed on improving disposition reporting and encouraging States with non-automated systems to consider automation. Each State must determine the activities which will contribute the most towards meeting program objectives and State goals. Funding will be provided to the maximum number of possible States. It is anticipated that most, if not all, States will participate in the program. Fiscal and technical assistance will be provided to improve the accuracy, completeness, and timeliness of criminal history record information residing at centralized state repositories; to accurately identify criminal history records that contain a conviction for an offense classified as a felony (or equivalent) within the State; and, to meet the FBI's newly developed voluntary reporting standards.

Type of Assistance

Assistance is in the form of cooperative agreements.

Statutory Authority

The funds for this program will come from the Bureau of Justice Assistance under the provision of 42 U.S.C. 3760 and will be awarded by the Bureau of Justice Statistics under the provisions of 42 U.S.C. 3732(c).

Eligibility Requirements

Applicants should be the State agency responsible for directing or overseeing the repository of state-wide criminal history files on persons arrested for fingerprintable offenses within the State. Agencies responsible for reporting dispositions to the criminal history repository are also eligible to receive funds. In developing an application, repositories shall coordinate with all agencies that provide disposition data. A single application with funding for one or more agencies is preferred. However, if that is not possible, fully coordinated applications from more than one agency will be considered. If a single application requests funding for more than one agency, separate budget items and the assignment of tasks for each agency must be identified and justified. Fiscal transfer mechanisms consistent with State law and/or administrative procedures must be followed.

Scope of Work

The focus of this program is to identify accurately those individuals convicted of an offense classified as a felony (or equivalent) within the State; to improve reporting of criminal justice actions and dispositions to State criminal history record systems, particularly those arrests and dispositions occurring in the last five years; to increase automation of criminal history records at the State level; and to meet the voluntary reporting standards of the FBI.

Funds will be provided for the following activities:

1. Development of systems and procedures to identify convicted felons through an examination of the subject's automated or manual criminal history record and to include a felony "flag" in criminal history records. Such information shall be made available for interstate criminal justice purposes. Emphasis should be placed on arrests and convictions made within the last five years. Convicted felons should be identified on an on-going basis.

2. Development of programs and procedures to meet the new FBI reporting standards and guidelines for identifying convicted felons, including making such records available to authorized State, local, and Federal criminal justice agencies.

3. Development of systems and procedures designed to improve reporting to the central repository of all arrests, dispositions and other related criminal justice information. As stated elsewhere in this announcement, agencies responsible for reporting dispositions to the criminal history repository may be funded to improve their systems and procedures.

4. Increasing the degree of criminal history automation by implementing a State master name index (MNI) or enhancing existing automated MNI's by increasing the number of individuals contained in the index. Funds may also be used to place a felony conviction indicator in the MNI.

5. Increasing the degree of criminal history automation by establishing a computerized criminal history (CCH) record system, increasing the number of individuals recorded in existing systems, and improving quality and timeliness of criminal history records.

Funds will not normally be available for extensive conversion of manual criminal history records. The State must develop a cost effective strategy designed to meet the needs of criminal justice practitioners and to identify felons before costs for conversion activities will be considered.

Funds will be available for data entry of dispositions and other data elements necessary to reduce any current backlog of information required to update existing automated criminal history records. The application must document that once the information has been entered into the file, procedures will be implemented to prevent future backlogs. All requests for data conversion must be thoroughly documented in the application.

Limited funds will be available for States to design a CCH system or to develop a strategy for data conversion. Additional funding may be available for system or data conversion once the necessary system design has been completed.

6. Development of procedures to participate in the Interstate Identification Index (III) program where it can be demonstrated that such an attempt will facilitate the goals of this program. In any case, III participation will not be funded unless efforts have been or will be undertaken to identify individuals convicted of a felony.

7. Conduct a baseline audit of criminal history record systems to assess existing data quality levels, identify problems in the present system, and establish a basis for evaluating the success of a data quality improvement program.

If a data quality audit has been conducted in the past three years, program funds may be used to implement the findings. The results of the recently completed audit and its recommendations must be contained in the application. Activities currently being undertaken by the State as a result of the audit should also be identified.

8. Upgrade existing data system to meet improved data quality requirements by obtaining auxiliary equipment such as disks, printers, communication lines, etc. Program funds may not be used to obtain primary CCH equipment unless criminal history record information is being automated for the first time and currently available equipment in the State repository is at maximum capability. All requests for equipment must be documented and justified.

Award Procedures

Awards under this program will be made in furtherance of those activities outlined in the Scope of Work. Awards for activities 1 and 2 will be made to support the development of an automated system within the State to identify convicted felons and meet FBI reporting standards. Substantial funds for activities 3 through 8 will not be made available until a detailed implementation plan has been developed. The plan shall include a needs analysis assessing the current state of data quality (ideally including a baseline audit), detailed specifications for data quality improvements, and a demonstration of support from the relevant criminal justice agencies within the State. Funds of up to $150,000 will be available for development of the plan.

There is no requirement for either hard (cash) or soft (in-kind services) match. However, applicants are encouraged to offer either or both types of matching resources. States which are able to provide hard or soft match and meet other programmatic guidelines will be given preference over those states with no match. The absence of match will not disqualify a state from receiving funding.

Whether or not States seek funding for activities 1 and 2 above, it is a condition of the grant program that States receiving implementation funds have in place or have initiated procedures to identify convicted felons on an on-going basis and, to the extent feasible, in existing criminal history records.

All applications must identify each of the activities for which funds will be expended and describe in detail how such activities will be carried out. Measures of timeliness, accuracy, and completeness that will be achieved with Federal funds must be specified.

