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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: September 13 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Title 3—

The President

Memorandum of August 2, 1994

Imposition of Prohibitions Pursuant to Section 8(a)(4) of the Fishermen's Protective Act of 1967, as Amended

Memorandum for the Secretary of the Treasury

Pursuant to the authority vested in me by the Constitution and under section 8(a)(4) of the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1978(a)(4)), I decided on April 11, 1994, to prohibit the bringing or importation into the United States of fish and wildlife products of Taiwan. I hereby direct you, in consultation with the Secretary of the Interior, to prohibit the importation of fish or wildlife, as defined in 16 U.S.C. 3371 and 50 CFR 10.12, and their parts and products, of Taiwan to which, but for these prohibitions, the import declaration requirements in 50 CFR 14.61 would apply. These prohibitions do not apply to those articles described in 50 CFR 14.62, which are excepted from the import declaration requirements. The prohibited articles include but are not limited to: (a) reptile leather shoes, handbags, and other reptile leather articles and products; (b) jewelry made from coral, mussel shells, and bone; (c) edible frogs' legs; (d) live goldfish and tropical fish for the aquarium trade; and (e) bird feathers, down, and specimens. These import prohibitions shall apply to fish or wildlife and their parts and products as described above that are exported to the United States after 10 days from the date of the publication of this memorandum and shall remain in effect until such time as I determine.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 2, 1994.

[FR Doc. 94–19524
Filed 8–5–94; 1:06 pm]
Billing code 4820–02–P

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–10]

Revocation of the Sacramento, Mather AFB, CA, Class C and Class E Airspace Areas and Revision of the Sacramento, McClellan AFB, CA, Class C Airspace Area and the Sacramento Executive Airport, CA, Class D Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class C and Class E airspace areas at Mather Air Force Base (AFB), Sacramento, CA, due to the closure of Mather AFB on May 15, 1993. This action also alters the Sacramento, McClellan AFB, CA, Class C airspace area to encompass part of the airspace previously delegated to Mather AFB. This action will alter the Sacramento Executive Airport, CA, Class D airspace area designation by removing all references to the Sacramento Mather AFB.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

Supplementary Information:

History

On February 7, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Class C and Class E airspace areas at Mather AFB, Sacramento, CA, and to alter the Sacramento, McClellan AFB, CA, Class C airspace area and the Sacramento Executive Airport, CA, Class D airspace area (59 FR 5556). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments were received in response to the proposal. The Northern California Airspace Users Working Group (NCAUWG) and one of its members each submitted comments in opposition to altering the existing Sacramento, McClellan AFB, CA, Class C airspace to encompass part of the airspace previously delegated to Mather AFB.

NCAUWG later withdrew this objection after receiving additional information from the FAA and a military representative from the McClellan AFB. Upon further consideration by its members, NCAUWG voted to withdraw its prior objection and to approve the proposal to alter the existing Sacramento, Mather AFB, Class C airspace. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class C and Class E airspace areas at Mather AFB, Sacramento, CA, due to the closure of Mather AFB on May 15, 1993. This action also alters the Sacramento, McClellan AFB, CA, Class C airspace area to encompass part of the airspace previously delegated to Mather AFB. This action will alter the Sacramento Executive Airport, CA, Class D airspace area designation by removing all references to the Sacramento Mather AFB. Class C, D, and E airspace designations are published in paragraphs 4000, 5000, and 6003, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class C, D, and E airspace designations listed in this document will be subsequently removed or published, as appropriate, in the Order.

Regulatory Evaluation Summary

The FAA has determined that this final rule is not a "significant regulatory action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this rule are summarized below.

This rule will revoke the Mather AFB Class C and Class E airspace areas at Sacramento, CA. This action is a result of the closure of Mather AFB on May 15, 1993. In addition, this rule will accomplish two other objectives. First, it will modify the Sacramento Executive Airport, CA, Class D airspace designation, by removing all references to the Sacramento Mather AFB. Second, it will modify the McClellan AFB Class C airspace area, at Sacramento, CA, by expanding the boundaries to the south. This modification is necessary to prevent a potential deterioration of safety that could result from greater mixing of visual flight rules (VFR) operations and instrument flight rules (IFR) operations once the Class C airspace area at Mather AFB is revoked. The FAA has determined that the revocation of the Class C airspace area at Mather AFB would expose the arrival flow of air traffic to the McClellan AFB to more potentially conflicting VFR traffic.

The Class C airspace concept (like that for Class B airspace, though to a lesser extent) was developed to reduce the likelihood of midair collisions in the congested airspace surrounding large airports in which large turbine-powered aircraft are mixing with smaller aircraft of varying performance characteristics. In addition, VFR and IFR aircraft are also mixing. As this complexity increases, so does the potential for midair collisions. This type of condition warrants an expansion of Class C airspace, providing more Class C airspace for aircraft in the outlying areas surrounding major terminals.

This rule will ensure that the current level of aviation safety remains intact. The termination of the Mather AFB Class C airspace area will permit transiting VFR aircraft to fly closer to McClellan AFB without entering a Class C airspace area. In order to minimize potential conflicts with traffic intending to land or take off from the airport, the FAA has concluded that the Class C airspace area at McClellan AFB should be expanded to the south.

This rule will have a positive impact on operational efficiency by allocating additional airspace to users who choose to avoid the Class C airspace area. The revocation of the Class C airspace area at Mather AFB will significantly contract Class C airspace in the vicinity of McClellan AFB. Aircraft operators who previously circumnavigated the Mather AFB Class C airspace area will be able to fly into this airspace without contacting air traffic control or having to satisfy associated avionics requirements. The planned expansion in the McClellan AFB Class C airspace area will involve some of the airspace that formerly belonged to the Mather AFB Class C airspace area. Therefore, no additional airspace would be converted into Class C airspace.

This rule will not impose additional administrative cost on the FAA for either personnel or equipment. The additional operations workload the rule is expected to generate can be handled with current personnel and equipment resources in place at the McClellan AFB, CA, Class C airspace area. Another potential cost to the FAA associated with the rule will be the revision of aeronautical charts to reflect the change in airspace around McClellan AFB. The change will be incorporated during the routine updating and printing of the charts, however, so that all costs associated with printing aeronautical charts are assumed to be a normal cost of doing business.

This rule is not expected to impose any incremental costs on users of the McClellan AFB, CA, Class C airspace area. This assessment is based on the fact that the rule will only modify the McClellan AFB, CA, Class C airspace area by expanding it to the south of McClellan AFB. This additional airspace will be taken from the Mather AFB Class C airspace area. Any users of this airspace [i.e., pilot schools, air taxi operators, general aviation (GA) operators] will be able to continue their flying practices in the same manner as before. Thus, the rule will not adversely affect these airspace users.

This rule will not impose any costs on either the FAA, the aviation community, or society. Although the FAA concludes that this rule will not have an impact on safety other than to ensure the maintenance of current levels, the rule is expected to promote the efficiency of operations. Thus, the FAA contends that this rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The types of small entities that will be potentially affected by the implementation of the final rule are air taxi operators and pilot schools.

Neither air taxi operators nor pilot schools will be impacted by this planned expansion. This assessment is based on the fact that this expansion will capture some of the airspace that was previously included in the Mather AFB Class C airspace area. Current users of this airspace will be able to continue to do so in the same manner as before. Thus, there will be no incremental cost impact on these operators as a result of this rule.

Inernational Trade Impact Assessment

This final rule will not have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries because the rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

AWP CA C Sacramento, Mather AFB, CA [Removed]

AWP CA C Sacramento, McClellan AFB, CA [Revised]

Sacramento, McClellan AFB, CA

(Lat. 38°40′04″ N., long. 121°24′02″ W.)

Sacramento Metropolitan Airport, CA

(Lat. 38°41′44″ N., long. 121°35′27″ W.)

Rio Linda Airport, CA

(Lat. 38°40′34″ N., long. 121°26′44″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of McClellan AFB, excluding that airspace within an area bounded by a line beginning at a point where the 321° bearing from McClellan AFB intersects the 5-mile radius of McClellan AFB; thence southeasterly via the 321° bearing to a point where it intersects the 007° bearing from Rio Linda Airport and thence direct to the point where the 187° bearing from the Rio Linda Airport intersects the 215° bearing from McClellan AFB and thence southwesterly via the 215° bearing to the 5-mile radius of McClellan AFB; and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of McClellan AFB to the points where the 10-mile radius intercepts the 10-mile radius of the Sacramento Metropolitan Airport, CA, Class C airspace area.

* * * * *

Paragraph 5000—Subpart D-Class D Airspace

* * * * *

AWP CA D Sacramento Executive Airport, CA [Revised]

Sacramento Executive Airport, CA

(Lat. 38°30′45″ N., long. 121°29′37″ W.)

Sacramento VORTAC, CA

(Lat. 38°26′37″ N., long. 121°33′06″ W.)

Sacramento McClellan AFB, CA

(Lat. 38°40′04″ N., long. 121°24′02″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Sacramento Executive Airport and within 1.8 miles each side of the Sacramento VORTAC 032° radial, extending from the 4.3-mile radius southwest of the VORTAC, excluding that airspace within the Sacramento McClellan AFB, CA, and the Sacramento Metropolitan Airport, CA, Class C airspace areas.

* * * * *

Paragraph 6003—Subpart E-Class E airspace areas designated as an extension to a Class C surface area

* * * * *

AWP CA E3 Sacramento, Mather AFB, CA [Removed]

* * * * *

Issued in Washington, DC, on July 27, 1994.

Harold W. Becker,

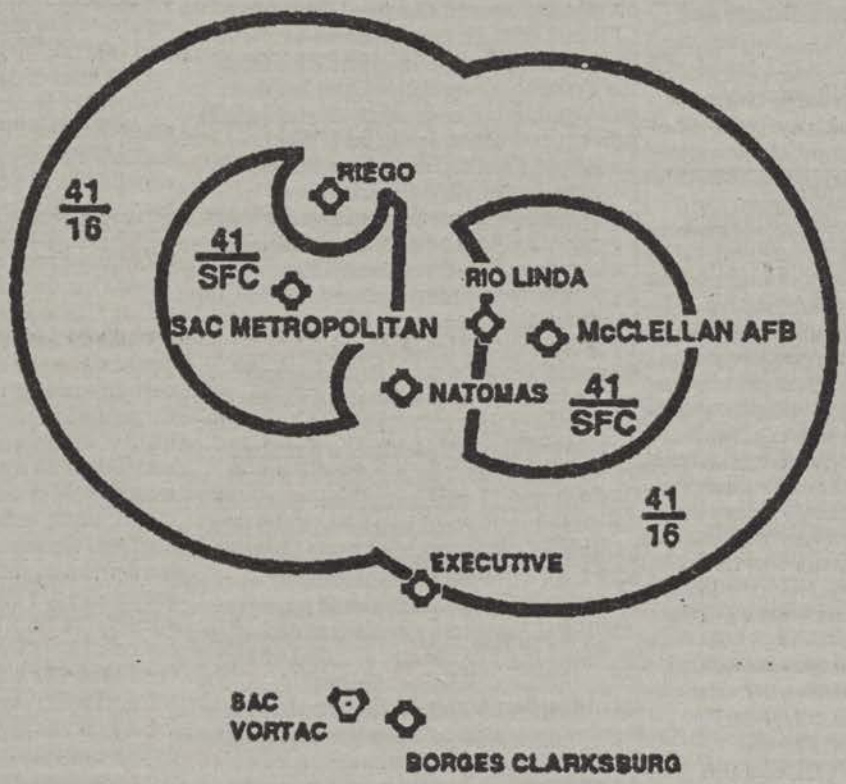
Manager, Airspace-Rules and Aeronautical Information Division.

Appendix—Sacramento, CA, Class C Airspace Area

BILLING CODE 4910-13-F

SACRAMENTO, CA
CLASS C AIRSPACE AREA

(Not to be used for navigation)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
(ATP - 220)

[FR Doc. 94–19406 Filed 8–8–94; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM94-17-000; Order No. 569]

Interpretation and Amendment Clarifying Exemption to Qualifying Facilities From the Federal Power Act

Issued August 2, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is interpreting and amending its regulations on the exemption of certain qualifying facilities from the Federal Power Act to clarify the scope of this provision in light of recent amendments to the Federal Power Act (FPA) as enacted in the Energy Policy Act of 1992 (Energy Policy Act). Specifically, the Commission is interpreting and amending the regulations to clarify that qualifying cogeneration and small power production facilities (QFs) are not exempt from the provisions of the FPA added and revised by the Energy Policy Act to the extent QFs fall within those provisions.

EFFECTIVE DATE: The final rule is effective September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly D. Bose, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202)208-2284.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the content of this document during normal business hours in Room 3104, at 941 North Capitol Street, N.E., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission is issuing this final rule to clarify and amend the regulation in 18 CFR 292.601. That regulation—Exemption to qualifying facilities from the Federal Power Act—provides that most qualifying cogeneration and small power production facilities (QFs) [1] under the Public Utility Regulatory Policies Act of 1978 (PURPA) are exempt from all sections of the Federal Power Act (FPA), with the exception of certain designated sections. That regulation was promulgated prior to enactment of the Energy Policy Act of 1992 (Energy Policy Act), which amended the FPA in certain respects.

The purpose of this final rule is to clarify that QFs are not exempt from the sections of the FPA added and revised by the Energy Policy Act, to the extent QFs fall within those sections. Some of the added or revised sections of the FPA (sections 3, 211, 212, and 316A) under which QFs are not exempt from Commission regulation already are identified (implicitly in the case of section 316A) in the list of § 292.601(c) exceptions to FPA exemptions; accordingly, no amendment to the regulatory text is necessary to reflect the clarification provided herein. Amendment is, however, necessary to reflect other sections of the FPA (sections 213 and 214) added by the Energy Policy Act which may be applicable to QFs.

II. Discussion

Subpart F of Part 292 of the Commission's regulations provides for the exemption of certain QFs from certain federal and state laws and regulations. Section 292.601 provides for QF exemptions from Commission regulation under the FPA. It applies to all QFs, other than qualifying small power production facilities (not fueled primarily by geothermal resources) with power production capacities in excess of 30 megawatts. Section 292.601(c) further provides that any QF to which the section applies is exempt from all sections of the FPA, except the following:

(1) Sections 1-18, and 21-30;

(2) Sections 202(c), 210, 211, and 212;

(3) Section 305(c); and

(4) Any necessary enforcement sections of Part III of the FPA with regard to the sections listed in (1), (2) and (3).

On October 24, 1992, the Energy Policy Act became effective and amended the FPA in several respects that affect the exemptions in and exceptions to § 292.601. In relevant respects, the Energy Policy Act amended section 3 of the FPA to include in section 3(23), 16 U.S.C. 796(23), a definition of a "transmitting utility." The Energy Policy Act revised section 211 of the FPA, 16 U.S.C. 824j, concerning the conditions under which certain applicants may request that the Commission direct a "transmitting utility" to provide transmission services. The Energy Policy Act extensively revised section 212, 16 U.S.C. 824k, concerning the rates, charges, terms and conditions for transmission services provided under section 211. The Energy Policy Act added section 213, 16 U.S.C. 824l, concerning information reporting requirements with respect to wholesale transmission services. The Energy Policy Act added section 214, 16 U.S.C. 824m, concerning sales by exempt wholesale generators. Finally, the Energy Policy Act added section 316A, 16 U.S.C. 825o-1, concerning enforcement penalties for violations of any of the provisions of sections 211 through 214 of the FPA.

Each of these statutory amendments directly or indirectly affects the application of the Commission's rules and regulations concerning the scope of FPA exemptions for QFs.

A. Section 3 of the FPA—Transmitting Utility

The definition of a "transmitting utility" has been added to section 3(23) of the FPA. It reads as follows: The term "transmitting utility" means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.

This definition allows eligible applicants under amended section 211 of the FPA (discussed *infra*) to request wholesale transmission service under

[1] The exception is for a qualifying small power production facility with a power production capacity which exceeds 30 megawatts, if such facility uses any primary energy source other than geothermal resources. 18 CFR 292.601(b).

However, the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, Pub. L. No. 101-575, 104 Stat. 2834 (1990), removes all size limitations on solar, wind, waste, and geothermal small power production facilities between 30 and 80 megawatts in size. *See, e.g.*, Cambria Cogen Company, 53 FERC ¶ 61,459 (1990).

the conditions enumerated in section 211 from QFs that fall within the definition of transmitting utility, *i.e.* which own or operate transmission facilities used for wholesale sales.

The Commission has explained in several orders that a QF under PURPA may own and operate a transmission line and related facilities that are necessary to the operation of and integral to the facility.[2] Indeed, the Commission has explained that more than one QF can own undivided interests in the same transmission line, if used solely to transmit power from the QF owners of the facilities to the purchasing utility.[3] In these circumstances, the transmission facilities that are necessary to allow a QF to reach a utility-purchaser may also subject the QF to applications for wholesale transmission services under section 211 of the FPA.

A recent order of the Commission is particularly instructive in this regard. In *Oxbow Geothermal Corporation* (*Oxbow*), 67 FERC ¶ 61,193 (1994), the Commission found that a QF that owns and operates a 214-mile transmission line and related facilities is a "transmitting utility" within the meaning of section 3(23) of the FPA. The Commission also found, in response to a request for a disclaimer of FPA jurisdiction, that the QF operator is exempt from regulation under most of the sections of the FPA (as enumerated in § 292.601) because the transmission line and related facilities are part of a QF. The Commission concluded that the QF does not lose any of its FPA exemptions, and does not become a "public utility" within the meaning of section 201(e) of the FPA, 16 U.S.C. 824(e), by virtue of its lease to another QF of an undivided interest in the transmission line and related facilities. (The Commission did, however, reserve judgment on whether the lessee interest of the other QF in the interconnection facilities was sufficient to bring it within the definition of a "transmitting utility.")

Accordingly, it must be clarified that QFs that own or operate transmission facilities *can* fall within the definition of a transmitting utility as defined in FPA section 3(23) and become subject to FPA regulation as specified above.

[2] *See* Clarion Power Company, 39 FERC ¶ 61,317 (1987); Oxbow Geothermal Corporation, 36 FERC ¶ 62,151 (1986).

[3] *See* Oxbow Geothermal Corporation, 67 FERC ¶ 61,193 (1994); Gamma Mariah, Inc., 44 FERC ¶ 61,442 (1988).

B. Section 211—Transmission Access to Entities Generating Electric Energy for Resale

Section 211 of the FPA has been amended by the Energy Policy Act to allow any electric utility, federal power marketing agency, or any other person generating electric energy for sale for resale to apply to the Commission for an order requiring a transmitting utility to provide transmission service to the applicant. The Commission may, but is not required to, issue such an order if it finds that the order is in the public interest, would not impair the continued reliability of electric systems affected by the order, would not result in the displacement of electric energy required to be provided under contract, and meets all of the requirements of section 212 (discussed below). Further, the applicant must have requested transmission service from the transmitting utility at least 60 days prior to filing its application.

As explained above, a QF may be a "transmitting utility" and, accordingly, may be the recipient of a request for wholesale transmission service under section 211. Alternatively, a QF, as a result of the Energy Policy Act, now can apply to the Commission for transmission services under revised section 211 to the extent it engages in wholesale sales.

Although revised section 211 contains a broad and expanded class of entities whom the Commission can order to provide transmission services, it does not otherwise expand the Commission's FPA jurisdiction over those entities. The Commission may order transmitting utilities to provide transmission services under section 211 and must set the rates for such services in accordance with the procedures and conditions enumerated in section 212. However, the Commission continues not to have jurisdiction over voluntary transmission services by transmitting utilities that are not FPA public utilities, as well as over sales of electricity by such entities or corporate regulation of them.

To date, the Commission has not been presented with a section 211 application requesting transmission services by or on behalf of a QF.

C. Section 212—Rates, Charges, Terms, and Conditions for Wholesale Transmission Services

Section 212 of the FPA, as revised by the Energy Policy Act, governs the rates, charges, terms, and conditions for wholesale transmission services ordered under section 211 (discussed above). Section 212 also governs the procedures the Commission must follow before issuing orders under section 211 or section 210 (involving interconnections). Because, as explained above, QFs can fall within the definition of a transmitting utility, and may be the subject of a Commission order under section 211 of the FPA, QFs cannot be considered exempt from the provisions of section 212.

D. Section 213—Information Requirements With Respect to Wholesale Transmission Services

Section 213, as added by the Energy Policy Act, is an entirely new section. Section 213(a) requires that if a transmitting utility does not agree to provide transmission services in accordance with the specific rates, terms and conditions of a good faith request by the applicant, the transmitting utility must, within 60 days or other mutually-agreed upon period, give the applicant a written explanation, including the basis for the transmitting utility's proposed rates, terms, and conditions and its analysis of any physical or other constraint.[4] Section 213(b) requires that the Commission issue within one year of enactment a rule requiring transmitting utilities to submit annual information concerning potentially available transmission capacity and known constraints.[5]

Section 213, like sections 211 and 212, refers specifically to transmitting utilities. As explained above, QFs may be transmitting utilities, and thus may be subject to the provisions of section 213. Accordingly, QFs cannot be exempt from the provisions of this FPA section.

E. Section 214—Sales by Exempt Wholesale Generators

Section 214, as added by the Energy Policy Act, applies to sales by exempt zwholesale generators (EWGs), as determined pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended. Section 214 provides that rates and charges received by an EWG for the sale of electric energy are not lawful if they are the result of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the EWG.

[4] *See* Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992, III FERC Stats. & Regs. ¶ 30,975 (1993).

[5] *See* Order No. 558, New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and 6Conforming and Other Changes to Form No. FERC–714, III FERC Stats. & Regs. ¶ 30,980, *order on reh'g*, Order No. 558–A, 65 FERC ¶ 61,324 (1993).

In *Richmond Power Enterprise, L.P., et al.*, 62 FERC ¶ 61,157 (1993), the Commission explained that an EWG may own a QF, and that a generating facility simultaneously may be both an eligible facility (within the meaning of section 32 of PUHCA) and a QF (under PURPA). Because of the possibility of such dual status, a QF might become subject to the provisions of section 214. Accordingly, QFs cannot be exempt from the provisions of this FPA section.

F. Section 316A—Enforcement of Certain FPA Provisions

Finally, section 316A, as added by the Energy Policy Act, provides for civil penalties in the event that any person violates any provision of sections 211 through 214 of the FPA, or violates any rule or order issued under any of these FPA sections. Because, as explained above, QFs are subject to the provisions of these sections, QFs cannot be exempt from the provisions of section 316A of the FPA.

III. Conclusion

As explained above, QFs that fall within the definition of transmitting utility are subject to the provisions of sections 3(23), 211, 212, 213, 214, and 316A of the FPA, as amended or added by the Energy Policy Act. Accordingly, it is necessary to clarify that QFs are not exempt from these FPA sections, and to make necessary amendments to § 292.601 of the Commission's regulations, to the extent QFs undertake any actions that fall within the scope of these sections. The Commission is not assuming additional FPA jurisdiction over the activities of QFs to the extent they operate outside the scope of these sections.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[6] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. As explained above, this rule is clarifying in nature. It interprets several amendments made to the FPA by the Energy Policy Act, and clarifies the applicability of these FPA amendments to QFs. Accordingly, no environmental consideration is necessary.[7]

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[8] requires rulemakings either to contain a description and analysis of the impact the rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. Many, if not most, QFs to which this rule would apply do not fall within the definition of small entities.[9] Further, this rule does not establish any new reporting requirements and merely clarifies the applicability of certain sections of the FPA, as amended or added by the Energy Policy Act, to QFs. Consequently, the Commission certifies that this rule will not have "a significant economic impact on a substantial number of small entities." Accordingly, no regulatory flexibility analysis is required.

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[10] require that OMB approve certain information collection requirements imposed by the agency's rule. However, this rule neither contains new information collection requirements nor modifies any existing information collection requirements in the Commission's regulations. Therefore, this final rule is not subject to OMB approval.

VII. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[11] requires rulemakings to be published in the **Federal Register**. The APA also mandates that an opportunity for comment be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[12] The Commission finds that notice and comment are unnecessary for this rulemaking. As explained above, the Commission merely is clarifying the scope of certain sections of the FPA added or amended by the Energy Policy Act to QFs and, where necessary, amending section 292.601 of the Commission's regulations to reflect this clarification.

This rule is effective September 8, 1994.

List of Subjects in 18 CFR Part 292

Electric power plants, Electric Utilities.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 292, subpart F of chapter I, title 18 of the Code of Federal Regulations as set forth below.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

1. The authority citation for Part 292 continues to read as follows:

Authority: 16 U.S.C. 791a–824r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 292.601(c) is revised to read as follows:

§ 292.601 Exemption to quality facilities from the Federal Power Act.

* * * * *

(c) *General Rule.* Any qualifying facility described in paragraph (a) of this section shall be exempt from all sections of the Federal Power Act, except:

(1) Section 1–18, and 21–30;

(2) Sections 202(c), 210, 211, 212, 213, and 214;

(3) Sections 305(c); and

(4) Any necessary enforcement provision of Part III with regard to the sections listed in paragraphs (c)(1), (2) and (3) of this section.

[FR Doc. 94–19247 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89–02; Notice 6]

RIN 2127–AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation.

ACTION: Interim final rule; request for comments.

[6] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1987) (*codified at* 18 CFR Part 380).

[7] *See* 18 CFR § 380.4(a)(2)(ii).

[8] 5 U.S.C. §§ 601–612.

[9] *See* 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation.

[10] 5 CFR 1320.

[11] 5 U.S.C. §§ 551–559.

[12] 5 U.S.C. 553b(B).

SUMMARY: This notice amends Part 1313 with respect to the criterion for a supplemental grant for States that deem persons under age 21 who operate a motor vehicle with a BAC of 0.02 or greater to be driving while intoxicated. The amendment reflects the agency's experience reviewing State laws under this grant criterion during fiscal years 1992–1994 and will provide States with additional flexibility in their ability to qualify for funds under this supplemental grant.

The agency is issuing the amendment as an interim final rule to provide guidance to the States before the end of fiscal year 1994. NHTSA requests comments on the rule. The agency will publish a notice responding to the comments received and, if appropriate, will amend provisions of the regulation.

DATES: This interim final rule becomes effective August 9, 1994. Comments on this interim rule are due no later than October 11, 1994.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ms. Marlene Markison, Chief, Program Support Staff, NRO–10, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590; telephone (202) 366–0166 or Mr. James Hedlund, Director, Office of Alcohol and State Programs, NTS–20, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–2753.

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988, Pub. L. 100–690, was signed into law on November 18, 1988. Subtitle A of Title IX of the Act, entitled the Drunk Driving Prevention Act of 1988, amended chapter 4 of title 23, United States Code, by adding section 410, which established an incentive grant program under which States could qualify for basic and supplemental grant funds for adopting and implementing comprehensive drunk driving prevention programs which met certain specified statutory criteria.

On January 12, 1990, NHTSA published a final rule in the **Federal Register** (55 FR 1185) to implement this new incentive grant program, 23 CFR Part 1313. When the regulation had been in place for nearly a year, and no State had submitted an application to NHTSA for funding, Congress made technical corrections to the statutory requirements contained in section 410. These technical corrections, contained in section 336 of Public Law 101–516, were signed into law on November 5, 1990. Corresponding changes were made to Part 1313 by final rule published in the **Federal Register** on May 1, 1991 (56 FR 19930). The agency approved two State applications for section 410 funding under this final rule.

Section 2004 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), signed into law on December 18, 1991, further revised section 410. These revisions, among other things, provided for additional basic and supplemental grant criteria and changed the formula used to determine the amount of section 410 incentive grants. An interim final rule (57 FR 29002) was published in the **Federal Register** on June 30, 1992, to change Part 1313 to conform to these amendments, and to request public comments.

On October 6, 1992, the Department of Transportation and Related Agencies Appropriations Act for 1993 (P.L. 102–388) was signed into law. It contained additional technical corrections to section 410. On April 23, 1993, a final rule (58 FR 21649) was published responding to the comments submitting to the June 1992 interim final rule and the October 1992 technical corrections.

During FY 1992, the agency received section 410 grant applications from 18 States; 17 were approved. During FY 1993, the agency received section 410 grant applications from 24 States; all of these applications were approved. NHTSA continues to receive and approve State applications in FY 1994.

Section 410 Criteria

To qualify for funding under section 410, a State must qualify first for a basic grant by meeting five or more out of six basic criteria. The criteria include: an expedited driver's license suspension or revocation system; a per se law (at 0.10 BAC in the first three fiscal years in which the State receives a grant and 0.08 BAC in subsequent years); a statewide program for stopping motor vehicles; a self-sustaining drunk driving prevention program; a minimum drinking age prevention program; and mandatory sentencing requirements.[1]

If the State qualifies for a basic grant, it may also seek to qualify for funds under one or more of seven supplemental grants. The supplemental grants include: per se law for persons under age 21; program making unlawful open containers and consumption of alcohol in motor vehicles; suspension of registration and return of license plate program; mandatory alcohol concentration testing program; drugged driving prevention; per se level of 0.08 (in the first three fiscal years in which the State receives a grant); and video equipment program.

Per se Law for Persons Under Age 21 Supplemental Grant

To qualify for the "per se law for persons under age 21" supplemental grant, Section 410 requires that the State must be "eligible for a basic grant in the fiscal year and [provide] that any person under age 21 with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated."

In its interim final rule, dated June 30, 1992, NHTSA explained:

> In other words, States must establish a 0.02 per se law for persons under the age of 21, that makes driving with a BAC of 0.02 percent or above itself an offense for such persons. (57 F.R. 29007)

The agency discussed specifically, in the interim final rule, that it would treat the 0.02 per se criterion under section 410 differently than it had treated the 0.10 per se criterion under its section 408 program. It explained that, under section 408, States were required to establish 0.10 as the per se level for purposes of both criminal and licensing sanctions. NHTSA clarified that it did not expect States, under section 410, to apply criminal sanctions to these underage drivers at the 0.02 level. To qualify under this supplemental grant, NHTSA stated that it was sufficient for States to apply licensing sanctions to these offenders:

> Under section 408, to be eligible for a basic grant, States are required to establish 0.10 as the illegal per se level for the purpose of both administrative and criminal sanctions. The section 410 criteria for a basic grant, described elsewhere in today's final rule, continue to call for States to adopt per se levels at 0.10 and 0.08 for administrative and criminal sanctions. However, the agency believes it is unwarranted to require that States apply criminal sanctions to youth found to be driving with an alcohol concentration level of 0.02. NHTSA believes that licensing sanctions are sufficiently effective for these offenses. (57 FR 29008)

Accordingly, the regulation provided that, to qualify for this supplemental

[1] To receive a basic grant, States that qualified for section 410 funding in FY 1992 need only demonstrate compliance with four out of the five criteria in effect at that time, namely all the basic criteria listed above except for mandatory sentencing.

grant, a State must "provide that any person under age 21 with an alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated for the purpose of administrative sanctions."

To demonstrate compliance with the criterion, the regulation provides that a State must "submit a copy of its law adopting this requirement."

NHTSA has received a number of applications for funding and requests for interpretation under this provision of the regulation. Based on the language in this provision, we determined that, to qualify for a "per se law for persons under age 21" supplemental grant, a State's law must provide that 0.02 BAC underage offenders must be treated the same as other (0.10) DUI offenders would be treated under the State's administrative license revocation (ALR) law. However, a number of the States that have applied for this supplemental grant either did not have an ALR law at all or did not have an ALR law that qualifies under section 410. NHTSA determined that these States need not provide for identical sanctions, but their laws must require a minimum 30-day license suspension as an administrative sanction for 0.02 underage offenders, and the suspension must be mandatory.

Changes to the Regulation

Some States have objected to the application of this portion of Part 1313, and the agency has become concerned that the regulation, as currently written, creates some inequity and unnecessary inflexibility.

For example, under the regulation, a State with an ALR law that qualifies under section 410 would not be eligible to receive a supplemental grant for a law that establishes a 60-day driver's license sanction for persons under age 21 who operate a motor vehicle with a BAC of 0.02. (The State would not be eligible because, to qualify for section 410, its ALR law would be required to establish a 90-day suspension for first offenders one a one-year suspension for subsequent offenders. By applying a 60-day suspension to underage offenders at 0.02, the State would not be treating these offenders as other (0.10 or, in some cases, 0.08) DUI offenders.)

However, a State without an ALR law, or a State with an ALR that does not qualify under section 410 would be eligible to receive a supplemental grant for a law that establishes a 60-day driver's license sanction for persons under age 21 who operate a motor vehicle with a BAC of 0.02. (The State would be eligible because the State need only provide for a mandatory 30-day suspension.)

To rectify this inequity, this interim final rule amends Part 1313 to provide that any State (whether it has an ALR law that conforms to section 410 or not) need only provide for a 30-day suspension or revocation for persons under the age of 21 who operate a motor vehicle with a BAC of 0.02 or greater. The 30-day suspension or revocation period must be a mandatory, hard suspension or revocation (i.e., it may not be subject to hardship, conditional or provisional driving privileges).

To demonstrate compliance, the regulation currently provides that a State must submit a copy of its law. Other section 410 criteria, such as expedited license suspension and mandatory sentencing requirements provide States with additional flexibility by permitting them to demonstrate compliance as either "Law" or "Data" States.

NHTSA has decided to afford this flexibility to States under this criterion as well. Accordingly, this interim final rule amends the regulation to provide that States may demonstrate compliance with the "per se law for persons under age 21" supplemental grant as either "Law" or "Data" States.

Under the amended regulation, a "Law State" is a State that has laws, regulations, or binding policy directives which, on their face, meet each element of the criterion. A "Data State" is a State that has laws, regulations, or binding policy directives which, on their face, meet each element, except that they need not specifically provide for a 30-day hard suspension.

To demonstrate compliance, under the regulation as amended, a "Law State" must submit only the law, regulation or binding policy directive itself governing its 0.02 per se law for persons under age 21. It need not submit data. To demonstrate compliance, a "Data State" must submit its law, regulation, or binding policy directive governing its 0.02 per se law for persons under age 21. It must also submit data demonstrating that the average length of hard suspensions for offenders under the State's per se law for persons under age 21 meets or exceeds 30 days.

In the course of reviewing State applications and requests for interpretations, NHTSA has been asked to consider whether it would accept 0.02 "per se" laws which require conviction prior to imposing a license suspension or revocation, or laws which provide that the 0.02 BAC offense may be enforced only as a secondary violation, when the driver of a motor vehicle has been cited for a violation of some other offense.

To qualify under this supplemental criterion, the regulation as amended requires that a State provide for the temporary debarring of all driving privileges for a term of not less than 30 days. It does not require that the debarring of driving privileges occur through "administrative sanctions." Accordingly, the agency will accept State laws that require a conviction prior to suspension or revocation. It will also accept State laws that provide for an administrative suspension or revocation. The agency will not accept, however, secondary enforcement laws. A secondary enforcement provision in a 0.02 "per se" law will render a State ineligible under this supplemental criterion as either a "Law" or a "Data State."

Interim Final Rule

This notice is published as an interim final rule, without prior notice and opportunity to comment. Because this regulation relates to a grant program, the requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553, are not applicable. Moreover, even if the notice and comment provisions of the APA did apply, the agency believes there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary and contrary to the public interest, since it would prevent States from qualifying for grant funds in fiscal year 1994.

This finding is based also on the agency's view that the amendments made in this interim final rule rectify an inequity in the current regulation, provide additional flexibility for the States and are consistent with other provisions in the section 410 implementing regulation, which was promulgated subject to notice and a full opportunity for the public to comment. Accordingly, there would be little benefit gained by following the notice and comment procedures with regard to the revisions made by today's interim final rule.

As an interim final rule, this regulation is fully in effect and binding after its effective date. No further regulatory action by NHTSA is necessary to make the rule effective. However, in order to benefit from comments which interested parties and the public may have, the agency is requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice, in accordance with the procedures outlined below, will be considered by the agency. Following the

close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (49 CFR § 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by October 11, 1994. All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 89–02; Notice 6 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

This interim final rule does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to adopt and implement comprehensive drunk driving prevention program, by offering incentive grant funds. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

State participation in the section 410 program is voluntary. Accordingly, a full regulatory evaluation is not necessary. Moreover, this rule makes only minor amendments to the existing section 410 implementing regulation to provide additional flexibility to States.

When the agency originally promulgated a regulation to implement the section 410 program on January 12, 1990 (55 FR 1185), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures. A regulatory evaluation was prepared at that time and placed in the public docket (Docket No. 89–02; Notice 2). Persons interested in reviewing this document should request it by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590, or by calling the Docket Section at (202) 366–4949.

Regulatory Flexibility Act

Since this matter relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Because the agency is not required to publish a notice of proposed rulemaking regarding this rule, the agency is not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agency has nonetheless evaluated the effects of this interim final rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The requirements relating to the regulation that this rule is amending that States retain and report to the Federal government information which demonstrates compliance with drunk driving prevention incentive grant criteria, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved through 11/30/95; OMB No. 2127–0501.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act, and has determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it will have no federalism implication that warrants the preparation of a federalism assessment. The section 410 grant program is entirely optional for the States. Moreover, this action provides increased flexibility to the States.

Executive Order 12778 (Civil Justice Reform)

This amendment to the regulation does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to establish drunk driving prevention programs by providing incentive grant funds. Participation in this program is entirely optional. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

List of Subjects in 23 CFR Part 1313

Alcohol and alcoholic beverages, Drugs, Grant programs, Transportation, Highway safety.

In consideration of the foregoing, NHTSA amends 23 CFR Part 1313 as set forth below.

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

1. The authority citation for Part 1313 continues to read as follows:

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

2. Section 1313.6(a) is revised to read as follows:

§ 1313.6 Requirements for supplemental grants.

(a) Per se law for persons under age 21. (1) To qualify for a supplemental grant of 5 percent of the State's 23 U.S.C. 402 apportionment for FY 1992, a State must have in place and implement or adopt and implement a drunk driving prevention program which meets the requirements of § 1313.5, and provide that any person under age 21 with an alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated and shall be subject to the temporary debarring of all driving privileges for a term of not less than 30 days.

(2)(i) To demonstrate compliance in the first and in subsequent years the State receives a supplemental grant under this paragraph, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the per se law for persons under age 21 criterion.

(ii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the per se law for persons under age 21 criterion.

(3)(i) To demonstrate compliance in the first and in subsequent years the State receives a supplemental grant under this paragraph, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the per se law for persons under age 21 criterion and data showing that the average length of the suspension term for offenders under this law meets or exceeds 30 days.

(ii) The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(iii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the per se law for persons under age 21 supplemental criterion, except that it does not specifically provide for the temporary debarring of all driving privileges for a term of not less than 30 days.

* * * * *

Issued on: August 4, 1994.

Christopher A. Hart,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 94–19430 Filed 8–4–94; 4:14 pm]

BILLING CODE 4910–59–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket 92–191; FCC 94–154]

Upgrading the Mobile-Satellite Service Allocation at 19.7–20.2 GHz and 29.5–30.0 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission upgraded the secondary allocation for Mobile-Satellite Service (MSS) at 19.7–20.2 GHz and 29.5–30.0 GHz (20/30 GHz) to a primary allocation. This action will also conform the U.S. Table of Frequency Allocations in these bands with the results of the World Administrative Radio Conference, Malaga-Torremolinos, 1992 (WARC–92). The objective of this action is to stimulate development of the 20/30 GHz bands by enabling satellite operators to offer, from a single satellite, a variety of communications services from one frequency band.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, Frequency Allocations Branch, (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in ET Docket 92–191, FCC 94–154, adopted June 13, 1994, and released July 13, 1994.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Public Reference Room (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Report and Order

The Commission amended the Table of Frequency Allocations to upgrade the secondary MSS allocation at 20/30 GHz to primary status shared with the Fixed-Satellite Service and adopted related amendments to implement decisions made by WARC–92. The Commission believes that this reallocation will serve satellite communications needs and maximize efficient use of this spectrum by allowing satellites to perform functions in both the Fixed and Mobile Satellite Services.

Final Regulatory Flexibility Analysis.

The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of the Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

a. The entry for 19.7–20.2 GHz is removed and new entries for 19.7–20.1 GHz and 20.1–20.2 GHz are added in numerical order.

b. The entry for 29.5–30.0 GHz is removed and new entries for 29.5–29.9 GHz and 29.9–30.0 GHz are added in numerical order.

c. INTERNATIONAL FOOTNOTES Nos. 873 and 883 are revised, and Nos.

873A, 873B, 873C, 873D, 873E, 882A, 882B, 882C, and 882D are added.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation GHz	Region 2—allocation GHz	Region 3—allocation GHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation GHz	Allocation GHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
19.7–20.1 FIXED-SATELLITE (space-to-Earth). Mobile-Satellite (space-to-Earth). 873	19.7–20.1 FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873 873A 873B 873C 873D 873E	19.7–20.1 FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873	19.7–20.1	19.7–20.1 FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873A 873B 873C 873D 873E		
20.1–20.2 FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873 873A 873B 873C 873D	20.1–20.2 FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873 873A 873B 873C 873D	20.1–20.2 FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873 873A 873B 873C 873D	20.1–20.2	FIXED-SATELLITE (space-to-Earth). MOBILE-SATELLITE (space-to-Earth). 873A 873B 873C 873D		
*	*	*	*	*	*	*
29.5–29.9 FIXED-SATELLITE (Earth-to-space) 882D MOBILE-SATELLITE (Earth-to-space). Earth Exploration-Satellite (Earth-to-space) 882C 882B 883	29.5–29.9 FIXED-SATELLITE (Earth-to-space) 882D MOBILE-SATELLITE (Earth-to-space). Earth Exploration-Satellite (Earth-to-space) 882C 873A 873B 873C 873E 882B 883	29.5–29.9 FIXED-SATELLITE (Earth-to-space) 882D MOBILE-SATELLITE (Earth-to-space). Earth Exploration-Satellite (Earth-to-space) 882C 882B 883	29.5–29.9	29.5–29.9 FIXED-SATELLITE (Earth-to-space). MOBILE-SATELLITE (Earth-to-space). 873A 873B 873C 873E		
29.9–30.0 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Earth Exploration-Satellite (Earth-to-space) 882C 873A 873B 873C 882 882A 882B 883	29.9–3.0 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Earth Exploration-Satellite (Earth-to-space) 882C 873A 873B 873C 882 882A 882B 883	29.9–30.0 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Earth Exploration-Satellite (Earth-to-space) 882C 873A 873B 873C 882 882A 882B 883	29.9–30.0	29.9–30.0 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) 873A 873B 873C 882		
*	*	*	*	*	*	*

International Footnotes

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873 Additional allocation: in Afghanistan, Algeria, Angola, Saudi Arabia, Bahrain, Bangladesh, Brazil, Brunei Darussalam, Cameroon, China, the Congo, the Republic of Korea, Costa Rica, Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Niger, Nigeria, Oman, Pakistan, the Philippines, Qatar, Syria, Singapore, Somalia, Sudan, Sri Lanka, Tanzania, Chad, Thailand, Togo, Tunisia, and Zaire, the band 19.7–21.2 GHz is also allocated to the fixed and mobile services on a primary basis. This additional use shall not impose any limitation on the power flux-density of space stations in the fixed-satellite service in the band 19.7–21.2 GHz and of space stations in the mobile-satellite service in the band 19.7–20.2 GHz where such allocation to the mobile-satellite service is on a primary basis in the latter band.

873A In order to facilitate interregional coordination between networks in the mobile-satellite and fixed-satellite services, carriers in the mobile-satellite service that are most susceptible to interference shall, to the extent practicable, be located in the higher parts of the bands 19.7–20.2 GHz and 29.5–30 GHz.

873B In the bands 19.7–20.2 GHz and 29.5–30 GHz in Region 2, and in the bands 20.1–20.2 GHz and 29.9–30 GHz in Regions 1 and 3, networks which are both in the fixed-satellite service and in the mobile-satellite service may include links between earth stations at specified or unspecified points or while in motion, through one or more satellites for point-to-point and point-to-multipoint communications.

873C In the bands 19.7–20.2 GHz and 29.5–30 GHz, the provisions of No. 953 do not apply with respect to the mobile-satellite service.

873D The allocation to the mobile-satellite service is intended for use by networks which use narrow spot-beam antennas and other advanced technology at the space stations. Administrations operating systems in the mobile-satellite service in the band 19.7–20.1 GHz in Region 2 and in the band 20.1–20.2 GHz shall take all practicable steps to ensure the continued availability of these bands for administrations operating fixed and mobile systems in accordance with the provisions of No. 873.

873E The use of the bands 19.7–20.1 GHz and 29.5–29.9 GHz by the mobile-satellite service in Region 2 is limited to satellite networks which are both in the fixed-satellite service and in the mobile-satellite service as described in No. 873B.

* * * * *

882A Additional allocation: the bands 27.500–27.501 GHz and 29.999–30.000 GHz are also allocated to the fixed-satellite service (space-to-Earth) on a primary basis for the beacon transmissions intended for up link power control.

Such space-to-Earth transmissions shall not exceed an equivalent isotropically radiated power (e.i.r.p.) of +10 dBW in the direction of adjacent satellites on the geostationary-satellite orbit. In the band 27.500–27.501 GHz, such space-to-Earth transmissions shall not produce a power flux-density in excess of the values specified in No. 2578 on the Earth's surface.

882B Additional allocation: the band 27.501–29.999 GHz is also allocated to the fixed-satellite service (space-to-Earth) on a secondary basis for beacon transmissions intended for up link power control.

882C In the band 28.5–30 GHz, the earth exploration-satellite service is limited to the transfer of data between stations and not to the primary collection of information by means of active or passive sensors.

882D The band 27.5–30 GHz may be used by the fixed-satellite service (Earth-to-space) for the provision of feeder links for the broadcasting-satellite service.

883 Additional allocation: in Afghanistan, Algeria, Saudi Arabia, Bahrain, Bangladesh, Brunei Darussalam, Cameroon, China, the Congo, the Republic of Korea, Egypt, the United Arab Emirates, Ethiopia, Guinea, India, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kenya, Kuwait, Lebanon, Malaysia, Mali, Morocco, Mauritania, Nepal, Niger, Pakistan, Qatar, Syria, Singapore, Somalia, Sudan, Sri Lanka, Chad, and Thailand, the band 29.5–31 GHz is also allocated to the fixed and mobile services on a secondary basis. The power limits specified in Nos. 2505 and 2508 shall apply.

* * * * *

[FR Doc. 94–19305 Filed 8–8–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 152
Tuesday, August 9, 1994

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 945

[Docket No. FV94–945–2PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Irish Potatoes; Modification of Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the minimum size requirements for all varieties of potatoes, except round reds, grown in certain designated counties in Idaho, and Malheur County, Oregon, and for imported long type potatoes. Currently, the minimum size requirement for all varieties, except round reds, is 2 inches in diameter, or 4 ounces in weight. This rule would specify that, in addition, at least 40 percent of the potatoes in each lot, by weight, must be 5 ounces or heavier. Requiring handlers to ship heavier potatoes could correct a marketing problem by providing the heavier potatoes demanded by the market and increase returns to producers and handlers. As provided under the Agricultural Marketing Agreement Act of 1937, the proposed changes would also apply to imported potatoes.

DATES: Comments must be received by August 24, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456 or by Fax at (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724 or Fax (503) 326–7440; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 205–2829 or Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 945 [7 CFR part 945], as amended, hereinafter referred to as the "order," regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. 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 proposed rule, which would also affect the import requirements for long type Irish potatoes, is also issued pursuant to section 8e of the Act. The provisions of section 8e and the potato import regulation are discussed later in this proposed rule.

The U.S. Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 60 handlers of Idaho-Eastern Oregon potatoes that are subject to regulation under the order, and approximately 2,000 producers in the production area. In addition, at least 75 importers of Irish potatoes are subject to import regulations and would be affected by this rule. Small agricultural service firms, which include handlers of Idaho-Eastern Oregon potatoes, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers and producers may be classified as small entities. The majority of the importers of potatoes may also be classified as small entities.

This action would amend paragraph (a)(2)(ii) of § 945.341 Handling regulation of the order's rules and regulations. The proposal is based on a unanimous recommendation made by the Idaho-Eastern Oregon Potato

Committee (committee), the agency responsible for local administration of the order, at its June 7, 1994, public meeting. The committee's recommended revision is authorized pursuant to §§ 945.51 and 945.52 of the order.

Quality assurance is very important to the Idaho-Eastern Oregon potato industry. Providing the public with acceptable quality produce which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. The committee reports that potato size is important to buyers.

For several decades, the minimum size requirement for all varieties of Idaho-Oregon potatoes, except round reds, has been 2 inches in diameter, or 4 ounces in weight. However, the committee reports that the industry has been losing its share of the potato market, because the market in recent years has been demanding potatoes larger than this minimum size. Consumers now expect some baker size potatoes in the packages they buy. In spite of an industry campaign to encourage handlers to voluntarily ship larger potatoes, a number of handlers have continued to ship potatoes that barely meet the minimum size requirement, depressing the price for other potatoes. These potatoes are generally shipped in consumer packs (e.g., 5- or 10-pound bags) or in 100-pound sacks for later repackaging into consumer packs.

These shipments have resulted in disappointment by buyers and consumers in recent years, hurting the quality image of Idaho-Eastern Oregon potatoes, reducing repeat purchases and overall sales volume, and resulting in declines in prices, which has hurt the overall sales volume.

To better meet market demand regarding the size of potatoes, the committee recommended an additional requirement that at least 40 percent of the potatoes in each lot must weigh at least 5 ounces. It is anticipated that requiring handlers to ship such heavier potatoes would enable the industry to regain its lost share of the market and increase returns to producers and handlers.

Section 8e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements, subject to concurrence by the U.S. Trade Representative. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports, then must meet the quality standards set for the particular area.

In the case of potatoes, the current import regulation [7 CFR 980.1] specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. While no changes are required in the language of § 980.1, imports of long type potatoes would have to meet the increased minimum weight requirements proposed herein.

Section 945.341(i) *Applicability to imports* is proposed to be removed from the handling regulations. That paragraph states the same information that is contained in § 980.1 of the import regulations. Since the same information applicable to imported potatoes is contained in the import regulations, paragraph (i) in the domestic handling regulations should be deleted to eliminate duplication or confusion.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter. The committee unanimously recommended that this rule become effective by September 1, 1994, to ensure that implementation be in place early in the 1994–95 shipping season. Implementation of this rule by this date will provide ample opportunity for handlers and the industry to make marketing and promotional plans for the upcoming season.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is proposed to be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.341 is amended by revising paragraph (a)(2)(ii) to read as follows and removing paragraph (i):

§ 945.341 Handling regulation.

* * * * *

(a) * * *

(2) * * *

(ii) *All other varieties.* 2 inches minimum diameter, or 4 ounces minimum weight: *Provided,* That at least 40 percent of the potatoes in each lot shall be 5 ounces or heavier.

* * * * *

Dated: August 2, 1994.

Terry C. Long,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 94–19385 Filed 8–8–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1942

Rural Development Administration

7 CFR Part 4284

RIN: 0570–AA08

Rural Business Enterprise Grants and Television Demonstration Grants

AGENCIES: Rural Development Administration and Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Development Administration (RDA) proposes to amend a Farmers Home Administration (FmHA) regulation previously utilized by RDA in administering the Rural Business Enterprise Grants and Television Demonstration Grants program, which is presently contained within 7 CFR Part 1942, Subpart G. This action is necessary to amend the regulation in order to implement Title V, Section 516 (d) of Public Law 102–552, Section 6 of Public Law 102–554, and RDA Instruction 4284–B. The intended effects of this action are to allow grants to be made for the purposes set forth within the two Public Laws and to expand the number of businesses qualifying for assistance. This proposed action will affect other regulations by changing references from FmHA Instruction 1942–G to RDA Instruction

4284–B. All such revisions will be appropriately indicated within the final rule publication.

DATES: Written comments must be received on or before September 8, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Howard Franklin, Loan Specialist, Community Facilities Division, Rural Development Administration, Room 6320, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1503.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant/economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." RDA has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2 (a) and 2 (b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR Part 1900, Subpart B, must be exhausted prior to filing suit.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Intergovernmental Review

This action affects the following RDA program as listed in the Catalog of Federal Domestic Assistance under 10.769 Rural Business Enterprise and Television Demonstration Grants and is subject to the provisions of E.O. 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V; 48 FR 29112, June 24, 1983, 49 FR 2267, May 31, 1984, 50 FR 14088, April 10, 1985.)

Paperwork Reduction Act: The information collection or recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget under section 3504 (h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 40 hours per response with an average of 1.86 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RDA, AG Box 0743, Washington, DC 20250.

Discussion

RDA proposes this action to implement Title V, Section 516 (d) of Public Law 102–552, Farm Credit Banks and Associations Safety and Soundness Act of 1992, which provides for grants to create, expand, and operate rural distance learning networks and rural learning programs that provide educational or job training instruction related to potential employment or job advancement for adult students. RDA recognizes that education and job training instruction are necessary to provide qualified employees for the development of small and emerging private businesses in rural areas. Therefore, RDA is proposing to require evidence of need from these existing or startup businesses for the educational or job training instruction for funding under this program. This proposed action will also implement Section 6 of Public Law 102–554, Agricultural Credit Improvement Act of 1992, which authorizes grants to qualified nonprofit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Assistance provided under this amendment may include on-site technical assistance to local/regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas, including the development of training assistance for local officials and agencies in rural areas. Similar grants have been awarded under the Rural Business Enterprise Grant (RBEG) program to qualified nonprofit organizations for assisting small and emerging private business enterprises. This action further proposes to change the definition of small and emerging private business enterprise in order that it will be consistent with specific program size standards established by the Small Business Administration. RDA recognizes that technical assistance and/or revolving fund projects have the potential to assist more small and emerging private business enterprises and proposes to amend its project selection criteria to give these projects additional priority points. The discretionary points portion of the project selection process is proposed to be changed to clarify that discretionary points may be provided when the applicant has not received a previous grant in accordance with this subpart, and the grant applied for is not more than $500,000. Additionally, the RDA Administrator would have authority to assign up to 100 discretionary points to projects requiring National Office reserve funds. Assignment of discretionary points by the RDA Administrator would be based on an appropriate geographic distribution of funds, criteria which would result in substantial employment improvement, mitigation of economic distress of a community via the creation of jobs, and/or the resolution of emergency situations. Relative to grants for operating revolving loan funds, the proposed action would clarify that the requirements for a Scope of Work would include the applicant's loan processing and servicing procedures when providing detail on its experience in operating a revolving loan fund. Other minor revisions and clarifications are appropriate to effect improved program understanding and administration. Finally, this action is necessary in order to implement RDA Instruction 4284–B.

List of Subjects

7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial parks, Rural areas.

7 CFR Part 4284

Business and industry, Grant programs—Housing and community development, Industrial parks, Rural areas.

Therefore, Chapters XVIII and XLII, Title 7, Code of Federal Regulations are amended as follows:

PART 1942—ASSOCIATIONS

1. Subpart G of Part 1942 is removed and reserved.

PART 4284—GRANTS

2. The authority citation for part 4284 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005, 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

3. Subpart B of Part 4284 is added to read as follows:

PART 4284—GRANTS

Subpart B—Rural Business Enterprise Grants and Television Demonstration Grants

Sec.

4284.101 Purpose.
4284.102 Policy.
4284.103 [Reserved]
4284.104 Definitions.
4284.105 Eligibility and priority.
4284.106 Purposes of grants.
4284.107 Limitations on use of grant funds.
4284.108 Regional Commission Grants.
4284.109 [Reserved]
4284.110 Other considerations.
4284.111 Application processing.
4284.112 [Reserved]
4284.113 Plan to provide financial assistance to third parties.
4284.114 Grants to provide financial assistance to third parties, television demonstration projects, rural learning programs and technical assistance projects.
4284.115 Docket preparation and Letter of Conditions.
4284.116 Grant approval, fund obligation, grant closing, and third-party financial assistance.
4284.117 Fund disbursement.
4284.118 Reporting.
4284.119 Audit requirements.
4284.120 Programmatic changes.
4284.121 Grant cancellation.
4284.122 Grant servicing.
4284.123 Subsequent grants.
4284.124 4284.197 [Reserved]
4284.198 Exception authority.
4284.199 Public availability of forms, regulations, and instructions.
4284.200 OMB control number.

Guides to Subpart G

Guide 1—Project Management Agreement Between the _____ Regional Commission and the Rural Development Administration, Department of Agriculture, pertaining to _____ County _____.

Guide 2—Resolution

Subpart B—Rural Business Enterprise Grants and Television Demonstration Grants

§ 4284.101 Purpose.

This subpart outlines Rural Development Administration (RDA) policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RDA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of Subpart D of Part 1900 of this title. Applicants for this assistance are required to identify any known relationship or association with an RDA employee.

§ 4284.102 Policy.

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) RDA officials will maintain liaison with officials of other Federal, State, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(c) RDA officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this subpart are also to be considered for use of Native Americans within the State regardless of whether State development strategies include Native American reservations within the State's boundaries. Native Americans residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of all RDA offices.

§ 4284.103 [Reserved]

§ 4284.104 Definitions.

Passenger transportation. A means or system of air, land, or water conveyance primarily benefiting rural residents.

Project. For Rural Business Enterprise Grants (RBEG), the result of the use of program funds, i.e., payment of startup operating costs, working capital, and fees for professional services; acquisition of land, easements, and rights-of-way; development of site, facilities, and infrastructure (including pollution control and abatement facilities); purchase, repair, or modernization of buildings, plants, machinery, and equipment; conditional refinancing; provision of technical assistance, job training/educational instruction; or providing financial assistance to third parties through a loan. For Television Demonstration Grants (TDG), television programming developed on issues of importance to farmers and rural residents.

Regional Commission Grants (RCG). Grants administered by RDA from funds made available by the Appalachian Regional Commission (ARC) or other Federal Regional Commissions designated under Title V of the Public Works and Economic Development Act of 1965.

Rural and rural area. Includes all territory of a State, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, or the Commonwealth of the Mariana Islands that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture, according to the latest decennial census of the United States.

Rural Business Enterprise Grants. Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from RDA funds under authority of the Consolidated Farm and Rural Development Act, as amended, Sec. 310B(c) (7 U.S.C. 1932).

Rural distance learning network. A telecommunications link between an eligible applicant in accordance with this subpart and the student/employee receiving educational or job training instruction which meets the definition of a rural learning program. The network connects teachers and/or adult students located in rural areas with teachers and/or adult students that are located in a different rural area or connects teachers in nonrural areas to adult students in rural areas.

Rural learning program. A system or means of providing educational or job training instruction to adult students located in rural areas which will result in qualified employees for small businesses as defined in this section. The training will result in employment with small businesses or job advancement of employees presently employed by small businesses. This may include establishment, expansion, and operation of rural distance learning networks necessary to provide the training.

Small and emerging private business enterprise. A new business, or one that

is expanding, which operates on a profit or nonprofit basis and relies primarily on revenues of the business for operation. The business/proposed business must not exceed the maximum number of employees or annual receipts allowed for a concern (including its affiliates) to be considered small according to the size standards established for Small Business Administration (SBA) assistance and set forth in 13 CFR, Part 121.

Technical assistance. A function performed for the benefit of a private business enterprise and which is a problem solving activity, such as market research, product and/or service improvements, feasibility studies, and job training/educational instruction, etc. Additionally, technical assistance could include functions performed on behalf of rural communities to improve passenger transportation services or facilities and which qualify as problem solving activities, i.e., transportation needs assessment, route planning, and/or training, etc.

Television Demonstration program. Television programming developed to demonstrate the effectiveness of providing information on agriculture and other issues of importance to farmers and other rural residents. Grants are made from RDA funds under authority of the Consolidated Farm and Rural Development Act, as amended, Sec. 310B(j) (7 U.S.C. 1932).

Urbanized area. An area immediately adjacent to a city having a population of 50,000 or more, which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated and extend from the contiguous boundary(ies) to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city, but are located across a river from such city, are recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section are not in a nonrural area.

Urbanizing area. A community which is not now, or within the foreseeable future not likely to be, clearly separate from, and independent of, a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered "separate from" when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered "independent of" when its social and economic structure (e.g., government, education, health, and recreational facilities; and business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized area.

§ 4284.105 Eligibility and priority.

(a) *Eligibility.* (1) RBEGs may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Native Americans on Federal and State reservations and other federally recognized Native American groups in rural areas.

(2) RCG applicants must meet eligibility requirements of the Regional Commission, and also those of RDA, in accordance with paragraph (a)(1) of this section for RDA to administer the RCG in accordance with this subpart.

(3) TDGs may be made to statewide, private (not public-body driven) nonprofit public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private (not public-body driven) nonprofit public television system, licensed by the Federal Communications Commission under its non-commerical classification, and operated statewide and within a coverage area that is predominantly rural.

(4) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant until the judgment is paid in full or otherwise satisfied. RDA grant funds may not be used to satisfy the judgment. Questions about whether or not a judgment is still outstanding should be directed to the Office of the General Counsel (OGC).

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. Due to the small number of applicants eligible for TDGs, such applicants will not compete for priority points against RBEG applicants but must compete with other applicants for TDGs.

(1) *Preapplications.* The preapplication and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(i) All preapplications shall be accompanied by sufficient information to permit the numerical ranking established by paragraph (b)(3) of this section. Such information should include:

(A) A description of proposed service(s) to be provided/projects to be funded.

(B) Income data on area to be served.

(C) Unemployment rate of the area to be served.

(D) Median household income of area to be served.

(E) Grantee's experience in providing the proposed service.

(ii) If a preapplication involves the establishment of a revolving fund, the following additional information should be provided:

(A) Grantee's financial ability to administer a revolving loan fund (at a minimum, the information should include a balance sheet and an income statement).

(B) The need for a revolving fund.

(C) Other funds available to leverage funds made available in accordance with this program.

(2) *RDA review.* All preapplications will be reviewed and scored and Form AD–622, "Notice of Preapplication Review Action," issued within the time limits in § 1942.2 (a)(2)(iv) of Subpart A of Part 1942 of this title. When considering authorizing the development of an application for funding, the RDA should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD–622 and advised of their appeal rights under Subpart B of Part 1900 of this title. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The RDA may request an additional allocation of funds from the National Office for such preapplications. Such requests will be considered along with all others on hand.

(3) *Selection priorities.* The priorities described in this paragraph will be used by RDA to rate preapplications. Points will be distributed as indicated in paragraphs (b)(3)(i) through (v) of this section.

(i) *Population.* Proposed project(s) will primarily be located in a community of:

(A) between 15,000 and 25,000 population—5 points;

(B) between 5,000 and 15,000 population—10 points;

(C) under 5,000 population—15 points.

(ii) *Economic conditions.* (A) Proposed project(s) will primarily be located in areas where the unemployment rate exceeds the State rate by 25 percent or more—20 points; exceeds the State rate by less than 25 percent—10 points; is equal to, or less than, State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where median household income (MHI), as prescribed by Section 673 (2) of the Community Services Block Grant Act (42 U.S.C 9902 (2)), for a family of four for the State is:

(*1*) less than poverty line—25 points;

(*2*) more than poverty line, but less than 85 percent of State MHI—15 points;

(*3*) between 85 and 100 percent of State MHI—10 points;

(*4*) equal or greater than, State MHI—0 points.

(iii) *Experience.* Applicant has evidence of at least 5 years of successful experience in the type of activity proposed in the preapplication for funds under this subpart. Evidence of successful experience may be a description of experience supplied and certified by the applicant, or a letter of support from appropriate local elected officials explaining the applicant's experience. Experience—15 points.

(iv) *Other.* (A) Preapplication is for revolving fund and/or technical assistance project—50 points.

(B) Applicant has evidence of substantial commitment of funds from non-Federal sources for proposed project. An authorized representative of the source organization of the non-Federal funds must provide evidence that the funds are available and will be used for the proposed project. More than 50 percent of the project costs from non-Federal sources—15 points; more than 25 percent, but less than 50 percent of project costs from non-Federal sources—10 points; between 5 and 25 percent of project costs from non-Federal sources—5 points.

(C) The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed project will create jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted. One job per each $10,000 or less in grant funds expended—10 points. One job per each $25,000 to $10,000 in grant funds expended—5 points.

(D) Grant projects utilizing funds available in accordance with this subpart of less than $100,000—25 points; $100,000 to $200,000—15 points; more than $200,000, but not more than $500,000—10 points.

(v) *Discretionary.* (A) In certain cases when the applicant has not received a previous grant in accordance with this subpart and the grant applied for is not more than $500,000, the RDA may assign discretionary points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. For grants of less than $100,000—50 points; $100,000 to $200,000—30 points; more than $200,000, but not more than $500,000—20 points.

(B) The RDA Administrator may additionally assign up to 100 discretionary points to projects requiring National Office reserve funds. Assignment of discretionary points by the RDA Administrator will be based on geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community via the creation of jobs and/or the resolution of emergency situations.

§ 4284.106 Purposes of grants.

(a) Grant funds may be used to finance and/or develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements, and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Startup operating cost and working capital.

(4) Technical assistance for private business enterprises.

(5) Technical assistance for public passenger transportation projects.

(6) Reasonable fees and charges for professional services necessary for the planning and development of the project, including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(7) Refinancing of debts exclusive of interest incurred by, or on behalf of, an association before an application for a grant when all of the following conditions exist:

(i) The debts were incurred for the facility, or part thereof, or service to be installed or improved with the grant, and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(8) Providing financial assistance to third parties through a loan.

(9) Training, when necessary, in connection with technical assistance and/or job training instruction related to potential employment or job advancement for adult students.

(10) Production of television programs to provide information on issues of importance to farmers and rural residents.

(11) The creation, expansion, and operation of rural distance learning networks and other rural learning programs providing educational and/or job training instruction to adult students which will result in qualified employees necessary for the development of small and emerging businesses as defined in this subpart.

(b) Grants, except grants for Television Demonstration programs and technical assistance for public passenger transportation projects, may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

(c) Grant funds may be used jointly with funds furnished by the grantee or from other sources, including RDA loan funds. Pursuant to Pub. L. 95–334, other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with RDA. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities other than authorities which impose restrictions on joint financing.

§ 4284.107 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agriculture products through growing, cultivation, and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations, or limited agricultural production related to technical assistance projects.

(2) To finance comprehensive areawide-type planning. This does not

preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms, and charges for those loans are not reasonable or would be for purposes not eligible in accordance with § 4284.106 of this subpart.

(4) For programs operated by cable television systems.

(5) To fund a part of a project which is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project.

(6) To pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and RDA to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The grantee will provide documentation to FS and RDA regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

(b) At least 51 percent of the outstanding interest in the project has membership, or is owned by, those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§ 4284.108 Regional Commission Grants.

(a) Grants are sometimes made by Regional Commissions for projects eligible for RDA assistance. RDA has agreed to administer such funds in accordance with RDA regulations and the requirements of the Regional Commission.

(b) The transfer of funds from a Regional Commission to RDA will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RDA and the Regional Commission.

(c) The ARC is authorized under the Appalachian Regional Development Act of 1965, as amended, to serve the Appalachian region. ARC grants are handled in accordance with the FmHA–ARC Agreement (Exhibit A, Subpart H of Part 1942 of this title), which applies to all ARC grants administered by RDA. Therefore, a separate Project Management Agreement between RDA and ARC is not needed for each ARC grant.

(d) Other Regional Commissions are those authorized under Title V of the Public Works and Economic Development Act of 1965. Grants by these Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Regional Commission and RDA for each grant administered by RDA (Guide 1 of this subpart).

§ 4284.109 [Reserved]

§ 4284.110 Other considerations.

(a) *Civil Rights compliance requirements.* All grants made in accordance with this subpart are subject to the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin as outlined in Subpart E of Part 1901 of this title. In addition, the grants made in accordance with this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap; the requirements of the Age-Discrimination Act of 1975, which prohibits discrimination on the basis of age; and Title III of the Americans with Disabilities Act, Pub. L. 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. When RDA is administering an RCG and no RDA RBEG/TDG funds are involved, the Regional Commission may make its own determination of compliance with the above Acts, unless RDA is designated compliance review responsibilities. RDA shall, in all cases, be made aware of any findings of discrimination or noncompliance with the requirements of the above Acts.

(b) *Environmental requirements.*—(1) General applicability. Unless specifically modified by this section, the requirements of Subpart G of Part 1940 of this title apply to this subpart. RDA will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 of Subpart G of Part 1940 of this title. Although the purpose of the grant program established by this subpart is to improve business, industry, and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmland and forest lands, prime rangelands, wetlands, and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants, and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance and rural learning programs.* The application for a technical assistance project is generally excluded from RDA's environmental review process by § 1940.310(e)(1) of Subpart G of Part 1940 of this title. However, as further specified in § 1940.333 of Subpart G of Part 1940 of this title, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance. Rural learning programs which do not include construction are treated the same as technical assistance projects relative to environmental requirements and purposes.

(3) *Applications for direct construction project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed in accordance with the applicable requirements of Subpart G of Part 1940 of this title.

(4) *Applications for grants to provide financial assistance to third party recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940–20, "Request for Environmental Information," for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. RDA will review the preapplication, supporting materials, and the required Form FmHA 1940–20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because RDA's approval of this type of grant application does not constitute RDA's commitment to the use of grant funds for any identified third party projects (see § 4284.116 of this subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be

assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this title prior to RDA providing its consent to the grantee to assist the third party project. If the preapplication reflects only one specific project which is specifically identified as the third party recipient for financial assistance, RDA may perform the appropriate environmental assessment in accordance with the requirements of Subpart G of Part 1940 of this title and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in Subpart G of Part 1940 of this title.

(5) *Combined applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply:

(i) The proposed direct construction project(s) will be reviewed in accordance with the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to third parties will be reviewed and processed in accordance with the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

(c) *Excess capacity or transfer of employment.* (1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to RDA which will enable RDA to determine that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location, or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location, or in any other area where it conducts such operations), or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written indication will consist of a resolution from the applicant and Form FmHA 449–22, "Certification of Non-Relocation and Market and Capacity Information Report," from each existing and future occupant of the site. The applicant may use Guide 2 of this subpart, available in any RDA office, as an example in preparing the resolution. Future occupants of the site must be certified by the Department of Labor (DOL) as outlined in paragraph (c)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) The RDA will check each document for completeness and accuracy and submit nine copies of each to the National Office for forwarding to DOL.

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of paragraph (c)(1) of this section have not been complied with. Information for obtaining this certification will be submitted, in writing, by the applicant to RDA. The information will be submitted to DOL by the RDA National Office. Grant approval may be given and funds may be obligated, subject to the DOL certification being received, provided RDA has made its own separate determinations of paragraphs (c)(1) (i) and (ii) of this section when the project is in excess of $1 million and affects over 50 employees.

(4) When a grant is being administered for a Regional Commission and no RDA grant funds are being used, the requirements for DOL determinations may be waived upon written request from the Regional Commission. If the Regional Commission so desires, the request will be included in the letter from the Regional Commission to RDA that gives notice of transfer of funds and conditions under which the funds are to be made available to the grantee. In such cases, the Letter of Conditions from RDA to the grantee will not include the requirement for DOL determinations.

(d) *Management assistance.* Grant recipients will be supervised, as necessary, to ensure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made in accordance with this subpart will be administered under, and are subject to, 7 CFR Parts 3015, 3016, and 3017, as appropriate, and established RDA guidelines.

(e) *National Historic Preservation Act of 1966.* All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with Subpart F of Part 1901 of this title.

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in Title 7, Subtitle A, Part 21 of the Code of Federal Regulations.

(g) *Floodplains and wetlands.* All projects must comply with Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands."

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by RDA, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

(j) *Intergovernmental review.* RBEG/TDG projects are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. A revolving fund established in whole, or in part, with grant funds will also be considered a project for the purpose of intergovernmental review as well as the specific projects funded with grant funds from the revolving loan project. For each project to be assisted with a grant in accordance with this subpart and for which the State has elected to review the project under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the grantee. Any comments from the State must be included with the grantee's request to use RDA grant funds for the specific project. Prior to RDA's decision on the request, compliance with

requirements of intergovernmental consultation must be demonstrated for each project. These requirements should be carried out in accordance with 7 CFR 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities," (see FmHA Instruction 1940–J, available in any RDA office).

§ 4284.111 Application processing.

(a) *Preapplications and applications.* (1) The preapplication/application review and approval procedures outlined in § 1942.2 of Subpart A of Part 1942 of this title will be followed, as appropriate. The applicant shall use Standard Form (SF)–424.1, "Application for Federal Assistance (For Non-Construction)," or SF–424.2, "Application for Federal Assistance (For Construction)," as applicable, when requesting financial assistance under this program. The applicant shall be advised of the conditions/requirements (outlined in this subpart) for receipt of grant funds at the time of the preapplication conference. Upon notification on Form AD–622, "Notice of Preapplication Review Action," that the applicant is eligible for funding, the following items will be submitted to RDA:

(i) SF–424.1 or SF–424.2 will be used for making application under this program, as applicable.

(ii) For grants to establish a revolving loan fund, a proposed Scope of Work detailing:

(A) Information as prescribed in § 4284.114 of this subpart.

(B) Proposed project budget.

(C) Other requested information needed by RDA to make a grant award determination.

(iii) For grants to establish revolving loan funds, rural learning programs, and/or to provide technical assistance, the following forms and documents will be part of the grant docket:

(A) Form FmHA 400–1, "Equal Opportunity Agreement," for the applicant and recipients of the technical assistance, loans under a revolving loan fund, and rural learning projects if the recipients are other than individuals.

(B) Form FmHA 400–4, "Assurance Agreement," for the applicant and recipients of the technical assistance, loans under a revolving loan fund, and rural learning projects if the recipients are other than individuals.

(C) Scope of Work prepared by the applicant, including a proposed project budget.

(D) Form FmHA 1940–1, "Request for Obligation of Funds," with Section A of Attachment 1 of this subpart (available in any RDA office) attached.

(iv) Dockets for nonrevolving fund grants will contain those items specified in paragraphs (a)(1)(iii) (A), (B), and (D) of this subpart, as well as other appropriate items specified in Subpart A of Part 1942 of this title.

(v) All dockets will contain executed Forms AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," and AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals," required in FmHA Instruction 1940–M, available in any RDA office.

(2) *OGC review.* RDA will request an opinion from the Regional Attorney, OGC, that the applicant is an eligible applicant with authority to carry out the purposes of the proposed grant. The applicant will provide the necessary information to RDA for submission to the Regional Attorney.

(b) *Review of decision.* When a determination is made that favorable action will not be taken on a preapplication or application, the applicant will be notified in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by RDA may be requested by the applicant in accordance with Subpart B of Part 1900 of this title.

(c) *Appraisals.* When land is to be purchased in accordance with § 4284.106 (a) of this subpart, the RDA, to establish "fair market value," may require the applicant to provide an appraisal report prepared by an independent qualified appraiser.

(d) *Planning and performing development.* The applicable provisions of § 1942.18 of Subpart A of Part 1942 of this title related to planning and performing development are to be adhered to for construction of grant projects. This includes requirements for actions pertaining to:

(1) Professional services, design policies, preliminary engineering and architectural reports and construction bids, contract awards, and construction inspections.

(2) Concurrence in agreements between grantees and third parties.

(3) Preconstruction conferences.

§ 4284.112 [Reserved]

§ 4284.113 Plan to provide financial assistance to third parties.

(a) For applications involving establishment of a revolving fund to provide financial assistance to third parties, the applicant shall develop a plan which outlines the purpose and administration of the fund. The plan will include:

(1) Planned projects to be financed.

(2) Sources of all non-RBEG funds.

(3) Amount of technical assistance (if any).

(4) Purpose of the loans.

(5) Number of jobs to be created with each project.

(6) Project priority and length of time involved in completion of each project.

(7) Other information required by RDA.

(b) Each third party project receiving funds will be reviewed for eligibility. When the applicant does not have a list of projects to be completed, the applicant should advise RDA at the time a preapplication is submitted.

§ 4284.114 Grants to provide financial assistance to third parties, Television Demonstration programs, rural learning programs, and technical assistance projects.

For applications involving a purpose other than a construction project to be owned by the applicant, the applicant shall develop a Scope of Work. The Scope of Work will be used to measure the performance of the grantee. As a minimum, the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized, i.e., technical assistance, revolving fund, etc.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made (key personnel should be identified).

(d) How the grant purposes will be accomplished.

(e) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBEG/Television Demonstration program.

(f) For grants involving a revolving fund, the Scope of Work should include those items listed in paragraphs (a) through (e) of this section, as well as the following:

(1) Information which will establish/identify the need for the revolving loan fund.

(2) Financial statements which will demonstrate the financial ability of the applicant to administer the revolving loan fund. As a minimum, the financial statements will include:

(i) Balance sheet.

(ii) Income statement.

(3) Detail on the applicant's experience in operating a revolving loan fund, which includes the applicant's loan processing and servicing procedures.

(g) For technical assistance, rural learning, and Television Demonstration programs, the Scope of Work should include a budget based on the budget contained in the application, modified or revised as appropriate, which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the project.

(h) For rural learning projects, the Scope of Work should include those items listed in paragraphs (a) through (e) and (g) of this section, as well as the following:

(1) Information which will establish/identify the need for the project by small and emerging private businesses in rural areas.

(2) Detail on the applicant's experience in operating a rural learning program.

(3) Detail on the applicant's experience in operating a rural distance learning network, if applicable.

§ 4284.115 Docket preparation and Letter of Conditions.

(a) The applicable provisions of § 1942.5 of Subpart A of Part 1942 of this title relating to preparation of loan dockets will be followed in preparing grant dockets.

(b) The RDA will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to ensure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in 7 CFR Parts 3015 and 3016 are complied with.

§ 4284.116 Grant approval, fund obligation, grant closing, and third party financial assistance.

(a) *Grant approval.* The RDA is authorized to approve grants made in accordance with this subpart. Section A of Attachment 1 of this subpart, available in any RDA office, shall become a permanent part of Form FmHA 1940–1 when RBEG funds are involved, and the following paragraphs will appear in the comment section of that form as appropriate:

"The grantee understands the requirements for receipt of funds in accordance with the Rural Business Enterprise Grant and Television Demonstration Grant program. The grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in Attachment 1 of Subpart B of Part 4284 of this chapter, available in any RDA office, 7 CFR Parts 3015, 3016, 3017, and 3018, including revisions through _____ (date of grant approval) and the Letter of Conditions."

For grants involving the establishment of a revolving loan program, the following statement shall also be added to the comment section of Form FmHA 1940–1: "The grantee furthermore agrees to use grant funds for the purposes outlined in the Scope of Work approved by RDA."

(1) Grants will be approved and closed in accordance with the applicable parts of Subpart A of Part 1942 of this title, including §§ 1942.7 and 1942.17 (o) of this subpart and any instructions from the Regional Attorney, OGC.

(2) An executed copy of the Scope of Work will be sent to the applicant on the obligation date, along with a copy of Form FmHA 1940–1 and the required attachment.

(3) When Form FmHA 1940–1 has been executed by all parties, the grant is closed.

(4) If the grant is not approved, the applicant will be notified in writing of the reason(s) for rejection. The notification to the applicant will state that a review of this decision by RDA may be requested by the applicant in accordance with Subpart B of Part 1900 of this title.

(b) *Fund obligation and approval announcement.* Funds will be obligated and approval announcement made in accordance with the provisions of § 1942.5 (d) of Subpart A of Part 1942 of this title.

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval, and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable parts of this subpart.

§ 4284.117 Fund disbursement.

Except for grants for revolving loans, grant funds will be disbursed by RDA on a reimbursement basis. Requests should not exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control and accountability of all funds, property, and other assets.

(a) As needed, but not more frequently than once every 30 days, an original and one copy of SF–270, "Request for Advance or Reimbursement," may be submitted to RDA. Recipient's request for advance shall not be made in excess of reasonable outlays for the month covered.

(b) The grantee shall provide satisfactory evidence to RDA that all officers of grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the grantee.

(c) Release of technical assistance funds.

(1) The grantee will provide RDA with a project description and intergovernmental review data as defined in § 4284.110 (j) of this subpart.

(2) The servicing official will review the project for eligibility. Once determined eligible and satisfactory intergovernmental review clearances have been received, the grantee may request funds as outlined in paragraph (a) of this section.

(d) For grants to provide assistance to third parties through a revolving fund, funds will be disbursed in accordance with USDA's Uniform Federal Assistance Regulations, the items listed in paragraph (c)(1) of this section, and the following:

(1) The grantee is responsible for providing RDA with environmental review data. Each project will undergo the applicable environmental review in accordance with § 4284.110 (b) of this subpart.

(2) The grantee is responsible for providing RDA with intergovernmental review clearances in accordance with § 4284.110 (j) of this subpart. Each project will undergo the intergovernmental review process.

(3) Once RDA has received clearances for intergovernmental review and the environmental assessment is completed, the grantee may request grant funds for that purpose by use of SF–270 as outlined in paragraph (a) of this section.

§ 4284.118 Reporting.

Form SF–269, "Financial Status Report," and a project performance activity report will be required of all grantees on a quarterly basis (due 15 working days after end of each quarter). A final project performance activity report will be required with the last SF–269. The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The project performance activity reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetables established for the next reporting period.

§ 4284.119 Audit requirements.

The grantee will provide an audit report in accordance with Subpart A of Part 1942 of this title. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with Generally Accepted Government Auditing Standards using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

§ 4284.120 Programmatic changes.

The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope). Failure to obtain prior approval of changes to the scope can result in suspension/termination of grant funds.

§ 4284.121 Grant cancellation.

Grants may be cancelled by RDA by use of Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation." The RDA will notify the applicant, by letter, that the grant has been cancelled. A copy of the letter will be sent to the applicant's attorney and engineer, as appropriate, and to the Regional Attorney, OGC, if the Regional Attorney has been involved. The applicant will be provided appeal rights, as appropriate, in accordance with Subpart B of Part 1900 of this title.

§ 4284.122 Grant servicing.

Grants will be serviced in accordance with Subpart E of Part 1951 of this title.

§ 4284.123 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this subpart.

§§ 4284.124–4284.197 [Reserved]

§ 4284.198 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law, or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and show how the adverse impact will be eliminated or minimized if the exception is made.

§ 4284.199 Public availability of forms, regulations, and instructions.

Copies of all forms, regulations, and instructions referenced in this subpart are available in any RDA office.

§ 4284.200 OMB control number.

Guides to Subpart G

Guide 1—Project Management Agreement Between the _____ Regional Commission and the Rural Development Adminstration, Department of Agriculture Pertaining to (Grantee) _____ County, _____.

I. Introduction

A. The _____ Regional Commission is providing a (basic or supplemental) grant for (purpose) to (grantee), and the U.S. Department of Agriculture, Rural Development Administration (RDA) has approved and will administer that grant. The RDA has determined that funds (can or cannot) be made available under its funding program for this fiscal year for the project. The project does meet all the requisites for assistance under Section 310B of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1926). In order to accomplish these purposes, the _____ Regional Commission's Federal Cochairman and the RDA approval official hereby enter into this Agreement, which is in accordance with 31 U.S.C. 686.

B. This Agreement is intended to cover the application phase, construction phase, and final audit.

II. General

A. *Project Cost.* The project costs for the purposes of this Agreement shall include the costs of construction, technical services, legal services, land acquisition, permits and rights-of-way, interest during construction and contingencies.

B. *Grant.* The _____ Regional Commission shall make a (basic or supplemental) grant of $_____ up to, but not exceeding, _____ percent of the total cost of project. These funds will be transferred to the Treasury Account of RDA by Standard Form 1151, "Nonexpenditure Transfer Authorization."

C. The undersigned RDA approval official on behalf of RDA, in concurring to this Project Management Agreement, hereby assures the Federal Cochairman that:

1. The estimated cost of the project is reasonable and the (basic or supplemental) grant, with the funds to be supplied by the applicant, are, in its judgement, sufficient to complete the project.

2. The funds to be supplied by the applicant are available or RDA is reasonably satisfied that the applicant has the capability of supplying such funds.

3. RDA is reasonably satisfied that the facility will be properly and efficiently administered, operated, and maintained and that the applicant will provide sufficient funds to ensure the successful and continuing operation of the facility.

D. The (grantee) is subject to Executive Order 11246 and will be required to evidence compliance by execution of Forms FmHA 400–1, "Equal Opportunity Agreement" and FmHA 400–4, "Assurance Agreement."

E. The (grantee) shall execute assurances of nonrelocation, if applicable.

III. Construction Management

A. The forms and format for the documents shall conform to the requirements in Subpart A of Part 1942 of this title. Generally, the following items shall be included:

1. contract documents.
2. specifications.
3. plans.

B. RDA will approve the plans and specifications.

C. RDA will obtain a certification of adequacy from the Federal Environmental Protection Agency (include only when applicable).

D. RDA will obtain a nonpollution certificate from the (State) (agency) (include only when applicable).

E. RDA will make monthly inspections.

F. Contract change orders will not become effective until approved by RDA.

G. Final inspection will be conducted by RDA.

IV. Financial Management

A. Financial management of the project shall be according to Subpart A of Part 1942 of this title.

B. RDA will provide the _____ Regional Commission with a copy of the audit report.

C. If actual costs fall below the costs on which the grant was calculated, the Federal and non-Federal shares will be reduced proportionately.

D. RDA will conform to the financial reporting requirements for transferred funds as required by OMB Circular No. A–34.

V. Compensation

Services rendered by RDA for the processing and administration of Regional Commission grants in cases where neither RDA loan nor grant funds are involved shall be on a reimbursable basis. Reimbursement will be based on 5 percent of the amount of the grant up to $50,000 and an additional 1 percent of any amount over the first $50,000 of the Regional Commission grant. The full amount of the reimbursement will be transferred to RDA at the time the grant funds are transferred to RDA.

VI. No provision in this Agreement shall abrogate the legal requirements of administrative responsibilities as set forth in

the Consolidated Farm and Rural Development Act or Section 509 of the Public Works and Economic Development Act of 1965, as amended.

For the Regional Commission

_____

(Name)

_____

Federal Cochairman

_____, 199_____

For the Rural Development Administration, USDA

_____

(Name)

_____

RDA Approval Official

_____, 199_____

Guide 2—Resolution

Whereas the _____ (hereinafter called grantee) desires to obtain financial assistance from the Rural Development Administration (RDA), United States Department of Agriculture, pursuant to Section 310B of the Consolidated Farm and Rural Development Act, for the purpose of providing

_____

_____

(Describe briefly the nature of the project)

_____

_____

(Herein referred to as the facility) and as a condition to and in consideration of receiving financial assistance from the RDA, this resolution is being adopted.

Therefore, in consideration of the premises, the grantee agrees as follows:

1. No private business enterprises shall be allowed to use or occupy the facility if such use or occupancy would be calculated to, or is likely to, result in the transfer from one area to another of any employment or business activity provided by operations of the private business enterprises. This limitation shall not be construed to prohibit use and enjoyment of the facility by such private business entity through the establishment of a new branch, affiliate, or subsidiary if the establishment of such branch, affiliate, or subsidiary will not result in the increase in unemployment in the area of original location (or in any other area where such entity conducts business operations), unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location (or in any other area where it conducts such operation).

2. No private business enterprises shall be allowed to use or occupy the facilities if such use or occupancy would be calculated to, or is likely to, result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, where there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the sufficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse affect upon existing competitive enterprises in the area.

3. Prior to allowing the use or occupancy of the facilities by any private business enterprise, the grantee shall clear such use or occupancy with the Manpower Administration, Department of Labor (DOL), Washington, DC, by submitting information required by the DOL for certification under the Act. This information shall be submitted to RDA for transmittal to the DOL. The grantee agrees to make no final commitment with any private business enterprise regarding such use or occupancy if the DOL issues a negative certification under the Act. The grantee shall obtain prior clearance in this matter for a period of three years after the date of an affirmative certification by the DOL on the application for financial assistance now pending before the RDA.

This resolution shall be in force and effect immediately.

The voting was yeas _____, nays _____, absent _____.

_____

(Name of grantee)

By _____

(Name and Title)

Certification

I, the undersigned, as (Secretary) or (Town Clerk as appropriate), of the _____, do hereby certify that the foregoing resolution was duly adopted at a meeting of _____ duly called and held on the _____ day of _____ 19_____, and that such resolution has not been rescinded or amended in any way. Dated this _____ day of _____, 19_____.

(Seal)

(Town Clerk) or (Secretary as appropriate) of

Dated: April 5, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–19408 Filed 8–8–94; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–71–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections to detect cracking in the midspar fuse pins and replacement of certain fuse pins. This action would require inspecting straight fuse pins and replacing cracked straight fuse pins with either new corrosion-resistant steel fuse pins or like pins, replacing bulkhead fuse pins with new corrosion-resistant steel fuse pins, and repetitively inspecting newly installed fuse pins. This proposal is prompted by the development of new corrosion-resistant steel fuse pins. The actions specified by the proposed AD are intended to prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane.

DATES: Comments must be received by October 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–71–AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–71–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 17, 1993, the FAA issued AD 93–16–08, amendment 39–8665 (58 FR 45041, August 26, 1993), applicable to certain Boeing Model 757 series airplanes, to require repetitive inspections to detect cracking in the midspar fuse pins and replacement of certain fuse pins with new or refinished fuse pins. That action was prompted by reports of cracked fuse pins found on in-service airplanes. The requirements of that AD are intended to prevent separation of the strut and engine from the wing of the airplane.

Since the issuance of that AD, the manufacturer has developed new 15–5PH corrosion-resistant steel fuse pins. Test data have shown that these new fuse pins have a longer service life. Therefore, the FAA has determined that the inspection interval for these new pins can be increased significantly without compromising safety.

Further, the FAA has reviewed the service experience of affected in-service airplanes and has found that consistent quality of the fuse pins cannot be ensured during the refinishing process of the fuse pins. Consequently, refinished straight fuse pins, currently allowed by AD 93–16–08 as suitable replacement fuse pins, are no longer considered to be suitable replacements.

Cracked fuse pins, if not corrected, could result in separation of the strut and engine from the wing of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994, which describes procedures for eddy current inspection to detect cracking in straight fuse pins, replacement of cracked straight fuse pins with either new 15–5PH pins or like pins, replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and repetitive eddy current inspections to detect cracking in the newly installed fuse pins.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–16–08 to require inspection of straight fuse pins, replacement of cracked straight fuse pins with either new 15–5PH corrosion-resistant steel fuse pins or like pins, replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and repetitive inspections of newly installed fuse pins. Installation of the steel fuse pins would allow a longer repetitive inspection interval than was previously provided by AD 93–16–08. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 306 Model 757 series airplanes equipped with Rolls Royce engines of the affected design in the worldwide fleet. The FAA estimates that 119 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 93–16–09, and retained in this proposal take approximately 8 work hours per fuse pin at an average labor rate of $55 per work hour. There are 4 fuse pins per airplane. Based on these figures, the total cost impact of these inspections on U.S. operators is estimated to be $209,440, or $1,760 per airplane, per cycle. However, since the integrity and strength of the new steel fuse pins permit longer inspection intervals, the cost impact for these inspections would actually be lessened because the proposed inspections are not required to be performed as frequently as currently required by AD 93–16–08.

The proposed replacement would take approximately 56 work hours per fuse pin at an average labor rate of $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $1,466,080, or $12,320 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8665 (58 FR 45041, August 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–71–AD. Supersedes AD 93–16–08, Amendment 39–8665.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Inspections accomplished prior to the effective date of this amendment in accordance with the procedures described in Boeing Service Bulletin 757–54A0020, Revision 4, dated May 27, 1993, Revision 3, dated March 26, 1992, or Revision 2, dated October 31, 1991, are considered acceptable for compliance with the applicable inspection specified in this amendment.

To prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For airplanes equipped with straight fuse pins, part number (P/N) 311N5067–1: Prior to the accumulation of 5,000 total flight cycles on the straight fuse pin, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the cracked straight fuse pin with new straight fuse pin, P/N 311N5067–1, and prior to the accumulation of 5,000 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles on the newly installed straight fuse pin. Or

(ii) Replace the cracked straight fuse pin with new 15–5PH fuse pin, P/N 311N5217–1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles on the newly installed fuse pin.

(b) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 90 days after the effective date of this AD, replace bulkhead fuse pins with 15–5PH fuse pins, P/N 311N5217–1, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994, and accomplish the requirements of paragraph (c) of this AD.

(c) For airplanes equipped with 15–5PH fuse pins: Prior to the accumulation of 14,000 total flight cycles on the 15–5PH fuse pins, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles on the fuse pin.

(2) If any cracking is detected, accomplish the requirements of paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to further flight, replace any cracked 15–5PH fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, in accordance with the service bulletin.

(ii) Prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles on the newly installed fuse pin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–19352 Filed 8–8–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–72–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Pratt and Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections to detect cracking in the midspar fuse pins and replacement of certain fuse pins. This action would require inspecting straight fuse pins and replacing cracked straight fuse pins with either new corrosion-resistant steel fuse pins or like pins, replacing bulkhead fuse pins with new corrosion-resistant steel fuse pins, and repetitively inspecting newly installed fuse pins. This proposal is prompted by the development of new corrosion-resistant steel fuse pins. The actions specified by the proposed AD are intended to prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane.

DATES: Comments must be received by October 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Carrie Sumner, Aerospace Engineer, Airframe Branch ANM–120S, FAA, Transport Airplane Directorate , Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2778; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 17, 1993, the FAA issued AD 93–16–09, amendment 39–8666 (58 FR 45044, August 26, 1993), applicable to certain Boeing Model 757 series airplanes, to require repetitive inspections to detect cracking in the midpsar fuse pins and replacement of certain fuse pins with new or refinished fuse pins. That action was prompted by reports of cracked fuse pins found on in-service airplanes. The requirements of that AD are intended to prevent separation of the strut and engine from the wing of the airplane.