Each application must include a plan, with milestones, of procedures developed to identify the number of arrests showing final dispositions and the number of conviction records that can be identified as felony convictions. At the end of each grant year, the recipient shall report to BJS the number of arrests showing final dispositions and, where there are conviction records, the number of felony convictions.

A separate section of the application must consider problems in disposition reporting by noting existing impediments to such reporting, identifying the agency or agencies responsible for such reporting, and discussing whether resources available under this program can overcome obstacles to disposition reporting problems.

Applications will be judged on the basis of: (1) Technical feasibility; (2) soundness of the proposed approach in meeting program objectives; (3) the type and qualifications of personnel assigned to the project; (4) the reasonableness of the budget; (5) the past record of the State's performance in the development of automated criminal history records systems; (6) the completion of previous analyses and audits of the existing criminal history system; and (7) the degree of commitment to the project as evidenced by letters of endorsement from participating criminal justice agencies, including the agency or agencies responsible for disposition reporting. The plan for improving criminal history record systems shall indicate the active participation of the agency or agencies responsible for disposition reporting in development of the application.

Application and Awards Process: Potential grantees should contact the BJS program manager for their State at (202) 724–7770, ((202) 307–0770 after May 18, 1990) and prior to submitting an application. An original and two (2) applications must be submitted on SF 424 (Revision 1988), including the Certified Assurances. Applications must be accompanied by OJP Form 4061/3, Certification Regarding Drug Free Workplace and OJP Form 4061/2, Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must complete the certificate regarding lobbying and, if appropriate, complete and submit Standard Form LLL, "Disclosure of Lobbying Activities". Applications should be sent to:

Applications Coordinator, Bureau of Justice Statistics, 633 Indiana Avenue NW., Room 1144–D, Washington, DC 20531

All applications must include a proposed budget containing detailed costs for personnel, fringe benefits, travel, equipment, supplies, and other expenses such as telephone and postage. Contractual services or equipment must be procured through competition or the application must

contain a sole-source justification. A program narrative must be included detailing all project objectives, major events, activities, products, and a timetable for completion. Applications should contain an evaluation plan designed to measure project objectives. Attachments to the program narrative should include letters of agreement from participating criminal justice agencies.

For funding in fiscal year 1990 (October 1, 1989–September 30, 1990), applications should be received on or before July 16, 1990. First year awards will be made by September 30, 1990, and will normally be for 12 months. Awards for up to 24 months may be considered if adequate systems implementation planning has been completed and realistic milestone dates are provided. The amount of funds per State will depend upon the number of applicants requesting funding. It is anticipated that few, if any, awards in the first year will be in excess of $500,000. The effective date of the award for those applications that are accepted will be within 90 days from the date of the BJS letter of acknowledgement.

Dated: May 17, 1990.

Joseph M. Bessette,

Acting Director, Bureau of Justice Statistics.

Dated: May 17, 1990.

Gerald (Jerry) P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 90–11900 Filed 5–22–90; 8:45 am]

BILLING CODE 4410–18–M

federal register

Wednesday
May 23, 1990

Part V

Department of Health and Human Services

Office of Human Development Services

Availability of Fiscal Year 1990 Funds and Request for Applications; Youth Gang Drug Prevention Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13660-90-4]

Availability of Fiscal Year 1990 Funds and Request for Applications; Youth Gang Drug Prevention Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS).

ACTION: Announcement of the availability of financial assistance and request for applications for youth gang drug prevention programs.

SUMMARY: The Family and Youth Services Bureau of the Administration for Children, Youth and Families announces the availability of funds for competing discretionary grants under the Youth Gang Drug Prevention Program. The purpose of this program is to conduct community-based, comprehensive, and coordinated activities to reduce and prevent the involvement of youth in gangs that engage in illicit drug-related activities.

This announcement describes the grant application process and covers four priority areas: (A) Development of Intervention Strategies for Intergenerational Gang Families; (B) Field Initiated Research on Youth Gang Prevention; (C) Development of Innovative Youth Gang Prevention and Intervention Strategies Aimed Specifically at Adolescent Females; and (D) Development of Community or Neighborhood Plans for Identifying and Addressing Local Youth Gang Problems and Solutions

DATES: The closing date for receipt of grant applications is July 23, 1990.

ADDRESSES: Address applications to: Youth Gang Drug Prevention Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Hubert H. Humphrey Building, 200 Independence Avenue SW., room 341-F-2, Washington, DC 20201. ATTN: William J. McCarron.

FOR FURTHER INFORMATION CONTACT: Frank Fuentes, Family and Youth Services Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 245-0078.

SUPPLEMENTARY INFORMATION:

Part I—General Information

A. Program Purpose

Section 3501 of Pub. L. 100-690, the Anti-Drug Abuse Act of 1988, 42 U.S.C. 5667, established the Drug Education and Prevention Program Relating to Youth Gangs. The specific purposes of the Program are to:

1. Prevent and reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities;

2. Promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes;

3. Prevent the abuse of drugs by youth, educate youth about such abuse, and refer for treatment and rehabilitation members of such gangs who abuse drugs;

4. Support activities of local police departments and other law enforcement agencies related to the conduct of educational outreach activities in communities in which gangs commit drug-related crimes;

5. Inform gang members and their families about the availability of treatment and rehabilitation services for drug abuse;

6. Facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes; and

7. Facilitate coordination and cooperation among local education, juvenile justice, employment, and social services agencies, and drug abuse referral, treatment and rehabilitation programs for the purpose of preventing or reducing the participation of youth in the activities of gangs that commit drug-related crimes.

The overall purpose of the Youth Gang Drug Prevention Program is to assist communities in controlling the spread of gang and drug-related activities through the prevention, early intervention, and diversion of at-risk youth from gang membership, through the support of activities designed to achieve the purposes of section 3501 of the Act. All applicants under this program announcement must describe in detail how the activities proposed will address these specific purposes.

B. Definitions

For the purposes of this program announcement, the following definitions apply:

(1) *Community-based* means located within the community and maintained with community and consumer participation in the planning, operation, and evaluation of its programs.

(2) *Drug* means a beverage containing alcohol; a controlled substance; or a controlled substance analogue.

(3) *Illicit* means unlawful or injurious.

(4) *Public Agency* means any State, unit of local government, combination of such States or units, or any agency, department, or instrumentality of any of the foregoing.

(5) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

C. Background

Recent studies by the University of Chicago and others report the existence of youth gangs in every State. The prevalence of gangs and associated illicit drug-related activity is widespread. It is estimated that 300 cities (i.e., 13 percent of all U.S. cities with 10,000 or more inhabitants) are experiencing problems with youth gangs. While smaller cities and suburban areas are experiencing an increase in youth gang activities, the strongest presence is in major population centers (i.e., 83 percent of the largest cities and 27 percent of the cities with 100,000 inhabitants are experiencing the most severe problems).

Associated with the recent increase in youth gang formation is the increase in youth gang violence and involvement in the use and sale of drugs. Definitive national data are not available; however, it is evident that, since the mid-1980s, extensive drug use and sale by gang members has been on the increase in cities both large and small. Moreover, police and juvenile justice reports indicate a shift from traditional turf-related gang violence to that associated with the use and sale of illicit drugs. Gang members from large urban areas are involved with the interstate drug traffic. Evidence also suggests a franchising effort on the part of long-standing traditional gangs to smaller communities around the country. In many areas, this activity has led to the emergence of new youth gangs and associated criminal activity among youth members.

Researchers have also noted a significant increase in the number of young females actively participating in gang activities and a change in their roles within the gangs. Traditionally females in gangs were viewed as playing subservient roles to the males. Their participation was primarily social. Therefore, most programs that dealt with the female population treated them

in the same way as the general female delinquent population. Studies show that adolescent females are now participating more fully in the male gangs' illegal and violent activities. They are also forming gangs of their own. Most of these gangs are affiliated with a male gang and adopt a feminized version of the male gang's name. In addition, we are seeing a growing number of independent female-controlled gangs.

Youth involvement in gangs has gone beyond the traditional reasons of acceptance, protection, and status to include an economic incentive. Experts in the field agree that little is known or understood about gang formation or about effective measures to combat their anti-social behavior. However, it is accepted that concerted and comprehensive efforts are needed at the community and grassroots levels to prevent and reduce the further recruitment and involvement of at-risk youth in gangs. Projects funded under this announcement will support a non-punitive, human service oriented, community response to this problem.

This program announcement focuses on support for projects which address the problems associated with both the more traditional and the newer, emerging types of gangs (such as female dominated gangs). Emphasis is also placed on community organizations and groups taking advantage of and coordinating with city, county, State and Federal services and systems that deal with the prevention of gangs and drug abuse. Our intent is to ensure that maximum use of resources is achieved through concentrated and sustained efforts in specific geographic areas. In addition, we strongly encourage innovative cooperation and information sharing among law enforcement agencies, community-based human service delivery agencies, local public and mental health agencies, and local public and private school systems. Since studies show that gang involvement starts as early as ages 8 to 9, an innovative prevention aimed at early childhood, young adolescents and their parents might involve collaboration between a local community-based social service or mental health agency and an early childhood development center, such as Head Start. Such a partnership could help educate families on drug abuse prevention and strengthen their parenting skills while working with the children to ensure that they do not fall prey to gang involvement as they grow older. These activities would be especially innovative if the targeted parents are themselves former, active or peripheral members of a gang.

The anticipated benefits from the combination of public and private non-profit agencies and services will be the establishment of new, improved or expanded services or methods of service delivery. In addition, the importance of the role of employers, labor leaders and businesses, particularly those which operate within communities experiencing gang problems, as full partners in the proposed activities cannot be overstated. Past experience with programs to increase the self-sufficiency of at-risk youth has demonstrated the need for strong participation by the business community. This is true not simply for the provision of employment, which in itself is a primary alternative to criminal activity, but also for the leadership and investment that involved employers and businesses can provide in the institutionalization of these positive alternatives to gang activities.

For example, many programs currently utilize mentoring as an effective strategy to help prepare youth for adulthood. However, many mentoring programs are aimed at preparing youth for careers that require a college level education. Since the vast majority of youth at risk of joining gangs do not see themselves as college bound, they might benefit more from a mentoring program that utilizes skilled workers as mentors. These mentors could not only serve as role models but could also help the youth prepare for entry into a skilled trade or business setting. Therefore, an early intervention program that couples the expertise of a community-based social service agency and, for example, a trade union in developing such a mentoring partnership would be innovative.

In FY 1989, ACYF funded 52 projects under the Youth Gang Drug Prevention Program to conduct community-based, comprehensive, and coordinated activities to reduce and prevent the involvement of at-risk youth in gangs that engage in illicit drug-related activities.

These grantees were awarded funds, for up to two years, under three priority areas:

Community-Based Consortia Projects—Sixteen grants were awarded to support the development of community-based consortia. Although varying in their area of coverage and composition, each consortium is a broadbased partnership that draws upon the resources, expertise, energies and commitments of many different groups within the community. The consortia generally consist of local social service and employment agencies, schools, public housing authorities, juvenile justice agencies,and local private community groups.