Since the issuance of that AD, the manufacturer has developed new 15–5PH corrosion-resistant steel fuse pins. Test data have shown that these new fuse pins have a longer service life. Therefore, the FAA has determined that the inspection interval for these new pins can be increase significantly without compromising safety.

Further, the FAA has reviewed the service experience of affected in-service airplanes and has found that consistent quality of the fuse pins cannot be ensured during the refinishing process of the fuse pins. Consequently, refinished straight fuse pins, currently allowed by AD 93–16–09 as suitable replacement fuse pins, are no longer considered to be suitable replacements.

Cracked fuse pins, if not corrected, could result in separation of the strut and engine from the wing of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994, which describes procedures for eddy current inspection to detect cracking in straight fuse pins, replacement of cracked straight fuse pins with either new 15–5PH pins or like pins, replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and repetitive eddy current inspections to detect cracking in the newly installed fuse pins.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–16–09 to require inspection of straight fuse pins, replacement of cracked straight fuse pins with either new 15–5PH corrosion-resistant steel fuse pins or like pins, replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and repetitive inspections of newly installed fuse pins. Installation of the steel fuse pins would allow a longer repetitive inspection interval than was previously provided by AD 93–16–09. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 273 Model 757 series airplanes equipped with Pratt and Whitney engines of the affected design in the worldwide fleet. The FAA estimates that 237 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 93–16–09, and retained in this proposal take approximately 8 work hours per fuse pin at an average labor rate of $55 per work hour. There are 4 fuse pins per airplane. Based on these figure, the total cost impact of these inspections on U.S. operators is estimated to be $417,120, or $1,760 per airplane, per cycle. However, since the integrity and strength of the new steel fuse pins permit longer inspection intervals, the cost impact for these inspections would actually be lessened because the proposed inspections are not required to be performed as frequently as currently required by AD 93–16–09.

The proposed replacement would take approximately 56 work hours per fuse pin at an average labor rate of $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed replacement on U.S. operators is estimated to be $2,919,840, or $12,320 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by removing amendment 39–8666 (58 FR 45044, August 26, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–72–AD. Supersedes AD 93–16–09, Amendment 39–8666.

Applicability: Model 757 series airplanes equipped with Pratt and Whitney engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Inspections accomplished prior to the effective date of this amendment in accordance with the procedures described in Boeing Service Bulletin 757–54A0019, Revision 4, dated May 27, 1993, Revision 3, dated March 26, 1992, or Revision 2, dated October 11, 1989, are considered acceptable for compliance with the applicable inspection specified in this amendment.

To prevent cracking of the midspar fuse pins, which may lead to separation of the strut and engine from the wing of the airplane, accomplish the following:

(a) For airplanes equipped with straight fuse pins, part number (P/N) 311N5067–1: Prior to the accumulation of 3,800 total flight cycles on the straight fuse pin, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on the straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Replace the cracked straight fuse pins with new straight fuse pin, P/N 311N5067–1, and prior to the accumulation of 3,800 total flight cycles on the newly installed straight fuse pin, perform an eddy current inspection, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on the newly installed straight fuse pin. Or

(ii) Replace the cracked straight fuse pin with new 15–5PH fuse pin, P/N 311N5217–1, and prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles on the newly installed fuse pin.

(b) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 90 days after the effective date of this AD, replace bulkhead fuse pins with 15–5PH fuse pins, P/N 311N5217, in accordance with Boeing Service bulletin 757–54A0019, Revision 5, dated March 17, 1994, and accomplish the requirements of paragraph (c) of this AD.

(c) For airplanes equipped with 15–5PH fuse pins: Prior to the accumulation of 14,000 total flight cycles on the 15–5PH fuse pins, perform an eddy current inspection to detect cracking in those fuse pins, in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles on the fuse pin.

(2) If any cracking is detected, accomplish the requirements of paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to further flight, replace any cracked 15–5PH fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1, in accordance with the service bulletin.

(ii) Prior to the accumulation of 14,000 total flight cycles on the newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in the newly installed pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles on the newly installed fuse pin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–19351 Filed 8–8–94; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 800

Rules, Regulations, Statements and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

AGENCY: Federal Trade Commission.

ACTION: Notice of Extension of Comment Period.

SUMMARY: The Commission has extended until August 26, 1994, the time period within which comments will be received on the proposed amendments to the Premerger Notification and Report Form that parties are required to file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice before consummating certain mergers and acquisitions. The proposed amendments are designed to improve the premerger notification program by requiring persons to submit certain new and more up-to-date information and also to reduce the burden of compliance by raising thresholds of several items consistent with the agencies' information needs. The original request for comments was announced in the **Federal Register** of June 14, 1994 (59 FR 30545).

DATES: Written comments will be accepted on the proposed changes to the Premerger Notification and Report Form on or before August 26, 1994.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust

Division, Department of Justice, room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Victor L. Cohen, Attorney, or John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition, room 303, Federal Trade Commission, Washington, DC 20580 Telephone: (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19381 Filed 8–8–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

August 4, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Filing and Opportunity to File Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has received a filing from the Electronic Bulletin Board (EBB) Working Group submitting a consensus proposed for modifying the transaction point common code database to add three additional fields to improve the clarity and management of the database. The Commission is affording interested persons an opportunity to file comments on this filing and to address these issues at an informal conference held with Commission staff.

DATES: Comments due by August 15, 1994. Conference to be held on August 11, 1994, 10:00 a.m.

ADDRESSES: Comments should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Conference to be held at: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208–0666

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

Notice of Filing and Opportunity to File Comments

Take notice that on July 29, 1994, the Electronic Bulletin Board (EBB) Working Group submitted a consensus proposal for modifying the transaction point common code database to add three additional fields to improve the clarity and management of the database.

Any person desiring to submit comments on this filing should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 on or before August 15, 1994. Issues relating to this proposed change also may be raised at the EBB conference to be held on Thursday, August 11, 1994, beginning at 10:00 a.m., in Hearing Room 1, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19389 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Parts 342, 346, 347, 357, and 385

[Docket No. RM94–2–000]

Cost-of-Service Filing and Reporting Requirements for Oil Pipelines; Notice of Proposed Rulemaking

July 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise the information reported by oil pipelines in their Form No. 6, Annual Report of Oil Pipeline Companies, and to amend its regulations to adopt filing requirements for cost-of-service rate filings by oil pipelines.

DATES: Comments are due no later than September 8, 1994.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM94–2–000 and should be addressed to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits an 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this proposed rule will be

available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) proposes to revise the information reported by oil pipelines in their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6), and to establish filing requirements for cost-of-service rate filings by oil pipelines. The Commission also proposes to issue rules for oil pipelines performing depreciation studies. Finally, the Commission proposes to require oil pipelines to file Form No. 6 on an electronic medium in addition to a paper filing. All these changes are proposed to become effective January 1, 1995, concurrently with the new regulations promulgated by Order No. 561.[1]

I. Background

In Order No. 561, issued by the Commission on October 22, 1993, the Commission established an indexing methodology to be used by oil pipelines as the generally applicable and simplified methodology for regulating oil pipeline rates on or after January 1, 1995. The indexing methodology will establish ceilings on oil pipeline rates. The Commission also recognized that there might be instances where pipelines using the indexing methodology to establish ceilings on their rates could substantially underrecover their prudent costs. The Commission provided the opportunity for pipelines to seek an exception to indexing in those instances. Further, the Commission provided that rates for new services could be established either through negotiation or by use of a cost-of-service methodology.[2]

In Order No. 561, as modified by Order No. 561–A, the Commission has provided a balanced approach to the index ratemaking methodology. On the one hand, it would allow an oil pipeline to file for rates above the indexed ceiling when the pipeline can show that there is a substantial divergence between the costs to be experienced by the pipeline and the revenues that would be produced by indexed rates. On the other hand, it would allow challenges to an oil pipeline's proposed indexed rates based on allegations that the indexed rates would produce increased revenues substantially in excess of the pipeline's actual increase in costs.[3] The Commission also recognized that cost-of-service rate filing information would be necessary for interested parties to decide whether to challenge proposed cost-of-service rates, and that Form No. 6 might need to be revised to enable effective cost-based challenges to indexed rates.

The Commission initiated this proceeding as a companion to Order No. 561 to inquire into the cost information that oil pipelines should include with their cost-of-service rate filings and in their annual Form No. 6 reports. The Commission thus issued a Notice of Inquiry (NOI)[4] to solicit comments on the appropriate information to be included by oil pipelines with their cost-of-service rate filings and whether it is necessary to revise the information reported by oil pipelines in Form No. 6. The Commission further solicited comments on whether and how cost-of-service ratemaking might be streamlined.[5]

Comments and/or reply comments were received from six oil pipelines,[6] one shipper,[7] four trade associations representing either pipelines or shippers,[8] and the State of Alaska. These comments indicated a need for revising Form No. 6 in many respects, as discussed below. While the Commission has not had specific filing requirements for rate changes since it began regulating oil pipelines in 1977,[9] the comments generally supported a specific set of regulations for cost-of-service rate filings. However, there was no consensus on what those regulations should contain.

Upon review of the comments, the Commission proposes to revise and update Form No. 6 so that the information reported by oil pipelines will enable shippers to analyze oil pipeline cost changes to determine whether to challenge indexed rate filings, and enable the Commission to monitor the effectiveness of the index in reflecting cost changes experienced by pipelines. The Commission also proposes to establish, through regulations, the specific filing requirements for cost-of-service filings for oil pipelines to conform to the Opinion No. 154–B methodology.[10]

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collections of information under the proposed rule will be reduced for Form No. 6 by approximately 7 percent and will, in effect, remain unchanged for rate filings, since the Commission proposes to codify the information to be provided which the Commission's staff has requested of oil pipelines for cost-of-service rate filings in the past. The information will be collected on Form No. 6, "Annual Report of Oil Pipeline Companies" and FERC–550, "Oil Pipeline Rates: Tariff Filings."[11] These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden associated with these information collection requirements is as follows:

Form No. 6: 22,200 hours, 148 responses, and 148 respondents; and

FERC–550: 5,350 hours, 535 responses, and 140 respondents.

The proposed rule will reduce the existing reporting burden associated with Form No. 6 by an estimated 1480 hours annually, or an average of 10 hours per response based on an estimated 148 responses. This estimate includes the addition of two new

[1] Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act, Order No. 561, III FERC Stats. & Regs. ¶ 30,985 (1993); Order on Rehearing, Order No. 561–A, *68* FERC paragraph 61,138 (1994), issued concurrently with this Notice.

[2] 18 CFR § 342.2.

[3] As noted in Order No. 561–A, the Commission is requiring that there be a *substantial* divergence between actual costs and rates to allow for efficiency gains that may occur.

[4] IV FERC Stats. & Regs. ¶ 35,528, entitled Cost-of-Service Filing and Reporting Requirements for Oil Pipelines.

[5] In Docket No. RM94–1–000, Market-Based Ratemaking for Oil Pipelines, the Commission solicited comments on whether to continue to permit oil pipelines to seek market based rates and, if so, the appropriate standards for making a determination that a pipeline lacks significant market power. This matter is the subject of a separate notice of proposed rulemaking, issued contemporaneously.

[6] ARCO Pipe Line Company, Four Corners Pipeline Company and ARCO Transportation Alaska, Inc. (collectively, ARCO); Williams Pipe Line Company (Williams); Marathon Pipe Line Company (Marathon); CITGO Pipeline Company (CITGO); Badger Pipe Line Company (Badger); Kaneb P/L Operating Partnership, L.P (Kaneb); and Lakehead Pipe Line Company (Lakehead).

[7] Chevron U.S.A. Products Company (Chevron).

[8] Association of Oil Pipe Lines (AOPL) representing pipelines; and the Petrochemical Energy Group (PEG), the Independent Petroleum Association of America (IPAA), and the National Counsel of Farmer Cooperatives (NCFC), representing shippers.

[9] Jurisdiction of oil pipelines was transferred from the Interstate Commerce Commission to the Commission in 1977. *See* Department of Energy Organization Act, 42 U.S.C. 7101 (1988).

[10] Opinion No. 154–B methodology is derived from the Commission's opinions in Williams Pipe Line Company, Opinion No. 154–B, 31 FERC ¶ 61,377 (1985), on rehearing, Opinion No. 154–C, Williams Pipeline Company, 33 FERC ¶ 61,327 (1985); and ARCO Pipe Line Company, Opinion No. 351, 52 FERC ¶ 61,055 (1990), on rehearing, Opinion No. 351–A, ARCO Pipe Line Company, 53 FERC ¶ 61,398 (1990).

[11] FERC–550 is the designation covering oil pipeline tariff filings made to the Commission.

schedules, the elimination of several schedules, and increasing the reporting thresholds for which oil pipelines must analyze and report certain data.

Comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Overview

Under § 342.4(a) of the regulations as promulgated by Order No. 561–A, a pipeline can make a cost-of-service rate filing to show that there is a substantial divergence between the actual costs experienced by the carrier and the revenues which will be realized from ceiling rates resulting from application of the index.[12] A shipper may protest an indexed rate change where it can show a significant discrepancy between the rate change filed and the change in the pipeline's costs in the interim since the last rate change.[13]

The NOI requested comments on how standard information might be collected and made available to provide a minimum adequate basis for comparing changes in a pipeline's rates and costs, without requiring unduly burdensome data filings by the pipelines. The goal was to develop a final rule that would be supported by a consensus of the oil pipeline industry and its customers. Some pipelines' comments urged adoption of a stand-alone costing methodology,[14] while others indicated that the Commission should continue to use the Opinion No. 154–B methodology.[15] Shippers and the State of Alaska also urged retention of the Opinion No. 154–B methodology.[16] Some conmmenters also suggested modifications to the data contained in Form No. 6.[17]

In view of the lack of a consensus among the parties filing comments and the absence of any persuasive reasons for changing the existing cost-based methodology, the Commission will continue to use the Opinion No. 154–B ratemaking methodology as reflected in the proposed regulations. The Commission proposed cost-of-service rate filing requirements that are intended to include all the information necessary to support a rate filing under Opinion No. 154–B. As for the historical base data in Form No. 6, the Commission proposes changes that are intended to permit a first level analysis of the relation of a proposed change in rates under the indexing methodology to the changes in cost actually experienced by a pipeline. They also are intended to provide a basis for a Commission determination of whether a protest has merit.

IV. The Proposed Rule

A. Revisions to Form No. 6

1. Proposed Changes to Conform With Order No. 561

Form No. 6 should contain information that will permit its use for a number of purposes: developing initial rates for new service, reviewing changes in rates made by use of the index, monitoring existing rages, and analyzing and auditing finances. At present, the primary focus of Form No. 6 is on financial accounting information that is gathered based on accounting principles which are different in some respects from the ratemaking principles used to establish rates for oil pipelines. To serve as a tool to evaluate the performance of the index and future changes in oil pipeline rates using the index methodology, Form No. 6 should be revised to include additional information.

Revisions to Form No. 6 are needed to provide at least a preliminary basis for shipper assessments of filed rate changes under Order No. 561. Form No. 6 data should be complete enough to enable an evaluation of whether a proposed rate change substantially exceeds the pipeline's changes in costs. As currently structured, Form No. 6 does not provide sufficient information to do this.

Only limited additional information would be needed in Form No. 6 to permit adequate preliminary review of a pipeline's cost-of-service showings, and to permit shipper comparison of indexed rate changes with changes in costs incurred. A single new schedule is proposed to be added to Form No. 6, showing basic information needed for a review of rate filings made within the index cap. The proposed new schedule, appearing as page 700 of Form No. 6, would require each pipeline company to report, as of the end of the reporting year and the immediately preceding year, its Total Annual Cost of Service (as calculated under the Order No. 154–B methodology), operating revenues, and throughput in barrels and barrel-miles. This schedule should permit a shipper to compare proposed changes in rates against the change in the level of a pipeline's cost of service. It should also permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate. The proposed new schedule is set forth as a part of Appendix A to this NOPR. Underlying calculations of and supporting data for these figures would not be required to be reported in Form No. 6.

The use of trended original cost to establish a rate base for oil pipelines, as required by the Opinion No. 154–B methodology, entails complex calculations to derive annual figures for equity and equity returns for ratemaking purposes. This calculation will differ from the book equity figures contained in Form No. 6, which are required for financial reporting purposes. In the Commission's view, to require the display of these calculations in Form No. 6 would be cumbersome and not be of significant benefit in a shipper's determination of whether to protest a pipeline's indexed rate filing.[18] In any event, if a shipper protest results in a cost-of-service justification by the pipeline, the underlying calculations would be available.

The changes proposed to Form No. 6 are proposed to be effective for reporting year 1995. The 1995 Form No. 6 would be filed on or before March 31, 1996 The new schedule appearing on page 700 therefore would not be required for Form No. 6 filings until March 31, 1996, for reporting year 1995. In the interim, the Commission proposed that a verified copy of this new schedule for calendar years 1993 and 1994 be prepared separately and filed concurrently with the first indexed rate change filing made by a pipeline after January 1, 1995, or by March 31, 1995, whichever is earlier For index rate change filings made early in 1995, complete data may not be available. In this instance, a 1994 schedule shall be prepared utilizing the most recently available data annualized for 1994. By March 31, 1995, a new 1994 schedule must be submitted, using the actual 1994 data.

This would provide shippers with the necessary information for an analysis of proposed indexed rate changes after

[12] 18 CFR § 342.4(a).

[13] 18 CFR § 343.2(c)(1).

[14] AOPL, Marathon.

[15] Williams, ARCO.

[16] *See*, PEG and NCFC comments and reply comments.

[17] AOPL, Williams, ARCO, Marathon, PEG, Alaska, and Chevron.

[18] For a discussion of the differences in the equity and equity return figures contained in Form No. 6 and the use of those figures for ratemaking purposes under the Opinion No. 154–B methodology, see Supplemental Brief of AOPL filed in Docket No. RM93–11–000 on January 21, 1994, at 11–12.

January 1, 1995, the effective date of the regulations in Order No. 561. In addition, as discussed below, the information on this page would become part of the Commission's evaluation of the effectiveness of the index. Accordingly, the Commission proposes to amend § 342.3(b) of the regulations to require a verified copy of a schedule containing the information contained on page 700 for calendar years 1993 and 1994 to be filed with the first indexed rate change filing made after January 1, 1995, or by March 31, 1995, whichever is earlier.

In Order No. 561, the Commission stated it would monitor the effectiveness of the index in tracing industry costs. These reviews will occur every five years, commencing July 1, 2000.[19] The proposed page 700, together with other information contained in Form No. 6, will permit the Commission to use the Form No. 6 data to help fulfill this commitment. Since the Total Cost of Service, for example, is derived from all of the components of a pipeline's cost and capital properties, this figure, when used in conjunction with other Form No. 6 information, will provide details on general trends affecting each company.

2. Other Proposed Changes to Form No. 6

Since the regulatory responsibility for oil pipelines was transferred to this Commission from the Interstate Commerce Commission in 1977, only cosmetic changes have been made to Form No. 6, other than the addition of a Statement of Cash Flow. In addition to the changes that are proposed to conform with Order No. 561, as discussed above, there are other changes that should make Form No. 6 a more useful report.

The Commission asked, in the NOI, what existing Form No. 6 reporting requirements (*e.g.*, data or cost elements, schedules, or instructions) should be eliminated or modified. Alaska recommended that the Commission eliminate all schedules in Form No. 6 that are unrelated to a pipeline's cost of service. It suggested that the Commission require pipeline companies to report information separately for each pipeline or system for which a cost of service is calculated. Alaska also suggested that the Commission require pipelines to calculate and report expense items using their cost-of-service methods in addition to the method used for financial reporting.[20] PEG similarly suggested that the Commission adjust the Form No. 6 filing requirements so that the data in Form No. 6 conforms to the principles of cost-of-service ratemaking, and suggested that the Commission require pipelines to conform their Form No. 6 data to embody the principles set forth in the initial decision in *Southern Pacific Pipe Lines, Inc.*, 39 FERC ¶ 63,018 (1987),[21] and that the Commission require pipelines to calculate and report data consistent with that initial decision.[22]

AOPL suggested that numerous schedules in Form No. 6 be changed or eliminated to bring it up to date and to facilitate the Commission's review of industry cost experience for purposes of the index mechanism.[23] ARCO suggested that several schedules, such as those relating to accounts receivable and accounts payable, the miles of pipe operated at the end of the year, and statistics of operation, be eliminated to lessen the reporting burden.[24] Marathon suggested extension changes to Form No. 6, such as the establishment of an electronic spreadsheet and filing capability, use of comparative information for certain accounts, and consolidation or elimination of certain schedules.[25]

Based on the comments and review of the current schedules in Form No. 6, the Commission proposes several changes to the annual report for oil pipelines. To simplify the Form No. 6 data, the Commission proposes to delete information not relevant to the Commission's regulatory responsibilities under the ICA. The Commission also proposes to modify certain Form No. 6 financial statements to a comparative format by requiring two years of data to enhance their usefulness and to conform the Form No. 6 data formats to the formats of FERC Nos. 1[26] and 2[27] (Form Nos. 1 and 2) for electric utilities and natural gas pipeline companies, respectively.

The Commission proposes to change the format of several schedules to accommodate electronic filing and reporting requirements for Form No. 6 similar to that used for Form No. 1. The Commission proposes to require electronic filing beginning with reports filed for the 1995 reporting year (*i.e*, reports due on or before March 31, 1996). Electronic filing of Form No. 6 information, similar to that for Form No. 1, should reduce the reporting burden for both large and small pipelines. Financial information reported electronically should also aid the Commission in conducting reviews of the pipeline companies and the rates charged.

The Commission also proposes to eliminate unneeded schedules or individual data elements, and to modify certain schedules so they will contain more useful and relevant data. A sample copy of the pages in Form No. 6 as proposed to be modified are attached as Appendix A.

The specific changes the Commission proposes are:

Corporate Control Over Respondent—Page 102

Some format modifications are proposed for electronic reporting purposes to better report vertical control of respondent from the immediate parent to ultimate controlling parent company.

Companies Controlled by Respondent—Page 103

This is a new schedule proposed to be added a new page 103, similar to the schedules currently in Forms Nos. 1 and 2, to report all subsidiaries directly controlled by a respondent.

Principal General Officers—Page 104

The Commission proposes that "Office Address" be replaced by "Salary," to make the format the same as Form Nos. 1 and 2.

Directors—Page 105

The Commission proposes to modify this schedule to delete the instructions at the top of the page and information required at lines 21 through 23. The Commission proposes to replace the deleted material with similar instructions at the top of the schedule and to insert "Title" in addition to "Name of Director" in column (a). This will make the format the same as Form Nos. 1 and 2.

Voting Powers of Security Holders—Pages 106 and 107

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Important Changes During the Year—Pages 108 and 109

The Commission proposes that the current format be replaced with instructions similar to Form Nos. 1 and 2.

[19] III FERC Stats. & Regs. ¶ 30,985 (1993), at 30,947

[20] Alaska comments, pp. 5–8.

[21] Settlement in this case was reached before the Commission's review of the initial decision.

[22] PEG comments, pp. 3–9.

[23] AOPL comments, pp. 42–47.

[24] ARCO comments, p. 13, n. 24.

[25] Marathon comments, pp. 7–8.

[26] Annual Report of Major Electric Utilities, Licensees, and Others.

[27] Annual Report of Natural Gas Companies.

Comparative Balance Sheet Statement—Pages 110, 111 and 113

Income Statement—Page 114

Appropriated Retained Income—Page 118

Unappropriated Retained Income Statement—Page 119

Statement of Cash Flows—Pages 120 and 121

The Commission proposes to modify these financial statements to require that data be presented on a comparative basis (*i.e.*, for two years) to enhance the usefulness of these financial statements. The Commission proposes to delete from page 119 the schedule showing Dividend Appropriations of Retained Income, because it is not needed for Commission regulatory purposes.

Working Capital—Page 117

The Commission proposes to delete this schedule because it is not needed for Commission regulatory purposes.

Notes to Financial Statements—Pages 122 and 123

The Commission proposes to add new instructions which would require statements of a company's accounting practices and policies (with specific reference to such matters as income taxes, pensions and post-retirement benefits); and significant matters concerning acquisitions and sales, significant contingencies and liabilities existing at the end of the year, and other matters that will materially affect company operations.

Receivables From Affiliated Companies—Page 200

The reporting thresholds in Instruction No. 2 are proposed to be raised from $100,000 to $500,000.

General Instructions Concerning Schedules 202 Through 205—Page 201

The Commission proposes to modify these instructions to conform with Form Nos. 1 and 2 by deleting the subclassifications presently required.

Other Investments—Pages 206 and 207

Securities, Advances and Other Intangibles Owned or Controlled Through Nonreporting Carrier and Noncarrier Subsidiaries—Pages 208 and 209

The Commission proposes to delete these schedules because they are not needed for Commission regulatory purposes.

Instructions for Schedule 212–213—Page 211

The Commission proposes to modify the footnote to Instruction No. 3 to require that a respondent identify the original cost of property purchased or sold. This information is useful in the analysis of carrier property transactions between oil pipeline companies. In addition, the reporting thresholds in Instruction Nos. 3 and 5 are proposed to be raised from $50,000 and $100,000 to $250,000 and $500,000, respectively.

Amortization Base and Reserve—Pages 218 and 219

The reporting thresholds in Instruction No. 4 are proposed to be raised from $10,000 to $100,000.

Noncarrier Property—Page 220

The reporting thresholds in Instruction No. 2 are proposed to be raised from $100,000 to $250,000.

Other Deferred Charges—Page 221

The reporting thresholds in the instruction are proposed to be raised from $100,000 to $250,000.

Payables to Affiliated Companies—Page 225

The reporting thresholds in Instruction Nos. 2 and 3 are proposed to be raised from $100,000 to $250,000.

Analysis of Federal Income and Other Taxes Deferred—230 and 231

The Commission proposes to replace the current reporting format with instructions that require an analysis of the respondent's current and deferred income tax liability.

Capital Stock—Pages 250 and 251

The Commission proposes that the current schedules be replaced with schedules and instructions similar to Form No. 2.

Operating Expense Accounts—Pages 302 Through 304

The Commission proposes to delete "Operating Ratio" at line 23 because it is not needed for Commission regulatory purposes.

Interest and Dividend Income—Page 336

The Commission proposes to delete the reference to Schedule pages 206 to 207 at line 2 because these pages are proposed to be eliminated.

Miscellaneous Items in Income and Retained Income Accounts for the Year—Page 337

The reporting thresholds in Instruction No. 2 are proposed to be raised from $100,000 to $250,000.

Employees and Their Compensation—Page 350

The Commission proposes to replace the present number of classes on this schedule with only four work classes.

Payments for Services Rendered by Other Than Employees—Page 351

The reporting thresholds in Instruction No. 1 are proposed to be raised from $30,000 to $100,000.

Finally, since the Commission proposes to require oil pipelines to file Form No. 6 on an electronic medium, in addition to paper filing, commencing with reporting year 1995 (reports due March 31, 1996), § 385.2011 of Part 385 of the Code of Federal Regulations is proposed to be changed. The formats for electronic filing and the paper copy would be obtainable at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Washington, D.C. 20426. It is anticipated that the electronic formats would be established by January 1, 1996, after consideration of the views of all interested parties.

B. Cost-of-Service Filing Requirements

1. Summary

In the NOI in this docket, the Commission asked whether there are ways to simplify and streamline the Commission's current cost-of-service methodology to aid review of a pipeline's over-all revenue requirement. As discussed earlier, a number of comments were received on the methodology, but no consensus could be ascertained from the comments. Therefore, the Commission will continue to require the use of the Opinion No. 154–B cost-of-service methodology. The proposed filing requirements are designed to implement this requirement.

As with present rate filings, and as required by Order No. 561, a pipeline seeking to change rates is required to file a transmittal letter containing the previous rate for the same movement or service, the applicable ceiling rate for the movement in question, and the new proposed tariff.[28] This is all that is required to be filed for a rate change within the index.

The Commission proposes to require a pipeline to file additional information if it is filing for a cost-of-service rate above the indexed rate change, or as support for an initial rate. This information should permit a pipeline to establish an initial case for cost-of-service rates. The additional filing requirements should provide sufficient

[28] 18 CFR 342.3(b).

information for a preliminary cost-of-service showing and will include an up-to-date overall cost of service for the pipeline, calculated in accordance with Opinion No. 154–B methodology. If the Commission institutes an investigation into a pipeline's rates, additional information may be required of the pipeline. The new filing requirements are set forth in proposed Part 346.

Part 346 also contains the Commission's proposed definition of the terms "base period" and "test period." The definitions of these terms are consistent with the principles contained in the definitions of similar terms in Section 154.63 of the Regulations under the Natural Gas Act,[29] applicable to natural gas pipeline companies.

2. The Supporting Statements

The oil pipeline must file the following statements and supporting work papers to support either an initial rate developed on a cost-of-service basis or a change in rates using the cost-of-service methodology. Such filing is proposed to be in both electronic and paper formats.

Statement A—Total Cost of Service

This statement would show the calculation of the Total Cost of Service for a pipeline.

Statement B—Operation and Maintenance

This statement would report the operation, maintenance, administrative and general expenses, and depreciation and amortization expenses.

Statement C—Overall Return on Rate Base

This statement would show the derivation of the return on rate base consisting of deferred earnings, equity and debt ratios, weighted cost of capital, and costs of debt and equity.

Statement D—Income Taxes

This statement would show the calculation of the Income Tax Allowance.

Statement E—Rate Base

This statement would show the calculation of the return rate base required by Opinion No. 154–B methodology to derive the cost of service.

Statement F—Allowance for Funds Used During Construction

This statement would show the calculation of the Allowance for Funds Used During Construction (AFUDC).

[29] 18 CFR § 154.63(e)(2)(i) (1993).

Details of the various statements and supporting schedules are found in the proposed regulations.

C. Other Proposed Changes

Depreciation Studies

In Order No. 561, the Commission stated that it would be the pipelines' responsibility in the future to perform depreciation studies to establish revised depreciation rates for oil pipelines. The Commission further stated that the specific requirements for such studies would be developed in this proceeding.[30]

In new Part 347 of the Commission's regulations, the Commission proposes to require the following information to justify a request for either new or changed carrier account depreciation rates:

a. A brief summary of the general principles on which the proposed depreciation rates are based (*e.g.*, why the economic life of the pipeline section is less than the physical life).

b. An explanation of the organization, ownership, and operation of the pipeline.

c. A table of the proposed depreciation rates by primary carrier account.

d. An explanation of the average remaining life on a physical basis and on an economic basis.

e. The following specific background data would be submitted concurrently with any request for new or changed property account depreciation rates for oil pipelines:[31]

(1) Up-to-date engineering maps of the pipeline including the location of all gathering facilities, trunkline facilities, terminals, interconnections with other pipeline systems, and interconnections with refineries/plants. These maps must indicate the direction of flow.

(2) A brief description of the pipeline's operations and an estimate of any major near-term additions or retirements including the estimated costs, location, reason, and probable year of transaction.

(3) The present depreciation rates being used, by account.

(4) For the most current year available and for the two prior years, a breakdown of the throughput (by type of product, if applicable) received from each source (*e.g.*, name of well, pipeline company) at each receipt point and throughput delivered at each delivery point.

[30] III FERC Stats. & Regs. ¶ 30,985 (1993), at 30,967–8.

[31] All of the information listed here may not be appropriate and thus could be omitted from the filing. For example, if the pipeline carries only crude oil, information requested concerning petroleum products would not be needed.

(5) The daily average throughput (in barrels per day) and the actual average capacity (in barrels per day) for the most current year, by line section.

(6) A list of shippers and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year.

(7) For each primary carrier account, the latest month's book balances for gross plant and accumulated reserve for depreciation.

(8) An estimate of the remaining life of the system (both gathering and trunk lines) including the basis for the estimate.

(9) For crude oil, a list of the fields or areas from which crude oil is obtained and the most recent estimated reserves, actual production for the previous three years, and five years of estimated future production.

(10) If the proposed depreciation rate adjustment is based on the remaining physical life of the properties, the Service Life Data Form (FERC Form No. 73) through the most current year. This may only require an updating from the last year for which information was filed with the Commission.

(11) Estimated salvage value of properties by primary carrier account.

An oil pipeline company would be required to provide this, and any other information it deems pertinent, in sufficient detail to fully explain and justify its proposed rates. Any modifications, additions, and deletions to these data elements should be made to reflect the individual circumstances of the pipeline's properties and operations, and should be accompanied by a full explanation of why the modifications, additions, or deletions are being made.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[32] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[33] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[34] Therefore, neither an environmental impact

[32] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[33] 18 CFR 380.4.

[34] *See* 18 CFR § 380.4(a)(2)(ii).

statement nor an environmental assessment is necessary and will not be prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[35] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[36] Most oil pipelines to whom the proposed rule would apply do not fall within the definition of small entity.[37] In fact, the reporting thresholds for numerous of the revised schedules in FERC Form No. 6 are proposed to be raised, which may exclude certain small entities from completing those schedules. Consequently, pursuant to section 605(b) of the RFA, the Commission certifies that the proposed regulations, if promulgated, will not have a significant adverse impact on a substantial number of small entities.

VII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations at 5 C.F.R. § 1320.13 (footnote) require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC–6 "Annual Report of Oil Pipeline Companies" (1902–0022) and FERC–550 "Oil Pipeline Rates: Tariff Filings" (1902–0089).

The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the Interstate Commerce Act (ICA), the Act of 1992, and delegations to the Commission from the Secretary of Energy. The Commission's Office of Pipeline Regulation uses the data for the analysis of all rates, fares, or charges demanded, charged, or collected by any common carriers in connection with the transportation of petroleum and petroleum products and also as a basis for determining just and reasonable rates that should be charged by the regulated pipeline company.

The Office of Economic Policy and the Office of General Counsel use the data in their functions relating to the administration of the ICA and the Act of 1992. The Commission's Office of Chief Accountant uses the data collected in Form No. 6 to carry out its compliance audits and for continuous review of the financial conditions of regulated companies.

Because of the proposed revisions to both FERC–550 and Form No. 6, and the expected reduction in public reporting burden of the latter, the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contracting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, DC 20503, FAX: (202) 395–5167.

VIII. Comment Procedures

Copies of this notice of proposed rulemaking can be obtained from the Office of Public Information, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426. Any person desiring to file comments should submit an original and fourteen (14) copies of such comments to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 not later than 30 days after the date of publication of this notice of proposed rulemaking in the **Federal Register**.

The full text of this notice of proposed rulemaking, excluding the revised Form No. 6 schedules, also is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service, which provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, communications software should be set to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. Paper copies of the Appendix may be obtained from the Office of Public Information. The complete text, excluding the revised Form No. 6 schedules, on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

List of Subjects in 18 CFR Parts 342, 346, 347, and 357

Pipelines, Reporting and recordkeeping requirements.

List of Subjects in 18 CFR Part 385

Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission gives notice of its proposal to amend Parts 342, 357, and 385, and to add parts 346 and 347, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

1. The authority citation for Part 342 continues to read as follows:

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

2. Sections 342.2(a), 342.3(b) and 342.4(a) are proposed to be revised as follows:

§ 342.2 Establishing initial rates.

* * * * *

(a) Filing cost, revenue, and throughput data supporting such rate as required by part 346; or

* * * * *

§ 342.3 Indexing.

* * * * *

(b) Information required to be filed with rate changes. The carrier must comply with part 341 of this chapter.

(1) Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

(2) Carriers must file a verified copy of a schedule for calendar years 1993 and 1994 containing the information required by page 700 of the 1995 edition of FERC Form No. 6 concurrently with the first indexed rate change filing made by a carrier on or after January 1, 1995, or by March 31, 1995, whichever occurs first. If actual data are not available for calendar year 1994 when the rate

[35] 5 U.S.C. §§ 601–612 (1988)

[36] Section 605(b)

[37] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. § 632(a)

change filing is made, the information for calendar year 1994 must be comprised of the most recently available actual data annualized for the year 1994. A schedule containing the information comprised of actual data for calendar year 1994 must be filed not later than March 31, 1995.

* * * * *

§ 342.4 Other rate changing methodologies.

(a) *Cost-of-service rates.* A carrier may change a rate pursuant to this section if it shows that there is a substantial divergence between the actual costs experienced by the carrier and the rate resulting from application of the index such that the rate at the ceiling level would preclude the carrier from being able to charge a just and reasonable rate within the meaning of the Interstate Commerce Act. A carrier must substantiate the cost incurred by filing the data required by part 346. A carrier that makes such a showing may change the rate in question, based upon the cost of providing the service covered by the rate, without regard to the applicable ceiling level under § 342.3.

* * * * *

3. In subchapter P, chapter I, title 18, Code of Federal Regulations, part 346 is proposed to be added to read as follows:

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

Sec.

346.1 Content of Filing for Cost-of-Service Rates.

346.2 Material in support of initial rates or change in rates.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 346.1 Content of filing for cost-of-service rates.

(a) If a carrier seeks to establish rates pursuant to § 342.2(a), of this chapter, or if a carrier seeks to change rates pursuant to § 342.4(a), of this chapter, it must file and provide supporting justification as set forth in this part.

(b) The carrier must file a letter of transmittal which conforms to §§ 341.2(c) and 342.4(a) of this chapter; the proposed tariff; and the statements and supporting workpapers required in § 346.2.

§ 346.2 Material in support of initial rates or change in rates.

A carrier which files for rates in accordance with § 342.2(a) or § 342.4(a) of this Chapter must file the following statements, schedules, and all supporting workpapers. The statements, schedules, and workpapers must be based upon an appropriate test period.

(a) *Base and test periods defined.*

(1) For a carrier which has been in operation for at least twelve months:

(i) A base period must consist of 12 consecutive months of actual experience. The 12 months of experience must be adjusted to eliminate nonrecurring items (except minor accounts). The filing carrier may include appropriate normalizing adjustments in lieu of nonrecurring items.

(ii) A test period must consist of a base period adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the last month of available actual experience utilized in the filing. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period.

(2) For a carrier which has less than 12 months' experience, the test period may consist of 12 consecutive months ending not more than one year from the filing date. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period.

(3) For a carrier which is establishing rates for new service, the test period will be based on a 12-month projection of costs and revenues.

(b) *Cost-of-service summary schedule.* This schedule must contain the following information:

(1) Total carrier cost of service for the test period.

(2) Throughput for the test period in both barrels and barrels-miles.

(3) For filings in accordance with § 342.4(a) of this chapter, the schedule must include the proposed rates and the rates which would be permitted under § 342.3 of this chapter, and the revenues to be realized from both sets of rates.

(c) *Content of statements.* Any cost-of-service rate filing must include supporting statements containing the following information for the test period.

(1) *Statement A—total cost of service.* This statement must summarize the total cost of service for a carrier (operating and maintenance expense, depreciation and amortization, return, and taxes) developed from the supporting statements described below.

(2) *Statement B—operation and maintenance expense.* This statement must set forth the operation, maintenance, administration and general, and depreciation expenses for the test period. Items used in the computations or derived on this statement must include operations, including salaries and wages, supplies and expenses, outside services, operating fuel and power, and oil losses and shortages; maintenance, including salaries and wages, supplies and expenses, outside services, and maintenance and materials; administrative and general, including salaries and wages, supplies and expenses, outside services, rentals, pensions and benefits, insurance, casualty and other losses, and pipeline taxes; and depreciation and amortization.

(3) *Statement C—overall return on rate base.* This statement must set forth the rate base for return purposes from Statement E and must also state the claimed rate of return and the application of the claimed rate of return to the overall rate base. The claimed rate of return must consist of a weighted cost of capital, combining the rate of return on debt capital and the real rate of return on equity capital. Items used in the computations or derived on this statement must include deferred earnings, equity ratio, debt ratio, weighted cost of capital, and costs of debt and equity.

(4) *Statement D—income taxes.* This statement must set forth the income tax computation. Items used in the computations or derived on this statement must show: return allowance, interest expense, return on equity rate base, accrued annual amortization or deferred earnings, depreciation on equity AFUDC, under/over-funded ADIT amortization amount, taxable income, tax factor, and income tax allowance.

(5) *Statement E—rate base.* This statement must set forth the return rate base. Items used in the computations or derived on this statement must include beginning balances of the rate base at December 31, 1983, working capital (including materials and supplies, prepayments, and oil inventory), accrued depreciation on carrier plant, accrued depreciation on rights of way, and accumulated deferred income taxes; and adjustments and end balances for original cost of retirements, interest during construction, AFUDC adjustments, original cost of net additions and retirements from land, original cost of net additions and retirements from rights of way, original cost of plant additions, original cost accruals for depreciation, AFUDC accrued depreciation adjustment, original cost depreciation accruals added to rights of way, net charge for retirements from accrued depreciation, accumulated deferred income taxes, changes in working capital (including materials and supplies, prepayments, and oil inventory), accrued deferred

earnings, annual amortization of accrued deferred earnings, and amortization of starting rate base write-up.

(6) *Statement F—allowance for funds used during construction.* This statement must set forth the computation of allowances for funds used during construction (AFUDC) including the AFUDC for each year commencing in 1984 and a summary of AFUDC and AFUDC depreciation for the years 1984 through the test year.

(7) *Statement G—revenues.* This statement must set forth the gross revenues for the actual 12 months of experience as computed under both the presently effective rates and the proposed rates. If the presently effective rates are not at the maximum ceiling rate established under § 342.4(a) of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.

4. In subchapter P, chapter I, title 18, Code of Federal Regulations, Part 347 is proposed to be added to read as follows:

PART 347—OIL PIPELINE DEPRECIATION STUDIES

Sec.

347.1 Material to support request for newly established or changed property account depreciation studies.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

(a) *Means of filing.* Filing of a request for new or changed property account depreciation rates must be made with the Secretary of the Commission. Filings made by mail must be addressed to the Federal Energy Regulatory Commission with the envelope clearly marked as containing "Oil Pipeline Depreciation Rates."

(b) *Number of copies.* Carriers must file three paper copies of each request with attendant information identified below.

(c) *Transmittal letter.* Letters of transmittal must give a general description of the change in depreciation rates being proposed in the filing. Letters of transmittal must also certify that the letter of transmittal (not including the information to be provided, as identified below) has been sent to each shipper and to each subscriber. If there are no subscribers, letters of transmittal must so state. Carriers requesting acknowledgement of the receipt of a filing by mail must submit a duplicate copy of the letter of transmittal marked "Receipt requested." The request must include a postage paid, self-addressed return envelope.

(d) *Effectiveness of property account depreciation rates.*

(1) The proposed depreciation rates being established in the first instance must be used until they are either accepted or modified by the Commission. Rates in effect at the time of the proposed revision must continue to be used until the proposed revised rates are approved or modified by the Commission.

(2) When filing for approval of either new or changed property account depreciation rates, a carrier must provide information in sufficient detail to fully explain and justify its proposed rates.

(e) *Information to be provided.* The items delineated below are the data to be provided as justification for depreciation changes. Modifications, additions, and deletions to these data elements should be made to reflect the individual circumstances of the carrier's properties and operations.

(1) A brief summary relating the general principles on which the proposed depreciation rates are based (*e.g.*, why the economic life of the pipeline section is less then the physical life).

(2) An explanation of the organization, ownership, and operation of the pipeline.

(3) A table of the proposed depreciation rates by account.

(4) An explanation of the average remaining life on a physical basis and on an economic basis.

(5) The following specific background data must be submitted at the time of and concurrently with any request for the establishment of, or modification to, depreciation rates for carriers. If the information listed is not applicable, it may be omitted from the filing:

(i) Up-to-date engineering maps of the pipeline including the location of all gathering facilities, trunkline facilities, terminals, interconnections with the other pipeline systems, and interconnections with refineries/plants. Maps must indicate the direction of flow.

(ii) A brief description of the carrier's operations and an estimate of any major near-term additions or retirements including the estimated costs, location, reason, and probable year of transaction.

(iii) The present depreciation rates being used by account.

(iv) For the most current year available and for the two prior years, a breakdown of the throughput (by type of product, if applicable) received with source (e.g. name of well, pipeline company) at each receipt point and throughput delivered at each delivery point.

(v) The daily average capacity (in barrels per day) and the actual average capacity (in barrels per day) for the most current year, by line section.

(vi) A list of shippers and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year.

(vii) For each primary carrier account, the latest month's book balances for gross plant and for accumulated reserve for depreciation.

(viii) An estimate of the remaining life of the system (both gathering and trunk lines) including the basis for the estimate.

(ix) For crude oil, a list of the fields or areas from which crude oil is obtained and the most recent estimated reserves, actual production for the previous three years, and five years of estimated future production.

(x) If the proposed depreciation rate adjustment is based on the remaining physical life of the properties, a complete, or updated, if applicable, Service Life Date Form (FERC Form No. 73) through the most current year.

(xi) Estimated salvage value of properties by account.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

5. The authority citation for Part 357 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C 1–27 (1976).

6. Section 357.2 is revised to read as follows:

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

Every carrier pipeline subject to the provisions of section 20 of the Interstate Commerce Act must file with the Commission FERC Form No. 6, "Annual Report of Oil Pipeline Companies," in the manner prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in this report form. This report must be filed on or before March 31st of each year for the previous calendar year, and must be properly completed and verified.

PART 385—RULES OF PRACTICE AND PROCEDURE

7. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825r, 2601–2605; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

8. Section 385.2011, paragraph (a), is proposed to be amended by redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6), and adding a new paragraph (a)(3) as follows:

§ 385.2011 Procedures for filing on electronic media.

(a) * * *

(3) FERC Form No. 6, Annual Report of Oil Pipeline Companies.

* * * * *

Appendix to the Proposed Rule

Note: This appendix is not being published in full in the Federal Register, but is available from the Commission's Public Reference Room.

Appendix A—Revised Sheets for Form No. 6: Annual Report of Oil Pipeline Companies

This Appendix A contains the pages from Form No. 6 which are proposed to be revised in the Commission's Notice Of Proposed Rulemaking, Docket No. RM94–2–000.

[FR Doc. 94–18871 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 100

[Docket No. N–94–1706; FR–3502–N–02]

Housing for Older Persons: Defining Significant Facilities and Services—Notice of Public Meetings on Proposed Rule

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed Rule; Public Meetings.

SUMMARY: This document announces four public meetings to be conducted by the Assistant Secretary for Fair Housing and Equal Opportunity of HUD (Assistant Secretary) to hear oral presentations from interested parties on the Department's proposed rule concerning the definition of "significant facilities and services specifically designed to meet the physical or social needs of older persons" under section 807(b)(2) of the Fair Housing Act.

DATES: See **ADDRESSES** below.

ADDRESSES: Locations: The first meeting will be held in Fontana, California on Monday, August 15, 1994, in the Fontana Performing Arts Center, 9460 Sierra Avenue, Fontana, California, 92325.

The second meeting will be held in Tampa, Florida on Thursday, August 25, 1994, in the Tampa Convention Center, 333 South Franklin Street, Tampa, Florida, 33602.

The third meeting will be held in Phoenix, Arizona on Thursday, September 29, 1994, in the City Council Chamber, City of Phoenix, 200 West Jefferson Street, Phoenix, Arizona, 85003.

The fourth meeting will be held in Washington, DC on Thursday, October 6, 1994, in the National Aeronautics Space Administration Auditorium, 300 E Street, SW., Washington, DC, 20546.

The meetings will convene at 9:00 a.m. and adjourn at 4:00 p.m. unless otherwise extended by the Assistant Secretary or duly designated Presiding Officer.

Attendance is open to the public but limited to the space available. The meetings facilities are accessible to persons with mobility impairments. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments. If you require any of these services, please contact HUD as indicated below.

Any member of the public may file written comments with the Office of Fair Housing and Equal Opportunity (FHEO), United States Department of Housing and Equal Opportunity (HUD), during the comment period for the proposed regulation.

Individuals, groups, and organizations that wish to make an oral statement at a meeting should make a written request to do so and should forward the text of their oral statement five work days in advance of the meeting to HUD as indicated below.

Oral statements at the Washington meeting are limited to those persons who have submitted written comments pursuant to the publication of the proposed rule in the **Federal Register** on July 7, 1994 (59 FR 34902).

Opportunity for oral statements at the California, Arizona and Florida meetings will include but not be limited to those who have submitted written comments pursuant to the publication of the proposed rule in the **Federal Register** on July 7, 1994 (59 FR 34902). To the extent that time permits and within the discretion of the Assistant Secretary or the Presiding Officer, other members of the public who wish to present oral statements will be allowed to do so.

FOR FURTHER INFORMATION CONTACT: Requests to make oral presentations contact: Peter Kaplan, Director, Office of Regulatory Initiatives and Federal Coordination, Office of Fair Housing and Equal Opportunity, HUD, Room 5242, 451 Seventh Street, S.W., Washington, DC 20410–0500, telephone (202) 708–2904 (not a toll-free number). The toll-free TDD number is 1-800–877–8339.

SUPPLEMENTARY INFORMATION:

Subject of the Meeting

The Fair Housing Act [Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601–19] exempts "housing for older persons" from the prohibitions against discrimination because of familial status. The purpose of the prohibition against discrimination because of familial status and the "housing for older persons" exemption is to protect families with children from discrimination in housing without unfairly limiting housing choices for older persons.

On January 23, 1989, HUD published a final rule implementing the Fair Housing Act (54 FR 3232). This rule included regulations governing housing for older persons. The "housing for older persons" regulations implement section 807(b)(2)(c) of the Fair Housing Act which exempts housing intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfies certain criteria. These regulations are codified at 24 CFR part 100, subpart E.

Congress mandated that, in determining whether housing qualifies as housing for persons 55 years of age or older, the Secretary develop regulations which require at least the following factors:

(1) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(2) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(3) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Section 919 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992, (the 1992 Act)), requires the Secretary of HUD to issue rules further defining what are "significant facilities and services specifically designed to meet the physical or social needs of

older persons" required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term "housing for older persons." On July 7, 1994, HUD published a proposed rule to implement the rulemaking required by section 919 of the 1992 Act (59 FR 34902). The proposed rule advised that the Assistant Secretary for Fair Housing and Equal Opportunity would schedule a public meeting to hear from interested persons affected by the proposed rule, issue a notice and announce the date, time, and location of the meeting through a notice published in the Federal Register. This notice of public meeting is issued pursuant to that publication.

Procedures Governing the Conduct of the Public Meeting

A. General

The Assistant Secretary or duly designated Presiding Officer will provide an overview of the regulations proposed by HUD. Then, a panel chaired by the Assistant Secretary, or duly designated Presiding Officer, will receive oral presentations from the participants in the meeting.

1. Oral presentations will be scheduled at a prescribed time and limited to matters concerning the proposed rule.

2. Speakers will appear in the order that they are called and shall address the panel. The Assistant Secretary or duly designated Presiding Officer may require speakers to make their oral presentations as part of a panel with other speakers. If more individuals request an opportunity to speak than can be heard in the time allotted, the Assistant Secretary or duly designated Presiding Officer reserves the right to select speakers and to reduce the amount of time made available for oral presentations in order to ensure that the views of as many persons as possible are heard. However, all written comments will be considered in preparing the final rule.

B. Specific

1. The Meeting shall be convened promptly at the scheduled time by the Assistant Secretary or duly designated Presiding Officer.

2. Speakers will appear in the order that they are called.

3. Oral presentations will be heard at prescribed times and for the Washington meeting, only from those persons that have submitted written comments on the proposed rule.

4. Speakers' comments shall be clear and succinct and where appropriate cite the applicable section of the proposed rule. This will assist with the effort to afford all speakers the opportunity to speak within the time allotted.

5. Questioning of a speaker during or after his or her presentation shall be done by the Assistant Secretary or duly designated Presiding Officer, or any other member of the panel recognized by the Assistant Secretary or duly designated Presiding Officer.

6. Members of the audience may be invited to direct questions to a speaker by written note submitted to the Assistant Secretary or duly designated Presiding Officer during any allotted Question and Answer period.

7. Proceedings of the Meeting will be officially transcribed by the Department.

8. This is a public Meeting and may be attended by news media. The proceedings may be televised, filmed or photographed and testimony may be broadcast or recorded for broadcasting without written consent.

9. The Assistant Secretary or duly designated Presiding Officer will maintain order and any person who engages in threats or intimidation of participants will be subject to criminal penalties under 18 United States Code-505 and 42 United States Code 3631.

10. The Meeting will be adjourned at the scheduled time unless otherwise announced by the Assistant Secretary or duly designated Presiding Officer.

Dated: August 2, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–19315 Filed 8–8–94; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Kentucky Administrative Regulations (KAR) pertaining to documents, assessment of civil penalties, performance bond and liability insurance, contemporaneous reclamation, and revegetation for surface and underground mining. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.D.T. September 8, 1994. If requested, a public hearing on the proposed amendment will be held on September 6, 1994. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T., on August 24, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Kentucky Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky, 40503. Telephone: (606) 233–2896

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated July 19, 1994 (Administrative Record No. KY–1304), Kentucky submitted a proposed amendment to its program pursuant to SMCRA. Kentucky submitted the proposed amendmnet at its own initiative. The provisions of KAR that Kentucky proposes to amend are: 405 KAR 7:015—Documents Incorporated by Reference, 405 KAR 7:095—Assessment of Civil Penalties, 405 KAR 10:010—General Requirements for Performance Bond and Liability Insurance, 405 KAR 16:020—Contemporaneous Reclamation, 405 KAR 16:200—Revegetation for Surface Coal Mining, and 405 KAR 18:200 Revegetation for Underground Mining Operations.

Specifically, Kentucky proposes to:

(1) At 405 KAR 7:015—delete the "Penalty Assessment Manual," dated July 1983, which was incorporated by reference. The "Penalty Assessment Manual" is being superseded by an amendment to Kentucky's regulations on assessment of civil penalties at 405 KAR 7:095.

(2) At 405 KAR 7:095—incorporate by reference a document, "Procedures for Assessment of Civil Penalties," Kentucky Department for Surface Mining Reclamation and Enforcement, June 15, 1994, which further explains the penalty assessment process. The document includes: a general description of the assessment process, explanation of the assessment factors, the assessment mechanism including the assessor's statement and assessment worksheet, and the application of the assessment factors to specific violations.

(3) At 405 KAR 10:010—modify this regulation as the result of the Reclamation Bonding Study conducted by a committee comprised of environmental, surety, and government representatives. The committee studied the issue of adequacy of performance bonds in Kentucky and determined that this amendment, coupled with the amendments proposed for 405 KAR 16:020, would decrease the chance that forfeited bonds would be inadequate to reclaim a minesite. Under these revisions, a permittee will have to submit a rider to his performance bond confirming coverage of the revision if a revision to a permit adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit, or alters the boundary of a permit area or increment.

This administrative regulation proposes to incorporate by reference the following documents:

Performance Bond, SME–42, February 1991.

Irrevocable Standby Letter of Credit, SME–72, July 1994.

Confirmation of Irrevocable Standby Letter of Credit, SME–72A, April 1991.

Certificate of Liability Insurance, SME–29.

Notice of Cancellation, Non-Renewal or Change of Liability Insurance, SME–30.

Escrow Agreement, SME–64, May 1991.

(4) At 405 KAR 16:020—modify this regulation as the result of the Reclamation Bonding Study conducted by a committee made up to industry, environmental, surety, and government representatives. The committee studied the issue of adequacy of performance bonds in Kentucky and determined that these amendments to the requirements for contemporaneous reclamation would be inadequate to reclaim a minesite. Under these modifications to add 405 KAR 16:020, section 6, a permittee will have to post supplemental assurance (CD's, letter of credit, surety guarantee, etc.) in addition to the normal performance bond whenever he obtains approval of alternate distance limits under the contemporaneous reclamation regulation. This will also be required if he wishes to open up more than one pit on the permit area. This was recommended by the Bonding Study Committee as a mechanism for assuring that the Cabinet would have sufficient funds to reclaim these types of operations should bond forfeiture ever become necessary.

The following documents are proposed to be incorporated into this administrative regulation:

Supplemental Assurance, SME–42 (SA), July 1994.

Escrow Agreement (for use with Supplemental Assurance form only) SME–64 (SA), July 1994.

(5) At 405 KAR 16:200 and 405 KAR 18:200—modify these regulations to correct deficiencies noted by OSM to revise the stocking success standards for trees and shrubs based upon consultation with the Kentucky Department of Fish and Wildlife Resources and the Kentucky Department for Natural Resources, Division of Forestry, to delete a document currently incorporated by reference (TRM #20) that contains material not related to this administrative regulation; to incorporate by reference a new document (TRM #21) that relates only to certain revegetation requirements; and to incorporate by reference recent editions of "Kentucky Agricultural Statistics." A few non-substantive editorial changes are also being made.

The proposed regulations that are modified to correct deficiencies noted by OSM in 58 FR 32283, dated June 9, 1993, include:

a. New language at section 1(4) to ensure it does not inadvertently negate the 405 KAR 16:180 section 3(2) requirement that "where cropland is to be the postmining land use, and where appropriate for wildlife and crop-management practices, the permittee shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversity habitat types for birds and other animals." This new language will assure the Kentucky's regulations are consistent with 30 CFR 816.97(h).

b. New language in section 5(2)(b)2 to specifically identify the "Kentucky Agricultural Statistics" documents being relied on (except on prime farmland) for average county yields of row crops, in the same manner as already provided at section 5(2)(a)2 for pastureland and hay cropland.

c. Deletion of section 9(3)(c) and 9(6) regarding the use of productivity test areas rather than statistical evaluation of productivity.

The amendments made through consultation with the Kentucky Department of Fish and Wildlife Resources and the Division of Forestry in the Cabinet's Department for Natural Resources include:

a. Revisions throughout section 6, the success standards for stocking of trees and shrubs.

b. Development of new TRM #21, "Plant Species, Distribution Patterns, Seeding Rates, and Planting Arrangements for Revegetation of Mined Lands."

The other substantive amendment is the incorporation by reference of 1991–1992 and 1992–1993 editions of "Kentucky Agricultural Statistics."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time

indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T., on August 24, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notice of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 2, 1994.

Patricia P. Acker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–19362 Filed 8–8–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 936

Oklahoma Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success standards and statistically valid sampling techniques, and guidelines for phase I, II, and III bond release. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t. August 24, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135.

Oklahoma Department of Mines, 4040 N. Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program,

including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated February 17, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–959.01). Oklahoma submitted the proposed amendment in response to the required program amendments at 30 CFR 936.16(a) through (i). Oklahoma proposed to amend the Bond Release Guidelines that are referenced in subsections 816.116(a) and 817.116(a) of the Oklahoma rules.

OSM announced receipt of the proposed amendment in the March 8, 1994, **Federal Register** (59 FR page number 10770), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. OK–959.06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 7, 1994.

During its review of the amendment, OSM identified concerns with Oklahoma's proposed revisions to the Bond Release Guidelines. Specifically, OSM identified concerns relating to (1) sections I.E.3, I.F.3, II.A, and III.A, the need to establish a method to determine revegetation success standards for diversity, seasonality, permanence, and regeneration; (2) Appendix O, the method for calculating a technical productivity standard for success of revegetation on soils reclaimed for use as pastureland, grazingland, and grain and hay cropland on both prime and nonprime farmland; (3) subsection V.B.2.d, phase II bond release requirements for the use of test plots to demonstrate productivity on reclaimed prime farmland; and (4) Appendix R, the repair of rills and gullies as normal husbandry practice. In addition, OSM identified certain editorial concerns relating to (1) subsection I.F.5.b, phase III bond release requirements for permanent drainage control facilities; (2) subsection V.B.2.e, the reference to Appendix O for the method to calculate a technical productivity standard on prime farmland for phase II bond release; and (3) Appendix J, the example calculation for a minimum adequate sample size.

OSM notified Oklahoma of these concerns by letter dated May 20, 1994 (administrative record No. OK–959.10). Oklahoma responded in a letter dated July 21, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. OK–959.11).

Oklahoma proposes revisions to and additional explanatory information for certain provisions of the Bond Release Guidelines. Specifically, Oklahoma proposes to revise the Bond Release Guidelines at (1) subsection I.F.5.b, to require that water discharged from permanent impoundments, ponds, diversions, and treatment facilities shall meet water quality effluent limitations; (2) subsections IV.A.1.a and IV.B.1.a, and section VII.A, to require that areas reclaimed for forestry, wildlife habitat, recreation, and industrial, commercial, or residential use must meet the standards for diversity, seasonality, permanence, and regeneration that are defined in the permit; (3) subsections V.B.2.d and V.B.2.e, to add criteria regarding the selection of test plots for demonstrating success of productivity on prime farmland cropland; (4) subsection V.B.2.f, to reference Appendix O for calculation of a technical productivity standard for grain or hay crops on prime farmland; (5) Appendix J, to correct typographical errors; (6) Appendix O, to revise the method for calculation of technical productivity standards on land reclaimed for use as pastureland, grazingland, and grain and hay cropland on both prime and nonprime farmland; and (7) Appendix R, concerning repair of rills and gullies, to use the term "initial establishment of permanent vegetative cover."

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 3, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–19363 Filed 8–8–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG63

Dependents and Veterans Education: Mitigating Circumstances and Other Miscellaneous Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Correction to proposed rules.

SUMMARY: This document contains corrections to the proposed rules which were published Friday, June 24, 1994 (59 FR 32671). The rules concerned submission of mitigating circumstances justifying a withdrawal from a course or receipt of a nonpunitive grade for a course.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION:

Background

Veterans and eligible persons who discontinue a course or courses are not entitled to education benefits paid or payable for any portion of the course(s) unless they submit a description of the mitigating circumstances which caused the discontinuance. Similarly, veterans and eligible persons who receive a nonpunitive grade for a course are not entitled to education benefits paid or payable for any portion of the course unless they submit a description of the mitigating circumstances which caused the veteran or eligible person to receive the nonpunitive grade. The proposed rules would standardize the time limits for doing this.

Need for Correction

As published the proposed rules contained errors that make them difficult to understand. They need to be corrected.

Correction of Publication

§ 21.4136 [Corrected]

1. On page 32672 in § 21.4136(k)(1)(ii)(C) seventh line, the word "onmemberyear" is corrected to read "one-year."

§ 21.4137 [Corrected]

2. On page 32673 in § 21.4137(h)(1)(ii)(C) seventh line, the word "onmemberyear" is corrected to read "one-year."

§ 21.7139 [Corrected]

3. On page 32673 in § 21.7139(b)(2)(ii) tenth line, the word "onmemberyear" is corrected to read "one-year." On page 32673 in § 21.7139(b)(2)(iii) eighth line, the word "onmemberyear" is corrected to read "one-year."

Dated: July 29, 1994.

Donald L. Neilson,

Director, Records Management Service.

[FR Doc. 94–19306 Filed 8–8–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5028–5]

Iowa; Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of State of Iowa for final approval, public comment period.

SUMMARY: The State of Iowa has applied for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Iowa's application and has made the tentative decision that Iowa's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA intends to grant final approval to Iowa to operate its program in lieu of the federal program. Iowa's application for final approval is available for public review and comment and a public hearing will be held to solicit comments on the application, if there is significant interest.

DATES: The public may submit written comments on EPA's tentative determination until September 8, 1994. EPA expects to make a final decision on whether or not to approve Iowa's program by November 7, 1994, and will give notice of it in the **Federal Register**. Any request for a hearing and all comments on Iowa's final approval application must be received at the EPA Region 7 office by the close of business on September 8, 1994.

ADDRESSES: Comments should be sent to Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651. Copies of Iowa's program application are available during business hours at the following addresses for inspection and copying: Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa, Phone: (515) 281–8779; U.S. EPA Headquarters, Library, Room 211A, 401 M Street, SW., Washington, DC 20460, Phone: (202) 382–5926; and U.S. EPA Region 7 Library, 726 Minnesota Ave., Kansas City, Kansas 66101, Phone: (913) 551–7266.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

Public Comments and Hearings

EPA will consider all public comments on its tentative determination received during the public comment period or at a public hearing, if held. Issues raised by those comments may be the basis for a decision to deny final approval to Iowa. EPA will announce its final determination in a **Federal Register** notice which will include a summary of the reasons for the determination and a response to all major comments. A public hearing will be held only if significant public interest on substantive issues is shown. If a public hearing is held, all those making comments or requesting a hearing will be notified by EPA of the place and time.

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the State in lieu of the Federal UST program. Program approval is granted by EPA if the Agency finds that the state program is

(1) "no less stringent" than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of Section 9004(a)(8), 42 U.S.C. 6991c(a)(8); and (2) provides for adequate enforcement of compliance with UST standards (Section 9004(a), 42 U.S.C. 6991c(a)).

B. Iowa

The statute authorizing Iowa's Underground Storage Tank Program is set forth in Division IV, Part 8 of Iowa Code Chapter 455B, entitled "Underground Storage Tanks." Part 8 consists of Code Sections 455B.471 through 455.479 and is the statute the State of Iowa relies on to obtain authorization for this program. In addition to its statutory authority, The Environmental Protection Commission of the Department of Natural Resources has adopted the federal regulations essentially verbatim. The rules differ in certain instances as a result of statutory requirements peculiar to Iowa's program, however, it is the opinion of the Iowa Attorney General that these differences do not render inadequate the State's authority to carry out this program. The program includes standards for: new tanks, upgrading existing tanks, general operating requirements, release detection, release reporting, corrective action, tank closure, financial responsibility and notification requirements.

On March 17, 1994, Iowa submitted an official application for "complete" program approval. On April 25, 1994, Iowa submitted H.F. 2118 which amended Iowa Code § 455B.471(6) for inclusion in the application. This bill amended the definition of an "owner" of an underground storage tank and provided the conditions under which a "lender" might be exempted from that definition. Also, on June 7, 1994 Iowa modified its' application so that it is not seeking authorization over Indian lands. Together, these comprise the Iowa application. The Iowa program provides for regulation of both petroleum and hazardous substance tanks. Iowa also regulates farm/residential tanks of 1,100 gallons or less capacity. However, this part of the Iowa program is broader in scope than the Federal program and is not included in this tentative approval. Prior to its submission, Iowa provided an opportunity for public notice and comment in the development of its underground storage tank program as required under 40 CFR § 281.50(b). EPA has reviewed Iowa's application and has tentatively determined that the State's program meets all of the necessary requirements to qualify for final approval. Consequently, EPA intends to grant Iowa final approval to operate its program in lieu of the Federal program.

The public may submit comments regarding EPA's tentative determination as provided in the "Dates" section of this notice.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification under the Regulatory Flexibility Act

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

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, and Underground Storage Tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6991c.

Dated: July 14, 1994.

Dennis Grams, P.E.,

Regional Administrator.

[FR Doc. 94–19184 Filed 8–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92–52; DA 94–836]

Reexamination of the Policy Statement on Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission previously adopted a second further notice of proposed rulemaking in this proceeding, which was initiated to reform the criteria used to select among mutually exclusive applicants for new broadcast facilities. The Commission sought comment on the impact on this proceeding of *Bechtel* v. *FCC*, 10 F.3d 875 (DC Cir. 1993). By order of the General Counsel the date for filing reply comments has been extended two weeks. The intended effect of this action is to give members of the public additional time to reply to comments on the Commission's proposal.

DATES: Reply comments must be filed on or before August 22, 1994.

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

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1760.

SUPPLEMENTARY INFORMATION:

Order

RM–7739; RM–7740; RM–7741

Adopted August 1, 1994; Released. August 1, 1994.

1. This order grants a Motion for Extension of Time, filed July 28, 1994 by Irene Rodriguez Diaz de McComas (McComas). McComas asks the Commission to extend until August 22, 1994, the date for reply comments in this proceeding.

2. On June 22, 1994, the Commission issued a second further notice of proposed rulemaking in this proceeding, which was initiated to reform the criteria used to select among mutually exclusive applicants for new broadcast facilities. Reexamination of the Policy Statement on Comparative Broadcast Hearings, 9 FCC Rcd 2821 (1994), 59 FR 32945 (Jun. 27, 1994). The Commission asked for comment on the impact on this proceeding of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Bechtel* v. *FCC*, 10 F.3d 875 (D.C. Cir. 1993). The second further notice established a comment date of July 22, 1994, and a reply date of August 8, 1994. McComas requests that the deadline for filing reply comments in this proceeding be extended two weeks.

3. McComas asserts that technical difficulties with the Commission's automated docket retrieval system has made it impossible for her to obtain in a timely manner copies of the comments filed in this proceeding. Moreover, she notes that the reply dated falls during the period in mid-August when many parties schedule summer vacations to coincide with the lull in Commission business that usually occurs at that time.

4. Accordingly, *It is ordered*, pursuant to the authority delegated under 47 C.F.R. 0.251(b), that good cause having

been shown, the Motion for Extension on Time, filed July 28, 1994, by Irene Rodriguez Diaz de McComas is granted.

5. *It is further ordered*, That the Reply Date in this proceeding is extended to August 22, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–19364 Filed 8–8–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940710–4210; I.D. 062894A]

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

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a preliminary notice of changes in the management regimes for the Atlantic migratory groups of king and Spanish mackerel and the Gulf of Mexico group of king mackerel, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This rule proposes changes in the total allowable catch (TAC) for the Atlantic groups of king and Spanish mackerel and for changes in the commercial vessel trip limits for Gulf group king mackerel. The intended effect is to protect king and Spanish mackerel from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on king and Spanish mackerel.

DATES: Written comments must be received on or before August 24, 1994.

ADDRESSES: Comments must be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of the environmental assessment and regulatory impact review supporting this action should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedure of the FMP, the Councils appointed a stock assessment panel (panel) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the panel's 1994 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to the TAC and allocations for the Atlantic migratory groups of king and Spanish mackerel, and changes in the commercial trip limits for Gulf group king mackerel in the Florida east and west coast sub-zones of the eastern zone. The recommended changes are within the scope of the management measures that may be adjusted, as specified at 50 CFR 642.29. For the 1994–95 fishing year, the Councils recommended no changes for Gulf group Spanish mackerel or for cobia.

Specifically, the Councils recommended that, effective with the fishing year that began April 1, 1994, the annual TAC for the Atlantic migratory group of Spanish mackerel be increased from 9.00 million lb (4.08 million kg) to 9.20 million lb (4.170 million kg) and the annual TAC for the Atlantic migratory group of king mackerel be decreased from 10.50 million lb (4.76 million kg) to 10.00 million lb (4.536 million kg). These recommended TACs are within the range of the acceptable biological catch chosen by the Councils. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages, the proposed TACs for the fishing year that commenced April 1, 1994, would be allocated as follows:

Species	m. lb	m. kg
Atlantic Spanish Mackerel—TAC	9.20	4.170
Recreational allocation (50%)	4.60	2.085
Commercial allocation (50%)	4.60	2.085
Atlantic King Mackerel—TAC	10.00	4.536
Recreational allocation (62.9%)	6.29	2.853
Commercial allocation (37.1%)	3.71	1.683

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone, i.e., south of a line extending directly east from the Georgia/Florida boundary, the specific trip limits vary depending on the percentage of catch of the adjusted allocation. The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted allocation is reached. Concomitant with the increased commercial allocation, the Councils recommended that the adjusted allocation be increased from 4.25 million (1.93 million kg) to 4.35 million lb (1.97 million kg).

The commercial sector of the Gulf group king mackerel fishery in the eastern zone (off Florida) also is managed under trip limits. The proposed trip limit changes for the Florida east and west coast sub-zones and quotas would be established by a separate and collateral action, i.e., Amendment 7 to the FMP, the proposed rule for which was published on June 1, 1994 (59 FR 28330). Measures proposed in Amendment 7, along with the trip limits proposed in this rule, are expected to enhance compatibility between Federal and State regulations, increase enforceability, allocate the resource fairly, reduce conflicts among users, extend the harvest season, increase the value of the fishery, and afford greater protection to the resource.

For the Florida east coast sub-zone, the Councils proposed commercial vessel trip limits of 50 king mackerel per day until 75 percent of the sub-zone's fishing year quota has been harvested, then 25 king mackerel per day until the entire quota has been harvested or until March 31, whichever occurs first. Last season, the trip limit was reduced from 50 to 25 fish per day when 50 percent of the quota was taken and remained at that level through March 31, 1994. As proposed in Amendment 7, the Florida east coast sub-zone would exist November 1 through March 31 and encompass the waters off the Florida east coast from a

line extending directly east from the Dade/Monroe County boundary (25°20.4′ N. lat.) to a line extending directly east from the Volusia/Flagler County boundary (29°25′ N. lat.).

For the Florida west coast sub-zone, the Councils recommended daily trip limits only for vessels harvesting king mackerel under the gillnet quota proposed in Amendment 7; they recommended no trip limits for vessels fishing under the hook-and-line quota proposed in that amendment. The daily possession/landing limit for a vessel using gillnets and having obtained a proposed gillnet endorsement on its Federal commercial mackerel permit would be 25,000 lb (11,340 kg) for the taking of the first 90 percent of the gillnet quota, then be reduced to 15,000 lb/day (6,804 kg/day) until the entire quota has been harvested. These trip limits would replace the 50-fish limit that was implemented during the 1993–94 season when 75 percent of the west coast sub-zone quota was taken. As proposed under Amendment 7, from November 1 through March 31, the Florida west coast sub-zone would encompass the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County boundary (25°20.4′ N. lat.) to a line extending directly south from the Alabama/Florida boundary (87°31′06″ W. long.). From April 1 through October 31, when the boundary separating the Gulf and Atlantic groups of king mackerel is a line extending directly west from the Monroe/Collier boundary (25°48′ N. lat.), the west coast sub-zone would extend from that boundary to the Alabama/Florida boundary and would exclude the Florida Keys (Monroe County).

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the king and Spanish mackerel stocks and prevent overfishing and that they are consistent with the objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

Classification

This proposed rule is exempt from review under E.O. 12866.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

The proposed reduction in the TAC for Atlantic group king mackerel is not expected to affect the revenues of small entities. Except for the 1988/89 fishing season, neither the commercial nor the recreational allocation has been filled, and for the last five consecutive fishing years, neither fishery has been closed.

The increase in TAC for the Atlantic group of Spanish mackerel will only slightly increase revenues to the commercial industry. The proposed trip limits for Gulf group king mackerel are expected to result in small increases in benefits for the industry. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 3, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

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

§ 642.25 [Amended]

2. In § 642.25, in paragraph (a)(2), the numbers "3.90" and "1.77" are revised to read "3.71" and "1.68", respectively; in paragraph (b)(2), the numbers "4.50" and "2.04" are revised to read "4.60" and "2.09", respectively.

§ 642.27 [Amended]

3. In § 642.27, in paragraph (b), the numbers "4.25" and "1.93" are revised to read "4.35" and "1.97", respectively.

4. In § 642.28, as published as a proposed rule on June 1, 1994 (59 FR 28330), in paragraphs (a)(1) and (a)(2), "50 percent" is revised to read "75 percent"; and paragraph (b)(1) is revised to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

* * * * *

(b) * * *

(1) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a permit with a gillnet endorsement has been issued under § 642.4,

(i) From July 1, each fishing year, until 90 percent of the sub-zone's king mackerel quota for vessels fishing with run-around gillnets has been harvested—in amounts not exceeding 25,000 lb (11,340 kg) of king mackerel per day; and

(ii) From the date, each fishing year that 90 percent of the sub-zone's king mackerel quota for vessels fishing with run-around gillnets has been harvested until a closure of the Florida west coast sub-zone's commercial fishery for vessels fishing with run-around gillnets has been effected under § 642.26—in amounts not exceeding 15,000 lb (6,804 kg) per day.

* * * * *

[FR Doc. 94–19318 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 651

[Docket No. 940532–4204; I.D. 062194I]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Disapproval of a revised portion of an FMP amendment and withdrawal of proposed rule.

SUMMARY: NMFS announces that it has disapproved a revised part of Amendment 5 to the Northeast Multispecies Fishery Management Plan that would exempt vessels fishing in only state waters from some of the winter flounder fishing regulations, and is therefore withdrawing the proposed rule for this revised portion of the FMP amendment. NMFS determined that analyses supporting the revised part of Amendment 5 were inadequate to assess its effects, and that its enforcement costs would likely outweigh the benefits.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Management Specialist, 508/281–9252.

SUPPLEMENTARY INFORMATION: On May 13, 1994, NMFS published proposed regulations (59 FR 25026) that would implement a revised part of Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP) to exempt vessels from some regulations for the winter flounder fishery, under certain conditions, if they are fishing only in state waters.

NMFS disapproved this revised part of Amendment 5 to the FMP on June 13, 1994, because the provision did not contain adequate environmental, biological, or cost-benefit analyses to assess the effects of the provision on the fishery and its environment. Also, the provision would be difficult to enforce at sea, as well as dockside; since the exemption would apply to a small segment of the fishery in state waters and NMFS' statistical data indicates that the majority of the fishery takes place in

Federal waters, the costs to enforce this provision would likely outweigh the benefits. The provision, therefore, would not be consistent with national standard 7 of the Magnuson Fishery Conservation and Management Act, which requires that conservation and management measures be practicable and minimize costs.

NMFS has requested that these issues be reassessed by the New England Fishery Management Council (Council) in concert with the Atlantic States Marine Fisheries Commission and the affected states. NMFS has offered assistance to the Council to resolve these issues, if the Council wishes to resubmit a revised version of this winter flounder exemption.

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

Dated: August 3, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–19319 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 663

[Docket No. 940817–4217; I.D. 032194D]

RIN No.: 0648–AF38

Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would revise groundfish trawl regulations and simplify the marking requirement for commercial vertical hook-and-line gear that is closely tended in the Pacific Coast Groundfish fishery. This proposed rule is intended to promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by enhancing the effectiveness of minimum mesh size regulations for trawl gear, making trawl gear requirements less likely to be circumvented, updating the regulations to be more consistent with changes in gear technology, and removing unnecessary burdens on the industry.

DATES: Comments must be received by September 8, 1994.

ADDRESSES: Comments may be mailed to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115–0070; or Rodney R. McInnis, Acting Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to this proposed rule has been compiled in aggregate form and is available for public review during business hours at the Office of the Director, Northwest Region, NMFS. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) can be obtained from the Pacific Fishery Management Council, 2000 SW First Avenue, Suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: NMFS is issuing a proposed rule based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides a socio-economic framework procedure under which gear regulations may be changed without amendment to the FMP. This proposed rule would affect trawl gear and commercial vertical hook-and-line gear (also called Portuguese longline).

The proposed changes to the trawl regulations would: (1) Enhance the effectiveness of current trawl mesh-size requirements by applying the minimum mesh size to the entire net, rather than just the codend; (2) remove an unnecessary distinction between bottom trawls and roller trawls; (3) clarify the distinction between bottom and pelagic (mid-water) trawls and reduce the possibility that pelagic gear is fished on-bottom; and (4) revise the chafing gear requirements to make them more enforceable and effective. This proposed rule also would remove an unnecessarily burdensome gear-marking requirement on vessels using commercial vertical hook-and-line gear. Minor administrative changes to the gear regulations also are included.

The minimum mesh-size requirements apply only to the last 50 meshes of the trawl net. Prior to May 9, 1992, the minimum mesh size for roller trawl gear (bottom trawl gear with rollers or bobbins on the footrope of the net) was 3 inches (7.62 cm) in the Vancouver, Columbia, and Eureka subareas (north of 40°30′ N. lat., near Pt. Arena, CA). On May 9, 1992, this minimum mesh size was increased to 4.5 inches (11.43 cm) (57 FR 12212, April 9, 1992). This change was made: (1) To reduce waste caused by discarding fish too small to market that were more likely to be caught in the 3-inch (7.62-cm) mesh; (2) to postpone the need for more restrictive trip limits until later in the year; and (3) to increase long-term yield by reducing the harvest of juvenile groundfish. This change also made the minimum mesh size for bottom trawl and roller trawl gear uniform in the EEZ off Washington, Oregon, and California.

Almost immediately upon implementation, the Council heard testimony that the regulations were being circumvented by tying off the net ahead of the last 50 meshes, thereby taking advantage of smaller mesh that could legally be used in the intermediate mesh in front of the codend (called the "intermediate"). In July 1992, the Council convened its Legal Gear Committee of industry, state, Federal, and enforcement representatives to address this issue and to consider whether other changes to the gear requirements should be made. The Council again discussed gear changes in April 1993 and the draft EA was made available for public review in August 1993. The Council made its final recommendations, which appear in this proposed rule, at its September 1993 meeting in Portland, OR. The Council's recommendations are summarized below:

(1) *Apply the trawl minimum mesh size throughout the net.* Currently, the minimum mesh size applies to the last 50 meshes of the trawl net. This proposed rule would apply the minimum mesh size requirements throughout the net.

Trawl mesh size affects the species and numbers of small or unmarketable fish that are brought on board and subsequently discarded. Fish can escape a trawl net by swimming or wiggling through the meshes. Each species has a different body shape, size, swimming speed, and endurance, and each has different net avoidance habits. Thus, the size and shape of meshes directly affects which fish are captured and which are more likely to escape. Most of the capture, and a large portion of the escape, occur in the codend, the terminal portion of the net, and codend minimum mesh-size restrictions can be an effective method for controlling the harvest of both target and incidental species. Therefore, the minimum mesh-size regulations were applied only to the terminal 50 meshes in the net. The effect of mesh size in the intermediate portion of the net (forward of the codend) is less clear. However, when a net is designed or modified to capture and hold fish in a forward portion of the net, and that forward portion of the net has smaller mesh than the codend, the effectiveness of the codend minimum mesh size is compromised. A large percentage of the west coast trawl fleet

uses intermediates with at least a small section of mesh smaller than the legal mesh size in the codend (EA/RIR, page 13, see **ADDRESSES**). Requiring the mesh throughout the net to be no smaller than the current codend mesh size removes all incentive for cinching off the codend to circumvent the mesh size regulations.

(2) *Remove the legal distinction between bottom and roller trawls.* Once the minimum mesh size became identical for bottom and roller trawls in May 1992 (57 FR 12212, April 9, 1992), the need to distinguish between the two in Federal regulations disappeared. The industry generally has considered roller trawls as a type of bottom trawl, so this change would be consistent with common usage.

Current regulations require two continuous riblines along the length of bottom and roller trawls if a vessel carries a net of less than 4.5-inch (11.43-cm) mesh. The continuous riblines were intended to make it difficult to switch to illegal, smaller-mesh codends. Since bottom and roller trawls have the same minimum mesh size, there no longer would be an issue of switching codends between these gears. Although the potential exists for putting a pelagic trawl codend on a bottom trawl, the Legal Gear Committee felt that this was not likely to be a big problem, and that the ribline requirement was not a sufficient deterrent to someone intent on violating the regulations. This rule would eliminate the continuous ribline requirement.

(3) *Clarify the distinction between bottom and pelagic (midwater) trawls.* The current pelagic trawl requirements state that the footrope at the trawl mouth must be unprotected and that sweeplines, including the bottom of the bridle, must be bare.

The Council felt additional requirements are needed to ensure that small-mesh (3 inches or 7.62 cm) pelagic trawls would not be used on the sea floor. The Council developed two provisions that would make pelagic trawls impractical and ineffective for fishing on the bottom. First, rollers, bobbins, tires, discs, or any other similar device used to protect the net from the sea floor could not be used anywhere in the net. This would make the net fragile, if dragging across the sea floor. Second, either bare ropes or 16-inch (40.6-cm) minimum mesh must encircle the net for at least 20 feet (6.15 m) immediately behind the footrope or headrope of the net. This also would make the net weak if fished on the bottom.

(4) *Modify chafing gear requirements.* Chafing gear is webbing or other material attached to a trawl net to protect the net from wear, particularly the codend as it scrapes the sea floor or slides onto the vessel. If attached in certain ways, chafing gear could reduce the effective mesh size by compressing or covering the webbing. The current regulations require that: (1) Chafing gear must not be connected directly to the terminal end of the net; (2) in bottom trawls, chafing gear must have a minimum mesh size of 15 inches (38.1 cm) unless only the bottom half of the codend is covered; and (3) in roller trawls in the Vancouver, Columbia, and Eureka subareas, and in pelagic trawls in all subareas, chafing gear covering the upper one-half of the codend must have a minimum mesh size of 6 inches (15.24 cm).

The first provision appears not to be an effective way to enhance escapement. Even if chafing gear is not connected directly to the terminal end of the net, it could legally be attached near the terminal end, where the mesh is puckered and mesh size already is reduced, further impeding escapement. The second and third provisions need modification to be consistent with the proposed revisions for bottom and roller trawls.

The Legal Gear Committee suggested new requirements for chafing gear. At any location on the net, chafing gear may cover no more than 50 percent of the circumference of the net. No section of chafing gear may be longer than 50 meshes of the net to which it is attached, and each section must not be connected at its terminal end (the end farthest from the mouth of the net). Chafing gear must be attached outside any riblines or restraining straps. There is no limit on the number of sections of chafing gear that may be used as long as they, in combination, satisfy the provisions in this paragraph. These provisions are intended to provide the necessary gear protection without unduly impeding escapement of fish through the webbing.

(5) *Modify marking requirements for commercial vertical hook-and-line gear.* Prior to the mid-1980's, commercial vertical hook-and-line gear was not extensively used. The effectiveness of the gear and its low cost made it attractive to small vessels with access to nearshore reefs and other fishing grounds. As this gear became more popular, the Council became concerned about entanglement with similar gear and with mobile gear that is used in the same area. Consequently, on August 1, 1987, the same marking requirements required of other fixed gear (pole, flag, light, radar reflector, and buoy) also were required of commercial vertical hook-and-line gear. However, problems have surfaced with the marking requirement. First, although the gear is anchored, it is lightweight and may be dragged by prevailing winds and currents. The radar reflector provides a large surface area that catches the wind and acts as a sail, making the gear less effective and forcing vessels to chase it. Second, the cost of the radar reflector, lights, and buoys is substantial in comparison to the cost of the gear itself. Since most vessels using this gear stay in the immediate vicinity of the gear, tending the lines frequently, there appears to be less need for such extensive marking requirements. The Council recommended that the gear marking requirements remain the same with one exception—that commercial vertical hook-and-line gear that is closely tended could be marked only with a single buoy clearly identifying the vessel's number or otherwise marked in accordance with state law. The Council's Enforcement Consultants Committee did not develop a definition for "closely tended," so such a definition was not included in the Council's recommendation. After further consideration, NMFS has developed a definition that it believes to be reasonable and enforceable, and has included it in this proposed rule for public comment. The proposed definition for "closely tended" is within sight, or within ¼ nautical mile (nm) (463 m) as determined by electronic navigational equipment, of the deployed gear. This definition should be easy to comply with and to enforce, and ensures that the fishing vessel stays near its gear.

(6) *Correct a mesh definition.* Reference to double-ply mesh at 50 CFR 663.2 has been used inappropriately. Ply refers to the number of strands twisted together to make twine. The regulation was intended to mean two lengths of twine tied together in one knot, or "double-bar" mesh. The definition is changed accordingly.

Biological impacts. To the extent that escapement is enhanced and discards reduced by increasing the mesh size in the intermediate part of the net, landings will be more reflective of harvest levels and more accurate information may be included in the biological models estimating the status of the resource.

An increase in escapement, and reduction in mortality, of small fish suggests increased survival to maturity and potentially an increase in spawning biomass. However, any changes in biomass probably would not be measurable with existing assessment measures.

The other proposed changes to the bottom and roller trawl, chafing gear,

and pelagic trawl requirements are intended to enhance compliance and effectiveness of current minimum mesh size requirements, and also are unlikely to have a measurable biological impact.

The relaxed marking requirement for closely tended vertical hook-and-line gear would not have a measurable biological impact. Closely tended gear is not likely to be lost and involved in ghost fishing.

Economic impacts.

Operating efficiency. Replacing the intermediate of the net with larger mesh may result in operational differences that are difficult to detect. First, larger mesh generally has reduced water resistance or "drag" when pulled through the water. Less drag means the net can be pulled faster with the same power or at the same speed with less power. Some reduction in fuel consumption could result. Second, the geometry of the net may change, which could affect fishing efficiency, and result in the need to modify the footrope or headrope configuration. The third and main effect is likely to be the amount of fish retained in the net. With larger mesh in the intermediate, more fish may fall through the mesh as the net is fishing or is retrieved. This is more a result of mesh size in the codend, however, than in the intermediate.

Cost. There is no official record of the types and number of nets that would need to be replaced. However, some believe that nearly every vessel will need some modification to its nets. The cost of the changes to trawl gear is lessened if the changes are phased in as old gear wears out. Some fishermen have been aware of these proposed changes and already have modified their gear. The minimum cost to a fisherman with a relatively small vessel should be about $150 (if the gear does not already conform). The maximum cost would be for a net manufacturer to rebuild a fully-rigged trawl for as much as $6000. If more than one net is used, which often is the case, the cost could be at least doubled. However, nets normally must be replaced periodically as they wear out, so the conversion price should be viewed as a maximum, one-time cost that is depreciated over several years. Under the limited entry program that was implemented January 1, 1994, approximately 381 vessels are expected to qualify for initial issuance of a fishing permit with an endorsement for trawl gear. If every one of these vessels required a completely new net built by a manufacturer (as opposed to building it with existing mesh and crew labor), the total cost to the industry would be $1.1 to $2.3 million. These values greatly exceed any reasonable expectation of the impact on the trawl industry because it assumes: (1) Every vessel currently uses small mesh in the intermediate; (2) all vessels would purchase nets rather than doing any of the changes with existing labor and materials; and (3) all net replacement is due to the regulation rather than to normal wear and tear. However, to minimize costs to the industry, the Council recommended that changes to the trawl regulations be phased in over a 6-month period, so that new gear could replace worn gear.

By increasing mesh size in the intermediate, the proposed rule may reduce the catch, and thus dollars per hour that the trawl fishery produces. However, the codend mesh size is more critical than the mesh size forward of the codend. In the Dover sole/thornyhead/sablefish fishery (also called the DTS or deepwater complex), the most significant reduction in dollars per hour may come from the thornyhead contribution. However, reduced catch rates may be compensated for by making longer or more frequent tows.

Gilling (entangling fish in the webbing), particularly of rockfish, may increase with larger mesh in the intermediate portion of the net, but gilled fish are expected to be usable for the most part. Increased time necessary to untangle gilled fish may be offset by decreased time sorting small and unmarketable fish from the catch. However, the decrease in sorting time seems most likely for flatfish species.

The marking requirement for vertical hook-and-line gear relieves an unnecessary restriction, and could reduce the cost of purchasing new marking equipment by about half. The current regulation is estimated to cost a maximum of $147 per unit of gear, for a total of $735–$882 per vessel, assuming an average of five to six units of gear per vessel. This proposed rule would reduce the cost by as much as $80 per unit of gear, or a reduction of $400–$480 per vessel. However, because most vessels are in compliance with the current regulations, the initial cost of marking gear already has been incurred, and any savings would occur as additional gear is acquired. Because this change would relieve a restriction, the Council requested that, if this action were approved, it would be effective upon filing of the final rule with the Office of the Federal Register.

Social impacts. As a whole, these proposed regulations are simpler than the current regulations, and would facilitate both enforcement and compliance. The economic impact of reduced catch rates would be borne most by individuals who circumvented the current codend mesh size regulations. Individuals who operate in accordance with current regulations are likely to notice little change in current catch rates.

This proposed rule would not eliminate the need for trip limits or other management measures in the fishery, but it possibly could delay more restrictive late-season changes in trip limits if catch rates are not maintained by increased tow duration and frequency.

No impacts on vessel safety are expected. There is a potential increased risk of collision with commercial vertical hook-and-line gear marked only with a single buoy if fishermen lose or leave their gear unattended, because visibility of the gear would be reduced. However, leaving such gear unattended would violate the proposed regulations because unattended fixed gear would still be subject to the more stringent marking requirements.

Classification

The Assistant Administrator for Fisheries, NOAA, has initially determined that this action is consistent with the FMP and the national standards and other provisions of the Magnuson Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Approximately 381 groundfish trawl vessels were initially issued limited entry permits. This number has been reduced to 320 through combination of vessel permits. The proposed trawl regulations would directly affect an unknown portion of these entities. Even if every one of the trawl vessels in the limited entry fishery required a completely new net built by a manufacturer, the total cost to the industry would be $1.1 to $2.3 million. These values greatly exceed any reasonable expectation of the impact on the trawl industry because they assume three extreme conditions: (1) Every vessel currently uses small mesh in the intermediate; (2) all vessels would purchase nets rather than doing any of the changes with existing labor and materials; and (3) all net replacement is due to the regulation rather than to normal wear and tear. There is no record of the number of vessels using vertical hook-and-line gear. This proposed rule would remove the expense of maintaining current gear

marking requirements for closely tended gear, and thus relieves a regulatory burden for this sector of the industry. Thus, it is determined the proposed measures could affect a substantial number of entities, but would not cause significant economic impacts on the affected small entities. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) is not required.

This rule has been determined to be not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 3, 1994.

Gary Matlock,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. Section 663.2 is amended as follows:

a. The definition of "Commercial fishing" is amended by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) and the definition for "Fishing gear" is amended by redesignating paragraphs (a) through (w) as paragraphs (1) through (23) respectively.

b. The definition for "Fishing gear" is amended by revising the newly redesignated paragraphs (1) through (3), (6), (14), (16), and (18) to read as follows:

§ 663.2 Definitions.

* * * * *

Fishing gear:

(1) *Bobbin trawl* means the same as a roller trawl, and is a type of bottom trawl.

(2) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls and Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawl at § 663.22(b)(6) is a bottom trawl.

(3) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

* * * * *

(6) *Double-bar mesh* means two lengths of twine tied into a single knot.

* * * * *

(14) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

* * * * *

(16) *Roller trawl (bobbin trawl)* means a trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

* * * * *

(18) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

* * * * *

3. In § 663.22, paragraphs (a), (b)(2) through (b)(4), and (c) are revised; paragraph (b)(5) is removed; and paragraph (b)(6) is redesignated as paragraph (b)(5) and revised to read as follows:

§ 663.22 Gear Restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net, trammel net, and spear.

(b) *Trawl gear.* (1) * * *

(2) Mesh size. Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL MESH SIZE

[in inches] [1]

Trawl type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	Conception
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 = 7.6 centimeters; 4.5 inches = 11.4 centimeters.