Single Purpose Youth Gang Prevention, Intervention and Diversion Programs—Thirty grants were awarded under this priority in support of the specific purposes of the Anti-Drug Abuse Act of 1988 (refer to Part I, Section A).

Support Programs for At-Risk Youth and Their Families—Six grants were awarded that focus on family education, empowerment and involvement strategies, all in support of the specific purposes of the Act.

The Administration for Children, Youth and Families plans to award a contract to provide technical assistance to grantees under the Youth Gang Drug Prevention Program and to communities which are interested in developing strategies to confront their own youth gang problems. For information on this contract, contact Maria Candamil at (202) 245–0054.

Other agencies of the Federal government are also supporting numerious activities to prevent substance abuse and delinquency among at-risk youth. The Office of Substance Abuse Prevention (OSAP), Department of Health and Human Services; the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Justice; and the Office for Drug-Free Neighborhoods, Department of Housing and Urban Development, are sources of information for such activities at the community level. For information on their programs, applicants may contact:

National Clearinghouse for Alcohol and Drug Information, Alcohol, Drug Abuse, and Mental Health Administration, 6000 Executive Boulevard, suite 402, Rockville, Maryland 20852, (301) 468–2600.

National Criminal Justice Reference Service, Juvenile Justice Clearinghouse, Box 6000, Department F, Rockville, Maryland 20850, (800) 638–8736, (301) 251–5194 (in Maryland).

HUD Drug Information and Strategy Clearinghouse, P.O. Box 6242, Rockville, Maryland 20850, (800) 245–2691, (301) 251–5154 (in Maryland).

In order to reduce potential duplication, ACYF encourages applicants to coordinate their proposed activities with projects in their communities which are supported by the above organizations. Applicants applying for funding from ACYF under

this announcement MUST STATE in their proposal whether they are receiving or are seeking funding from another Federal agency for a similar program activity. For a complete listing of current ACYF Youth Gang Prevention Program grantees see Attachment 2.

D. Eligibility

Any public or non-profit private agency, organization (including community based organizations with demonstrated experience in this field), institution or other non-profit entity (including individuals) is eligible to apply, except for current ACYF grantees under this program. Non-profit applicants which have not previously received support from the Office of Human Development Services must submit proof of non-profit status with their grant application. This can be done either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from IRS (IRS Code Sections 501(c)(3) and 501(c)(6)). Non-profit applicants cannot be funded without acceptable proof of this status.

Although for-profit entities do not qualify as applicants under this grant announcement, they may participate as contractors under grants to eligible non-profit applicants.

As required by section 3503 of the Anti-Drug Abuse Act, priority will be given to applicants from geographic areas in which frequent and severe drug-related crimes are committed by gangs and law-breaking groups whose membership is composed primarily of youth, and to applicants who demonstrate the broad support of community-based organizations in such geographic areas.

The Administration for Children, Youth and Families realizes that obtaining definitive data regarding the geographic distribution of youth gang activities is a difficult task. In order to carry out the mandate of section 3503 of the Anti-Drug Abuse Act, ACYF will consult with Federal agencies, as well as with State and local organizations which are actively involved in the areas of juvenile delinquency and drug abuse prevention. We will also consider the detailed discussion of emerging or current youth gang problems that should be provided by the applicant in the "Objectives and Need" section of the program narrative (see part III, section A).

All applicants must demonstrate a willingness to cooperate with the third party evaluation contractor to be funded by the Family and Youth Services Bureau which will conduct assessments of their program and service delivery models. Such cooperation will involve periodically furnishing needed data on per-client costs of in-house or subcontracted services, information on collaboration with other service providers, and other process-oriented data as required by the evaluation contractor. In addition the contractor must be allowed reasonable access to obtain youth and family impact information. All data collected by participating programs and by the contractor will be kept confidential and restricted to the stated purposes of the program.

E. Applicant Share of Project Costs

Applicants must contribute at least 25 percent ($1 for every $3 of Federal funding) of the total cost of the project, except for applicants under Priority Area B of this announcement. For example, an applicant who applies for $150,000 in Federal funding must provide $50,000 toward the project, with a total project cost of $200,000. The applicant share of project costs may be made in cash, third party in-kind contributions, or applicants' own in-kind contributions secured from non-Federal sources.

The maximum Federal share of project costs are specified in the respective priority area descriptions in part II of this announcement.

Part II—Responsibility of the Grantee: Priority Area Descriptions and Minimum Requirements for Project Design

A. Development of Intervention Strategies for Intergenerational Gang Families

Purpose

Up to ten grants will be awarded under this priority area to encourage the development and implementation of model projects which examine the role of the family in youth gang early intervention/prevention activities. Grants will be awarded for projects that propose to identify contributing factors to intergenerational gang participation and then develop appropriate intervention models which take these factors into consideration. Grants will also be awarded for projects aimed at prevention through the development of models that focus on family education, empowered, and involvement strategies.

Applicants should discuss how the proposed activities will achieve the purposes identified in section 3501 of the Anti-Drug Abuse Act of 1988 (see part I, section A). In particular, applicants are encouraged to focus on activities which will provide new information on how to: (1) Prevent and reduce youth participation in gang activities; (2) promote the involvement of youth in lawful activities; (3) educate youth about drug abuse; (4) prevent the abuse of drugs by youth; and (5) facilitate coordination and cooperation among local education, juvenile justice, employment and social service agencies, and drug abuse referral, treatment and rehabilitation programs.

Projects aimed at families with evidence of intergenerational gang participation should include activities that are designed to: identify, document and report on the historical, racial, cultural and socio-economic factors which have resulted in the institutionalization of gangs within the family's community. These findings should be used as the basis of developing an intervention model which focuses on the gang family as a unit and on its individual members, especially the adolescents.

In addition, the intervention models should emphasize families with children who range from early childhood to early adolescence. In developing these models, applicants are encouraged to consider collaborative efforts with agencies and individuals currently providing support services to at-risk families, e.g., Head Start and child development programs, school systems, child abuse and neglect programs, family violence programs, and surrogate parenting programs.

Components of these projects may focus on topics such as family substance abuse, reliance of the family on youth drug-related income, child care practices (especially latch key children), different types of family structures, family rituals, ethnic/cultural differences, lack of family communication, barriers to fulfillment of parental roles, families in crisis, parental education and skill development, and the impact of sibling or other family member involvement in gang activities.

Duration of Project: Not to exceed 24-months, with the possibility of renewal for an additional 12-month period based on the availability of funds and satisfactory performance by the grantee.

Federal Share of Project Costs: Up to $150,000 a year for the initial 24-month project period.

B. Field Initiated Research for Youth Gang Prevention

Purpose

Up to five grants will be awarded in this area to support new research on youth gangs in order to increase our knowledge and understanding of the critical issues surrounding this area. Research findings will enable us to more

effectively carry out the Act's legislative mandate to reduce and prevent the involvement of youth in gang that engage in illicit drug-related activities. This priority area enables researchers to expand the current knowledge base, build on prior research, contribute to the development of programs and practice, and provide insights into new approaches to the youth gang problem.

Compared to other areas dealing with the problems of children, adolescents and families, there has been relatively little research done on the causes and dynamics of youth gangs and on the ramifications of gang involvement by young people. The bulk of the work done in this area focused on male street gangs in the 1950s and 1960s. Some of the more recent research indicates that, while some of the motivating factors for youth to join gangs (i.e., a rite of passage into adulthood) are similar to historical factors, there appear to be new forces attracting youth to gangs. Among the new attractions is the amount of money to be made from drug trafficking. We are interested in learning more about these forces and how they may be counteracted. We are also interested in new research on the demographics, structure and operation of youth gangs, the extent and dynamics of youth gang involvement in drug abuse and drug trafficking, and the effects of gang membership on youth.

In addition, we are interested in research that looks not only at the youth but at families of youth gang members. Some of the questions that we are interested in exploring include, but are not limited to:

What impact does the family have in encouraging or dissuading a youth from gang participation?

How does the family respond to the youth's gang involvement?

Consideration will also be given to research projects that focus on an area not mentioned above but which will, nevertheless, increase capacity to reduce and prevent the participation of youth in gangs.

Projects must include an approach that is comprehensive and culturally responsive to the populations included in the study. Projects must also include strategies for the dissemination of its findings in a manner that will be of use to the researchers and service providers in the field.

Duration of Project: Not to exceed 24 months, with the possibility of renewal for an additional 12-month period based on the availability of funds and satisfactory performance by the grantee.

Federal Share of Project Costs: Up to $100,000 a year for the initial 24-month project period.

Matching Requirement: There is no matching requirement.

C. Development of Innovative Youth Gang Prevention and Intervention Strategies Aimed Specifically at Adolescent Females

Purpose

Up to five grants will be awarded under this priority area to focus on female gang membership. Applicants are encouraged to emphasize activities which will contribute to an understanding of female gang membership and the development of programs to:

1. Prevent and reduce the participation of youth in the activities of gangs that engage in illicit drug-related activities;

2. Promote the involvement of youth in lawful activities in communities in which such gangs commit drug-related crimes;

3. Support activities of local police departments and other law enforcement agencies related to the conduct of educational outreach activities in communities in which gangs commit drug-related crimes;

4. Facilitate Federal and State cooperation with local school officials to assist youth who are likely to participate in gangs that commit drug-related crimes; and

5. Facilitate coordination and cooperation among local education, juvenile justice, employment, and social services agencies, and drug abuse referral, treatment and rehabilitation programs for the purpose of preventing or reducing the participation of youth in the activities of gangs that commit drug-related crimes.

Observations by researchers and service providers indicate that female gang members are at risk of more severe and life long negative impact than are males. For example, many communities attach a life-long stigma to girls who are affiliated with gangs. Many of these girls are members of racial and ethnic minorities. Children of female gang members are more apt to be raised in a gang environment and, therefore, subscribe to gang values and practices. In traditional gangs, it is not uncommon to find female member whose mother was herself a member of the same gang. Compared to the data on male gang members, there is a paucity of information on female gang members. We intend to fund projects that add to our knowledge about female gang involvement. For example, projects should investigate the specific reasons that females join gangs, their socio-economic interactions with male gang members, the paradigm within which they function, the long range implications of female gang participation (health, children, welfare), and their growing propensity to participate in violent criminal activities.

Family dysfunction and community alienation may also be causal factors. Compounding the problem is the increase in autonomous female gangs and greater participation by females in violent activities. Support will be given to projects which identify and work with these female youth and their families to prevent and divert these females from gang involvement. Components of these intervention projects may focus on issues such as the lack of positive female role models within the community, barriers to the fulfillment of parental roles, barriers resulting from the traditional role of females within the community, families in crisis, physical abuse and violence within the family, family substance abuse, different types of family structures, traditional family gang involvement, and ethnic/cultural differences.

Projects should propose to identify and document issues such as those listed above and use the findings to develop models to prevent female involvement in gangs or that attempt to break the chain of female gang participation by developing activities that involve the adolescent gang mother and her child(ren).

Duration of Project: Not to exceed 24 months, with the possibility of renewal for an additional 12-month period based on the availability of funds and satisfactory performance by the grantee.

Federal Share of Project Costs: Up to $150,000 a year for the initial 24-month project period.