(3) Chafing gear. Chafing gear may encircle no more than 50 percent of the net's circumference any place on the net. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. The terminal end (the end farthest from the mouth of the net) of chafing gear must not be connected to the net. Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) Codends. Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) Pelagic trawls. Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. Either bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net for at least 20 feet (6.15 m) in length immediately behind the footrope or headrope of the net.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net, and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy except as provided in paragraph (c)(2) of this section; and

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of

sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within ¼ nautical mile (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or (2) of this section must be:

(i) marked in the manner required by applicable state law (at Washington Administrative Code, Chapter 220; Oregon Administrative Rule 635; California Fish and Game Code, sections 7850 and 9029), or

(ii) if no state requirement applies, marked permanently with the vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

* * * * *

[FR Doc. 94–19340 Filed 8–4–94; 10:41 am]
BILLING CODE 3510–22–P

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50 CFR Part 681

[Docket No. 940818–4218; I.D. 072094A]

RIN 0648–AF82

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to implement Amendment 8 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). The rule would establish framework procedures for considering quota adjustments for the fishery and would eliminate a 2-year landing requirement for permit renewal. Notification and reporting procedures also would be modified. These changes are intended to improve the administration of the management program, to improve enforcement and monitoring efforts, and to remove a restrictive criterion for permit renewal.

DATES: Written comments must be received by September 23, 1994.

ADDRESSES: Copies of Amendment 8 and the associated environmental assessment may be obtained from Ms. Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Comments on the information collection should be sent to the Acting Regional Director and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Western Pacific Fishery Management Council, at (808) 522–8220;

Svein Fougner, NMFS, at (310) 980–4034; or Alvin Z. Katekaru, NMFS, at (808) 973–2937.

SUPPLEMENTARY INFORMATION: In 1983, the Western Pacific Fishery Management Council (Council) developed a fishery management plan for lobster fisheries in the Western Pacific region. The principal fishery for spiny and slipper lobster occurs in the Northwestern Hawaiian Islands (NWHI). In 1992, an annual quota, a season, and a limited entry program were implemented for the NWHI lobster fishery (57 FR 10437, March 26, 1992). In January 1993, the Crustaceans Plan Team and Advisory Panel, with enforcement agency representatives, met to discuss the effectiveness of the regulations implementing these new management measures following their first year of operation. The group also discussed the preliminary 1993 quota determination and stock abundance expectations for the future.

As a result of that review, the Council decided that changes to the FMP were needed to address immediate operational concerns arising in the first year of the quota/limited entry program. The recommended changes are included in Amendment 8 and proposed by these regulations.

Permit Renewal

Fifteen vessel owners qualified for permits for the 1994 fishing year under the limited entry program. Currently, in order to be eligible for permit renewal for the 1995 fishing season and beyond, a permit holder must make a qualifying landing during 1 of the 2 most recent years in which fishing was authorized under the quota management program. The intent of the requirement was to ensure that there would always be sufficient effort in the fishery to achieve the optimum yield. If a permit holder decided not to participate, the permit could be made available to someone who would participate. When the limited entry program was established, harvest quotas of one million lobsters per year were anticipated.

In 1993, due to low stock abundance, the fishery was closed and no one had the opportunity to make a landing. A relatively low initial quota of 200,000 lobsters was established for the 1994 season. Under the present regulations, four permit holders must fish in 1994 in order to be eligible to renew their permits for 1995. This "use-it-or-lose-it" requirement forces their participation in the fishery when it may be against their economic interests and unnecessary for purposes of achieving optimum yield in the fishery. This situation is likely to reoccur whenever the quota is low, which may continue for several years due to environmental conditions. For these reasons, Amendment 8 proposes to eliminate the 2-year landing requirement for permit renewal.

Catch-Per-Unit Effort Framework

Determination of the annual quota depends on research and actual catch-per-unit-of-effort (CPUE) data from the fishery. The target CPUE presently used in determining the quota is 1.0 animal per trap-haul, which is consistent with the estimated maximum sustainable yield (MSY) for spiny lobsters of about 1 million animals per year. The MSY was based on knowledge of the fishery obtained since 1977 and assumes a moderate range of recruitment. However, a significant and sudden decline in recruitment occurred in 1991, which, through use of the existing target CPUE in the formula required by the FMP, has led to very low quotas. This decline is believed to be primarily related to environmental change rather than due to overfishing. As more information becomes available concerning the productivity of the stocks, the relationship of the stocks to the overall marine environment, and the response of the stocks to environmental changes, it may be appropriate to change the target CPUE figure so that the formula will be more reflective of the status of the stocks. Therefore, Amendment 8 establishes a framework procedure for considering the best available information, and, if appropriate, for changing the target CPUE figure in the quota formula by regulation. Other measures protecting the resource, such as the overfishing level, size limits, prohibition on the retention of berried females, and escape vents, would remain unchanged.

The annual quota determination process provides for the announcement of an initial quota after public discussion at a Council meeting, then establishment of a final quota based on actual performance of the fishery during the first month of the season (July). The Council intended the initial quota to be a forecast of what the annual quota was likely to be for the year. However, during the first full year of quota

management, the initial quota was zero, and no fishing was allowed. The Council recognizes that a forecast of a zero quota is indicative of low recruitment to the stocks. Nevertheless, variability in recruitment and the preliminary data that may be available in any year to estimate the quota could result in a wide disparity between the estimated recruitment and actual recruitment. If a fishery were permitted early in the season, the harvest rate could substantially change the estimate of abundance and the resultant quota. Therefore, Amendment 8 proposes a framework process that would allow the Director, Southwest Region, NMFS (Regional Director), with the concurrence of the Council, either to close the fishery or allow some level of fishing with the intention of collecting fisheries data or alleviating special hardships when the forecasted quota is zero. During this process, special attention would be paid to confidence intervals associated with the estimate and factors that may affect the accuracy of the estimate. A decision to allow some level of fishing must include a determination that such change will not result in, or substantially increase, the risk of overfishing to the stocks.

Reporting Requirements

Amendment 8 also would modify the reporting requirements to facilitate enforcement and the monitoring of landings. The proposed amendment would shorten the notification period to at least 24 hours, but not more than 36 hours, before returning to port. Vessel operators would also be required to notify the Southwest Region, NMFS Office of Enforcement, of the location and time of offloading of their catch. These changes would help enforcement agents to schedule more efficiently dock-side monitoring and enforcement of regulations concerning size limits, prohibition of retention of berried lobsters, and reporting requirements.

Amendment 8 would allow further revisions to the reporting regulations to be implemented by the Regional Director through rulemaking procedures without further amendment to the FMP. This would result in improved data collection and enforcement.

NMFS and the Council are reviewing all notification procedures for western Pacific fisheries with the intent of developing a streamlined, comprehensive notification procedure.

The FMP now requires that vessel operators provide sales revenue and lobster tail size information through submission of a Transshipment and Sales Report. The timeliness and completeness of this report has been a problem because vessel operators must rely on information from the first-level buyer(s) to complete the report, and this information is often not available until after the 72–hour post-landing submission deadline. Amendment 8 proposes to retitle the report as the Sales Report and modify it to include information identifying the first-level buyer(s). The report would be required to be submitted to NMFS within 72 hours of off loading the lobster from the vessel, rather than within 72 hours of bringing lobster to shore for the purpose of offloading. If the vessel operator is not provided the information in time to meet the revised submission deadline, the sales report would not need to contain revenue or other sales information.

The regulations define the first-level buyer as a person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or that is otherwise regulated under this part; or a person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species, such as the services provided by a wholesale auction facility. While the regulations do not require submission of data by first-level buyers, the regulations do require first-level buyers to make records of their transactions involving management unit species available to authorized officials. This is necessary to ensure adequate monitoring of sales and associated revenues by product type so that economic conditions in the fishery can be evaluated and the effectiveness of management can be determined. The reporting burden on the fishermen is reduced by allowing the vessel operator to attach sales information provided by the buyer(s), rather than the fishermen filling out a separate form. The proposed modifications, including requiring information on the number or weight of lobster not sold, would also increase the usefulness of the Sales Report as a cross-check to verify daily logbook information.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time, NMFS has not determined that Amendment 8 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. In making that determination, NMFS will take into account the data, views, and comments received during the comment period.

This rule has been determined to be not significant for purposes of E.O. 12866.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only increased costs resulting from this rule would be additional recordkeeping and reporting, which are minimal. Changes in the method of determining the quota may result in some increased harvest, and eliminating the landing requirement for permitted vessels will remove a regulation that tended to force fishermen to engage in unprofitable fishing. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The Daily Lobster Catch Report has been previously approved by OMB under OMB No. 0648-0214. The other collection of information requirements have been submitted to OMB for approval. A notification requirement before offloading of the catch would be added. The sales report would be modified by eliminating certain data elements. First-level buyers can choose to submit a worksheet in lieu of allowing an authorized officer to access, inspect, and copy records relating to their sales. For purposes of estimating the maximum reporting burden, it is assumed that all 15 permit holders will take 4 trips per year. The estimated burden for all of the above reports is 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 681

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 3, 1994.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 681 is proposed to be amended as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

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

2. In § 681.2, the definitions of "initial quota" and "land or landing" are removed, and definitions of "Council", "first-level buyer", "forecast quota", "landing", "management unit species", and "off-loading" are added, in alphabetical order, to read as follows:

§ 681.2 Definitions.

* * * * *

Council means the Western Pacific Fishery Management Council established by the Magnuson Act.

* * * * *

First-level buyer means: (1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit under this part or that is otherwise regulated under this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Forecast quota means the initially determined estimate of the allowable number of spiny and slipper lobster (combined) that may be caught and retained from permit Area 1 by all permitted vessels in the upcoming season.

* * * * *

Landing means bringing management unit species to shore for the purpose of offloading.

* * * * *

Management unit species means spiny lobster (*Panulirus* spp.), slipper lobster (family Scyllaridae), and Kona crab (family Raninidae).

Off-loading means removing management unit species from a vessel.

* * * * *

2. Section 681.5 is amended by revising paragraph (a), the heading in paragraph (b), paragraphs (c) and (d), and by adding a new paragraph (e) to read as follows:

§ 681.5 Recordkeeping and reporting.

(a) *Daily Lobster Catch Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must maintain on board the fishing vessel, while fishing for lobster, an accurate and complete NMFS Daily Lobster Catch Report on a form provided by the Regional Director. All information specified on the form and specified in paragraph (b) must be recorded on the form within 24 hours after the completion of the fishing day. The Daily Lobster Catch Reports for a fishing trip must be submitted to the Regional Director within 72 hours of each landing of lobsters.

(b) *Information Requirements for Daily Lobster Catch Report.*

* * *

(c) *Lobster Sales Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must submit to the Regional Director, within 72 hours of off-loading of lobster, an accurate and complete Lobster Sales Report on a form provided by the Regional Director, and attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing/weighout slips have not been provided in time by the buyer(s).

(d) *Information Requirements for Lobster Sales Report.* The Lobster Sales Report must be signed and dated by the vessel operator and include the following information:

(1) Vessel information.

(i) Name of vessel.

(ii) Permit number.

(2) First-level buyer information.

(i) Name of first-level buyer(s).

(ii) Address(es) and phone number(s).

(3) Landing information.

(i) Date of off-loading.

(ii) Port of landing.

(4) Sales information.

(i) Total number or weight of spiny lobsters sold and total number or weight not sold by product type.

(ii) Total number or weight of slipper lobsters sold and total number or weight not sold by product type.

(iii) Total number or weight of octopus sold and total number or weight not sold by product type.

(iv) Total number or weight of other fishery products sold and total number or weight not sold by product type.

(v) If available, packing/weighout slip or other sales information, including information on revenue by species, product type, and size categories.

(e) *Modification of reporting requirements.* The Regional Director may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the Daily Lobster Catch Report or the Lobster Sales Report.

3. Section 681.7 is amended by revising paragraph (b)(5) and by adding paragraph (b)(14) to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(5) Fail to report before landing or off-loading as specified in § 681.25.

* * * * *

(14) Refuse to make available to an authorized officer for inspection and copying any records that must be made available in accordance with § 681.11.

* * * * *

4. Section 681.11 is added to subpart A to read as follows:

§ 681.11 Availability of records for inspection.

(a) Upon request, any first-level buyer must allow an authorized officer to access, inspect, and copy all records relating to the harvest, sale, or transfer of management unit species taken by vessels that have permits issued under this part or that are otherwise subject to this part, including, but not limited to, information concerning:

(1) The name of the vessel involved in each transaction and the owner or operator of the vessel;

(2) The amount, number, and size of each species of fish involved in each transaction; and

(3) Prices paid by the buyer and proceeds to the seller in each transaction.

(b) This requirement may be met by furnishing the information on a worksheet provided by the Regional Director.

5. Section 681.25 is revised to read as follows:

§ 681.25 Notification requirements.

(a) The operator of any vessel that has on board management unit species taken from Permit Area I must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which lobsters will be landed; and

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of the lobster will begin.

(b) The Regional Director shall notify permit holders of any change in the reporting method and schedule at least 30 days prior to the opening of the fishing season.

6. In § 681.30, paragraph (c) is revised to read as follows:

§ 681.30 Limited access management program.

* * * * *

(c) *Renewal.* Applications for renewal of a limited entry permit for the next calendar year must be submitted to the Pacific Area Office by December 31.

* * * * *

7. In § 681.31, paragraphs (a) introductory text and (b) are revised; paragraph (d) is redesignated as paragraph (e); and a new paragraph (d) is added, to read as follows:

§ 681.31 Quota management program.

(a) A forecast quota and a final quota will be set annually. The final quota for a calendar year shall:

* * * * *

(b) *Forecast quota.* (1) The Regional Director shall use information in commercial fishing logbooks from previous years, and may use information from research sampling and other sources, to establish the forecast quota, applying the quota formula of the fishery management plan.

(2) The Assistant Administrator shall publish notification of the forecast quota in the **Federal Register** by February 15 each year, and shall use other means to notify permit holders of the forecast quota for the year.

(3) If the forecast quota determined by the Regional Director and noticed in the **Federal Register** is zero, the Regional Director shall refer the question to the Council for discussion at its next meeting.

(4) The Council's notice of the agenda for its next meeting will specifically indicate that the Council will discuss the forecast quota with the Regional Director, and may make recommendations that would allow some level of fishing during July.

(5) At its meeting, the Council will review the statistical information supporting the determination of the forecast quota. Special attention will be paid to confidence intervals associated with the estimate, and factors that may affect the accuracy of the estimate (e.g., the quota formula depends heavily on fishery data from the preceding year.) If anomalous conditions existed (e.g., low participation by the fleet, incomplete coverage of the archipelago, adverse weather conditions or other environmental conditions affecting catchability), then commercial catch-per- unit-of-effort (CPUE) may not be representative of lobster abundance and a forecast quota of zero may be overly conservative. The Council will ask its Crustaceans Plan Team, Scientific Committee, and Advisory Panel for advice, and will decide whether to recommend allowing some level of fishing to collect fishery data on which to base the final quota.

(6) If the Council agrees to recommend a different forecast quota, or allow some level of fishing to collect fishery data, the Council will submit this request to the Regional Director with documentation supporting its recommendation. The Council may recommend that the fishery be opened for a limited period of time and recommend additional measures to restrict effort or catch during that time period. The request must be accompanied by an analysis of how the Council's recommendation would affect the risk of overfishing of the stocks.

(7) If the Regional Director determines that the Council's recommendation will not result in or substantially increase the risk of overfishing and concurs in part or all of the Council's recommendation, a notice will be published in the **Federal Register** indicating the approved change in the forecast quota or other restricted fishing conditions and summarizing the information supporting this change, including a determination that such change will not result in or substantially increase the risk of overfishing to the stocks.

(8) If the Regional Director does not concur, a written explanation of the reasons for rejecting the Council's recommendation will be provided.

* * * * *

(d) *Quota formula review.* (1) The Crustaceans Plan Team shall annually report to the Council whether the target CPUE in the quota formula is consistent with the estimation of the MSY for the stocks, given the results of any new research concerning the productivity of the stocks.

(2) The Plan Team shall indicate whether a change in the target CPUE will result in quota determinations that would more precisely reflect the status and long-term productivity of the stocks.

(3) If the Plan Team indicates a change in the target CPUE is appropriate, the Plan Team shall indicate the proposed target CPUE, the data that support a change in the target CPUE, and the impacts and implications of the change, including the risk of overfishing.

(4) The Council shall consider any such recommendation at its next meeting. The notice to the public of the meeting shall specifically state that the Council may take action to recommend a change in the target CPUE and shall indicate that a portion of the meeting will be open to public comment on the issue.

(5) At its meeting, the Council shall review the statistical information supporting the change in the target CPUE and shall ask its Scientific and Statistical Committee and Advisory Panel for advice.

(6) If the Council agrees to recommend a different target CPUE, the Council shall submit this request to the Regional Director with documentation supporting its recommendation. The request must be accompanied by an analysis of how the Council's recommendation will affect the risk of overfishing the stocks.

(7) If the Regional Director determines that the Council's recommendation will not result in or substantially increase the risk of overfishing and concurs, a proposed rule will be published in the **Federal Register** to implement the recommended change in the target CPUE.

(8) Following a 30-day comment period, the Regional Director will consider the information submitted by the Council and comments submitted during the comment period and determine whether the recommended change in the target CPUE is consistent with the objectives of the FMP and will achieve optimum yield and prevent overfishing. If so, a final rule will be published in the **Federal Register** implementing the new target CPUE.

(9) If the Regional Director concludes that the recommended change in the target CPUE should not be approved, the Council will be notified in writing, explaining the reasons for the disapproval.

[FR Doc. 94–19341 Filed 8–4–94; 2:30 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 152
Tuesday, August 9, 1994

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 94–026N]

Membership on the National Advisory Committee on Meat and Poultry Inspection; Nominations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Department is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection.

DATES: Nominations for membership and typed resumes must be postmarked no later than August 26, 1994.

ADDRESSES: Nominations and typed resumes must be addressed to Dr. Marvin A. Norcross, Office of the Administrator, Food Safety and Inspection Service, USDA, Room 4342, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Fedchock, Office of the Administrator, Food Safety and Inspection Service, Room 4342, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250–3700, 202–720–9150; Fax: 202–720–5124.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the Department's intent to solicit nominations for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c) and sections 5(a)(3), 5(c), 8(b) and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

Nominations for membership are being sought from individuals representing producers, processors, exporters and importers of meat and poultry products; academia; Federal and State government officials; and consumers.

Appointment(s) to the Committee will be made by the Secretary of Agriculture. Nominees will be considered without discrimination for any reason such as race, color, religion, sex, national origin, age, or marital status. It is anticipated that the Committee will meet at least semiannually.

Done at Washington, DC, on: August 3, 1994.

William J. Hudnall,

Associate Administrator, Food Safety & Inspection Service.

[FR Doc. 94–19384 Filed 8–8–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–93]

Foreign-Trade Zone 21—Dorchester County, South Carolina Application for Expansion Amendment of Application

The pending application of the South Carolina State Ports Authority (SCSPA), grantee of FTZ 21, requesting authority to expand its zone (Docket 50–93, filed 9/14/93, 58 FR 50330, 9/27/93), has been amended to request additional expansion sites.

The application originally requested authority to expand the zone to include a site (eight parcels—2,040 acres) located at SCSPA's terminal complex at the Port of Charleston. The amendment revises the application to also request expansion of the zone's two existing sites and inclusion of two new sites:

—Expand existing Site 1 (16 acres) to include the entire 134-acre Tri-County Industrial Park located 2.6 miles west of Summerville, South Carolina;
—Expand existing Site 2 (4 acres) approved through a minor boundary modification (A(27f)–18–94, 6/10/94) to include the entire Cainhoy Industrial Park (57 acres) located at 10 Cainhoy Park Road, Wando, South Carolina;
—Add a new site (proposed Site 3) at the Crowfield Corporate Center (160 acres) located at 754 College Park Road, Goose Creek, South Carolina;
—Add a new site (proposed Site 4) at the Low Country Regional Industrial Park (998 acres) located on Highway 68 North in Early Branch, South Carolina.

The proposed Port terminal site would be designated as Site 5.

The comment period is reopened until [45 days from date of publication].

The application and amendment materials are available for public inspection at the following locations:

U.S. Department of Commerce, District Office, Room 128 C Long Building, 9 Liberty Street, Charleston, South Carolina 29424

Office of the Executive Secretary, Foreign-Trade Zone Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: July 29, 1994.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 94–19418 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–580–008]

Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 11, 1994, the Department of Commerce published a notice of preliminary results of administrative review of the antidumping duty order on color television receivers from the Republic of Korea. The review covers exports of this merchandise to the United States during the period April 1, 1992, through March 31, 1993. Three companies failed to respond to our questionnaire and received a rate based on the best information available. For the remaining four companies, we determined that there were no known shipments of the

subject merchandise during the period of review.

We gave interested parties an opportunity to comment on the preliminary results. Only one party submitted comments. The final results remain unchanged from the preliminary results of review.

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1993, the Independent Radionic Workers of America, the United Electrical Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL–CIO, and Industrial Union Department, AFL–CIO (the Unions), the petitioners in this proceeding, requested an administrative review of the antidumping duty order on color television receivers (CTVs), complete or incomplete, from the Republic of Korea (ROK) (49 FR 18336, April 30, 1984) in accordance with 19 CFR 353.22(a). On May 27, 1993, the Department of Commerce (the Department) published a notice of initiation of this review which covered seven manufacturer/exporters for the period April 1, 1992, through March 31, 1993 (58 FR 30,767).

Four respondents, Daewoo Electronics Co., Ltd. (Daewoo), Goldstar Electronics Co., Ltd. (Goldstar), Samwon Electronics, Inc. (Samwon), and Samsung Electronics Co., Ltd. (Samsung), indicated that they had no sales during the period of review (POR). The companies, Quantronics Manufacturing Korea, Ltd. (Quantronics), Tongkook General Electronics, Inc., and Cosmos Electronics Manufacturing Korea, Ltd., did not respond to our requests for information. Thus, in accordance with section 776(c) of the Tariff Act of 1930 (the Tariff Act), the Department was required to use the best information available (BIA). Standard Department practice dictates that when a company fails to provide the information requested in a timely manner, the Department considers the company uncooperative and generally assigns to that company the higher of (a) the highest rate assigned to any company in any previous review or the less-than-fair-value investigation (LTFV), or (b) the highest rate for a responding company with shipments during the POR. *See Allied-Signal Aerospace Co. v. United States*. 996 F. 2nd. 1195, 1191–92 (Fed. Cir. 1993). *See also Krupp Stahl AG et al v. United States*, 822 F. Supp 789 (CIT May 26, 1993). Therefore, we have used the highest rate from the LTFV investigation, which was 16.57 percent, in determining the margins for these three companies for this review.

Because Daewoo, Goldstar, Samwon, and Samsung stated they had no sales during the POR, on June 24, 1993, the Department requested the U.S. Customs Service (Customs) to confirm that there was no record of entries of the subject merchandise, manufactured by these four respondents, from the ROK during the POR. We received no affirmative responses from Customs.

On July 23, 1993, petitioners provided the Department with import data from the Port Import-Export Reporting Service (PIERS) (a private for-profit computerized data bank) and alleged that Samsung, Daewoo and Goldstar "exported" to the United States CTVs from the ROK.

In light of the petitioners' allegations, on February 25, 1994, the Department again requested information from Customs as to whether any entries of the subject merchandise, manufactured by these four companies, had been made during the POR. On March 21, 1994, Customs responded with a list of entries indicating that certain merchandise under the covered HTS item numbers manufactured by respondents, had entered the United States. The Department provided this information to the respondents with a request for an explanation as to the nature of these entries. On March 28, 1994, we received information from each of the respondents supporting their claims that the entries in question were of merchandise which is not subject to the antidumping duty order on CTVs from the ROK. Respondents certified that the entries consisted either of merchandise destined for third country markets or contained television parts not covered by the antidumping duty order.

On April 11, 1994, the Department published a notice of preliminary results of review (59 FR 17086). We gave interested parties an opportunity to comment on the preliminary results. Only one respondent, Goldstar, submitted comments, concurring with the Department's preliminary results.

Subsequent to publication of the preliminary results, on May 23, 1994, the petitioners requested a withdrawal of their request for review of Goldstar. Because Goldstar had no shipments during the POR, we accepted the withdrawal request and are terminating the review with regard to Goldstar in accordance with 19 CFR 353.22(a)(5). Goldstar's rate from the prior review will remain in effect. The final results with regard to all other respondents have not changed from our preliminary results.

The Department has now completed this administrative review pursuant to section 751 of the Tariff Act, as amended.

Scope of Review

The products covered by this review include color television receivers, complete and incomplete, from the ROK. The order covers all CTVs regardless of tariff classification. During the POR, the subject merchandise was classified under Harmonized Tariff Schedule (HTS) item numbers 8528.10.60, 8529.90.15, 8529.90.20 and 8540.11.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the product coverage.

Final Results of Review

We have not changed the final results from those presented in the preliminary results of review. The final results for the reviewed firms are as follows:

Manufacturer/exporter	Margin percentage
Daewoo Electronics Co., Ltd	[1] 0.90
Samwon Electronics, Inc	[1] 0.53
Cosmos Electronics Manufacturing Korea	16.57
Quantronics Manufacturing Korea, Ltd	16.57
Samsung Electronics Co., Ltd	[1] 0.37
Tangkook General Electronics, Inc	16.57

[1] No shipments; rate from previous review.

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative reivew, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be the rates established above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most

recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 13.90 percent, which is the "all others" rate established in the LTFV investigation, as discussed below.

On March 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (1993), and *Federal-Mogul Corporation* v. *United States*, 822 F. Supp. 782 (1993), decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Therefore, the "all others" rate for this case will be 13.90 percent, the "all others" rate established in the LTFV investigation (49 FR 7620, March 1, 1984).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34.(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended, and 19 CFR 353.22(c)(1993).

Dated: July 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–19420 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–803]

Gray Portland Cement and Clinker From Venezuela; Termination of Administrative Review of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of termination of administrative review.

SUMMARY: On June 20, 1994, the Ad Hoc Committee of Florida Producers of Gray Portland Cement withdrew its request for an administrative review of the above referenced suspension agreement. The Department of Commerce (the Department) is now terminating this review.

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Rice, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department received a request from the Ad Hoc Committee of Florida Producers of Gray Portland Cement to conduct an administrative review of the suspension agreement pursuant to section 353.22(a)(4) of the Department's regulations (19 CFR 353.22(a)(4)).

On March 14, 1994, the Department published in the **Federal Register** a Notice of Initiation for this review (59 FR 11769).

On June 20, 1994, petitioners withdrew their request for administrative review.

Although petitioners withdrew their request for administrative review more than 90 days following the publication of the notice of initiation, the Department has determined that it is reasonable in this case to extend the deadline to withdraw a request for review beyond the 90 days following the publication of the notice of initiation, in accordance with § 353.22(a)(5) of the Department's regulations. Accordingly, the Department has determined to terminate this administrative review.

Dated: July 28, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–19421 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–401–603]

Stainless Steel Hollow Products From Sweden; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a timely request from Sandvik AB, AB Sandvik Steel, and the Sandvik Steel Company (collectively, Sandvik), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on seamless stainless steel hollow products (SSHP) from Sweden. This review covers one manufacturer and/or exporter of this merchandise, Sandvik, during the period December 1, 1990 through November 30, 1991.

The preliminary results of this review indicate the existence of dumping margins for Sandvik during the period of review. As a result, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between U.S. prices and foreign market values. Interested parties are invited to comment on these preliminary results of review.

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta or Tom Futtner in the Office of Antidumping Compliance; International Trade Administration; U.S. Department of Commerce; Washington, DC 20230; telephone number (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1991, the Department published in the **Federal Register** an "Opportunity to Request an Administrative Review" (56 FR 61229) of the antidumping duty order on seamless SSHP from Sweden (52 FR 45985), December 3, 1987). On December 13, 1991, Sandvik requested an administrative review of the antidumping duty order. On January 23, 1992, the Department initiated an administrative review for the period December 1, 1990 through November

30, 1991 (57 FR 2705). The Department is now conducting this review in accordance with Section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is seamless SSHP, including pipes, tubes, hollow bars, and blanks of circular cross-section, containing over 11.5 percent chromium by weight. This merchandise is currently classified under subheadings 7304.41.00 and 7204.49.00 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers sales and entries made during the period of review by one Swedish manufacturer and/or exporter, Sandvik, of seamless SSHP to the United States. The period covered by this review is December 1, 1990 through November 30, 1991.

The Department has determined that there are three such or similar categories of merchandise: (1) pipes and tubes; (2) redraw hollows; and (3) hollow bars. During this review period, Sandvik sold only pipes and tubes in the United States. Sandvik also imported redraw hollows into the United States, which Sandvik subsequently further manufactured into pipes and tubes and sold to unrelated customers in the United States. For these latter sales, such or similar comparisons were made between the foreign market sales value of redraw hollows and the U.S. sales value of the imported redraw hollows, which the Department calculated as the U.S. sales value of the pipe or tube sold to the unrelated U.S. customer less the value added by the U.S. further manufacturing.

United States Price

In calculating the U.S. price, the Department used purchase price (PP) and exporter's sales price (ESP), both as defined in Section 772 of the Tariff Act. PP and ESP were based upon the packed, delivered prices, net of discounts, to unrelated customers in the United States. The Department made adjustments to the U.S. price, where appropriate, for freight and insurance charges for movement from Sweden to the United States, U.S. brokerage and handling expenses, U.S. duties, U.S. inland freight and insurance charges, rebates, and U.S. packaging costs. For ESP sales, the Department also adjusted the U.S. price for commissions, credit expenses, royalties, direct selling expenses incurred in both Sweden and the United States, and indirect selling expenses, which included Sandvik's reported indirect selling expenses, product liability insurance premiums, and inventory carrying costs incurred in both Sweden and the United States.

In addition to the aforementioned adjustments, the Department deducted, for sales involving imported redraw hollows which were further manufactured into pipes and tubes by the Sandvik Steel Company, the value added in the United States after importation and the portion of profit from the U.S. sale which was attributable to the U.S. value added, pursuant to Section 772(e)(3) of the Tariff Act. The Department considered all such sales to be ESP sales. The U.S. value added consists of further manufacturing costs incurred in converting an imported redraw hollow into a finished pipe or tube. The Department calculated profit or loss by deducting from the sales price of the finished pipe or tube: (1) the foreign manufacturing costs of the imported redraw hollow; (2) the U.S. further manufacturing costs of the finished pipe or tube; and (3) all other selling expenses incurred by Sandvik.

The Department allocated the total profit or loss from the U.S. sale to the imported redraw hollow and to the U.S. value added based upon the ratio of the manufacturing costs of the redraw hollow and the U.S. further manufacturing costs to the total foreign and U.S. manufacturing costs. The Department adjusted the U.S. price only for the profit or loss attributable to the U.S. further manufacturing costs.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales of SSHP in the home market to serve as a basis for calculating foreign market value (FMV), the Department compared the quantity of home market sales to the aggregate quantity of third country sales, in accordance with Section 773(a)(1) of the Tariff Act. The quantity of home market sales was less than five percent of the aggregate quantity of third country sales. Therefore, the Department based FMV on third country sales (19 CFR 353.48).

In selecting the appropriate third country market to use for comparison purposes, the Department first determined which third country markets had adequate volumes of sales within the meaning of 19 CFR 353.49(b)(1). The Department determined that the volume of sales to a third country market was adequate if the quantity of sales of such or similar merchandise equalled or exceeded five percent of the quantity of sales in the United States. The Department then selected the third country market with the largest volume of sales, and whose organization and development is most like that of the United States, as the most appropriate market for comparison, in accordance with 19 CFR 353.49(b)(2) and 19 CFR 353.49(b)(3). Therefore, for Sandvik's sales to the first unrelated U.S. customer of seamless stainless pipe and tube, both imported pipe and tubes and those which were further manufactured in the United States from imported redraw hollows, the Department based FMV on Sandvik's sales in Germany.

In this review, the petitioner alleged that Sandvik sold pipes, tubes, and redraw hollows in the German market at prices below their cost of production. Based on the evidence presented in the petitioner's allegation, the Department initiated a cost of production inquiry of this merchandise.

The Department based the cost of production on the cost data submitted by Sandvik in response to the Department's questionnaire. Sandvik adjusted its cost data to conform with generally accepted accounting principles (GAAP) used in the United States. Sandvik's cost records are based upon Swedish GAAP, while its financial statements conform to U.S. GAAP. Under Swedish GAAP, production costs must include an imputed interest expense, and depreciation must be based upon replacement costs. Sandvik adjusted its cost data by replacing imputed interest with actual interest expenses, and by basing its depreciation expense on historical costs rather than replacement costs.

The Department performed a model-specific cost of production test, in which the Department examined whether each German sale was priced below the merchandise's cost of production. The Department defines the cost of production as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packaging. For each model, the Department compared this sum to the reported German unit price, net of price adjustments and movement expenses. In accordance with Section 773(b) of the Tariff Act, the Department also examined whether the German sales of each model were made at prices below their cost of production in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each model where less than ten percent of the quantity sold in the German market during the seventeen

months of reported German sales were made at prices below the cost of production, the Department included all sales of that model in its computation of FMV. For each model where ten percent or more, but less than ninety percent, of the quantity sold in the German market over the seventeen month period were priced below the merchandise's cost of production, the Department excluded from its calculation of FMV those German sales which were priced below the merchandise's cost of production provided that these below-cost sales were made over an extended period of time. For each model where ninety percent or more of the quantity sold in the German market over the seventeen month period were priced below the cost of production, the Department disregarded all sales of that model from its analysis, and used constructed value as described below.

In order to determine whether below-cost sales had been made over an extended period of time, the Department compared the number of months in which below-cost sales occurred for each product to the number of months in which each model was sold over the seventeen month period. If a product was sold in fewer than three months during the seventeen month period, the Department did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, the Department did not exclude the below-cost sales unless there were below-cost sales in at least three months during the seventeen months of the reported German sales.

Where there were adequate sales of a such or similar product in the contemporaneous month at a given level of trade (as identified in the model match), the Department based FMV upon the C.I.F. and delivered prices, net of discounts, to unrelated customers in Germany. The Department made adjustments, where appropriate, for freight and insurance charges for movement from Sweden to Germany, German brokerage and handling expenses, German inland freight for movement to the customer, and rebates.

Where all German sales of a such or similar product in the contemporaneous month at a given level of trade (as identified in the model match) were excluded from the Department's analysis because the German sales were priced below the cost of production, or where no German sales of such or similar merchandise were found, then the Department used the constructed value of the merchandise sold in the United States as the basis for FMV. The Department calculated the constructed value, in accordance with Section 773(e) of the Tariff Act, as the sum of the cost of manufacture of the product sold in the United States, German selling, general and administrative (SG&A) expenses, and German profit. The cost of manufacture of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For German SG&A expenses, the Department used the larger of the actual SG&A expenses reported by Sandvik or ten percent of the cost of manufacture, the statutory minimum for foreign SG&A expenses. For German profit, the Department used the larger of the actual profit reported by Sandvik or the statutory minimum of eight percent of the sum of the cost of manufacture and SG&A expenses.

For those products where Sandvik did not submit the necessary constructed value information, the Department used the best information available. As the best information available, the Department evaluated these sales at the highest weighted-average dumping margin which Sandvik had received in any previous final result or determination, or which was calculated for the U.S. sales evaluated in this administrative review using FMV. This highest weighted-average dumping margin is 20.47 percent, which is the margin found in the final determination of the orginal less-than-fair-value investigation.

The Department deducted both Swedish and German packaging expenses for the German sale from the German unit price (for price-based FMV's), and added the Swedish export packaging expenses for the U.S. sale to the FMV, based upon either the German unit price or the constructed value, in accordance with Section 773(a)(1) of the Tariff Act.

For comparisons involving ESP sales, the Department deducted the U.S. and German credit, warranty, royalties, and direct selling expenses from both the U.S. unit price and either the German unit price or the constructed value, respectively. The Department also adjusted the FMV, based either upon German unit prices or the constructed value, for Sandvik's German indirect selling expenses, which included its reported German indirect selling expenses, product liability insurance premiums, and inventory carrying costs. The adjustment for the Germans indirect selling expenses was limited to the sum of the indirect selling expenses, product liability insurance, inventory carrying costs, and commissions incurred for the U.S. sale, in accordance with 19 CFR 353.56(b).

For comparisons involving PP sales, the Department deducted the German credit, warranty, royalties, and direct selling expenses from the German unit price or the constructed value, and added the U.S. credit, warranty, royalties, and direct selling expenses to the FMV, based upon either the German unit price or the constructed value, in accordance with 19 CFR 353.56(a)(2). The Department added the amount of the commissions incurred for the U.S. sale to the FMV, based upon either the German unit price or the constructed value, and deducted the amount of the German indirect selling expenses, as defined above, up to the amount the commissions incurred for the U.S. sale, in accordance with CFR 353.56(b)(1).

Where there were no German sales of identical merchandise for price-based FMV comparisons of a U.S. sale, the Department used German sales of a similar product, and made an adjustment to the German unit price for differences in the physical characteristics of the merchandise, in accordance with Section 773(a)(4)(c) of the Tariff Act. Where there were no German sales of similar merchandise to use for comparison to a U.S. sale, the Department used the constructed value of the merchandise sold in the United States as the basis for FMV, as noted above.

Sandvik claims that the Department, whenever possible, should compare U.S. sales to German sales of the same quantity range, and, whenever this is not possible, that the Department should make a quantity discount adjustment. In support of its position, Sandvik argues that there is an inverse relationship between the sales price and quantity of merchandise sold. The Department has determined that the evidence on the record does not justify either comparing only sales of similar quantities or making a quantity discount adjustment. Based on Sandvik's sales listings, the Department examined the monthly weighted-average unit prices on a model-specific basis for each unique combination of the channel of distribution, level of trade, month of sale (*i.e.*, to recognize the impact of the fluctuating alloy surcharge), and quantity bracket, which are the factors that, according to Sandvik, have an impact on the sale's price. When taking into account all of these price-influencing factors, the Department found numerous instances where the average price for sales of a smaller quantity bracket was lower than the average price for sales of a larger quantity bracket. Therefore, Sandvik's argument concerning the inverse relationship between price and quantity

sold is not supported by the information which it has submitted on the record.

In both Germany and the United States, Sandvik sells merchandise out of inventory (ex-stock) as well as merchandise which is produced and shipped directly from the factory (ex-mill). Sandvik argues that the Department should match sales, wherever possible, made through the same channel of distribution, or make an adjustment to take into account Sandvik's higher costs of selling merchandise out of inventory. The Department believes that its adjustments, including those for inventory carrying costs and other indirect selling expenses, adequately account for any cost differences associated with selling the merchandise through different distribution channels. Therefore, there is no reason to take special account of this factor in making comparisons or any additional adjustments.

Sandvik also argues that the Department should compare U.S. sales with German sales at the same level of trade, and, if this is not possible, that the Department should make an adjustment when comparing sales across levels of trade. The Department has followed its long-standing practice of comparing, where possible, U.S. sales with German sales made at the same level of trade. However, with regard to a level of trade adjustment, Sandvik did not demonstrate that there were differences in prices at different levels of trade. The Department examined Sandvik's reported unit sales prices for each product, level of trade, channel of distribution, month of sale, and quantity brackets, and could not discern any consistent pattern in the prices charged between distributors and end-users. Furthermore, the Department found many instances where the prices charged to end-users were less than the prices charged to distributors. Therefore, the Department has made no level of trade adjustment.

Preliminary Results of Review

As a result of this administrative review, the Department preliminarily determines that the following weighted-average dumping margin exists for the period December 1, 1990 through November 30, 1991:

Manufacturer/exporter	Dumping margin percent
Sandvik	10.54

Interested parties may request disclosure within five days of the date of publication of this notice. Interested parties may also request a public hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments may be submitted to the Department not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed with the Department not later than 37 days after the date of publication. The Department will include in its publication of the final results of administrative review an analysis of the issues raised in any written comments or at the hearing.

The Department will determine, and the U.S. Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between the U.S. price and the FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless SSHP from Sweden, entered for consumption, or withdrawn from warehouse for consumption, on or after its publication date, as provided by Section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Sandvik AB will be that established in the final results of this administrative review;

(2) For subject merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or in the original less-than-fair-value investigation, a cash deposit based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) For subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final result or determination, a cash deposit based upon the most recently published company-specific rate for that manufacturer; and

(4) For merchandise exported by all other manufacturers and exporters who are not covered by this or any previous administrative review conducted by the Department, the cash deposit rate will be the "all others" rate established in the less-than-fair-value investigation.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States, Slip Op. 93–79*, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the less-than-fair-value investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. Thus, the "all others" rate for this proceeding is 28.60 percent.

This notice also serves as a preliminary reminder to all importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 USC 1675(a)(1)) and 19 CFR 353.22.

Dated: July 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–19422 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–802]

3.5 Inch Microdisks and Coated Media thereof from Japan; Termination of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On May 12, 1994, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on 3.5 inch microdisks and coated media thereof from Japan for the period April 1, 1993, through March 31, 1994. Based on a timely withdrawal of the request for review by Fuji Photo Film Co., Ltd. (Fuji), the only requestor, we are now terminating this review.

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1994 (59 FR 24683), the Department published in the **Federal Register** a notice of initiation of administrative review on the antidumping duty order on 3.5 inch microdisks and coated media thereof from Japan (54 FR 13406, April 3, 1989) at the request of Fuji. The notice stated that the Department would review merchandise sold in the United States by Fuji for the period April 1, 1993 through March 31, 1994.

On June 30, 1994, Fuji timely withdrew its request for review and requested that the Department terminate this administrative review. As a result, and because there were no other requests, the Department is terminating this administrative review.

This termination of administrative review is in accordance with 19 CFR 353.22(a)(5).

Dated: August 1, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–19419 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–811]

Preliminary Negative Countervailing Duty Determination: Disposable Lighters From Thailand

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

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin M. Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3798.

PRELIMINARY DETERMINATION:

Case History

Since the initiation of this investigation on May 31, 1994, the following events have occurred.

On June 1, 1994, we issued a questionnaire to the Government of Thailand in Washington, DC., concerning petitioner's allegations.

On July 8, 1994, we received responses from the Government of Thailand and Thai Merry Company Ltd. On July 21, 1994, we received a supplemental questionnaire response filed jointly by both respondents.

Scope of Investigations

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees Celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Injury Test

Although Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended ("the Act"), the merchandise being investigated is non-dutiable under the Generalized System of Preferences and Thailand is a contracting party to the General Agreement on Tariffs and Trade. Thailand, therefore, is entitled to an injury test on imports of the subject merchandise. On June 20, 1994, the ITC preliminarily determined that imports of the subject merchandise from Thailand materially injure, or threaten material injury to, a U.S. industry.

Petitioner

The petitioner is BIC Corporation. Petitioner states that it is the sole remaining domestic producer of the subject merchandise and that it is filing on behalf of the domestic industry.

Respondents

The Government of Thailand ("GOT") and Thai Merry Company Ltd. ("Thai Merry") are respondents in this investigation. Although Thai Merry is not the only exporter of disposable lighters to the United States, it accounts for more than 85 percent of exports and is, therefore, the sole company respondent.

Analysis of Programs

For purposes of this preliminary determination, the period of investigation ("the POI") is calendar year 1993.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Program Preliminarily Determined to be Countervailable

Section 31 of the Investment Promotion Act

The Investment Promotion Act of 1977 ("IPA") provides incentives for investment to promote the development of the Thai economy. The IPA authorizes an array of tax exemptions and exclusions. The IPA is administered by the Board of Investment through promotion certificates. These certificates list the various sections of the IPA under which a company is eligible to receive benefits.

Under Section 31, companies may obtain a three-to-eight year exemption from payment of corporate income tax on profits derived from promoted activities, as well as deductions from net profits for losses incurred during the tax exemption period. The 1977 IPA Act has been amended several times and, in 1991, the GOT passed the Investment Promotion Act No. 2 of 1991. This 1991 Act was the law in effect during the POI. Section 16 of this law states that eligible activities for this exemption include "* * * activities which involve production for export."

Thai Merry applied for and received income tax exemptions under section 31 of the IPA for the income tax return filed during the POI. The approval certificate received by Thai Merry for participation in this program states that "the company has received a promoted status in the business for production of gas lighters for export."

Because Thai Merry received these benefits for exported lighters, we preliminarily determine that this program confers an export bounty or grant. To calculate the benefit for the POI, we divided the tax savings by the total value of export sales, pursuant to

355.47(c)(ii) of the *Proposed Regulations (Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989)). . On this basis, we calculated a net bounty or grant of 0.23 percent *ad valorem*.

Because this is the only countervailable program and the rate is *de minimis*, pursuant to 19 CFR 355.7 (1994), we preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of disposable lighters in Thailand.

II. Programs Preliminarily Determined Not to be Used

We preliminarily determine that producers or exporters in Thailand of the subject merchandise did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

1. *Industrial Estates/Export Processing Zones*
2. *Preferential Short-term Loans Under the Export Packing Credit Program*
3. *Tax and Duty Exemptions Under the Investment Promotion Act (sections 28, 33, 34, 36(1), 36(2), 36(3) and 36(4))*
4. *Tax Certificates for Exporters*
5. *Rediscount of Industrial Bills*
6. *International Trade Promotion Fund*

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties should contact the Department by telephone to learn the time and date of the hearing.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: August 1, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–19423 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–405]

Termination of Countervailing Duty Administrative Review; Certain Textile Mill Products From Mexico

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

ACTION: Notice of Termination of Countervailing Duty Administrative Review (1/1/93—12/31/93).

SUMMARY: The Department of Commerce (the Department) has terminated the countervailing duty administrative review of the order on certain textile mill products from Mexico initiated on April 15, 1994 (59 FR 18100).

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Mercedes Fitchett, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On March 4, 1994, the Department published in the **Federal Register** (59 FR 10368) a notice of "Opportunity to Request Administrative Review" on the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985) for the period January 1, 1993, through December 31, 1993. On March 31, 1994, the Camara Nacional de la Industria Textil and its member companies, exporters of the subject merchandise, requested that the Department conduct a review of the subject countervailing duty order. No other interested party requested a review.

On April 15, 1994, the Department published a notice of initiation of a review of the order (59 FR 18100). On July 14, 1994, the Camara Nacional de la Industria Textil and its member companies withdrew its request for an administrative review. Because the request for withdrawal was timely pursuant to 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: August 1, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–19424 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Proposal to Issue an Exploration License and of Public Hearing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of proposal to issue Deep Seabed Mining. Exploration License USA–4 to Ocean Minerals Company subject to terms, conditions and restrictions (TCRs), of a public hearing on the proposal, and of the availability of a draft environmental impact statement.

SUMMARY: On May 21, 1993, the National Oceanic and Atmospheric Administration (NOAA) received a notice of surrender of Deep Seabed Mining Exploration License USA–4 by the Kennecott Consortium, Ladysmith, Wisconsin, pursuant to section 115(a) of the Deep Seabed Hard Mineral Resources Act (the "Act") and 15 CFR 971.803(a). This action was noticed at 58 FR 33933 on June 22, 1993. On June 17, 1993, NOAA received an application from Ocean Minerals Company (OMCO), Menlo Park, California, to conduct deep seabed mining exploration activities in license site USA–4, which was noticed at 58 FR 34782 on June 29, 1993. NOAA completed the public review process and issued to OMCO a certification of its application on March 29, 1994, in accordance with Subpart D of 15 CFR Part 970.

NOAA proposes to issue an exploration license authorizing OMCO to engage in deep seabed mining exploration activities in the site known as USA–4, consistent with the provisions of the Act and 15 CFR Part 970, subject to terms, conditions and restrictions (TCRs).

NOAA has prepared and circulated to Federal agencies a Draft Environmental Impact Statement (DEIS) on issuing the license with the proposed TCRs. The availability of the DEIS was noticed at 59 FR 33970 on July 1, 1994. NOAA will hold a public hearing on this license issuance proposal, TCRs and the DEIS at NOAA Building IV, 1305 East-West Highway, Silver Spring, MD, Lobby Conference Room, on September 13, 1994, at 1:30 p.m.

Subject to 15 CFR 971.802, which excludes confidential information from public disclosure, interested persons will be permitted to examine the application documents, the DEIS and TCRs, and to provide comments thereon, by October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Rosser, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East-West Highway, Station 11437, Silver Spring, MD 20010, (301) 713–3159.

Dated: August 3, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–19309 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 072894C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Availability of draft stock assessment and Potential Biological Removal (PBR) workshop reports; request for comments.

SUMMARY: The Marine Mammal Protection Act (MMPA) Amendments of 1994 (Amendments) require NMFS and the Fish and Wildlife Service (FWS) to prepare for public comment by August 1, 1994, draft stock assessments for all marine mammal stocks that occur in waters under the jurisdiction of the United States. NMFS convened a workshop to develop an initial approach for promoting a consistent national interpretation of parameters used in draft stock assessment reports. In addition to seeking comments on the draft stock assessment reports, NMFS requests comments and guidance on the preliminary methodologies proposed in the Potential Biological Removal (PBR) workshop report.

DATES: Comments on the draft stock assessment reports and the report of the PBR workshop must be received by November 7, 1994.

ADDRESSES: Send comments to Patricia Montanio, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226. Copies of the draft stock assessments and Report of the PBR Workshop are available from one of the contacts below.

NMFS has established a bulletin board for electronic retrieval of stock assessment reports. The reports are stored as Wordperfect® 5.1 files and may be downloaded by a modem link to the following telephone number: (703) 218–2595. Within your communications software, specify 8 data bits, no parity, and 1 stop bit. Set up as an ANSI terminal and use your appropriate baud rate up to 19,200. Instructions to download files are available on screen.

FOR FURTHER INFORMATION CONTACT: Thomas C. Eagle with the Office of Protected Resources at (301) 713–2319. Or, contact James A. Balsiger at (206) 526–4000, Alaska Fisheries Science Center (F/AKC), National Marine Fisheries Service, 7600 Sand Point Way, N.E. BIN 15700, Seattle, WA 98115–0070 regarding Alaska regional stock assessments; Irma Lagomarsino at (310) 980–4020, Southwest Regional Office (F/SWO3), National Marine Fisheries Service, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, regarding Pacific regional stock assessments; or Robert A. Blaylock at (305) 361–5761, Southeast Fisheries Science Center (F/SEC4), National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, FL 33149–1003, or Gordon Waring at (508) 548–5123, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543–1097 for Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION:

Draft Stock Assessment Reports

On April 30, 1994 the Marine Mammal Protection Act Amendments of 1994 were enacted into law (P.L. 103–238). Under the new section 117 of the MMPA, NMFS and FWS are required to prepare, and periodically revise, stock assessments for marine mammal stocks that occur in waters under the jurisdiction of the United States. Drafts of these stock assessments were to be completed by August 1, 1994, for public review and comment.

In addition, NMFS was required to establish, by June 30, 1994, three regional, independent, Scientific Review Groups representing Alaska, the Pacific Coast (including Hawaii) and the Atlantic Coast (including the Gulf of Mexico). The Scientific Review Groups are to advise NMFS on marine mammal population dynamics and quantitative methodologies (such as those required for assessing stocks), research priorities, impacts of habitat degradation, and any other issue NMFS or the groups consider appropriate for pursuing the goals of the MMPA.

On June 30, 1994, NMFS established the three Scientific Review Groups. Each consists of ten to eleven individuals with a range of expertise in marine mammal biology and ecology, population dynamics and modeling, and commercial fishing technology and practices, and represents, to the extent feasible, a balance of viewpoints.

The draft stock assessment reports have been divided into three regions, Alaska, Pacific and Atlantic, to correspond with the appropriate Scientific Review Group. As specified by the Amendments each report must, based on the best scientific information available:

(1) Describe the geographic range of the affected stock, including any seasonal or temporal variations in such range;

(2) Provide minimum population estimates, current and maximum net productivity rates, and the current population trend, including a description of the information upon which these are based;

(3) Estimate human-caused mortality and serious injury of the stock by source and, for strategic stocks, other factors that may be impeding recovery of the stock or causing a decline, including effects on marine habitat and prey;

(4) Contain a description of the commercial fisheries that interact with the stock including:

(A) The approximate number of vessels participating in each such fishery;

(B) The estimated annual level of incidental mortality and serious injury of the stock by each such fishery;

(C) Any seasonal or area differences in such incidental mortality or serious injury; and

(D) The rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and approaching a zero mortality and serious injury rate.

(5) Categorize the status of the stock as one that either:

(A) Has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population (OSP); or

(B) Is a strategic stock, with a description of the reasons therefore.

(6) Estimate the PBR level for the stock (e.g., the number of animals that may be removed from the stock while allowing the stock to reach or maintain its OSP and a description of the information used to calculate PBR, including the recovery factor.

Congress defined strategic stocks as those for which:

(1) The level of direct, human-caused mortality exceeds the level of PBR;

(2) Based on the best available scientific information, are declining and are stocks likely to be listed as threatened under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) in the foreseeable future; or

(3) Are listed as threatened or endangered under the ESA or

designated as depleted under the MMPA.

The Amendments require NMFS to provide, through a notice of availability, a summary of each draft stock assessment report and a list of sources of information or published documentation on which each draft assessment is based. To satisfy this requirement and minimize unnecessary duplication, a table that summarizes draft stock assessment reports appears at the end of this document, listing each stock, its regional designation, geographical range, minimum abundance estimate, PBR, estimated human-caused mortality, and whether or not the stock would be regarded as strategic or nonstrategic.

To maximize the opportunity for full consultation with the Scientific Review Groups, Alaskan native organizations and the public, NMFS is pursuing parallel tracks of review. In addition to the comment period initiated by this notice, NMFS began consultation with the Scientific Review Groups by forwarding draft stock assessment reports to the appropriate Scientific Review Groups on July 20, 1994, for their review and comment. NMFS recognizes the need for full and equal participation by Alaskan natives in the decisions that affect the management of marine mammals upon which much of the native culture depends; therefore, NMFS is seeking direct input from Alaska natives, particularly with regard to stocks taken for subsistence.

At the close of the public comment period, NMFS intends to continue consultation with the Scientific Review Groups by forwarding the public comments for each draft stock assessment to the appropriate Scientific Review Group for consideration in framing its recommendations to NMFS.

PBR Workshop

Recognizing the need to provide consistent parameters in calculating stock assessments and meet the August 1 deadline, NMFS convened a workshop, composed of NMFS and FWS scientists, to develop an initial approach for promoting consistent national interpretation of parameters to be used in draft stock assessment reports, including the calculation of PBR. PBR is defined in the Amendments as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population". PBR is calculated as the product of three elements: The minimum population estimate (N_{MIN}); half the maximum net productivity rate ($0.5R_{MAX}$); and a recovery factor (F_R) that ranges from 0.1 to 1.0, ($N_{MIN} \times 0.5R_{MAX} \times F_R$).

The NMFS convened the workshop to agree on an initial approach for calculating PBR, defining stock structure, and analyzing whether fishery-related incidental mortality and serious injury have reached insignificant levels approaching zero mortality and serious injury rates for use in preparing draft stock assessment reports. It was the workshop participants' principal objective to identify quantitative criteria for defining input values that could serve as a nationwide standard for calculating PBR.

Advantages of the PBR approach include that it was not based on any particular population model, it allows conservative management to proceed when lacking detailed information, it provides an incentive to improve information on stock size (*e. g.*, to increase precision by lowering coefficients of variation, CV), it is based on readily measurable quantities, and it focuses on achievable goals.

The workshop participants concluded that the three PBR parameters must be evaluated together, rather than independently, in the context of meeting the goals of the MMPA. In this regard, they concluded that F_R should serve to weight the PBR so as to take into account uncertainty in estimates of N_{MIN}, and serve as a "safety factor" that would allow the taking of individuals from stocks below OSP while continuing to promote their recovery and that would provide a safety margin to account for unknown bias in stock status information (*e.g.*, estimation of abundance, productivity, mortality) for stocks of unknown status or trends.

Values of 0.5 (pinnipeds) and 0.65 (cetaceans) were adopted as starting points for calculating initial PBR for stocks of unknown status, and participants noted that values of F_R could be "tuned" or increased (thereby increasing the PBR) provided reasonable assurance in the form of scientific justification is provided to ensure that the estimates of abundance, mortality, and R_{MAX} are not severely biased, and that the coefficients of variation of the abundance and mortality estimates are within accepted ranges.

NMFS is seeking comments on the methodologies for calculating PBR and other parameters that were agreed to by the workshop participants and employed in the preparation of the draft stock assessment reports, as well as seeking comments on the individual stock assessment reports.

The workshop was held in LaJolla, CA, June 27–29, 1994. A copy of the Report of the PBR Workshop is available (see **ADDRESSES**).

In examining the methodologies proposed by workshop participants, the following points should be noted by reviewers:

(1) Estimates of mortality and serious injury incidental to commercial fisheries presented in the Fisheries Information section often included both NMFS observer and logbook data from the exemption program. However, only observer recorded mortalities were used in estimating the kill rate, with logbook data provided to "qualitatively" indicate that additional information exists on incidental mortality; and

(2) When a reliable population estimate was not available, the resulting PBR was zero. Although this often resulted in a stock being classified as "strategic", it was noted that due to the lack of a reliable abundance estimate, it was not currently possible to predict the impact of human-caused mortality on the stock.

Preliminary Comments

Stock Assessment Reports and copies of the PBR workshop were sent to Scientific Review Groups on July 20, 1994, with a request to send preliminary comments to NMFS so that these comments could be considered before stock assessment reports were released for public review and comment. NMFS received several comments on the approach described in the PBR workshop, the process for preparing reports, and on individual stock assessments. Many of the stock-specific comments have been incorporated in the draft stock assessment reports. The general, rather than stock-specific, comments are discussed below.

1. Delay Release of Draft Stock Assessment Reports to Satisfy the Requirement to Consult Fully With Scientific Review Groups.

The Amendments direct NMFS and FWS to prepare draft stock assessment reports in consultation with Scientific Review Groups by August 1, 1994, and to make the reports available for public review and comment. The Amendments also included a period of 60 days in order to establish Scientific Review Groups, in consultation with many agencies and interest groups. Thus, draft assessment reports were due for completion approximately 30 days after review groups were established. Clearly, in-depth consultation with review groups could not occur within a 30-day period.

Throughout the reauthorization process, interested entities reiterated that rapid preparation of stock assessment reports was vital to the timely implementation of a permanent regime to replace the Interim Exemption for Commercial Fisheries under MMPA section 114. Therefore, NMFS believes that the August 1, 1994, deadline for preparing draft stock assessment reports was of critical importance. Consultation with Scientific Review Groups is also of critical importance, and the two concerns are not mutually exclusive. NMFS intends to consult closely with Scientific Review Groups and, for stocks affected by subsistence harvest, Alaska Native organizations throughout the stock assessment process. Such an approach allows NMFS to meet the statutory mandates of consultation and the August 1, 1994, deadline.

2. PBR Calculations Are Not Consistent With Other Management Regimes—Bowhead Whale Example.

Concerns have been raised about the lack of consistency between the take limit for bowhead whales obtained under the PBR process and the subsistence catch limits for bowheads adopted by the International Whaling Commission (IWC) at its 1994 meeting. The two management systems have entirely different purposes and they each consider different criteria in formulating allowable removal levels.

The subsistence hunt for bowhead whales is managed through an international regime which differs from U.S. domestic management of marine mammals under the MMPA. The bowhead whale subsistence quota, determined under the IWC's policy, assumes additional levels of risk to accommodate the cultural needs of special peoples (*e.g.*, Native communities) than it assumes for commercial harvests. This is justified, in part, by an extensive scientific assessment of the status of the bowhead stock (conducted every three years), which evaluates relative levels of risk based on the precision of the information available on the status of the stock and its life history characteristics.

In contrast, the PBR process was established primarily to address the specific problem of incidental takes of marine mammals by commercial fisheries. Although bowhead whales are not subject to an incidental take in a commercial fishery, a PBR was calculated for this stock because the Amendments to the MMPA require that PBR be calculated for all marine mammal stocks in U.S. waters.

Furthermore, NMFS noted that values for parameters in PBR calculations may be "tuned" as additional information is included. The draft stock assessment contains a straight-forward interpretation of the PBR workshop results. NMFS fully expects that the F_R for bowhead whales may be tuned based upon the extensive scientific information available for this stock. This tuning should occur in consultation with Scientific Review Groups and after consideration of public comments. NMFS will reconsider the approach described in the report of the PBR workshop.

3. Consider an Alternative Classification (Strategic Versus Non-Strategic) When Populations Estimates Are Unreliable and Fishery-Related Mortality Is Low

Section 117(a)(5) of the MMPA, as amended, specifies that each stock assessment report categorize the status of each marine mammal stock as one that either: (a) Has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population, or (b) Is a strategic stock, with a description of the reasons therefor.

Section 3(19) of the MMPA, as amended, defines the term "strategic stock" as a stock for which the level of direct human-caused mortality exceeds the potential biological removal level, or which is designated as depleted under the MMPA, is listed as threatened or endangered under the ESA, or is declining and likely to be listed under the ESA.

A problem exists in categorizing stocks for which there are no reliable estimates of abundance. In these cases, the PBR would default to zero, and any human-caused mortality would exceed the PBR. The level of mortality may be so low that it is not likely to cause the stock to be reduced below its OSP, but the stock would still meet the criteria in section 3(19) that the level of mortality exceeds the PBR. These stocks have been considered "strategic" in the draft stock assessment reports. This highlights the need to obtain reliable abundance estimates for all stocks that have human-caused mortality, and will be used by NMFS in guiding and prioritizing its stock assessment program. In addition, NMFS expects that the Scientific Review Groups may recommend additional research into the status of the affected stock to determine if human-caused mortality or serious injury poses a significant adverse impact to the stock. In the interim, until reliable estimates are available, NMFS will be examining the options and best way to classify these stocks consistent with the MMPA requirements. This will be done in consultation with the Scientific Review Groups, and in consideration of comments received.

Further, it should be noted that the identification of marine mammal stock as "strategic" does not necessitate restrictions on human-caused mortality and serious injury. Rather, such a designation means that the affected stock is, or may be reduced, below its optimum sustainable population. As such, the stock should be identified as having the potential for significant adverse impact if human-caused mortality is high.

Take Reduction Teams would be established for strategic stocks that interact with Category I or II fisheries to develop Take Reduction Plans. Take Reduction Plans are designed to reduce mortality and serious injury of marine mammals incidental to commercial fishing. If such incidental mortality and serious injury is not biologically significant for the affected stock, then no restrictions would necessarily be required.

4. The Age and Sex Structure of Individuals Removed From a Population of Marine Mammals May Have a Major Effect on the Impact of Those Removals

PBR calculations assume that removals are random with respect to the age and sex of individuals removed from the population. However, these factors could have a major effect on the impact of such removals from the population. Participants in the PBR workshop identified alternative population models as one area for future research needs. Incorporating the sex and age structure within marine mammal stocks and of the human-caused mortality of that stock are components of this area of research.

5. Use Alternate Methods To Evaluate Stock Status When Certain Data Are Not Available

For several stocks of marine mammals, NMFS has no reliable estimate of abundance, and a survey to obtain such information, if possible, would be exceedingly expensive. If an estimate of total human-caused mortality and serious injury was known, or could be estimated, then the PBR equation could be used to estimate the minimum number of individuals in the stock that could safely sustain the estimated level of removal. For example the estimated human-caused mortality of a given pinniped stock was 3,000. Using the default values for R_{MAX} (0.12) and the recovery factor (0.5) recommended at the PBR workshop, one

could calculate that a population of at least 100,000 individuals could support the human-caused mortality, and such mortality would be less that the PBR.

Such an approach appears to have merit. NMFS will consider this comment in revising stock assessment reports during the review, comment, and revision process.

Dated: August 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

TABLE 1.—SUMMARY OF MARINE MAMMAL DRAFT STOCK ASSESSMENT REPORTS FOR SPECIES OF MARINE MAMMALS UNDER NMFS MANAGEMENT AUTHORITY

[N/A means that data were more than 10 years old and, therefore, not used or were otherwise not available for an estimate]

Species	Stock area	Region	NMFS center	Nmin	Rmax	Fr	PBR	Total mort.	Fish. mort.	Strategic status
Beaked Whales	Pacific N.W. and Alaska.	AKA	AKC	N/A	0.04	0.65	0	0	0	N
Bearded Seal	Alaska	AKA	AKC	N/A	0.12	0.50	0	1000	1	Y
Beluga	Bristol Bay	AKA	AKC	1800	0.04	1.00	36	8	N/A	N
Beluga	Eastern Chukchi Sea	AKA	AKC	2500	0.04	1.00	50	92	0	Y
Beluga	Beaufort Sea	AKA	AKC	21000	0.04	1.00	420	0	0	N
Beluga	Cook Inlet	AKA	AKC	332	0.04	1.00	4	13	0	Y
Beluga	Norton Sound and Yukon Delta.	AKA	AKC	4000	0.04	0.65	52	168	0	Y
Bowhead Whale	Western Arctic Stock	AKA	AKC	7524	0.04	0.10	15	42	0	Y
Dall's Porpoise	North Pacific	AKA	AKC	311353	0.04	1.00	6227	29	29	N
Dall's Porpoise	Bering Sea	AKA	AKC	55777	0.04	1.00	1116	4	4	N
Fin Whale	N. Pacific	AKA	AKC	N/A	0.04	1.00	0	0	0	Y
Gray Whale	Eastern North Pacific	AKA	AKC	20110	0.04	1.00	402	159	0	N
Harbor Porpoise	Alaska	AKA	AKC	10652	0.04	0.65	138	0	0	N
Harbor Seal	Gulf of AK/ Bering Sea.	AKA	AKC	25183	0.12	0.50	755	1221	25	Y
Harbor Seal	Southeast Alaska	AKA	AKC	22447	0.12	1.00	1347	1671	0	Y
Humpback Whale	Central Pacific	AKA	AKC	1286	0.04	0.10	3	0	0	Y
Killer Whale	Oregon/Washington/ Alaska.	AKA	AKC	1046	0.04	0.65	14	1	1	N
Northern Fur Seal	North Pacific	AKA	AKC	885322	0.12	0.50	26560	22	22	Y
Northern Right Whale Dolphin.	Central North Pacific	AKA	AKC	39733	0.04	0.65	517	0	0	N
Ribbon Seal	Alaska	AKA	AKC	N/A	0.12	0.50	0	100	0	Y
Right Whale	North Pacific	AKA	AKC	N/A	0.04	0.10	0	0	0	Y
Ringed Seal	Alaska	AKA	AKC	44340	0.12	0.50	1330	3001	1	Y
Sperm Whale	Eastern N. Pacific	AKA	AKC	0	0.04	0.10	0	0	0	Y
Spotted Seal	Alaska	AKA	AKC	4145	0.12	0.50	124	1000	N/A	Y
Steller Sea Lion	U.S. EEZ	AKA	AKC	71547	0.12	0.50	2146	592	44	Y
Atlantic White-sided Dolphin.	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	4	4	Y
Beaked Whale, Blainville's.	Northern GulfMex	ATL	SEC	5	0.04	0.65	0	0	0	N
Beaked Whale, Cuvier's.	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	0	0	Y
Beaked Whale, Cuvier's.	Northern GulfMex	ATL	SEC	19	0.04	1.00	0	0	0	N
Beaked Whale, Mesoplodon spp.	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	5	5	Y
Beaked Whale, Ziphiidae.	Northern GulfMex	ATL	SEC	44	0.04	1.00	1	0	0	N
Blue Whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	0	0	Y
Bottlenose Dolphin	Mid-Atlantic, Coastal	ATL	SEC	1349	0.04	0.65	18	20	20	Y
Bottlenose Dolphin	Western GulfMex, Coastal.	ATL	SEC	2897	0.04	0.65	38	N/A	N/A	N
Bottlenose Dolphin	Gulf of Mexico Bays	ATL	SEC	3131	0.04	0.65	41	N/A	N/A	Y
Bottlenose Dolphin	Eastern GulfMex, Coastal.	ATL	SEC	4436	0.04	0.65	58	N/A	N/A	N
Bottlenose Dolphin	Northern GulfMex, Coastal.	ATL	SEC	3472	0.04	0.65	45	N/A	N/A	N
Bottlenose Dolphin	Eastern GulfMex, Offshore.	ATL	SEC	13738	0.04	0.65	179	N/A	N/A	N
Bottlenose Dolphin	Mid-Atlantic, Offshore	ATL	SEC	N/A	0.04	0.65	0	120	120	Y
Bottlenose Dolphin	No. & W. GulfMex, Offshore.	ATL	SEC	20177	0.04	0.65	262	N/A	N/A	N
Bryde's Whale	Northern GulfMex	ATL	SEC	25	0.04	0.65	0	N/A	N/A	N
Clymene Dolphin	Northern GulfMex	ATL	SEC	3119	0.04	1.00	62	0	0	N

TABLE 1.—SUMMARY OF MARINE MAMMAL DRAFT STOCK ASSESSMENT REPORTS FOR SPECIES OF MARINE MAMMALS UNDER NMFS MANAGEMENT AUTHORITY—Continued

[N/A means that data were more than 10 years old and, therefore, not used or were otherwise not available for an estimate]

Species	Stock area	Region	NMFS center	Nmin	Rmax	Fr	PBR	Total mort.	Fish. mort.	Strategic status
Common Dolphin	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	78	78	Y
Dwarf Sperm Whale	Northern GulfMex	ATL	SEC	211	0.04	1.00	4	0	0	N
False Killer Whale	Northern GulfMex	ATL	SEC	148	0.04	1.00	3	0	0	N
Fin Whale	Western North Altantic.	ATL	NEC	N/A	0.04	0.10	0	1	1	Y
Fraser's Dolphin	Northern GulfMex	ATL	SEC	75	0.04	0.65	1	0	0	N
Gray Seal	Northwest North Altantic.	ATL	NEC	500	0.12	0.50	15	1	1	N
Harbor Porpoise	Gulf of Maine/Bay of Fundy.	ATL	NEC	39670	0.04	0.65	516	1875	1875	Y
Harbor Seal	Western North Atlantic.	ATL	NEC	28810	0.12	0.50	864	18	18	N
Harp Seal	Northwestern North Atlantic.	ATL	NEC	N/A	0.12	0.00	0	0	0	N
Hooded Seal	Northwestern North Atlantic.	ATL	NEC	N/A	0.12	0.00	0	0	0	N
Humpback Whale	Western North Atlantic.	ATL	NEC	720	0.04	0.10	1	5	4	Y
Killer Whale	Western North Altantic.	ATL	NEC	N/A	0.04	0.65	0	0	0	N
Killer Whale	Northern GulfMex	ATL	SEC	192	0.04	1.00	4	0	0	N
Melon-headed Whale	Northern GulfMex	ATL	SEC	908	0.04	1.00	18	0	0	N
Minke Whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	3	2	Y
Pilot Whale, Long-Finned.	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	9	9	Y
Pilot Whale, Short-Finned.	Atlantic EEZ	ATL	SEC	456	0.04	0.65	6	N/A	N/A	N
Pilot Whale, Short-Finned.	Northern GulfMex	ATL	SEC	84	0.04	1.00	2	0	0	N
Pygmy Killer Whale	Atlantic EEZ	ATL	SEC	6	0.04	1.00	0	0	0	N
Pygmy Killer Whale	Northern GulfMex	ATL	SEC	111	0.04	1.00	2	0	0	N
Pygmy Sperm Whale	Northern GulfMex	ATL	SEC	41	0.04	1.00	1	0	0	N
Pygmy and Dwarf Sperm Whale.	Atlantic EEZ	ATL	SEC	264	0.04	1.00	5	0	0	N
Right Whale	Western North Atlantic.	ATL	NEC	295	0.04	0.10	1	2	1	Y
Risso's Dolphin	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	9	9	Y
Risso's Dolphin	Northern GulfMex	ATL	SEC	1155	0.04	0.65	15	N/A	N/A	N
Rough-toothed Dolphin.	Northern GulfMex	ATL	SEC	351	0.04	1.00	7	0	0	N
Sei Whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.10	0	0	0	Y
Sperm Whale	Western North Atlantic.	ATL	NEC	N/A	0.04	0.10	0	0	0	Y
Sperm Whale	Northern GulfMex	ATL	SEC	162	0.04	0.10	0	0	0	Y
Spinner Dolphin	Southwestern North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	0	0	Y
Spinner Dolphin	Northern GulfMex	ATL	SEC	1055	0.04	1.00	21	0	0	N
Spotted Dolphin, Atlantic.	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	4	4	Y
Spotted Dolphin, Atlantic.	Northern GulfMex	ATL	SEC	1768	0.04	1.00	35	N/A	N/A	N
Spotted Dolphin, Pantropical.	Northern GulfMex	ATL	SEC	13911	0.04	1.00	278	N/A	N/A	N
Striped Dolphin	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	4	4	Y
Striped Dolphin	Northern GulfMex	ATL	SEC	2160	0.04	1.00	43	0	0	N
Whitebeaked Dolphin	Western North Atlantic.	ATL	NEC	N/A	0.04	0.65	0	0	0	Y
Beaked Whale, Baird's.	California to Washington.	PAC	SWC	19	0.04	0.65	0	0	0	N
Beaked Whale, Blainville's.	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Beaked Whale, Cuvier's.	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N

TABLE 1.—SUMMARY OF MARINE MAMMAL DRAFT STOCK ASSESSMENT REPORTS FOR SPECIES OF MARINE MAMMALS UNDER NMFS MANAGEMENT AUTHORITY—Continued

[N/A means that data were more than 10 years old and, therefore, not used or were otherwise not available for an estimate]

Species	Stock area	Region	NMFS center	Nmin	Rmax	Fr	PBR	Total mort.	Fish. mort.	Strategic status
Beaked Whale, Cuvier's.	California to Washington.	PAC	SWC	886	0.04	0.65	12	18	18	Y
Beaked Whales, Mesoplodont.	California to Washington.	PAC	SWC	136	0.04	0.65	2	12	12	Y
Blue Whale	Hawaii	PAC	SWC	N/A	0.04	0.10	0	0	0	Y
Blue Whale	California/Mexico	PAC	SWC	1650	0.04	0.10	2	1	0	Y
Bottlenose Dolphin	California, Coastal	PAC	SWC	245	0.04	0.65	3	0	0	N
Bottlenose Dolphin	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Bottlenose Dolphin	California, Offshore	PAC	SWC	1775	0.04	0.65	23	8	8	N
Brydes Whale	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Brydes Whale	Eastern Tropical Pacific.	PAC	SWC	11145	0.04	1.00	223	0	0	N
California Sea Lion	California to Washington.	PAC	SWC	67399	0.12	1.00	4044	2093	2093	N
Common Dolphin, Long-Beaked.	California	PAC	SWC	5636	0.04	0.65	73	11	11	N
Common Dolphin, Short-Beaked.	California	PAC	SWC	185181	0.04	0.65	2407	197	197	N
Dall's Porpoise	California to Washington.	PAC	SWC	58902	0.04	0.65	766	33	33	N
Dwarf Sperm Whale	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
False Killer Whale	Hawaii	PAC	SWC	470	0.04	0.65	6	0	0	N
Fin Whale	Hawaii	PAC	SWC	N/A	0.04	0.10	0	0	0	Y
Fin Whale	California to Washington.	PAC	SWC	573	0.04	0.10	1	0	0	Y
Guadalupe Fur Seal	Mexico to California	PAC	SWC	3259	0.12	0.50	98	0	0	Y
Harbor Porpoise	Central California	PAC	SWC	3430	0.04	0.65	45	31	31	N
Harbor Porpoise	Washington/Oregon	PAC	SWC	24992	0.04	0.65	325	16	16	N
Harbor Porpoise	North California	PAC	SWC	7649	0.04	1.00	150	0	0	N
Harbor Seal	Washington, Inland Waters.	PAC	AKC	13053	0.12	0.50	392	14	14	N
Harbor Seal	Oregon/Washington Coast.	PAC	AKC	28322	0.12	0.50	850	231	231	N
Harbor Seal	California	PAC	SWC	18099	0.12	1.00	1086	725	725	N
Hawaiian Monk Seal	Hawaii	PAC	SWC	1300	0.07	0.10	5	0	0	Y
Humpback Whale	California/Mexico	PAC	SWC	482	0.04	0.10	1	1	0	Y
Killer Whale	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Killer Whale	California	PAC	SWC	139	0.04	0.65	2	0	0	N
Melon-headed Whale	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Minke Whale	California to Washington.	PAC	SWC	265	0.04	0.65	3	0	0	N
Northern Elephant Seal.	California, Breeding	PAC	SWC	42000	0.12	1.00	2520	158	158	N
Northern Fur Seal	San Miguel Island	PAC	AKC	7112	0.12	0.50	213	0	0	Y
Northern Right Whale Dolphin.	California to Washington.	PAC	SWC	15080	0.04	0.65	196	34	34	N
Pacific White Sided Dolphin.	California to Washintgon.	PAC	SWC	82939	0.04	0.65	1078	18	18	N
Pilot Whale, Short-Finned.	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Pilot-Whale, Short-Finned.	California	PAC	SWC	N/A	0.04	0.65	0	33	33	Y
Pygmy Killer Whale	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Pygmy Sperm Whale	California to Washington.	PAC	SWC	481	0.04	0.65	6	2	2	N
Pygmy Sperm Whale	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Risso's Dolphin	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Risso's Dolphin	California to Washington.	PAC	SWC	22388	0.04	0.65	291	29	0	N
Rough-Toothed Dolphin.	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Sei Whale	North Pacific	PAC	SWC	N/A	0.04	0.10	0	0	0	Y
Sperm Whale	Hawaii	PAC	SWC	N/A	0.04	0.10	0	0	0	N
Sperm Whale	California to Washington.	PAC	SWC	511	0.04	0.10	1	22	22	Y
Spinner Dolphin	Hawaii	PAC	SWC	677	0.04	0.65	9	0	0	N
Spotted Dolphin, Pan Tropical.	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N

TABLE 1.—SUMMARY OF MARINE MAMMAL DRAFT STOCK ASSESSMENT REPORTS FOR SPECIES OF MARINE MAMMALS UNDER NMFS MANAGEMENT AUTHORITY—Continued

[N/A means that data were more than 10 years old and, therefore, not used or were otherwise not available for an estimate]

Species	Stock area	Region	NMFS center	Nmin	Rmax	Fr	PBR	Total mort.	Fish. mort.	Strategic status
Striped Dolphin	Hawaii	PAC	SWC	N/A	0.04	0.65	0	0	0	N
Striped Dolphin	California	PAC	SWC	13639	0.04	0.65	177	0	0	N

[FR Doc. 94–19397 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 080394A]

Financial Considerations in Relation to an Individual Fishing Quota Program; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: NMFS announces a meeting to discuss financial considerations in relation to the Individual Fishing Quota (IFQ) program for the fixed-gear Pacific halibut and sablefish fisheries in and off Alaska. The purpose of the meeting is to obtain information on methods of financing and lien recording from the financial community and other interested parties.

DATES: Monday, August 22, 1994, 1:00 to 4:00 p.m.

ADDRESSES: The meeting will be held at 605 W. 4th Ave. (Old Federal Building), Room 135, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586-7228.

SUPPLEMENTARY INFORMATION: Title 50 CFR part 676 established an IFQ program for the fixed-gear Pacific halibut and sablefish fisheries in and off of Alaska intended to promote the conservation and management of those fisheries. Persons who qualify will be issued quota share (QS). This QS will entitle qualified persons to a specific harvest privilege (IFQ) for the fishery resources.

Under this new IFQ management regime, it is possible that QS may be deemed collateral by financial lending institutions when considering loan agreements. However, representatives of financial lending institutions have indicated that they may be reluctant to accept QS as collateral unless there is a reliable method of determining: (1) Whether there are existing liens on the QS being pledged and (2) whether the person pledging the QS holds unencumbered title. As a result, NMFS was requested to establish a mandatory lien registry that would require, by law, that all liens against QS be recorded with NMFS.

After thoroughly reviewing this request from a legal and policy perspective, NMFS decided not to move forward with regulations establishing a mandatory lien registry. However, NMFS is still evaluating other alternatives, such as establishing a voluntary lien registry similar to the one used by the Federal Aviation Administration, Department of Transportation, for liens against aircraft.

In coming to a final decision on what role NMFS will play, if any, in establishing a lien registry, NMFS believes it will be useful to hear from representatives of financial lending institutions and other interested parties about the advantages and disadvantages of voluntary lien registries. Therefore, NMFS requests these parties provide their thoughts at a meeting in Anchorage (see **DATES** and **ADDRESSES**).

Dated: August 3, 1994.

David S. Crestin,

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

[FR Doc. 94–19386 Filed 8–4–94; 1:10 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

August 3, 1994.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: August 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The United States Government has agreed to increase the 1994 Guaranteed Access Levels (GALs) for Categories 340/640 and 347/348.

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 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 10, 1994, you are directed to increase the current Guaranteed

Access Levels (GALs) for the following categories:

Category	Guaranteed access level
340/640	620,000 dozen.
347/348	1,200,000 dozen.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–19344 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DR–F

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

August 3, 1994.

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

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

EFFECTIVE DATE: August 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. 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) 927–6707. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The Governments of the United States and the Republic of Korea have agreed to amend the 1994 limit for Category 224–V to 9,503,098 square meters.

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 58 FR 62645, published on November 29, 1993). Also see 59 FR 2597, published on January 18, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 1994.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 10, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Category 224–V, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 10, 1994, you are directed to amend the January 10, 1994 directive to reduce the limit for Category 224–V [1] to 9,503,098 square meters [2].

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–19345 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

August 3, 1994.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 10, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6715. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limit for Category 435 is being increased for special shift, reducing the limit for Category 444 to account for the increase.

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 58 FR 62645, published on November 29, 1993). Also see 58 FR 65968, published on December 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 3, 1994.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 10, 1994, you are directed to amend the directive dated December 13, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Romania:

Category	Adjusted twelve-month limit [1]
Sublevels in Group III	
435	8,393 dozen.
444	25,797 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1993.

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–19346 Filed 8–8–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Savannah River Operations Office (SR); Financial Assistance Award; Intent To Award a Noncompetitive Grant Modification

AGENCY: Savannah River Operations Office, DOE.

ACTION: Notice.

SUMMARY: The DOE announces that it plans to award a grant modification to the Lower Savannah Council of Governments (LSCOG), Aiken, South Carolina. The grant entitled, "Savannah River Regional Diversification Initiative (SRRDI)", will be modified to cover a performance period through December 31, 1995 with additional DOE support of $1,278,250. Pursuant to Section 10 CFR Part 600.7(b)(2)(i)(A&B) of the DOE Assistance Regulations (10 CFR 600), DOE has determined that a noncompetitive modification is appropriate: (1) the activity to be funded (LSCOG/SRRDI) is necessary to the satisfactory completion of an activity (SRRDI) presently being funding by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity, and (2) the activity would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of the activity would enhance the public benefits to be derived; namely regional cooperation and a regional economic development plan. DOE knows of no other entity which is conducting or is planning to conduct such an activity.

FOR FURTHER INFORMATION CONTACT: Beth O'Rear, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–1345.

SUPPLEMENTARY INFORMATION: Procurement Request Number: 09–94SR18344.002.

Project Scope: This grant will facilitate a regional approach to economic planning to offset adverse impacts of DOE downsizing and restructuring and to carry out Secretary O'Leary's commitment to the region to provide economic development assistance funds to the region as approved by Congress. The purpose of this modification is to develop a regional planning document which will meet the challenges of the changing mission at the Savannah River Site. The SRRDI will serve as the principal point of interaction in regional community economic assistance matters. In addition, SRRDI is responsible for solicitation, evaluation and monitoring subcontracts selected to provide input into the regional planning document. This is consistent with the Savannah River Site Restructuring Plan and funds approved by Congress for such purposes in the 1994 Defense Authorization Act under Economic Adjustment Assistance.

The LSCOG was created by the General Assembly of the State of South Carolina for the purpose of coordinating and promoting cooperative programs and actions among its members, for providing technical assistance and to make recommendations on matters affecting the public health, safety, education, pollution control, utilities, planning, and development and such other matters as the common interest of the participating governments may dictate. LSCOG is the appropriate governmental entity to coordinate this plan. DOE has determined: (1) support of the SRRDI Board activities through a grant modification to LSCOG will enhance benefits public benefits to be derived, and (2) award of the modification on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina, on July 8, 1994.

Robert E. Lynch,

DOE Savannah River Operations Office, Head of Contracting Activity.

[FR Doc. 94–19395 Filed 8–8–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EC94–22–000, et al.]

Ocean State Power, Ocean State Power II, et al.; Electric Rate and Corporate Regulation Filings

August 3, 1994.

Take notice that the following filings have been made with the Commission:

1. Ocean State Power Ocean State Power II

[Docket Nos. EC94–22–000 and EL94–82–000]

Take notice that on July 28, 1994, Ocean State Power ("OSP I") and Ocean State Power II ("OSP II") filed a Petition with the Federal Energy Regulatory Commission (the "Commission") For an Order Disclaiming Jurisdiction Under Section 203 of The Federal Power Act Or, In The Alternative, Granting Authorization Pursuant To Section 203 of the Federal Power Act over a merger involving J. Makowski Company, Inc. (the parent company of JMC Ocean State Corporation, which is a partner in OSP I an OSP II.) OSP I and OSP II are two separate Rhode Island general partnerships each of which owns and operates a combined-cycle wholesale electric generating in Burrillville, Rhode Island.

Comment date: August 15, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Power Barge Antilles, L.P.

[Docket No. EG94–88–000]

On July 29, 1994, Power Barge Antilles, L.P. ("Antilles") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Antilles is a California limited partnership which is an indirect subsidiary of ESI Energy, Inc., a wholly-owned subsidiary of FPL Group, Inc. Antilles owns a 28.5 MW barge-mounted electric generating facility that it will use to sell electric energy exclusively at wholesale outside of the United States.

Comment date: August 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Oglethorpe Power Corp. v. Georgia Power Co. Municipal Electric Authority of Georgia v. Georgia Power Co.

[Docket No. EL94–81–000]

Take notice that on July 28, 1994, Oglethorpe Power Corporation (Oglethorpe Power) and the Municipal Electric Authority of Georgia (MEAG) (collectively the Complainants) filed a Joint Complaint against Georgia Power Company (Georgia Power) pursuant to Sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules of Practice and Procedure. The Complainants allege that Georgia Power Company unlawfully included certain capacity associated with a Unit Power Sale contract between Gulf States Utilities Company (Gulf States) and certain of the Southern Companies (including Georgia Power) in calculations of reserve charges under a Partial Requirements (PR) Tariff on file with the Commission applicable to sales to the Complainants. Complainants argue that Georgia Power violated the "filed rate" doctrine because it included

such capacity in reserve charge calculations in violation of a PR Tariff and a related settlement agreement between the parties.

As an alternative theory of relief, Oglethorpe Power and MEAG argue that even if Georgia Power has not violated the "filed rate" doctrine, Georgia Power is obligated to share with ratepayers appropriate portions of the proceeds that it received from Gulf States, especially with PR customers who shouldered over $16.5 million, plus interest, in extra reserve cost associated with the flow-through of the Gulf States charges.

Comment date: September 2, 1994, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before September 2, 1994.

4. Boston Edison Co.

[Docket No. ER94–1497–000]

Take notice that on July 28, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems further extending the deadline for the Municipal's submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. On June 20, 1994, Boston Edison filed a letter agreement in Docket No. ER94–1383–000 extending that deadline from June 20, 1994, until July 31, 1994. The new letter agreement extends that deadline from July 31, 1994 until August 15, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers: Reading Municipal Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

Comment date: August 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Union Electric Co.

[Docket No. ER94–1498–000]

Take notice that on July 28, 1994, Union Electric Company (UE) tendered for filing a Transmission Service Agreement dated July 20, 1994, between AES Power, Incorporated (AES) and UE. UE asserts that the purpose of the Agreement is to set out specific terms and conditions for transmission service transactions from UE to AES.

Comment date: August 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Co.

[Docket No. ER94–1499–000]

Take notice that on July 28, 1994, Southwestern Electric Power Company (SWEPCO) submitted for filing an "Agreement for Backup and Maintenance Service and Scheduling Agreement," dated July 27, 1994, (Agreement), between SWEPCO and Tex-La Electric Agreement, SWEPCO will schedule power and energy which East Texas Inc. (EPI), for the account of Tex-La. SWEPCO will also provide backup and maintenance service at such time as the power and energy from EPI are not available.

SWEPCO seeks an effective date the later of August 1, 1994, or the date on which EPI energy and power is available for scheduling. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Tex-La, ETEC and the Public Utility Commission of Texas. Copies are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: August 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Mexico

[Docket No. ER94–1500–000]

Take notice that on July 28, 1994, Public Service Company of New Mexico (PNM) tendered for filing a Letter Agreement Implementing Certain Temporary Arrangements (letter Agreement) between PNM and Plains Electric Generation Transmission Cooperative, Inc. (Plains). The Letter Agreement implements a reduction in cost to Plains under Service Schedule G to the PNM-Plains Master Interconnection Agreement until December 31, 1994.

PNM has requested that the notice requirements of 18 CFR Section 35.3 be waived, and that the Commission accept for filing the Letter Agreement, with an effective date of July 28, 1994.

Copies of this filing have been served upon Plains and the New Mexico Public Service Commission.

Comment date: August 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER94–1504–000]

Take notice that on July 29, 1994, Entergy Services, Inc. (Entergy Services), on behalf of itself, Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company (MP&L), and New Orleans Public Service Inc. (collectively, the Entergy Operating Companies), tendered for filing the Amendment (Amendment) to Interconnection Agreement between MP&L and South Mississippi Electric Power Association, dated as of July 18, 1979, as amended (Interconnection Agreement). Entergy Services requests that the Amendment be made effective on May 17, 1994.

Comment date: August 17, 1994, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19390 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–P

Upper Peninsula Power Co.; Notice of Environmental Assessment Scoping

[Project No. 10856–001, MI]

August 4, 1994.

On March 3, 1994, the Commission issued a notice (REA Notice) indicating that staff is ready to conduct the environmental analysis for the Au Train Project. The REA Notice also requested comments from federal, state, and local resource agencies; licensees and developers; non-governmental organizations (NGO's); Indian tribes; other interested groups (parties); and the general public. Parties were given until May 2, 1994, to file comments.

The purpose of this scoping notice is to advise all parties as to the scope of the environmental analysis and to seek additional information pertinent to this analysis. The scope is based on the

information filed with the Commission by the applicant, Upper Peninsula Power Company, and comments received from the parties and intervenors thus far.

Parties on the mailing list for the Au Train Project will be receiving copies of the Scoping Document for the proposed project. Any others interested in commenting may obtain copies of the Scoping Document in the Public Reference Branch, Room 3104 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 10856-001 to the top of all comments. For further information, please contact CarLisa Linton, Environmental Coordinator, at (202) 219–2802 or Mary Golato, Project Manager, at (202) 219–2804.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19391 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–59–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on August 1, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1994:

First Revised Sheet No. 1100
First Revised Sheet No. 1101
First Revised Sheet No. 1102
First Revised Sheet No. 1103
First Revised Sheet No. 1104
First Revised Sheet No. 1105
First Revised Sheet No. 1106
First Revised Sheet No. 1107
First Revised Sheet No. 1108

Algonquin states that the purpose of this filing is to revise Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party 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, N.E., Washington, D.C. 20426, in accordance with Sections 385.14 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1994. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19339 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–12–000]

Black Marlin Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on July 29, 1994, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of Black Marlin's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to be effective August 1, 1994:

Second Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 127
First Revised Sheet No. 128
Second Revised Sheet No. 129
First Revised Sheet No. 220
Second Revised Sheet No. 221

Black Marlin states that such tariff sheets are being submitted pursuant to the Federal Energy Regulatory Commission's (Commission) Order No. 566 in order to incorporate the Commission's changes therein effective August 1, 1994.

Black Marlin further states that copies of the filing have been mailed to each of its customers affected by this filing 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994. Protests will be considered by the Commission in determining the appropriate actions 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19336 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–330–000]

Carnegie Natural Gas Co.; Notice of Waiver of Refund Obligation

August 3, 1994.

Take notice that on July 28, 1994, Carnegie Natural Gas Company (Carnegie) filed with the Commission a petition for a waiver of the refund obligations established by § 31.3(a)(4) of the General Terms and Conditions of Carnegie's FERC Gas Tariff.

Carnegie states that it and New Jersey Natural Gas (NJNG) are currently engaged in an on-going federal district court litigation regarding NJNG's claim to have exercised a market-out provision in the LVWS Service Agreement. Until the litigation between the parties is resolved, Carnegie requests a waiver of its obligation to pass through to NJNG its share of a refund received Texas Eastern Transmission Corporation (Texas Eastern) associated with a net overrecovery in Texas Eastern's Account No. 191 and attributable to gas purchases by Carnegie prior to the implementation of Order No. 636 on Texas Eastern's system. Carnegie states that it proposes to establish a memorandum account to keep track of amounts, inclusive of applicable interest, which would otherwise be refunded by Carnegie to NJNG. Carnegie states that when the litigation between the parties is concluded and the amounts owed to Carnegie by NJNG are paid, the amounts in the memorandum account will be refunded.

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, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19327 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–342–000]

Colorado Interstate Gas Company; Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on August 1, 1994, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets as listed in the attached Appendix A, to be effective September 15, 1994.

CIG states it has tendered for filing certain administrative revisions and clarifications to its Order No. 636 Tariff. CIG's tariff was approved by the Commission on September 3, 1993, in Docket No. RS92–4–002 to be effective October 1, 1993. After the first months of operation under the tariff, CIG has noted various administrative items and potential ambiguities that need to be changed. These changes include:

Removal of daily and annual entitlements for Interruptible Storage Service.