D. Development of Community or Neighborhood Plans for Identifying and Addressing Local Youth Gang Problems and Solutions

Purpose

Up to ten grants will be awarded to help community or neighborhood groups organize and develop strategies to address their local youth gang problems. Applicants are encouraged to emphasize activities which will:

1. Support the activities of local police departments and other law enforcement agencies related to the conduct of educational outreach activities in communities in which gangs commit drug-related crimes;

2. Inform gang members and their families about the availability of treatment and rehabilitation services for drug abuse; and

3. Facilitate coordination and cooperation among local education, juvenile justice, employment, and social services agencies, and drug abuse referral, treatment and rehabilitation programs for the purpose of preventing or reducing the participation of youth in the activities of gangs that commit drug-related crimes.

The principal emphasis is on grassroots participation in developing an action plan which addresses both the community's particular youth gang problems and the resources that can be utilized to help resolve these problems. The applicant's project should include a broad coalition within the community such as neighborhood associations, churches, schools, local civic organizations, local law enforcement and juvenile probation departments, local businesses, and community-based nonprofit organizations.

The applicant is expected to produce an action plan by the end of the project that describes the specific activities that the coalition will undertake to prevent or intervene in the growth of youth gangs, especially those involved in drug use and trafficking. Activities may include locally sponsored gang awareness activities, programs to involve local youth in positive learning and recreational activities, family and community strengthening activities, and strategies to access local, State and Federal resources for anti-gang and drug abuse local programs.

Duration of Project: Not to exceed 12 months, with the possibility of renewal for an additional 12-month period based on the availability of funds and satisfactory performance by the grantee.

Federal Share of Project Costs: Up to $50,000 for the initial 12-month project period.

Minimum Requirements for Project Design

All eligible applications will be reviewed, evaluated and competitively scored against the evaluation criteria outlined in part III of this announcement. In addition, each applicant must address the minimum information requirements listed below. The requirements are stated in generic terms. It is the responsibility of the applicant to adapt each information requirement to the specific priority area under which the application is being submitted. Applications which fail to provide required information in terms relevant to the priority area under which funding is sought are likely to be scored poorly by the independent evaluators.

The evaluation criteria (see part III of this announcement) to which each of these information requirements applies is identified within the brackets. In order to successfully compete, applicants, at a minimum, must ensure that their responses to each requirement under the chosen priority area in part II are fully developed under the appropriate program narrative section.

—A detailed discussion of emerging or current youth gang problems and issues in the target community, including data on the number, age, gender, ethnic/cultural background, family demographics and dynamics, and drug-related gang activity (if available) of the youth and families to be served. [Objectives/Need]

—A description of what makes the proposal innovative—how it builds upon the existing service delivery systems; expands service delivery capabilities; expands our knowledge and understanding of the critical issues surrounding youth gangs and their families; and/or differs from current services available within the community. [Objectives/Need]

—A description of the numbers and types of clients to be served or to be studied. [Results/Benefits]

—Evidence that proposed activity or research methodology is appropriate for the targeted population. [Results/Benefits]

—Evidence that the project will generate the financial, programmatic, political and other types of support and commitments that will be required for its continued operation beyond the period of Federal support (not applicable to Priority Area B). [Results/Benefits]

—A description of the products to be developed that could be used, if the project is successful, to facilitate duplication of the model(s) by other service and support providers (not applicable to Priority Area B). [Results/Benefits]

—A detailed description of the proposed intervention, prevention, diversion, education, youth involvement, treatment referral, and outreach efforts that will be carried out by the applicant, including evidence of the organizational capability to provide these services (not applicable to Priority Area B). [Approach]

—A detailed description of the research methodology to be used (Priority Area B only). [Approach]

—A description of the evaluation plans and procedures that will be used to measure the degree to which the project objectives have been accomplished. [Approach]

—Letters of endorsement or support that show evidence of broad community support in the geographic area to be served by the applicant, specifying any type of direct involvement that the organizations or individuals will have with the project. [Attachment]

Part III—Criteria for the Review and Evaluation of Applications

An application must meet all of the eligibility requirements specific to the priority area under which it is being submitted. This includes eligibility of the applicant, duration of the project, maximum Federal funding, 25 percent minimum applicant share (with the exception of Priority Area B), and responsiveness to the purpose and minimum requirements of the priority area.

Applications which meet these eligibility requirements will be evaluated by a panel of at least three non-Federal experts who are knowledgeable about youth gang prevention programs and human service programs and who will comment on and score the applications, based on the four criteria listed below.

In order to successfully compete, applicants, at a minimum, must ensure that the program narrative section of the application clearly addresses each of the following four areas of the evaluation criteria, incorporating responses to the priority area descriptions and the minimum requirements detailed in part II of this announcement.

A. Objectives and Need for Assistance: (25 points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution in the geographic areas that the project proposes to serve. Give a precise location of the project and the area(s) to be served (maps or other graphic aids may be attached). Demonstrate the need for the project and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

B. Results or Benefits Expected: (20 points)

Identify the results and benefits to be derived. The anticipated contribution to policy, practice, theory and/or research should be indicated.

C. Approach: (35 points)

Outline a plan of action pertaining to the scope of the proposed project and detail how the proposed work will be accomplished. Cite factors which might accelerate or decelerate the work and the reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance component quantitative projections of the accomplishments to be achieved, if possible. List the activities to be carried out in chronological order to show the schedule of accomplishments and their target dates (GANTT or PERT charts may be used for this purpose). Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

D. Staff Background and Experience: (20 points)

Present a biographical sketch of the proposed program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, educational background, work experience, and training of other proposed key personnel. Provide a brief description of the applicant's organizational experience relating to youth gangs.