Changes to reflect CIG's Order No. 636 reorganization.

Addition of provision for incremental facility charge in TI–1 Rate Schedule.

Removal of Table of Initial Allocation of Capacity.

Various clarifications to nomination, scheduling, allocation, and curtailment sections.

Addition of provision to TI–1 crediting section allowing CIG to carry forward undercollection of fixed costs.

Change from 3 months to 2 months on the estimate of charges for performing transportation service for Shipper.

Various other administrative revisions.

CIG states that copies of this filing were served upon all CIG transportation customers and State Commissioners where CIG provides transportation services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before August 10, 1994. 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 in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A

Second Revised Sheet No. 9
Third Revised Sheet No. 10
Sixth Revised Sheet No. 11
Second Revised Sheet No. 12
First Revised Sheet No. 13
First Revised Sheet No. 17
First Revised Sheet No. 22
First Revised Sheet No. 26
First Revised Sheet No. 30
First Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37
First Revised Sheet No. 38
First Revised Sheet No. 39
First Revised Sheet No. 40
Original Sheet No. 40A
First Revised Sheet No. 45
First Revised Sheet No. 48
First Revised Sheet No. 52
First Revised Sheet No. 54
First Revised Sheet No. 55
First Revised Sheet No. 56
First Revised Sheet No. 57
First Revised Sheet No. 58
First Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 62
Original Sheet No. 62A
First Revised Sheet No. 65
First Revised Sheet No. 67
First Revised Sheet No. 68
Sheet Nos. 71–73
First Revised Sheet No. 74
First Revised Sheet No. 75
First Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
Original Sheet No. 78A
Sheet No. 79
First Revised Sheet No. 81
First Revised Sheet No. 88
First Revised Sheet No. 91
First Revised Sheet No. 98
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 106
Original Sheet No. 106A
First Revised Sheet No. 107
Original Sheet No. 107A
First Revised Sheet No. 108
First Revised Sheet No. 109
First Revised Sheet No. 110
First Revised Sheet No. 111
First Revised Sheet No. 112
First Revised Sheet No. 113
First Revised Sheet No. 114
First Revised Sheet No. 115
First Revised Sheet No. 116
First Revised Sheet No. 117
First Revised Sheet No. 118
First Revised Sheet No. 124
First Revised Sheet No. 125
First Revised Sheet No. 126
First Revised Sheet No. 127
First Revised Sheet No. 128
First Revised Sheet No. 129
First Revised Sheet No. 130
First Revised Sheet No. 131
Original Sheet No. 131A
First Revised Sheet No. 132
Original Sheet No. 132A
First Revised Sheet No. 144
First Revised Sheet No. 147
First Revised Sheet No. 148
First Revised Sheet No. 150
First Revised Sheet No. 156
First Revised Sheet No. 158
First Revised Sheet No. 159
First Revised Sheet No. 160
First Revised Sheet No. 161
First Revised Sheet No. 162
First Revised Sheet No. 163
First Revised Sheet No. 164
First Revised Sheet No. 165
First Revised Sheet No. 166
First Revised Sheet No. 167
First Revised Sheet No. 168
Sheet Nos. 169–172
First Revised Sheet No. 175
First Revised Sheet No. 176
First Revised Sheet No. 177
First Revised Sheet No. 178
First Revised Sheet No. 179
First Revised Sheet No. 180
First Revised Sheet No. 181
First Revised Sheet No. 224
First Revised Sheet No. 225
First Revised Sheet No. 228
First Revised Sheet No. 229
Second Revised Sheet No. 230
First Revised Sheet No. 231
First Revised Sheet No. 233
First Revised Sheet No. 272
First Revised Sheet No. 274
First Revised Sheet No. 275
First Revised Sheet No. 279
Sheet Nos. 280 and 281
First Revised Sheet No. 282
First Revised Sheet No. 283
First Revised Sheet No. 284
First Revised Sheet No. 293
First Revised Sheet No. 294
First Revised Sheet No. 295
First Revised Sheet No. 296
First Revised Sheet No. 302
First Revised Sheet No. 305
First Revised Sheet No. 306
First Revised Sheet No. 313
First Revised Sheet No. 322
First Revised Sheet No. 323
First Revised Sheet No. 324
First Revised Sheet No. 341
First Revised Sheet No. 347
First Revised Sheet No. 352
First Revised Sheet No. 358
First Revised Sheet No. 359
First Revised Sheet No. 366
First Revised Sheet No. 367
First Revised Sheet No. 368
First Revised Sheet No. 369
First Revised Sheet No. 373

First Revised Sheet No. 374
First Revised Sheet No. 375
First Revised Sheet No. 376
First Revised Sheet No. 377
First Revised Sheet No. 378

[FR Doc. 94–19322 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–338–000]

El Paso Natural Gas Co.; Notice of Tariff Filing

August 3, 1994.

Take notice that on July 29, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act and the Commission's Order Affirming Initial Decision and Order on Rehearing issued concurrently on June 16, 1994, at Docket No. RP90–81–000, et al., and Docket No. RP91–26–000, et al. (June 16th Orders) respectively, certain tariff sheets to its Second Revised Volume No. 1–A Tariff.

El Paso states the tendered tariff sheets, proposed to become effective August 1, 1994, provide for a decrease of $.0013 per dth in El Paso's currently effective take-or-pay Throughput Surcharge (Throughput Surcharge) resulting from the removal of the unamortized portion of certain ineligible costs resulting from the June 16th Orders.

El Paso states that it is requesting waiver of the notice requirement of § 154.22 of the Commission Regulations pursuant to § 154.51 to permit the tendered tariff sheets to become effective on August 1, 1994. El Paso states that the instant revision results in a decrease to the currently effective Throughput Surcharge and no party will be adversely affected by the shortened notice.

El Paso states that copies of the filing were served upon all of El Paso's affected interstate pipeline system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994.

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 with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19324 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–13–000]

Florida Gas Transmission Co.; Notice of Proposed Changes In FERC Gas Tariff

August 3, 1994.

Take notice that on July 29, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of FGT's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective August 1, 1994:

Second Revised Sheet No. 12
Second Revised Sheet No. 26
Third Revised Sheet No. 42
Third Revised Sheet No. 43
Second Revised Sheet No. 49
Third Revised Sheet No. 207
Second Revised Sheet No. 208

FGT states that such tariff sheets are being submitted pursuant to the Federal Energy Regulatory Commission's (Commission) Order No. 566 in order to incorporate the Commission's changes therein effective August 1, 1994.

FGT further states that copies of the filing have been mailed to each of its customers affected by this filing 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994. Protests will be considered by the Commission in determining the appropriate actions 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19334 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–332–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on July 29, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 1994:

First Revised Sheet No. 18
Original Sheet No. 18A
Second Revised Sheet No. 46A
First Revised Sheet No. 47
Original Sheet No. 47A
Fourth Revised Sheet No. 207

FGT states that it is filing the above referenced tariff sheets in order to: (1) Clarify that the Fuel Reimbursement Charge retained by FGT does not apply to volumes transported through non-contiguous laterals without compression nor through laterals without compression behind processing plants where volumes transported are consumed within the plant; and (2) modify the Fuel Reimbursement Charge Adjustment mechanism to permit FGT to discount the fuel charge for certain Western Division transportation services.

FGT states that it does not incur compressor fuel usage in certain instances described in its filing. FGT states that it is filing to clarify that the Fuel Reimbursement Charge is not applicable to the these situations.

FGT also states that it is proposing to change the Fuel Reimbursement Charge mechanism to permit FGT to discount the Fuel Reimbursement Charge for Western Division transportation service only, but not below any incremental fuel usage incurred (which represents the variable fuel cost of the transactions), without having such discounts made at FGT's expense. FGT believes that this flexibility is necessary if FGT is to generate additional throughput from its Western Division facilities, to the benefit of the entire system while, at a minimum, fully recovering all variable costs associated with transaction.

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 Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994. Protests will be considered by the

Commission in determining the appropriate actions 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 inspections.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19325 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–10–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on July 29, 1994, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume 1, the following tariff sheets, proposed to be effective August 1, 1994:

Second revised Sheet No. 220
First Revised Sheet No. 221
First Revised Sheet No. 256

Northern states that such tariff sheets are being submitted in compliance with Order No. 566 by (1) deleting the provision involving the complaint log and (2) deleting from the provision on information required for a valid request the information regarding (a) marketing affiliate involvement in the transaction, (b) producing area of the source of supply, (c) total volumes requested to be transported over the life of the agreement and (d) the state of ultimate end-use of the gas.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before August 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19338 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–14–000]

Overthrust Pipeline Company; Notice of Tariff Filing

August 3, 1994.

Take notice that on July 29, 1994, Overthrust Pipeline Company, tendered for filing and acceptance to be effective August 1, 1994, First Revised Sheet Nos. 30, 37, 39, 40, 42, 58 and 77 to First Revised Volume No. 1–A of its FERC Gas Tariff. These tariff sheets revise currently effective tariff provisions to comport with the requirements of Order No. 566 issued by the Commission on June 17, 1994.

Overthrust states that it seeks Commission waiver of 18 CFR 154.22 so that the tendered tariff sheets may become effective August 1, 1994, the effective date of Order No. 566.

Overthrust states further that this filing was served upon its jurisdictional customers and appropriate Public Service 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 Rules 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 10, 1994. 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 with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19335 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–344–000]

Panhandle Eastern Pipe Line Co.; Compliance Filing

August 3, 1994.

Take notice that on July 29, 1994, Panhandle Eastern Pipe Line Company (Panhandle) submitted a report in compliance with the Commission's December 22, 1992 Order on Compliance with Restructuring Rule, 61 FERC ¶61,357 at 62,400 (1992) (December 22, 1992 Order).

Panhandle states that this report and the data contained herein are consistent with the requirements of the December 22, 1992 Order and demonstrate that 15.1 Bcf of retained storage capacity is necessary to meet transportation customer service requirements on the Panhandle system.

Panhandle states that copies of its report have been served on all parties to the RS92–22–000 proceeding.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994. 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 with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19321 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–16–000]

Questar Pipeline Company; Notice of Tariff Filing

August 3, 1994.

Take notice that on August 1, 1994, Questar Pipeline Company (Questar) tendered for filing and acceptance to be effective August 1, 1994, first Revised Sheet Nos. 49, 50, 53, 72, 95, and 96 and Second Revised Sheet Nos. 40, 46 and 71 to First Revised Volume No. 1 of its FERC Gas Tariff.

Questar states that these tariff sheets revise currently effective tariff provisions to (1) be consistent with the requirements of Order No. 566 issued by the Commission on June 17, 1994, and (2) facilitate Questar's operations under that order.

Questar states that it seeks Commission waiver of 18 CFR 154.22 so that the tendered tariff sheets may become effective August 1, 1994, the effective date of Order No. 566.

Questar states further that this filing was served upon its jurisdictional

customers and the Wyoming and Utah Public Service 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 Rules 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19333 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–331–000]

Questar Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on August 1, 1994, Questar Pipeline Company, tendered for filing and acceptance to be effective September 1, 1994, revised and original tariff sheets as listed on Appendix A to the filing.

Questar states that these tariff sheets revise First Revised Volume 1 of its FERC Gas Tariff by incorporating changes that reflect Questar's customer needs as well as its operating experience in providing restructured services under Order No. 636.

Questar states further that it seeks Commission approval of various tariff revisions and additions applicable to the Statement of Rates, Index of Shippers, EBB information, bidding periods for and awarding of Questar's firm service and shippers' released capacity, notice of recall and withdrawal of released capacity, interruption and curtailment procedures, contract amendments, assessment of imbalance charges on inactive contracts, crediting of interruptible revenues, use of receipt and delivery points and allocation of interruptible storage service.

Questar also seeks Commission approval of the correction of various typographical errors or technical oversights.

Questar explains that approval of the proposed tariff revisions will enable Questar to resolve various areas of concern and to serve its customers more efficiently and effectively as it operates in the post-Order No. 636 environment.

Questar states that this filing was served upon its jurisdictional customers and the Wyoming and Utah Public Service Commission.

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 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19326 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–264–003]

Southern Natural Gas Co.; Notice of Revised GSR Tariff Sheets

August 3, 1994.

Take notice that on July 29, 1994, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect an increase in GSR billing units effective August 1, 1994, due to new transportation commitments under rate schedule FT:

Tenth Revised Sheet No. 15
Tenth Revised Sheet No. 17
Eighth Revised Sheet No. 29
Eighth Revised Sheet No. 30
Eighth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 10, 1994. 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. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19329 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–341–000]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on July 29, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to its FERC Gas Tariff, with a proposed effective date of August 1, 1994:

First Revised Sheet No. 223

Texas Gas states that the revised tariff sheet is being filed to extend the clear-up period for recovering past period debit billing adjustments to its Account No. 191 after termination of its PGA pursuant to restructuring its services under Order No. 636. Texas Gas requests an extension of the initial nine-month period by an additional period equal to the later of fifteen (15) months or in the case of any litigation, arbitration or, any administrative proceeding affecting such adjustment, ninety (90) days after a final nonappealable resolution of such proceeding.

Texas Gas notes that copies of the filing are being mailed to Texas Gas' affected customers and interested state commissions and are being served on all parties in Docket No, RS92–24 and Docket No. RP94–125 (Texas Gas' initial filing to recover Account No. 191 costs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994.

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 in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19323 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–11–000]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1994.

Take notice that on July 29, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1994:

3rd Revised Sheet No. 15
3rd Revised Sheet No. 16
9th Revised Sheet No. 25
6th Revised Sheet No. 25A
5th Revised Sheet No. 34
4th Revised Sheet No. 35
12th Revised Sheet No. 73
15th Revised Sheet No. 74
11th Revised Sheet No. 75

On June 17, 1994, the Commission issued Order No. 566, "Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions," amending its regulations governing standards of conduct and reporting requirements for transportation and marketing affiliate transactions. Transwestern is making the filing to enact tariff changes in compliance with Order No. 566. Accordingly, Transwestern proposes to eliminate certain items contained in the request for transportation service from Rate Schedules FTS–1, FTS–2, and ITS–1. In addition, in accordance with revised § 250.16 of the Commission's regulations, Transwestern proposes to revise Section 19, Order No. 497 Compliance of the General Terms and Conditions of Transwestern's FERC Gas Tariff to: (1) delete § 19.2, Requests for Transportation Service, (2) revise § 19.3, Procedures Regarding Complaints to delete any references to a complaint log which is no longer required, and (3) delete § 19.4, Communication of Pricing and Capacity Information.

In addition, Transwestern is concurrently filing revised procedures implementing the standards of conduct in 18 CFR 161.3 and 284.286 in compliance with Order No. 566, consistent with the tariff changes being made.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

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. All such motions or protests should be filed on or before August 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19337 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–30–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

August 3, 1944.

Take notice that on August 1, 1994, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing. Trunkline requests an effective date of September 1, 1994.

Trunkline states that this filing is being made in accordance with Section 23 (Miscellaneous Revenue Flowthrough Surcharge Adjustment) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheets and rates submitted herewith effective September 1, 1994.

Trunkline further states that copies of the filing are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

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 petitions or protests should be filed on or before August 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19330 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA95–1–35–000]

West Texas Gas Inc.; Notice of Filing

August 3, 1994.

Take notice that on August 1, 1994, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 4, proposed to be effective October 1, 1994.

WTG states that Twelfth Revised Sheet No. 4 and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers 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 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 August 18, 1994. 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 with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19331 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–17–000]

Williston Basin Interstate Pipeline Co.; Notice of Filing

August 3, 1994.

Take notice that on August 1, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the

following revised tariff sheets, with an effective date of August 1, 1994.

First Revised Sheet Nos. 187–188
First Revised Sheet No. 191
First Revised Sheet No. 194
Second Revised Sheet Nos. 195–196
First Revised Sheet Nos. 199–200
Second Revised Sheet No. 201
Second Revised Sheet Nos. 203–204
Second Revised Sheet No. 206
First Revised Sheet Nos. 208–215
First Revised Sheet No. 222
First Revised Sheet No. 226

Williston Basin states that it is submitting the above tariff sheets to comply with the Commission's June 17, 1994, Final Rule to Docket No. RM94–6–0000 regarding standards of conduct and reporting requirements for transportation and affiliate transactions.

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 August 10, 1994. 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 to the proceeding must file a motion to intervene. Copies of the filing are on 3ile with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19932 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–267–001]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

August 3, 1994.

Take notice that on July 29, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Substitute Sheet No. 82. This substitute tariff sheet reflects the Commission directive pursuant to its order dated June 29, 1994.

WIC states that the filed tariff sheet provides for fully crediting of interruptible transportation revenues, as proposed in WIC's initial filing in this docket, to be effective December 1, 1994.

WIC states that copies of this filing are being served on all participates listed on the Commission's official service list in this Docket.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1994. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19328 Filed 8–8–94; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

RIN: 1901–AA50

Proposed Energy Planning and Management Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed Program and request for public comments.

SUMMARY: The Western Area Power Administration (Western) proposes to adopt an Energy Planning and Management Program (Program). The Program is being proposed in part to implement section 114 of the Energy Policy Act. The proposed Program would require the preparation of integrated resource plans (IRP) by Western's customers and establish a framework for extension of existing firm power resource commitments.

DATES AND ADDRESSES: Combined public information/comment forums on the proposed Program will be held on the following dates and at the following locations:

September 7, 1994, 9 a.m., Doublewood Inn, 3333 Thirteenth Avenue South, Fargo, ND (701) 235–3333

September 8, 1994, 1 p.m., Ramkota Convention Center, 2400 North Louise Avenue, Sioux Falls, SD (605) 336–0650

September 9, 1994, 10 a.m., Red Lion, 2001 Point West Way, Sacramento, CA (916) 929–8855

September 13, 1994, 10 a.m., Holiday Inn, 10 East 120 Avenue, Northglenn, CO (303) 452–4100

September 15, 1994, 1 p.m. Doubletree Hotel, 215 West South Temple, Salt Lake City, UT (801) 531–7500

September 26, 1994, 1 p.m., Airport Hilton, 700 North Haven Avenue, Ontario, CA (909) 980–0400

September 27, 1994, 1 p.m., Phoenix Area Office Conference Room, 615 South 43rd Avenue, Phoenix, AZ (602) 352–2662

Written comments on the proposed Program should be submitted to Western by October 11, 1994.

FOR FURTHER INFORMATION CONTACT: To submit written comments, or for additional information, please contact:

Robert C. Fullerton, Western Area Power Administration, P.O. Box 3402, A6100, Golden, CO 80401–0098 (303) 275–1610

James D. Davies, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800 (406) 657–6532

Stephen A. Fausett, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003 (303) 490–7201

J. Tyler Carlson, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457 (602) 352–2453

James C. Feider, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097 (916) 649–4418

Kenneth G. Maxey, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606 (801) 524–6372

SUPPLEMENTAL INFORMATION:

Background

On April 19, 1991, Western proposed in concept an Energy Planning and Management Program (56 FR 16093). The goal of the Program was to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. On May 1, 1991, Western announced its intention to prepare an environmental impact statement (EIS) on the Program due to potentially significant environmental and economic issues that may be of interest to the public (56 FR 19995).

Combined public information/environmental scoping meetings on the Program were held in seven States in June of 1991. Based on the feedback received from these meetings, Western developed alternatives to be analyzed in the EIS. Alternatives workshops were held in eight cities during March and April 1992. Based on further public input received during these workshops,

as well as comments previously received, Western announced a tentative preferred alternative for the EIS in a Program newsletter in June of 1992.

On October 24, 1992, the President signed into law the Energy Policy Act of 1992 (EPAct), Public Law 102–486. Section 114 of that legislation requires the preparation of IRPs by Western's customers and amends Title II of the Hoover Power Plant Act of 1984. Western has adjusted its Program proposal to reflect fully the provisions of this law.

On March 31, 1994, a notice of public availability of the draft EIS was published in the **Federal Register** (59 FR 15198). The Environmental Protection Agency also published a notice of availability of the draft EIS on April 1, 1994, officially starting a 45-day public comment period. Eight hearings were held throughout Western's service territory, with over 130 members of the public in attendance. About 200 written comments were received on the draft EIS. Discussion of all comments is attached to this **Federal Register** notice.

Western is now at the point in the Program development process when issuance of proposed procedures is appropriate. A 60-day consultation and comment period starts with the publication of this notice in the **Federal Register**.

Proposed Action

The Program goal is to promote the efficient use of electric energy by Western's customers and to extend Western's long-term firm power resource commitments in support of customer IRPs. A major purpose of this action is to assure the customers who purchase Federal power greater stability in planning for future resources than would exist in the absence of the Program. The Program proposal has two major components: (1) an IRP provision conforming to the requirements of EPAct and (2) a Power Marketing Initiative (PMI). The IRP provision, formerly known as the Energy Management Program, would require most long-term firm power customers to (1) develop and implement an IRP, (2) submit an updated IRP every 5 years, and (3) submit an annual progress report. A different requirement for small customers with an annual load or usage of 25 gigawatthours (GWh) or less is proposed, as allowed in the Energy Policy Act of 1992. This IRP provision and small customer provision will amend Western's Final Amended Guidelines and Acceptance Criteria (G&AC) for Customer Conservation and Renewable Energy (C&RE) Programs of August 21, 1985 (50 FR 33892). Western will continue to provide a wide range of technical assistance services to customers. A penalty provision for noncompliance with the IRP provision would consist of a 10-percent surcharge for the first 12 months of noncompliance, 20 percent for the next 12 months of noncompliance, and 30 percent thereafter for as long as noncompliance persists. In lieu of a surcharge after the first 12 months of noncompliance, Western proposes to impose a 10-percent resource reduction penalty if such an approach is more effective in assuring compliance or is more cost-effective for Western. Penalties in existing contracts will continue to be in effect until changed. The penalties proposed in this Program will be incorporated into the contracts that extend resources and will be effective upon contract execution.

The proposed PMI would extend a major portion of the power currently under contract with existing purchasers. Western proposes to extend its existing long-term firm resource commitments, subject to the outcome of project-specific environmental work as appropriate. Western projects proposed for initial coverage under this PMI are the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. The term of the extension would be 18 years from the date that existing contracts expire. The level of the commitment to existing customers would be a project-specific percentage of the resource available when existing contracts expire, as described in section IV.C of the proposed Program, with two withdrawals at 5-year intervals after the new contracts become effective. Unextended resources would be available for allocation to new customers and other purposes as determined by Western. In addition, marketable resources placed under contract could be adjusted on 5 years' notice, and then only in response to changes in hydrology and river operations.

Western believes that customer actions taken as a result of preparing an IRP should (1) either maintain or enhance existing energy services provided to consumers served by Federal power customers; (2) produce savings or benefits equal to or exceeding investment and operational costs over some reasonable period of time for demand-side management (DSM) alternatives, renewable energy investments, or supply-side efficiency improvements; (3) produce measurable energy and/or capacity benefits as a result of customer investments; and (4) demonstrate sensitivity to environmental impacts and values.

In these proposed procedures, Western commits to the use of IRP principles in its own resource acquisition and transmission planning programs. Western's commitment concerning the use of IRP principles will be pursued independently from the Program through a separate public process by Western starting within 90 days after the publication of this **Federal Register** notice. This separate public process will commence with publication in the **Federal Register** of a draft set of IRP principles, with opportunity for public comment prior to adoption of formal IRP procedures applicable to Western.

The Program is being developed pursuant to §§ 302(a) and 501 of the Department of Energy (DOE) Organization Act, 42 U.S.C. §§ 7152 and 7191; the Reclamation Act of 1902, 32 Stat. 388, as amended by subsequent enactments and acts specifically applicable to the projects involved; and section 114 of the Energy Policy Act of 1992, Public Law 102–486.

Proposed Program

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Section III—Integrated Resource Planning

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Section VI—Effective Date

Section II—Definitions

A. The term "Administrator" means the Administrator of the Western.

B. For any customer, the term "applicable integrated resource plan" or "applicable IRP" means the IRP approved by Western under these procedures for that customer.

C. The term "customer" or "customers" means any entity or entities purchasing firm capacity with or without energy from Western under a long-term firm power contract. Such terms include member-based associations (MBA) and their distribution or user members that receive direct benefit from Western's power.

D. The term "integrated resource planning" or "IRP" means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to a customer's electric consumers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

E. The term "least-cost option" means an option for providing reliable electric services to electric consumers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

F. The term "long-term firm power contract" means any contract with Western for the sale of firm capacity, with or without energy, which is to be delivered over a period of more than 1 year. This term includes contracts for the long-term sale of power from the Boulder Canyon Project.

G. The term "member-based association," or "MBA," means a parent-type entity composed of utilities or user members.

H. The term "purchaser" means the entity that has signed a long-term firm power contract with Western. It does not include distribution or user members where the MBA is the purchaser, and it does not include the MBA where the distribution or user members are the purchasers.

I. A "small customer" is defined as a customer with total annual sales or usage of 25 GWh or less which is not a member of a joint action agency or a generation and transmission (G&T) cooperative with power supply responsibility, and that Western finds has limited economic, managerial, and resource capability to conduct integrated resource planning.

Section III—Integrated Resource Planning

A. Applicability: All customers of Western must prepare an IRP, regardless of a customer's resource needs, with the following two exceptions:

1. Those meeting the criteria for a "small customer" as detailed in section III.E(1) of these procedures; and

2. State-regulated, investor-owned utilities.

Nothing in these procedures shall require a customer to take any action inconsistent with a requirement imposed by the Rural Electrification Administration.

B. IRP Content: An integrated resource plan should support customer-developed goals and schedules. The plan should evaluate the full range of practicable alternatives for energy resources, including the appropriate use of cost-effective renewable and DSM resources to meet future needs.

IRPs submitted pursuant to these procedures must consider electrical energy resource needs and may also consider, at the customer's option, water, natural gas, and other energy resources. Each IRP submitted to Western must meet the requirements of the EPAct, section 114, which provides that IRPs must:

1. Identify and accurately compare all practicable energy efficiency and energy supply resource options available to the customer.

2. Include a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its IRP.

3. Designate least-cost options to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explain the reasons why such options were selected.

4. To the extent practicable, minimize adverse environmental effects of new resource acquisitions.

5. In preparation and development of the plan (and each revision or amendment of the plan), have provided for full public participation, including participation by governing bodies.

6. Include load forecasting.

7. Provide methods of validating predicted performance in order to determine whether objectives in the plan are being met.

8. Meet such other criteria as the Administrator shall require in this Program or subsequent revisions.

These criteria are discussed with more detail and guidance in section III.D(1)(a-h).

C. Submittal Information:

1. General Information: An IRP submitted to Western for approval may be a summary document with sufficient detail for Western to confirm it meets the requirements of these procedures, or it may be the full plan. Compliance with these procedures is primarily the responsibility of the purchaser of long-term firm power from Western. If more than one long-term firm power contract exists between Western and a purchaser, only one IRP is required for that purchaser.

2. Submittal Options: Customers may submit IRPs to Western under one of the following options:

a. Individual Submittal: Purchasers of long-term firm power may submit IRPs individually.

b. MBAs: MBAs may submit individual IRPs for each of their members or submit one IRP on behalf of all of their members, so long as individual member responsibilities and participation levels are identified. It is acceptable for any member of a purchaser MBA to submit an individual IRP to Western.

c. IRP Cooperative: With Western's approval, customers may form integrated resource planning cooperatives. Western believes the benefits of joint integrated resource planning can be significant and encourages customer consideration of this approach when an appropriate resource planning "decision block" exists. Western will allow the submittal of joint IRPs if an appropriate resource planning decision block exists, such as if all the entities covered by an IRP are contained within a power supply chain, so long as individual member responsibilities and participation levels are identified.

Examples of eligible entities include (1) existing first-level MBAs which were formed to meet the load growth of their members through supply-side resources, such as G&T cooperatives; (2) existing second-level MBAs, such as organizations with G&T cooperative members, which may acquire IRP cooperative status due to the magnitude and effort involved in development of such comprehensive IRPs; and 3) new associations where potential members have not previously evaluated supply-side and demand-side resources on a joint basis.

3. Small Customers: Customers approved by Western as small customers according to the small customer provision, discussed in section III.E(1) of these procedures, shall

submit a small customer plan in place of an IRP.

4. Schedules: Every customer must provide written notification to Western regarding how it intends to submit its initial IRP. This notification must be provided to the Area Manager of the area in which the customer is located within 60 days of the effective date of these procedures. The submittal options are discussed in section III.C(2).

a. IRP Cooperative Status Requests: Requests for IRP cooperative status must be made to the Area Manager of the area in which the customer is located within 60 days of the effective date of these procedures, and Western shall respond to the requests within 30 days of their receipt. If a request for IRP cooperative status is disapproved, the requesting purchasers must submit their initial IRPs no later than 1 year after the date of the letter of disapproval. Any subsequent requests by customers for IRP cooperative status will be responded to by Western within 30 days of receipt of the request.

b. Small Customer Requests: Requests for small customer status must be made to the Area Manager of the area in which the customer is located within 60 days of the effective date of these procedures. Western shall respond to the requests within 30 days of receipt of the request. If a request for small customer status is disapproved, the requesting customer must submit its initial IRP no later than 1 year after the date of the letter of disapproval. Any subsequent requests by customers for small customer status will be responded to by Western within 30 days of receipt of the request.

c. Initial IRP Submittals: Each customer must submit its initial IRP to the appropriate Area Manager no later than 1 year after the effective date of these procedures. Approved IRP cooperatives shall be allowed 18 months from the effective date of these procedures to submit an initial IRP.

d. IRP Resubmittals: If an IRP submittal is found to be insufficient after Western review, a notice of deficiencies will be provided to the entity that submitted the IRP. Western, working together with the customer, will determine the time allowable for resubmitting the IRP. However, the time allowed for resubmittal will be not greater than 9 months after the date of the disapproval.

e. Updated IRPs: Updated IRPs must be submitted to the appropriate Area Manager every 5 years, beginning 5 years after Western's approval of the initial IRP submitted.

D. Approval Criteria: IRP approval will be based upon (1) whether or not the IRP criteria as defined within these procedures are satisfactorily addressed, and (2) the reasonableness of the IRP given the size, type, resource needs, and geographic area of the customer.

Customers will make their own choices regarding resource type, quantity, and timing in accordance with their IRP. Western will not dictate resource choices.

Where a customer or group of customers implements the IRP process under a program responding to other Federal, State, or other initiatives, Western shall accept and approve such a plan as long as the IRP substantially complies with the requirements of these procedures, and therefore meets the IRP criteria.

Important elements of an IRP are (1) an assessment of resources on an equitable basis, where supply-side, demand-side, and renewable resources are compared on a fair and accurate basis to determine an appropriate low cost resource portfolio, and (2) an integration of all options in a comprehensive manner, as opposed to a piecemeal and sequential approach.

1. The IRP criteria must be addressed as follows:

a. Identification and Comparison of All Practicable Energy Efficiency and Energy Supply Resource Options: This is an assessment and comparison of existing and future supply- and demand-side resource options available to a customer based upon its size, type, resource needs, and geographic area. Identification of resource options evaluated by the specific customer, or members in the case of IRP cooperatives or MBAs, must be provided. The options evaluated should relate to the resource situation unique to each Western customer as determined by profile data (such as service area, geographical characteristics, customer mix, historical loads, projected growth, existing system data, rates, and financial information) and load forecasts.

Supply-Side Options: Supply-side options include, but are not limited to, purchased power contracts or conventional or nonconventional generation options.

Demand-Side Options: Demand-side options alter the customer's use pattern in a manner that provides for an improved combination of energy services at least cost to the customer and the ultimate consumer.

Considerations that may be used to develop the potential options include cost, market potential, consumer preferences, environmental impacts, demand or energy impacts, implementation issues, and commercial availability.

The IRP should discuss the comparisons made between resource options by describing (1) the method(s) or rationale used to select the options to be compared, (2) the options evaluated, (3) the assumptions and costs related to the options, and (4) the evaluation methods.

Resource Comparison—The IRP should describe any quantitative and qualitative methods used to compare the resource options.

b. Action Plans: Customers must submit an action plan covering a minimum period of 5 years describing specific actions the customer will take to implement its IRP. These plans must outline both short- (2 years) and long-term (5 years) actions proposed for implementation during the period covered by the plan. Where a customer is implementing IRP in response to State, Federal, and other initiatives, Western will accept action plans of other than 2 and 5 years if they substantially comply with EPAct. This action plan must summarize the load profile data and address the results of the IRP resource evaluation. In addition, the action plan must include the following:

(1) Actions the customer expects to take in accomplishing the goals identified in the IRP process.

(2) Milestones to be used to evaluate accomplishment of those actions during implementation.

(3) Quantified estimated energy and capacity benefits for each action planned.

(4) Estimated or proposed costs for implementing each action.

c. Designated Least-Cost Options to be Utilized: This is a comparative evaluation of supply- and demand-side resources using a consistent economic evaluation method. An objective of the evaluation should be to achieve the most cost-effective energy services to the consumer, taking into account reliability, economics, price risk, and all other factors influencing the quality of energy services. The analysis should consider impacts on suppliers, distribution entities, and end-use consumers, as applicable. The resource selection process and criteria should be explicit and identify the rationale for selection.

Cost-effectiveness is basic to this evaluation and therefore must be undertaken. Western recognizes the criteria for determination of least-cost options in each IRP will by nature vary between Western's customers by size, type, resource needs, and geographic area. For Western's smaller customers that prepare an IRP, this may be a generalized analysis which describes

the cost comparison processes utilized and economic assumptions. These may be limited to the total resource cost test for demand-side resources and may involve simplified methods and procedures to analyze important variations in supply-side characteristics such as service lives, construction periods, and price inflation influences. For Western's larger customers Western would expect a much more in-depth evaluation of demand and supply resource cost effectiveness, on a levelized basis. This may include evaluation of demand-side resources under some combination of the total resource cost, participant, rate impact measure, utility, and societal tests; life-cycle screening and screening curve analyses for the supply-side resources; production costing analysis; rate impact analysis; risk analysis; and impacts to the power supply chain as applicable.

Exceptions to least-cost-based decisions may be made if the customer explains the basis for the decision and can show in the IRP document that decisions were made on a clear analysis of resource options and environmental effects.

d. Environmental Effects: To the extent practicable, the customer should minimize adverse environmental effects of new resource acquisitions and document these efforts in the IRP document. Customers are neither precluded from nor required to include environmental externalities as a part of their IRP process. Western will not determine for its customers the level of environmental compliance appropriate for each action.

e. Full Public Participation: Full public participation means that ample opportunity exists for the public to participate in or influence the preparation and development of an IRP. An effective public participation program includes techniques for getting information to the public (information techniques) as well as techniques for getting information from the public (involvement techniques). Examples of information techniques include newsletters, briefings, feature stories, newspaper inserts, and bill stuffers. Involvement techniques include activities such as interviews, meetings or workshops, informal meetings, task force/advisory committees, and polls.

Member-based associations and their distribution or user members must demonstrate public participation in the development and implementation of the IRP. Given the wide diversity of customers that Western serves and the variety of resource planning circumstances that they face, Western is not proposing to mandate that customers hold a specific number of public meetings. The summary of the public participation process in the IRP must include descriptions of how the public was involved, resolutions to public concerns, and how the public influenced IRP decisions.

As part of the public participation process, the governing body of each MBA member (such as a board of directors or city council) must approve the IRP, confirming that all requirements have been met. In addition to MBA approval, customer/member approvals must be indicated by signature of a responsible official in the IRP document submitted to Western or by documentation of passage of an approval resolution by the appropriate governing body. The customer/member approvals should also be included or referred to in the IRP document submitted to Western.

Several Western customers, such as Department of Defense installations, Department of Energy laboratories, and State agencies, do not have boards or consumers in the normal utility sense. The public participation requirement for these customers is satisfied if there is review and concurrence by a top management official with resource acquisition responsibility, and the concurrence is noted in the IRP document submitted to Western.

f. Load Forecasts: Load forecasting, as a planning process used to estimate future electrical demand and energy consumption patterns, should include data which reflects the size, type, resource conditions, and demographic nature of the customer using an accepted methodology (such as the time series method, end-use method, and/or econometric method).

g. Methods of Validating Predicted Performance: Customers must provide methods of validating predicted performance in order to determine whether objectives in the IRP are being met. Validation must include identification of the baseline from which a customer will measure the benefits of its IRP implementation and then demonstrate its performance against targeted objectives. Western will assess the merits of the validation methods and give latitude for any identified lack of unavailable baseline data. A reasonable balance should be struck between the cost of data collection and the benefits resulting from obtaining exact information.

h. Other Criteria: Customers must meet such other criteria as the Administrator shall require in this Program or subsequent revisions.

2. Reasonableness Test: Western will use a "reasonableness test" in the review and approval of IRPs and small customer plans to determine plan adequacy. It shall answer both of the following questions:

a. Is the IRP consistent, overall and for individual criteria, with customer achievement of its own defined IRP goals?

b. Does the customer meet the full intent of EPAct and these procedures in their definition of an IRP for each of the eight IRP criteria, and are they appropriate for the customer's size, type, resource needs, and geographic circumstances?

E. Special Provisions: 1. Small Customer Provision: Western realizes that it may not be administratively or economically feasible for small customers to submit an IRP. Therefore, as an alternative, small customers may submit a request to prepare a small customer plan which (1) considers all reasonable opportunities to meet future energy service requirements using DSM techniques, new renewable resources, and other programs that will provide retail consumers with electricity at the lowest possible cost; and (2) minimizes, to the extent practicable, adverse environmental effects. There is no expectation for small customers to expend significant resources—time and money—in acquiring the expertise and data with which to prepare these plans. Western will be available to assist customers in developing an appropriate strategy for preparing the plans.

In order to meet these criteria, an entity approved for small customer status must submit in writing a small customer plan every 5 years which presents in summary form the following information: (a) customer name, address, phone number, and contact person; (b) type of customer; (c) current energy and demand profiles; (d) future energy services projections; (e) the manner in which items (1) and (2) in the preceding paragraph were considered; and (f) actions to be implemented over the next 5 years. The first small customer plan is due to the appropriate Western Area Manager 1 year after Western's approval of the request to prepare the plan.

Every year on the anniversary of submittal of the plan, small customers must submit a letter to Western verifying that their annual energy sales or usage is 25 GWh or less and identifying their achievements against their targeted action plans. The letter will be used for overall program evaluation and comparison with the customer's plan.

When a small customer exceeds total annual energy sales or usage of 25 GWh, becomes a member of a joint action

agency or G&T cooperative with power supply responsibility, or no longer has a limited economic, managerial, and resource capability, it will no longer be eligible for the small customer provision. In this case, Western will work with the customer in developing an appropriate timeframe, no longer than 1 year, for submittal of an IRP.

2. Irrigation District IRP: For purposes of these procedures, Western shall equate water planning, efficiency improvements, and conservation to energy planning and efficiencies. Therefore, irrigation districts may comply with EPAct by quantifying results through submission of their IRPs in terms of water conservation plans. However, to the extent practical, irrigation district customers should convert their water savings to energy values. In recognition of the impact of weather and commodity prices on energy usage, progress in implementing IRPs may be reported and measured based upon efficiency improvements instead of power usage. These procedures do not require a customer to engage in complex cost-benefit analysis when information on resource cost-effectiveness is available from other sources. For example, an irrigation district preparing an IRP may use information available from an extension service or a university to judge the merits of a demand-side resource opportunity; there is no requirement to hire a consultant to independently verify this kind of information. The customer's knowledge and experience should be central in the IRP resource evaluation and selection process.

F. Processing of IRPs and Small Customer Plans: Western shall review all IRP and small customer plan submittals and respond to customers as to each plan's acceptability within 120 days after receipt.

In order to ensure consistent application of these procedures in all Area Offices, Western will utilize IRP evaluation criteria and small customer plan checklists. The checklists will be provided to the public as part of a future Program public involvement newsletter and will provide for consistent review of IRPs. These are internal documents to Western and are made available to the public for informational purposes only.

G. Annual IRP Progress Reports: IRP progress reports must be submitted each year within 30 days of the anniversary date of the currently applicable IRP. Western will use this information to (1) ascertain compliance with an approved IRP, (2) analyze overall program impacts, (3) provide a basis for preparation of Western's annual report, and (4) provide a basis for Western to furnish appropriate technical assistance for customers.

Generally, annual progress reports must include actions taken by the customer to implement its IRP and an evaluation of associated quantitative and qualitative benefits achieved. The most important subject in the annual progress report is quantification of the energy and capacity saved under the IRP, dollars saved, renewable energy benefits achieved, or other quantifiable benefits identified by the customer. Measured values are preferred, but credible estimates are acceptable if measurement is infeasible or not cost-effective. Western is also interested in reporting on the qualitative benefits of IRP related to (1) risk, (2) competition, (3) planning flexibility, and (4) public involvement. Events or circumstances may occur which could significantly alter the content or implementation of a customer's IRP. Therefore, modifications to an approved IRP should be submitted in the annual progress report.

Following is a list of items which must be included in annual progress reports:

1. General customer information (i.e., name, address, phone, contacts).

2. Accomplishments achieved pursuant to the action plan (i.e., projected goals, implementation schedules with anticipated quantifiable benefits, milestones, and resource expenditures).

3. Quantitative and qualitative benefits (i.e., energy and capacity savings and renewable energy developments) achieved as compared to those anticipated.

4. Problems, issues, or achievements of note.

5. Any significant changes that may be planned for the IRP in the coming year.

H. Noncompliance:

1. Definition of Noncompliance: A penalty for noncompliance shall be imposed for (1) nonsubmittal of an IRP or an annual progress report within the designated timeframe, (2) failing to obtain Western acceptance of an IRP, or (3) failing to implement an IRP approved by Western, unless Western determines that a good-faith effort has been made to comply. A penalty for noncompliance will be imposed following periodic review (see section III.J) if a customer's actions are inconsistent with its approved IRP and it is found that there are no mitigating circumstances which justify those actions.

2. Assessment of Penalties: If the entity submitting the IRP to Western is in violation of these procedures, a notice of noncompliance will be issued to the purchaser which will trigger the penalty provisions. The 10-percent resource withdrawal penalty in existing contracts will continue to be in effect until changed. The penalties proposed below will be incorporated into the contracts that extend resources and will be effective upon contract execution.

Beginning with the first full billing period following the notice, a surcharge penalty of 10 percent of the monthly power charges will be assessed for each of the next 12 months of noncompliance. The penalty will then increase to 20 percent of the monthly power charges for each of the following 12 months of noncompliance. If the entity remains in noncompliance thereafter, Western will assess a 30-percent surcharge. As an alternative to imposing the 20- and 30-percent graduated surcharge on power charges, Western proposes a penalty which would reduce the resource delivered under a purchaser's long-term firm power contract(s) by 10 percent. The power withdrawal penalty may be imposed in cases of either (1) when it is determined that the power withdrawal will be more effective to assure compliance than the surcharge penalty by itself, or (2) when the power withdrawal is more cost-effective for Western, by avoiding acquisitions of resources from another entity to meet the contractual obligation.

The surcharge will be assessed on the total charges for all power obtained by a customer from Western and will not be limited to firm power charges. When a customer resolves the deficiencies, the imposed surcharge and/or power withdrawal will cease, beginning with the first full billing period after compliance is achieved.

In situations involving an IRP submitted by a member-based association on behalf of its members or an IRP cooperative where a single member does not comply, a penalty or withdrawal shall be imposed upon the member-based association or IRP cooperative on a pro rata basis in proportion to that member's share of the total member-based association's power received from Western.

If a customer has more than one long-term firm power contract with Western, the penalty would be imposed under each contract.

If a small customer is found in noncompliance with any of the requirements of the small customer provision, it will be subject to the penalty conditions stipulated in this section.

I. Administrative Appeal Process: If a customer disagrees with Western's

determination of the acceptability of its IRP submittal, its compliance with an approved IRP, or any other compliance issues, the customer may request reconsideration by filing a written appeal with the appropriate Area Manager. Appeals may be submitted any time such disagreements occur and should be very specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts which the customer believes should be brought to Western's attention. The Area Manager will respond within 45 days of receipt of the appeal. If resolution is not achieved at the Area Office level, a further appeal may then be made to the Administrator who will respond within 30 days of receipt.

Upon request, Western is open to mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, on the issues of IRP compliance and acceptability. Western will not impose a penalty while an appeal process/alternative dispute resolution is pending. However, if the appeal/alternative dispute resolution is unsuccessful for the customer, Western will impose the penalty retroactively from the date Western made the determination of deficiency that led to the use of the appeal process/alternative dispute resolution.

J. Periodic Review by Western:

1. Timeframe: Beginning 3 years after the effective date of these procedures, Western shall periodically review a representative sample of applicable IRPs and the customer's implementation of the applicable IRP. These reviews are in addition to, and separate and apart from, the review of initial IRP submittals and updated IRPs made under section III.D of these procedures.

2. Purpose: The purpose of the review shall be to determine if customer actions are consistent with the approved IRP. Small customer plans are not subject to this periodic review.

3. Selection of Representative Sample: A representative sample of IRPs from each of Western's marketing areas will be developed. The representative samples will consist of IRPs that reflect the diverse characteristics and circumstances of the customers that purchase power from Western. At a minimum, Western will review a sample of IRPs from the following:

—IRPs indicating a need to acquire resources in the IRP study period.
—IRPs prepared by individual customers, IRP cooperatives, and member-based associations.
—IRPs that do not show plans to implement DSM programs in the IRP study period.

4. Method of Review: Periodic reviews may consist of any combination of (1) Review of the customer's annual IRP progress reports, (2) telephone interviews, or (3) on-site visits. Western will document these periodic reviews and shall report on the results of the reviews in Western's annual report.

K. IRP by Western: In these proposed procedures, Western commits to the use of IRP principles in its resource acquisition and transmission planning programs. Western's commitment concerning the use of IRP principles will be pursued independently from the Program through a separate public process by Western starting within 90 days after the publication of this **Federal Register** notice. This separate public process will commence with publication in the **Federal Register** of a draft set of IRP principles, with opportunity for public comment prior to adoption of formal IRP procedures applicable to Western.

L. Western Annual Report: Western must prepare and include in its annual report a description of the activities undertaken by Western and by customers under these procedures and an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

M. Freedom of Information Act: IRPs and associated data submitted to Western are not exempt from public access under the Freedom of Information Act (FOIA). However, customers may request confidential treatment of all or part of a submitted document under FOIA's exemption for "Confidential Business Information." Materials so designated and which meet the criteria stipulated in the FOIA will be treated as exempt from FOIA inquiries.

N. Program Review: Within 1 year after January 1, 1999, and at appropriate intervals thereafter, Western shall initiate a public process to review these IRP procedures. Western may at that time revise the eight criteria for approval of IRPs to reflect changes, if any, in technology, needs, or other developments.

Section IV—Power Marketing Initiative

A. Applicability: The proposed PMI provides a general framework for the marketing of Western's long-term firm hydroelectric resources. Many project-specific determinations are necessary before any final decisions can be made on marketing power. Such important issues as the resource available for marketing in the future, the size of a resource pool, any adjustments to the size of this pool, and allocation criteria for new purchasers must be decided on a project-specific basis, with public input and appropriate environmental documentation.