Part IV—The Application Process

Applicants will be initially screened against the criteria in this part. Applications not meeting the screening criteria listed below will not be accepted for competitive review and will receive no further consideration.

A. Availability of Forms

All of the forms and instructions needed for submitting an application under this announcement are included for your convenience under Appendix II. Single sided copies of these forms should be reproduced and used to prepare the application package.

A complete application consists of:

1. Standard Form 424: Application for Federal Assistance;

2. Standard Form 424A: Budget Information;

3. Assurances

(a) Standard Form 424B: Non-Construction Programs;

(b) Drug Free Work Place Certification;

(c) Debarment Certification;

(d) Certification Regarding Anti-Lobbying.

(The certifications regarding Drug Free Work Place and Debarment do not have to be returned with the application as they both provide that signing and submitting the application constitutes certification.)

4. Program Narrative/Evaluation Criteria: A narrative description of the project, organized under headings which address the four evaluation criteria identified in part III: (A) Objectives and need for assistance; (B) results or benefits expected; (C) approach; and (D) staff background and experience. The applicant must respond to the minimum requirements identified in Part II of this announcement under the appropriate criteria headings in the program narrative.

The program narrative must be typed, double-spaced, on 8½ x 11 inch bond paper. All pages of the narrative (including charts, tables, maps, etc.) must be sequentially numbered, beginning with the "Objective and Need for Assistance" section as page number one. The narrative should not exceed 25 double-spaced pages.

5. Project Abstract: A brief (approximately 100 word) description of project, typed on 8½ x 11 inch bond paper.

6. Appendices/Attachments: Letters of commitment and support; exhibits; etc.; not to exceed 10 pages.

B. Application Submission

The application must be signed by an official authorized to act on behalf of the applicant agency, organization, institution, or other entity and to assume responsibility for the obligations imposed by the terms and conditions of any grant awarded.

Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

One signed original and two copies of the application, including all attachments, are required.

The priority area (see part II) under which the application is being submitted must be clearly identified in Block 11 of Standard Form 424. An application can apply to only one priority area.

Completed applications must be sent to: Youth Gang Drug Prevention Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Hubert J. Humphrey Building, 200 Independence Avenue, SW., room 341–F–2, Washington, DC 20201. Attention: William J. McCarron.

Hand delivered applications will be accepted at the OHDS Grants and Contracts Management Division Office during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday (excluding Federal holidays).

C. Closing Date for the Submission

The closing date for receipt of applications under this announcement is July 23, 1990.

1. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the address specified in the application submission section of this announcement; or

b. Sent on or before the deadline date and received in time for the independent review under Chapter 1–62 of HHS Transmittal 86.01 (4/30/86). Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. *Late Applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications and will not be considered in the competition.

3. *Extension of Deadline.* The Administration for Children, Youth and Families (ACYF) may extend the deadline for all applicants because of acts of God such as floods, hurricanes, earthquakes, or when there is widespread disruption of the mails. However, if ACYF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

D. Screening of Applications

All applications will be initially screened to determine conformance with the following requirements:

(1) Deadline for submittal;

(2) Appropriate number of pages;

(3) Identification of priority area;

(4) Signature of authorizing official; and

(5) Federal funding requests not exceeding the limitations set by the priority area.

These preliminary screening requirements will be rigorously enforced. Applications which do not meet these requirements will not be considered in the competition and the applicant will be so informed.

E. Application Consideration

Applications meeting the above screening requirements will be submitted to a panel of non-Federal reviewers for review and competitive scoring against the criteria outlined in part III of this announcement. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about issues relating to youth gang behavior and illicit drug use.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Family and Youth Services Bureau, who will recommend applications to be funded to the Commissioner of ACYF. The Commissioner of ACYF will make the final selections. Applicants may be funded in whole or in part. Consideration will also be given to ensuring that a variety of geographic areas are served, that projects with different auspices are selected, and that various project designs and models are represented.

Successful applicants will be notified through the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period, and the amount of the non-Federal matching share.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements and regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities."

Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine areas need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. A list of single points of contact for each State and territory is included in Appendix I of this announcement.

Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, Block 16a. OHDS will notify the State of any applicant who fails to indicate SPOC contact (when required) on the application form.

SPOCs have 60 days from the grant application deadline date to comment on applications for financial assistance under this program. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Youth Gang Drug Prevention Program, Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, room 345–F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Catalog of Federal Domestic Assistance Program Number 13.660, Drug Abuse Education and Prevention Relation to Youth Gangs)

Dated: May 10, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 17, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

APPENDIX I

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Tel. (205) 284–8905.

Alaska

None.

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth floor, Phoenix, Arizona 85007, Tel. (602) 542–5004.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074.

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0613.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Tel. (303) 866–2156.

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Tel. (202) 727–9111.

Florida

Karen McFarland, Director of Intergovernmental Coordination, Single

Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Tel. (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Tel. (404) 656–3855.

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548–3016 or 548–3085.

Idaho

None.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5610.

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3725.

Kansas

None.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382.

Louisiana

None.

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3261.

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490.

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, room 904, Boston, Massachusetts 02202, Tel. (617) 727–3253.

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Tel. (517) 375–1838.

Note: Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, suite 2, Lansing, Michigan 48911, Tel. (517) 334–6190.

Minnesota

None.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 421 West Pascagoula Street, Jackson, Mississippi 39206, Tel. (601) 960–4282.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834.

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, room 210–State Capitol, Helena, Montana 59620, Tel. (406) 444–5522.

Nebraska

None.

Nevada

Nevada Office of Community Services, Capitol Complex, Carson city, Nevada 89710, Tel. (702) 885–4420.

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155.

New Jersey

Mr. Barry, Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613.

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827–3885.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, NC. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Tel. (614) 466–0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770.

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Tel. (503) 373–1998.

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656, **Note:** Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734–0435.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennnessee 37219, Tel. (615) 741–1676.

Texas

Ralph Boeker, Jr., Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463–1778.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street,

Montpelier, Vermont 05602, Tel. (802) 828–3326.

Virginia

None.

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 753–4978.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741, **Note:** Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574.

American Samoa

None.

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Palau

None.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774–0750.

BILLING CODE 4130–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission

Item	Entry
1	Self-explanatory
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number If for a new project, leave blank
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities)
13.	Self-explanatory
14.	List the applicant's Congressional District and any District(s) affected by the program or project
15	Amount requested or to be contributed during the first funding/budget period by each contributor Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17	This question applies to the applicant organization, not the person who signs as the authorized representative Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**	22. **Indirect Charges:**
23. **Remarks**	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown Additional sheets should be used when one form does not provide adequate space for all breakdown of data required However, when more than one sheet is used, the first page should provide the summary totals by programs

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d) Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5 For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7 Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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BILLING CODE 4130-01-C

U.S. Department of Health and Human Services, Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 13, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False cetification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, and local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certifcation or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarly excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligiblity, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or

modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other that Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue SW., Washington, DC 20201–0001.

[FR Doc. 90–11961 Filed 5–22–90; 8:45 am]
BILLING CODE 4130–01–M

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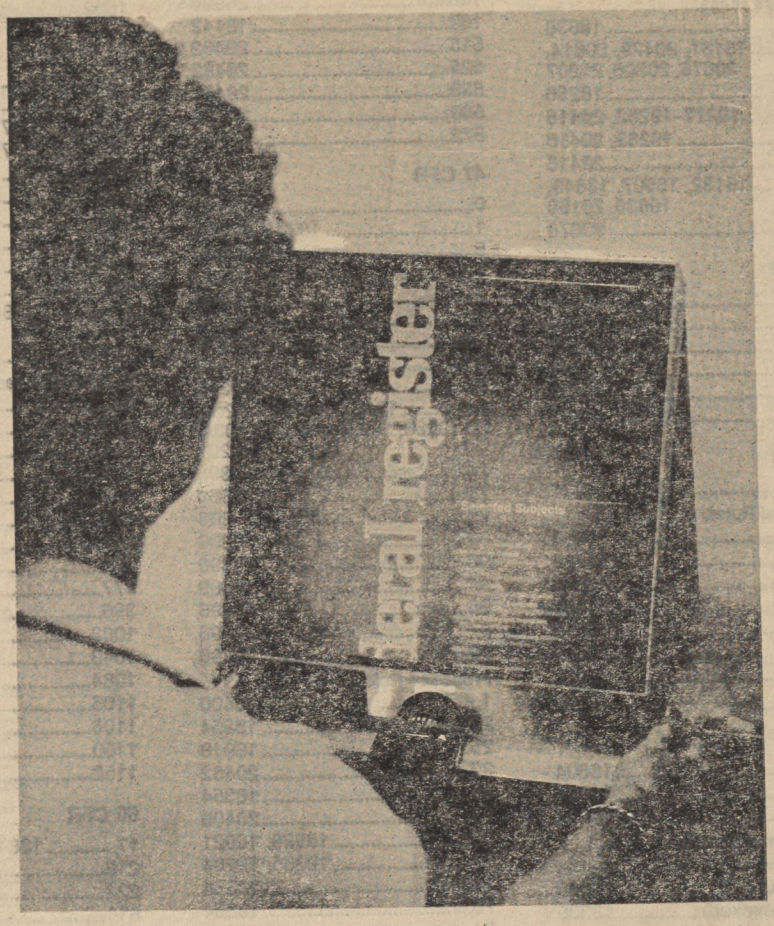

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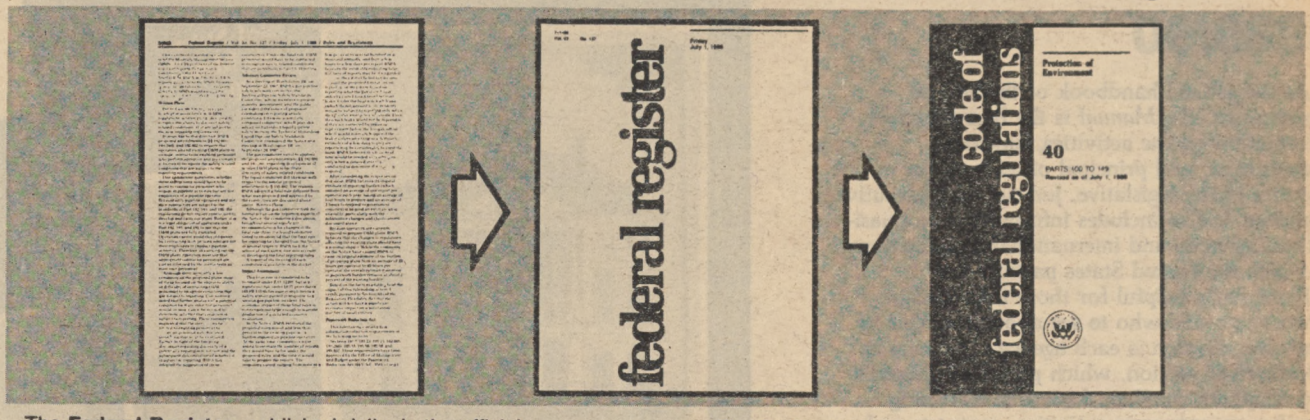

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