Western proposes to make a major portion of the resources currently under contract available to existing long-term firm power purchasers for a period of time beyond the expiration date of their current contracts. The PMI would apply if consistent with other contractual and legal rights, subject to the outcome of project-specific environmental work as appropriate. Western projects proposed for initial coverage under this PMI are the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects (LAP).

For Central Valley Project and Washoe Project resources, all power contracts between Western and its long-term firm power customers expire in 2004, as do the Western-Pacific Gas & Electric Company contracts. Western is at an early stage of the post-2004 decision-making process and is preparing an EIS for the Sacramento Area Office (SAO) 2004 marketing plan. Western will not make any decision at this time about application of the PMI to SAO resources for the post-2004 time period. Western will include the PMI as an alternative in the SAO marketing plan EIS for purposes of impact assessment and comparison with other alternatives. As a result of further analysis in the 2004 marketing plan process, Western may at a later date propose through the public process adoption of the PMI for SAO resources in the post-2004 time period. If the PMI provision is implemented, Western estimates that an initial extension level of 95 to 98 percent of the SAO resources available at the end of the term of existing contracts would be made. The additional resource pool increments described in section IV.C would also be applicable.

Application of the PMI to the Salt Lake City Area/Integrated Projects (SLCA/IP) resources would be evaluated after its electric power marketing EIS is completed and the associated marketing criteria and contract changes are implemented. Western's ongoing project-specific EIS for the SLCA/IP analyses power marketing between now and the year 2004. For customer planning purposes, Western estimates that an initial extension level of 98 percent of the SLCA/IP resources available at the end of the term of existing contracts would be made upon PMI adoption. The additional resource pool increments described in section IV.C would also be applicable.

If necessary, the resource pool size estimates for SAO and SLCA/IP resources may be adjusted during a

project-specific public process to reflect the actual fair share needs of eligible new customers and other purposes as determined by Western.

Western also proposes to evaluate application of this PMI to other Western firm power contracts that expire after January 1, 2005—principally the Parker-Davis and Boulder Canyon Projects. This evaluation would be published after a separate public process and would take place no more than 10 years before termination of these contracts.

B. Term: For existing customers with long-term firm power contracts, and in accordance with the applicability criteria in section IV.A, Western proposes to extend resource commitments for 18 years from the date existing contracts expire. All long-term firm power contracts for a particular project would expire at the same time.

C. Resource Extensions and Resource Pool Size: Western proposes to extend a project-specific percentage of the marketable resource available at the time current contracts expire to existing customers with long-term firm power contracts (see extension formula in section IV.D below). The remaining unextended power would be used to establish project-specific resource pools. The proposed project-specific resource pools (including both the initial pool and future increments) could be as large as 6 percent over the term of the contracts. Initially, an extension level of 97 percent is proposed for the Pick-Sloan Missouri Basin Program-Eastern Division and 97 percent for the Loveland Area Projects. These percentages are based on Western's judgment of the hydropower needed to meet a fair share of the projected power needs of potential new customers in the applicable marketing area at the time existing contracts expire.

Western proposes an incremental resource pool that makes power available for potential new customers over time, without the disruptive influence of creating a large pool all at once, before the need exists. Another purpose of a graduated resource pool is to provide Western with the flexibility that is necessary when long-term contracts are offered to customers.

At two intervals of 5 years after the effective date of the extension to existing customers, Western proposes to create a project-specific resource pool increment of up to an additional 1.5 percent of the marketable resource available at the time current contracts expire. The size of the additional resource pool increment would reflect the actual fair-share needs of eligible new customers and other purposes as determined by Western. Since Western estimates a 3-year public process will be needed to market resources after PMI extension contracts expire, no additional resource pool increment is proposed for the last 8 years of the PMI contract term.

The additional resource pool increments will be established by pro rata withdrawals from existing customers which could be mitigated or delayed if good water conditions exist, or if Western acquires sufficient energy made available as a result of investment in energy efficiency and DSM, conventional supply-side, or renewable resources to create the additional resource pool increments.

The following table illustrates the timing and size of the proposed resource pool creation, as applied to the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. In all cases, the percentages are applied to the marketable resource available at the time current contracts expire.

Year	P–SMBP–ED	LAP
2000	3%.	
2004		3%
2005	up to 1.5%.	
2009		up to 1.5%
2010	up to 1.5%.	
2014		up to 1.5%

Once the extensions for existing customers and allocations to new purchasers from the resource pool have been made, additional power resources may become available for various reasons.

Power reserved for new purchasers but not allocated and resources offered but not placed under contract may become available. This power would be offered on a pro rata basis to existing customers that contributed to the resource pool through application of the extension formula described in section IV.D.

Power resources freed up by Western's acquisition of cost-effective energy efficiency/DSM may become available. Resources resulting from the enhancement of existing generation, project-use load efficiency upgrades, the development of new resources or resources turned back to Western may also become available. Western proposes that this power be used to reduce the need to acquire firming resources, retained for operational flexibility, or allocated by the Administrator.

Resources may become available due to penalty imposition pursuant to section III.H of these procedures; this power may be made available to existing customers, subject to withdrawal on 30 days' notice.

For the Pick-Sloan Missouri Basin Program-Eastern Division, both the State of South Dakota and the Department of Defense have been allowed to transfer Western power from one location to another. After existing contracts expire, Western proposes to require that power commitments to specific State and Defense sites not be changed unless the contract rate of delivery exceeds the total load at that site. If the contract rate of delivery exceeds the total load at a State or Defense site, Western proposes that only the excess power at that site may be transferred to other State or Defense sites. Transfers are subject to negotiation of transmission service contracts for the delivery of transferred power. To be consistent with requirements for other firm power deliveries, Western further proposes to require the delivery of a proportional share of firm Pick-Sloan Missouri Basin Program-Eastern Division power at each State or Defense site in both the summer and winter seasons. If there is closure of a Defense installation or facility after the year 2000, the allocation may be impacted by the report required in section 2929 of the 1993 National Defense Authorization Act, Pub. L. No. 103–160. Section 2929 requires the Secretary of Energy, in consultation with the Secretary of Defense, to submit a report to Congress by November 30, 1994; this report must contain recommendations regarding the disposition of hydroelectric power allocations to military installations closed or approved for closure outside of the marketing area of the Central Valley Project.

D. Extension Formula: The amount of power to be extended to an existing purchaser would be determined according to this formula:

(Purchaser contract rate of delivery (CROD) today/total project CROD under contract today × project-specific percentage × resource available at the end of the term of existing contracts) = CROD extended.

If a purchaser's CROD is or would become (except for a resource withdrawal penalty under section III.H) less than 1 megawatt (MW), no reduction would take place.

Where contract rates of delivery vary by season, the formula would be used on a seasonal basis. A similar pro rata approach would be used for energy extensions. Determination of the amount of resource available after existing contracts expire, if significantly different from existing resource commitments, would take place only after an appropriate public process.

Amounts of firm power subject to withdrawal at 5-year intervals after the effective date of the extension to existing customers also would use the formula set forth above, except the percentage used would be up to 1.5 percent for each of the two withdrawal opportunities. New customers who have received power from the resource pool would not be subject to withdrawal to create a resource pool increment for other new customers.

If no better information is available, for initial IRP planning purposes, Western would provide existing customers with estimated resource commitments (based on application of the percentages set forth in these procedures to the resources currently under contract). Actual resource commitment numbers would be developed and included in contracts as soon as practicable.

E. Adjustment Provisions: Western proposes to adjust marketable resources committed to all customers with long-term firm power contracts only in response to changes in hydrology and river operations. Under the terms of contracts that extend resources under this PMI, existing purchasers would be given at least 5 years' notice before adjustments are made. Depending on when new customer contracts are signed, new customers may receive less notice. The earliest that any notice under this section would become effective is the date that existing contractual commitments expire. Adjustment would only take place after an appropriate public process. Withdrawals to serve project use would continue to take place based on existing contract/marketing criteria principles.

F. New Purchaser Eligibility: Allocations to new purchasers from the project-specific resource pool would be determined through separate public processes in each project's marketing area. New purchasers receiving an allocation must execute a long-term firm power contract to receive the allocated power and would be required to comply with the IRP procedures. Contracts with new customers would expire on the same date as firm power contracts with all other customers of a project.

To be eligible for an allocation, a potential new purchaser must be a preference entity, as defined in Reclamation law, within the currently established marketing area for a project. In order to increase widespread distribution of hydropower resources, Western will allocate a fair share of power to eligible new preference entities who do not have a contract with Western or are not a member of a parent entity that has a contract with Western.

The specific terms and conditions associated with allocations to new purchasers would be determined during future, project-specific public processes. All new applicants for power would be considered and be given an opportunity to receive an allocation in accordance with Reclamation law. For example, Western expects to make allocations to Native American tribes (as that term is defined in the Indian Self Determination Act of 1975, 25 U.S.C. § 450b) for use on the reservation and will consider making allocations to national parks and public mass transit agencies. Western also will consider making power available to preference entities in support of fish and wildlife (such as power to pump water to increase or improve wildlife habitat) and to firm up renewable resources. Proposals for providing allocations directly to Native American tribes will be developed on a project-by-project basis, during the allocation of project-specific resource pools. This flexibility is critical, because an allocation of power is of no value unless an organization has the means to receive power; the potential customer must be ready, willing, and able to take delivery of power. Ready, willing, and able means that (1) the potential customer has the facilities needed for the receipt of power or has made the necessary arrangements for transmission service, (2) the potential customer's power supply contracts with third parties permit the delivery of Western's power, and (3) metering, scheduling, and billing arrangements are in place. Limits on the power received by any customer, as well as minimum load requirements, also may be adopted.

Certain entities, such as municipalities, cooperatives, public utility districts and public power districts, must have utility status to purchase power from Western. Utility status means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail consumers. To be eligible to apply for power available from a project's initial resource pool, those entities that desire to purchase Western power for resale to consumers must have attained utility status by January 1, 1996, for the Pick-Sloan Missouri Basin Program-Eastern Division, and by September 30, 2000, for the Loveland Area Projects. To be eligible to apply for power from subsequent resource pool increments, these entities must have attained utility status no later than 3 years prior to availability of the incremental addition to the resource pool. Deadlines for attaining utility status for other projects would be established at a later date.

All potential new customers, both utilities and nonutilities, would be required to apply for power in a project-specific marketing plan by a date to be determined in the project-specific process. All potential new customers must be ready, willing, and able to receive and distribute or use power from Western. A potential new purchaser would be responsible for transmission arrangements beyond Western's system/points of delivery necessary to receive power from Western.

An existing customer would not be eligible to receive power from a resource pool unless Western provides otherwise on a project-specific basis. A new customer receiving power from a project-specific resource pool would not be eligible to receive additional power from a subsequently available resource pool increment unless Western provides otherwise on a project-specific basis.

G. Marketing Criteria: Western proposes to retain applicable provisions of existing marketing criteria for projects where resource commitments are extended beyond the current expiration date of long-term firm power sales contracts. Western must retain important marketing plan provisions such as classes of service, marketing area, and points of delivery, to the extent that these provisions are consistent with the proposed PMI. The PMI, eligibility and allocation criteria for potential new customers, retained or amended provisions of existing marketing criteria, the project-specific resource definition, and the size of a project-specific resource pool would constitute the future marketing plan for each project. Any necessary amendments to existing power marketing criteria could be pursued at the time Western determines the amount of resource available after existing contracts expire.

H. Process: Resource extensions and allocations to new customers from the initial resource pool would take effect when existing contracts terminate. These dates would be the year 2000 for the Pick-Sloan Missouri Basin Program-Eastern Division and 2004 for the Loveland Area Projects. For the Pick-Sloan Missouri Basin Program-Eastern Division, Western proposes to offer contracts to existing purchasers for resource extensions as IRPs are received by Western from existing purchasers. For the Loveland Area Projects, existing contracts provide for potential adjustments to marketable resources in 1999. Western proposes that no contracts be offered to existing

customers for post-2004 Loveland Area Projects resources until the analysis of potential resource adjustments in 1999 has been completed and any adjustments are implemented. Existing power sales contracts require that this analysis be completed by 1996.

The timing of offers of power to existing Salt Lake City Area/Integrated Projects customers for the time period after 2004 may be impacted by the replacement power process relating to loss of capacity due to changes in operations at Glen Canyon Dam. For the SLCA/IP, existing contracts provide for potential resource adjustments in 1999. Western proposes that no contracts be offered to existing customers for post-2004 SLCA/IP resources until the analysis of potential resources in 1999 has been completed and any adjustments are implemented. Existing power sales contracts require that this analysis be completed by 1996.

Modified contractual language would be required to place resource extensions under contract. For all projects receiving resource extensions under the PMI, Western will develop contractual language which would allow the customer to assume the responsibility of acquiring resources to firm up Western's hydroelectric commitments if the customer so chooses.

Section V—Energy Services

Western will provide technical assistance to customers to conduct integrated resource planning, implement applicable IRPs, and otherwise comply with the requirements of these procedures. Technical assistance, which may include publications, workshops, conferences, individual assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers, will be provided under Western's energy services functions and will not be addressed as a part of these customer IRP procedures. Customers will be kept informed at all times of the technical assistance available to them in support of their development and implementation of IRPs through Western's energy services publications.

Section VI—Effective Date

Western proposes that the final Program procedures become effective on the date that the Record of Decision on the Program EIS is published in the **Federal Register**, or 30 days after the final Program rule is published in the **Federal Register**, whichever date is later.

Regulatory Procedure Requirements

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the rule on small entities. Western has determined that this Program relates to services offered by Western and therefore is not a rule within the purview of the Act. In addition, the requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that this Program, if promulgated, will not have a significant adverse economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from OMB for the collection of customer information proposed herein.

National Environmental Policy Act

Western is preparing an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969.

Issued in Golden, Colorado August 1, 1994.

William H. Clagett,

Administrator.

Response to Comments on the Energy Planning and Management Program.

The Western Area Power Administration (Western) has received numerous comments on the proposed Energy Planning and Management Program (Program) during the public process to date. The following section responds to those comments and is intended to assist the public in understanding Western's rationale for the proposed Program. Each issue is presented in a format featuring background, public comments, and discussion.

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A. Energy Planning and Management Program-Overview

1. General

a. Background

Western has proposed to make future commitments of long-term firm power at the same time that customers commit to identify and pursue cost-effective supply- and demand-side resources through preparation of an integrated resource plans (IRP).

b. Comments

—Western should link power marketing and energy management.
—If the current program were strengthened to the satisfaction of both customers and its detractors, the perceived need to link resource allocations with energy efficiency performance would prove unnecessary.
—Linkage should not take place, especially if the Energy Management Program (EMP) is subject to change every 5 years.
—Some linkage between allocations and efficient energy use is desirable; but,

if linked, flexibility and cost-based rates should continue.

—Linkage is an important incentive to promote demand-side management (DSM) on the part of Western's customers.

—Western's ability to link power allocations to energy efficiency gains is one of the few options available for providing an affirmative incentive to customers that promote DSM.

—The linkage should be expanded to holders of nonfirm power sales contracts, such as investor-owned utilities. Nonfirm sales encourage inefficiency, so the Program should apply to nonfirm purchasers from Western.

—Western should either break the linkage, or couple a more modest linkage proposal with a package of reforms. Western practices in need of reform include the acquisition of supplementary resources to meet customer needs, construction and use of transmission, moving of renewables to market, and encouraging efficiency. Better decisional processes based on IRP are needed.

—To our knowledge, no other power marketing administration has combined the issues of long-term power allocations and conservation.

—If this environmental impact statement (EIS) takes longer than 2 years, Western should separate the Power Marketing Initiative (PMI) from the EMP.

c. Discussion

Prior to the passage of the Energy Policy Act of 1992 (EPAct), the PMI was viewed by Western as an important incentive to encourage energy efficiency and promote cost-effective DSM by its customers. The character of the incentive has now changed, as Congress has mandated IRP preparation whether resources are extended or not. The IRP title in the EPAct, while not referring to the PMI, certainly does not prohibit making decisions on resource commitments in a time frame that promotes the quality of integrated resource planning. The PMI remains an incentive for potential new customers to apply for power and prepare IRPs. In addition, the improved planning stability that results from an appropriately timed extension of resources can be seen as an incentive for future planning. Western creates a disincentive to energy efficient resource choices, with their associated economic and environmental benefits, when the existing customer resource base is uncertain.

Western has proposed a Program to meet a number of changes that are taking place in the utility industry. The business of generating, transmitting, and distributing electrical power is increasingly dynamic. More competition and uncertainty exists in the industry than ever before. Integrated resource planning, coupled with the resource stability needed to effectively plan for the future, can meet the challenges of the 1990s and beyond.

Diverse interests are reflected in the users of the multipurpose water projects from which Western markets hydroelectric power. In the past, such interests as irrigation, flood control, navigation, treaty obligations, and hydropower generation dominated discussions on the use of these multipurpose facilities. More recently, such purposes as recreation and preservation and enhancement of endangered and threatened species have become more prominent. Timely commitments of hydropower resources are more difficult to make as a result of the ongoing debate on the purpose and operations of Federal resources. Western has designed the Program to provide the resource stability necessary for integrated resource planning, while allowing for adjustments in marketable resources in response to changing priorities for multipurpose water projects.

Environmental issues are critically important to Western. Western believes that the Program can and must be responsive to environmental issues and concerns. For example, the PMI provides for flexibility in the determination and marketing of Western's hydropower resources in response to operational changes due to environmental factors. In addition, Western believes that integrated resource planning must be sensitive to the environmental effects of resource options. IRPs should, to the extent practicable, minimize the adverse environmental effects of new resource acquisitions.

Western's proposed Program will respond to all of these changes and achieve several objectives. The Program has been proposed to promote greater planning stability, to encourage energy efficiency, and to promote the evaluation of both demand- and supply-side resource alternatives through integrated resource planning by Western's customers. Western is committed to achieving all of these goals and objectives as a group, with a Program that meets several related objectives simultaneously. The proposed Program meets all of these goals and objectives as an integrated solution to the identified issues.

Strengthening the existing Conservation and Renewable Energy (C&RE) Guidelines and Acceptance Criteria (G&AC) alone does not meet the goals and objectives that underlie Western's Program proposal. The existing G&AC only require that a customer perform a certain number of activities, usually demand-side or renewable in nature, to be in compliance. When these activities are identified as the best resource choice in an IRP, as required by the EPAct, only then do they represent the most appropriate approach for meeting customer needs for cost-effective electricity. Integrated resource planning, with its emphasis on considering both cost-effective supply- and demand-side resource opportunities, fulfills the goal of making Western's customers better equipped to provide low-cost power to consumers and to meet the challenges that exist in the more competitive utility environment of today. The Program also provides Western's customers with the resource stability necessary to effectively engage in integrated resource planning, an objective that could not be met simply by strengthening the existing G&AC.

Western agrees with the viewpoint that Energy Management Program stability is undercut and the goals of the Program are not met if the EMP is subject to change every 5 years. The EPAct is consistent with this view. In accordance with this legislation, Western presently anticipates no change in the integrated resource planning process requirements until at least 1999, and then only if technology or other developments warrant. No change will take place without a full and open public process.

Western concurs with the comment that flexibility should be part of the Program approach and philosophy. Western also concurs with the comment that cost-based rates should continue, pursuant to applicable law.

Western does not agree that the IRP requirement should be expanded to purchasers of nonfirm power. Extension of the IRP requirement to nonfirm purchasers would not significantly expand the scope of the Program. Nonfirm purchasers who are also long-term preference customers must comply with the IRP preparation requirement by virtue of the conditions set forth in their long-term firm contracts with Western. Although section 205(c) of the IRP title set forth in section 114 of the EPAct specifically exempts investor-owned utilities from IRP preparation pursuant to the bill, to the extent that nonfirm purchasers of power are investor-owned utilities, they likely are or will soon be

preparing IRPs in response to State public utility commission regulations.

Requiring preparation of IRPs as a condition of commitments that can be terminated on telephone notice by either party offers little opportunity for penalty imposition for noncompliance. Revenue levels could be adversely impacted if purchasers who offer to pay an attractive price for surpluses decide to stop purchasing nonfirm energy due to Western's attempts to expand the scope of IRP preparation.

Preparation of an EIS on this Program has been proceeding, and comments have been received on the draft. Western sees no reason to abandon its proposed approach at this point in the process due to delays in developing the necessary environmental documentation.

Western agrees that its purchase power and transmission planning processes should be based on integrated resource planning principles. Detailed responses to comments on this subject can be found in section D.1 of these responses to comments.

2. Public Process

a. Background

Western has committed to preparing an EIS on the Program. A public involvement process, including the development of a mailing list of diverse members of the interested public, has been pursued. Newsletters and brochures have been developed and distributed, and public meetings and workshops have been held throughout Western's service area on the substance of the Program and the draft EIS.

b. Comments

—Preparation of an EIS is not warranted. No negative environmental impacts are foreseen, so an EIS need not be prepared.
—An EIS should be prepared, but in an expedited, 12- to 15-month time period.
—Considering the diversity among Western's customers and service territories, 12 to 15 months for EIS preparation is too short. Do not go too quickly, as customers must respond to the radical changes that have been proposed in the EMP.
—An EIS should be done because of the significant impacts that power generation facilities could have on major river systems and on fishery resources.
—Western should let customers know how it is reacting to and evaluating issues before the draft EIS is made available.
—Western should address the issues raised in the scoping meetings. Where in the alternatives are such options as 100-percent extension of power resources for 40 years? Carrots versus sticks options on the EMP? Retain existing G&AC with quantification of benefits?
—Western should tie the Salt Lake City Area/Integrated Projects (SLCA/IP) Power Marketing Criteria EIS to the Program EIS.
—Western needs to integrate more fully the EIS with the decision making process so that reviewers can understand both the economic and environmental effects of Program alternatives.
—The several separate public processes currently envisioned under the Program over the next 10 years should be abbreviated.
—The public development process is a good one that shows what can be accomplished when cooperation exists between the private sector and Government.
—Although an EIS is unneeded for this Program, socioeconomic impacts do need to be evaluated.
—The lack of detailed Program regulations hampers review of the draft EIS.

c. Discussion

Western initially decided that the proposed Program may involve potentially significant environmental and economic issues and impacts that may be of interest to the public. Preparation of an EIS would document any significant impacts which could be taken into account by Western's Administrator in his final decision on the Program.

After Western decided to prepare an EIS through its **Federal Register** notice of May 1, 1991, Congress enacted the Energy Policy Act of 1992. Section 205(a) of the integrated resource planning title of that legislation mandates the preparation of an EIS by defining the IRP provision as a major Federal action significantly affecting the quality of the human environment. Therefore, Western will continue its EIS preparation.

Western is taking all prudent steps to assure that the preparation of the EIS is accomplished as soon as practicable so that the benefits of integrated resource planning are realized by Western's customers and their electrical consumers in the near future.

Western is responding to all comments received on the Program in this **Federal Register** notice. Comments that were previously advanced are addressed so that the public understands why Program development has progressed in the way that it has.

Western is sensitive to the public's need for information as the Program development process moves forward. In recognition of this need, Western has held 46 meetings and workshops during the Program development process to date and has issued a brochure and a series of 11 newsletters to entities who have expressed an interest in the Program prior to the publication of this **Federal Register** notice. Western has also scheduled several public meetings in this **Federal Register** notice to receive comments on the Program proposal. Through these mechanisms, Western keeps the public apprised of progress in overall Program development.

Western has fully integrated the Program development process with the ongoing environmental documentation. The notice of Western's intent to prepare an EIS was published in the **Federal Register** soon after the first notice announcing the proposed Program. EIS scoping meetings and informational meetings on the substance of the Program were held on the same day throughout Western's marketing area. Although not required by the National Environmental Policy Act of 1969 (NEPA), a public meeting was held in Denver to inform the public of the comments received during the scoping meetings and to describe the range of alternatives under consideration for evaluation in the draft EIS. Western also held a series of alternatives workshops to gather public input on defined alternatives in the spring of 1992. This **Federal Register** notice is being published soon after the draft EIS was made available for public comment. While open to more specific comments on how the integration of the decision making and environmental processes could be enhanced, Western believes that the process to date has demonstrated its commitment to this goal.

Comment was received that the Power Marketing Criteria EIS for the SLCA/IP should be tied to the Program EIS. Western agrees that a relationship exists between these two processes. The Program EIS is programmatic in nature. It analyzes on a Western-wide basis the environmental impacts of the Program, including customer integrated resource planning and the extension of resources for projects, with the timing of the extension to be project-specific. Any necessary environmental analysis resulting from project-specific application of Program principles (e.g., significant changes in marketable resources, size of the resource pool, and allocations to new customers) will be tiered off the Program EIS. The SLCA/IP Power Marketing Criteria EIS

recognizes the programmatic nature of the Program EIS and further recognizes Western's Program proposal that customers purchasing power from the SLCA/IP will be required to prepare IRPs as soon as the Program becomes final. The Program EIS will be incorporated into the SLCA/IP Power Marketing Criteria EIS.

Western agrees that the lack of detailed Program procedures has made it difficult for the public to comment on the draft EIS. Due to the lack of a preferred alternative in the draft EIS, Western did not find it appropriate to issue proposed procedures when the draft EIS was released for public review. The detailed Program procedures are part of this **Federal Register** notice.

3. Environmental Impact Statement

a. Background

Western has prepared a draft EIS on the Program. The draft EIS predicts that environmental benefits will be realized upon Program implementation. The majority of the projected benefits result from implementation of integrated resource planning. Additional environmental benefits are attributable to resource certainty and stability resulting from implementation of the PMI.

b. Comments

—Although the draft EIS is not perfect, we agree with the general trends identified within the document.
—We agree with the aggregated simulation in the draft EIS, as opposed to a system-specific approach.
—The draft EIS does not adequately recognize the significant conservation, renewable resource, and energy efficiency accomplishments of Western's customers.
—The predicted energy savings and associated environmental benefits projected in the draft EIS should not be used as a standard against which future customer IRP implementation will be measured.
—Western should recognize that some end-use technologies are so efficient that adoption leads to net reductions in CO_2 emissions; this is recognized in the Administration's Climate Control Action Plan.
—The environmental benefits associated with the extension of resources identified in the draft EIS would be even stronger if the analysis extended beyond 2015.
—Western should coordinate environmental mitigation strategies with the Bonneville Power Administration (BPA).
—Rate stability and cost containment should be part of the purpose and need statement for the EIS.
—There is no recognition in the draft EIS of the impact of resource extensions on purchases of thermal power.
—The draft EIS is flawed in its lack of analysis of its relationship to other EISs.
—Some numbers, trends, and assumptions in the draft EIS are questionable.
—An alternative should be added allowing a 70-percent extension of existing resources to existing customers.
—Due to the greater environmental benefits that would result, we suggest an alternative of 35 to 40 years at a 100-percent level be adopted.
—Wind energy will be a larger resource in the future than the draft EIS suggests.
—The impact of extension options on SO_2 emission credits needs to be recognized.
—An alternative should be added reserving a noncompetitive allocation of Federal power for Indian tribes in Western's service territory.
—The environmental benefits of long-term extensions may be far greater than the draft EIS suggests.
—The draft EIS is flawed, as it does not provide a basis for determining whether a 10-percent resource pool is too small, and does not analyze disposition of new power resources, allocation criteria based upon need, the economic impact of marketing policies on new customers, the benefits of allocating power to Native Americans, the need for utility status to receive an allocation of power, or the need for equity in Western's marketing policies.
—The environmental benefits associated with resource certainty and stability are understated in the draft EIS. Such factors as the ability to borrow money, the impact on utility revenue requirements, the need to acquire more supply-side resources at the expense of customer efficiency programs, and the character of supply-side resources acquired are impacted by short-term contracts.

c. Discussion

Western appreciates these comments and suggestions and will address them in the final EIS. Several comments deserve brief responses here.

Western did not analyze the environmental impact of uses of the resource pool, as we cannot predict with any certainty who will apply successfully for power from project-specific resource pools during future allocation processes. For example, entities considering submitting an application for Western power may not be able to acquire transmission access, or existing power supply contacts may be an obstacle to receipt of hydropower from Western. Western will engage in environmental analysis on issues arising from resource pool size and allocation criteria on a project-specific basis at a time closer to the expiration dates of existing contracts.

Although environmental benefits associated with Program implementation are forecast in the Program draft EIS, Western will not use those predicted energy savings as the measure of successful customer IRP implementation. The predicted energy savings in the draft EIS are useful in identifying regional trends for purposes of environmental analysis, but the assumptions and analysis approach are far too broad to be useful in setting customer-specific energy savings goals. In fact, the establishment of customer conservation goals by Western would be totally inappropriate, as an IRP should consist of customer-defined goals and objectives.

B. Integrated Resource Planning

1. Proposed Procedures

a. Background

Options considered in the draft EIS include:

1. No change to the existing C&RE Program.
2. An IRP requirement for all customers.
3. An IRP requirement with a small customer provision. Western's proposal is an IRP requirement with a small customer provision.

b. Comments

i. Comments Concerning Applicability:

—IRP provisions should be mandatory
—IRP provisions should be voluntary.
—There should be exemption provisions.
—No exemption provisions should be proposed.
—Is there a possibility of waiver of the IRP provision for new customers? Does the EPAct require it?
—The IRP rule should apply to contractors only and not all recipients of Federal power.
—Some customers are concerned about the practicality of the IRP analysis and process.

Discussion

Section 114 of the EPAct requires all of Western's firm power customers to

develop and implement IRP. The EPAct also provides Western with the option of developing a small customer provision. Only State regulated investor-owned utilities (IOU) are exempt from the IRP requirement under EPAct. Beyond the State regulated IOU exemption, Western has no flexibility to exempt new or existing customers from the IRP requirement. The EPAct defines customer as including parent-type entities and their distribution or user members. The IRP procedures are not limited to contractors only because of this broad definition.

ii. Comments Concerning Special Provisions:

—Western should adopt a small customer provision for those unaffiliated with member-based associations. The size for small customers should be below 75 gigawatthours (GWh).

—Small customers should be allowed to submit an IRP but should be allowed an option to invest a specific percentage of gross revenues (½ to 1 percent) in DSM targeted to end-users. Western should allow up to one third of this investment to be used for technical or economic feasibility studies and evaluations.

Discussion

Western has included the small customer provision in response to public comment. The small customer provision, as defined in section 114, will apply to customers whose annual sales or consumption is equal to or less than 25 GWh and who have limited economic, managerial, and resource capability to conduct integrated resource planning. Customers may request small customer status, and Western will make a determination as to the customers' qualifications. This Program does not limit a customer that could otherwise qualify under the small customer provision from preparing an IRP. In addition, there is nothing in the proposed Program that restricts a customer from adopting a policy to invest a percentage of gross revenues in DSM as part of its small customer plan.

iii. Comments Concerning Flexibility:

—There are local and regional differences.

—Any final requirement must be reasonable and achievable.

—The level of effort required may be too much/little.

—IRP regulations should be flexible enough to respond to regional and project differences.

Discussion

In the development of the proposed procedures, consideration was given to the administrative burden, flexibility, and equity of the alternatives on Western's diverse customers. In addition, consideration was given to the regional diversity in Western's service area. We believe that with the IRP requirement and small customer provision, each customer will have the flexibility necessary to adequately address regional needs and to expend an appropriate level of resources, such as time and money, on these planning efforts. Western will not dictate energy decisions a customer makes based upon regional conditions or needs as long as all of the IRP criteria are met.

2. Specificity of Procedures

a. Background

Section 114 of the EPAct provides the framework for the IRP requirement. It sets forth IRP criteria as well as administrative principles and requirements. As defined by section 114, Western shall approve an IRP if, in developing the plan, the customer in a reasonable manner has:

1. Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.

2. Included a 2-year action plan and 5-year action plan which describe specific actions the customer will take to implement its IRP.

3. Designated least-cost options to be utilized by the customer for the purpose of providing reliable electrical service to its retail consumers and explained the reasons why such options were selected.

4. To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

5. In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

6. Included load forecasting.

7. Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

8. Met such other criteria as the Administrator shall require.

b. Comments

—The IRP option needs to be more specific and less subjective.

—There are too many specifics which could lead to insufficient flexibility.

—Will Western recognize customer size and type differences?

—Should Western be specific in its definition of content and evaluation criteria?

c. Discussion

In developing the IRP requirement, it is important to balance needs for flexibility and equity among Western's diverse customers. For this reason, the proposed Program is based upon the premise that the development of each IRP must be tailored to each customer's unique characteristics, reflecting that customer's size, type, resource needs, and geographic area. Western's primary interest is in providing an adequate framework for customer use of the IRP process as a tool for meeting resource needs.

While some comments have expressed a preference for specific standards, Western believes that quantitative standards are likely to limit the potential of an IRP process, assuring only the achievement of minimum standards. Flexible and general guidance will lead to locally tailored, relevant, and meaningful IRP as the customer works with its consumers in this planning process. Any need for specific technical guidance on how to prepare and implement an IRP can be met through technical services provided by Western's energy services program.

3. IRP Content

a. Background

During the early portion of the public process on this Program, Western proposed in concept that IRPs address several subjects. The EPAct directed Western to develop procedures regarding IRP content.

b. Comments

i. Comments of General Nature:

—The final requirements should not address small versus big customers, but power suppliers versus all-requirements customers.

—Some customers should not have to address all elements.

ii. Comments on Identification and Comparison of Alternatives:

—Western should require customers to analyze the costs and benefits of all options.

—Western's Program should identify and target all practicable potential opportunities to save energy.

—Western should not stipulate the type of test (i.e., RIM test, total resource cost test, etc.) that a customer uses in its IRP.

iii. Comments on Action Plans:

—IRPs should include budgets, milestones, and completion dates.

iv. Comments on Environmental Analysis:

—How far need a customer go on the supply-side for environmental analysis?
—Western should not require customers to consider environmental externalities in their IRPs. It should accept the decision of individual States on externality issues.
—Quantification of environmental externalities should not be a requirement.
—Environmental externalities should be required.
—Do not require a customer to prepare an EIS as a part of an IRP.

v. Comments on Public Involvement:

-Boards and city councils should be sufficient public involvement.
—Only local consumers and not the general public should be involved in IRP development or implementation.
—Public review of an IRP is costly.

vi. Comments on Load Forecasting:

—Load forecasting methodologies which require lengthy lead times (e.g., end-use) should not be required before the second round of IRPs.

vii. Comments on Quantification:

—IRPs should emphasize cost-effectiveness and demonstrated benefits.
—IRP approval criteria should include minimum standards for energy efficiencies in each customer class, minimum annual progress requirements for each customer class, recognition of the relative environmental cost of resource alternatives, and guidelines for the selection of new resources which always address environmental costs and encourage selecting alternatives that minimize environmental damages.
—Western should let customers evaluate energy and capacity on an equal level, so that demand options such as load shifting and peak reduction are on an equal DSM level with conservation.

viii. Comments on IRP Updates:

—Updates should not require public review.

c. Discussion

The EPAct defines the elements or content that must be included in IRPs. Western is proposing that the extent to which the elements are addressed should reflect each customer's size, type, resource needs, and geography. It would be expected that a power supplier and an all-requirements customer would address each of the IRP criteria in a unique manner and to a different extent. Western is not attempting to develop different procedures for each type of customer situation, but rather one Program which is flexible enough to be applied to any customer situation.

Western is requiring that each customer identify and compare all practicable demand- and supply-side alternatives. Western will not prescribe the methods to be utilized in making these comparisons. Western will require the customer to describe the method used to select the options to be compared; describe the options, assumptions, and costs related to the options; and describe the evaluation methods.

Western is proposing that each customer submit an action plan that sets forth both short- (2 years) and long-term (5 years) actions that it will take to implement its IRP. The action plans must contain goals and milestones, quantify energy and capacity benefits, and give the estimated or actual implementation costs for each action. Annual progress reports will also be required. To the extent possible, Western has attempted to combine reporting requirements in order to reduce paperwork and avoid duplication of effort.

The IRP procedures require that, to the extent possible, customers should minimize adverse environmental effects of new resources, either supply or demand. Customers will not be required to quantify environmental externalities since this is not required by the EPAct, and the States within Western's marketing area have taken different and sometimes conflicting positions on this issue. Western is not proposing to require customers to prepare an EIS or any other environmental compliance as part of their IRP submittal. In addition, Western will not determine for its customers or review or approve plans with respect to the level of environmental compliance appropriate for each proposed action.

The EPAct requires governing board and full public involvement. Western believes that public involvement will help assure that resource planning and choices meet local needs. Western has defined full public participation to mean that ample opportunity exists for the public to participate in or influence the preparation and development of an IRP. Western will be interested in how the public was involved, how resolutions to public concerns were handled, and how the public influenced IRP decisions. Western believes that each customer can manage the costs of its public involvement process by planning a process appropriate to the scope and magnitude of its IRP process.

Western is not requiring customers to adopt a specific load forecasting method, only that customers utilize an accepted methodology. We are proposing however that customers develop forecasts upon which to base their IRPs.

The EPAct requires that least-cost options be adopted by utilities as well as annual reporting on the benefits achieved under the IRP. Western is proposing to allow exemptions to the least-cost requirement if the customer can show in the IRP that decisions were made on a clear analysis of demand- and supply-side resource options and environmental effects.

Updated IRPs, at a minimum, must be submitted at least every 5 years after the anniversary date of approval of the initial IRP submittal. The criteria utilized to review updated IRPs will be the same as for initial IRP submittals. However, periodic changes and updates to IRPs may be submitted as part of the customer's annual progress report.

4. IRP Review and Approval

a. Background

Western has proposed that the required elements of an IRP must be addressed in a reasonable manner by a customer before Western approves the IRP.

b. Comments

—How much will Western expect from its customers in developing and implementing an IRP?
—On what basis will customer IRPs be graded?
—Western should focus on having customers develop productive IRPs, not on "window dressing."
—Western's IRP review should be administrative and not regulatory or judicial. Acceptance of an IRP should be based on process and customer goals. Western should not be analyzing customer choices or decisions.
—Western should be flexible for surplus utilities. It should accept IRPs prepared for other governmental entities.
—Past customer efforts should be recognized.
—There should be a peer review of IRPs
—Western should not hire consultants to review customer IRPs.
—A dispute resolution provision should be included.

c. Discussion

Western will apply a reasonableness test in its review and approval of customer IRPs. The following two questions will be answered by Western in the review and approval process:

1. Is the IRP consistent, overall and for individual criteria, with customer achievement of its own defined IRP goals?

2. Does the customer meet the full intent of the EPAct and this Program in their definition of an IRP for each of the IRP criteria, and are they appropriate for the customer's size, type, resource needs, and geographic circumstances?

Western will not direct a customer to utilize specific methodologies in the development of its IRP. Customers will make their own choices regarding resource type, quantity, and timing in accordance with their IRP.

Western will not dictate resource choices but will review them for reasonableness.

Western will accept an IRP prepared for another Federal, State, or other regulatory body if the IRP substantially complies with the requirements of Western's IRP procedures. Western recognizes that the past efforts of many of its customers in implementing conservation and demand-side management have been significant. Historic investments by Western's customers will influence the future resources available for consideration in an IRP or a small customer plan. However, the EPAct makes no allowances for the approval of IRPs or small customer plans based upon past efforts.

Only Western personnel will review customer IRPs. Western does not plan to employ consultants to review IRPs, nor does it propose to use peers for the review of customer IRPs. Western considered the merits of peer reviews, but issues related to proprietary or sensitive customer data and administrative burden seem to outweigh any potential benefits. Most importantly, the EPAct requires Western's Administrator to review IRPs; this responsibility should not be delegated to consultants or customer peers.

Western has included an administrative appeal process that provides for appeals to the Area Manager or Administrator in the event the customer does not agree with Western's determination of the acceptability of an IRP or small customer plan or its compliance with an approved IRP or small customer plan. In addition, Western will consider the use of mutually agreeable alternative dispute resolution practices, to the extent allowed by law, on issues of IRP acceptability and compliance.

5. Member Based-Associations

a. Background

There is a considerable mix of contractual arrangements among Western's member-based associations (MBA) customers. Some MBAs are the sole supplemental power supplier for the members and have load growth responsibility, while others act as a representative for the members and have no generation or transmission capabilities.

b. Comments

—In order to achieve the most cost-effective and operational IRPs possible in their situations, all of the members/participants must support the IRP with data and during the final decision making process.

—While most MBAs or power suppliers may wish to prepare a unified IRP on behalf of all their membership, not all members may be supportive of such a centralized approach and prefer the option of doing their own IRP.

—Western should accommodate the variations represented by its customers and their numerous organizational and supply arrangements.

c. Discussion

Western has proposed an IRP requirement which allows MBAs to submit individual IRPs for each of their members, or submit one IRP on behalf of all of their members, so long as individual member responsibilities and participation are identified. Western has also provided an option for any member of an MBA to submit an individual IRP to Western. While Western agrees that members should support the IRP process with data and during the decision making process, it is the responsibility of each MBA to work with its membership on these issues. Each member will be required to sign the IRP or a resolution accepting the IRP prior to submittal to Western.

All customers will be required to notify Western within 60 days of the effective date of the final Program of their intent to submit an IRP individually, through an MBA, or as an IRP cooperative.

6. IRPs Prepared for Others

a. Background

A number of Western customers are required to submit IRPs to regulatory bodies and other agencies in addition to the requirement to submit an IRP to Western.

b. Comments

—Western should accept IRPs prepared by its customers for other entities.

—The Rural Electrification Administration requires an IRP only when a customer applies for financing; Western should have a similar timing requirement.

—Would Western adopt a different criteria for review and acceptance of IRPs prepared for other entities than for IRPs prepared specifically for Western?

—Western's energy planning and marketing programs are intruding into customers' traditional utility responsibilities. Customers are concerned about multiple jurisdictions requiring IRPs.

—The IRP regulations should not be burdensome or duplication for customers preparing to meet State and other Federal requirements. Conflicts with IRP requirements should be avoided. If IRP rules are stringent or specific, they should not apply to entities subject to IRPs from State regulations.

c. Discussion

The EPAct stipulates that Western will accept IRPs prepared for other governing agencies if those IRPs substantially comply with Western's Program. In addition, it stipulates that State-regulated IOUs are exempt from Western's procedures. Western has, in the development of this Program, considered resource planning regulations and policies of other entities, particularly State public utilities commissions and the Rural Electrification Administration. We have reviewed and compared those other requirements and proposals with the fundamentals of this proposal. While we have not found any other proposals, regulations, or policies that are mirror images of the Western proposal, we believe that this proposed Program is generally compatible with other requirements. The EPAct does not provide an option to require IRPs only when a new resource and/or associated financing are necessary.

7. IRPs for Utilities in Surplus

a. Background

Within Western's 15–State marketing area there is a great deal of diversity in the resource situation in various regions and in the types of customers. There are utilities and regions with surplus power and utilities and regions facing the next resource acquisition decision. There are both large and small utilities that may or may not have direct control over

generation decisions of their power supplier.

b. Comments

—Customers suffering from loss of load should be exempted from the new programs for conservation and efficiency.
—In situations where utilities have surplus generation, marketing should be considered an acceptable option.
—Western should not mandate additional expenditures on DSM which would create additional surpluses and increase rates.

c. Discussion

Utilities in surplus could be viewed as having the time and tools necessary today to plan better for the future without being under the time pressure facing utilities with a more immediate need for resources. The EPAct does not give Western the flexibility to exempt customers with surpluses or in a load-loss situation from the IRP requirements. The IRP process has no predetermined outcomes. Western will not mandate the selection of a DSM technology over other resource options; however, we are requiring the evaluation of the economics of DSM technologies compared with other resource options. Should a DSM technology be the least cost, Western believes that it should be adopted or that there should be documentation explaining why another option fits better with the utility's objectives. Exceptions to least-cost-based decisions may be made if the customer can show in the IRP document that decisions were made on a clear analysis of demand- and supply-side resource options and environmental effects.

8. Economic Feasibility and Administrative Burden

a. Background

A number of Western's customers are smaller or medium-sized utilities. To date, there are more examples of the costs of preparation and implementation of IRPs by larger utilities, mostly IOUs. These examples have tended to set the baseline for what smaller and medium-sized utilities expect to incur in preparation and implementation of IRPs. Western is not proposing to define how much time and money a customer should invest in IRP development and implementation. Rather Western's review will be focused on the end-product IRP. The EPAct requires that customers develop and submit annual progress reports to Western. Western is interested in both quantitative and qualitative reporting. The draft IRP procedures list five items that must be included in the annual report. A penalty may be assessed for nonsubmittal of an annual report to Western.

b. Comments

i. Comments on Cost of IRP Development

—Some customers believe that the cost of preparing an IRP would be a higher percentage of their revenues (as compared to a larger utility) and subsequently serves to be a double penalty or inequity as compared to larger customers.
—There should be a ceiling on the costs customers should be expected to incur in preparation of an IRP; i.e., it has been suggested that IRP costs should not be in excess of 1 percent of the customer revenues, while others have suggested a ceiling based on 2 percent of annual administrative cost (as averaged over 5 years).
—Do not stipulate an IRP funding percentage.

ii. Comments on Cost of IRP Implementation

—Some customers are concerned about the economic feasibility of demand-side management for small utilities.
—The proposal threatens to shift load away from electricity toward more reliance on petroleum and natural gas if, as a result of IRP development and implementation, electric rates increase.
—The administrative cost of IRPs estimated in the draft EIS does not appropriately recognize the cost of monitoring and verification.
—The IRP implementation costs may be too imposing.
—Western's actions could impact rates.
—Customers have resource limitations.

iii. Comments on Burden of Reporting

—Reporting requirements should be kept to a minimum.
—The administrative burden of reporting for small customers could be too much.
—Since growth, weather, and changing economics drive power use as much as or more than conservation, most data cannot be used to measure the Program's effectiveness.
—Research and development should be recognized, even if no measurable benefits are evident today.
—Western needs to simplify and streamline its reporting requirements.

c. Discussion

Western is sensitive to and understands the concerns about the costs of development and implementation of an IRP and the importance of practicality. Western believes that the benefits of preparing an IRP could outweigh IRP development and implementation costs. The IRP process holds the potential for customers to make better decisions, develop greater credibility with their end-users, and provide more cost-effective and valued service. The level of resources a customer expends in the development and implementation of its IRP is not a factor in the review and approval of the IRP.

Western believes that many of its customers are already performing some of the aspects of IRP and subsequently incurring costs associated with good planning and customer service activities. The costs of developing and implementing an IRP are also somewhat staged. In this sense, an IRP can be viewed as a risk management tool, since the assessment of the best resource options can take place before the resource need is imminent so that less start-up time is necessary when resource needs are apparent. Western anticipates that the benefits from IRP implementation will outweigh the administrative burden of data collection, data preparation, and reporting.

The level and extent of reporting should be consistent with each customer's size, type, resource needs, and geographic area in the same manner as the IRP preparation itself. The IRP procedures identify specific items that should be included in annual progress reports. The most important portion of the annual progress report is quantification of benefits achieved. Credible estimates of benefits are appropriate if actual measurement is infeasible or not cost-effective. Western will prepare a summary of customer IRP activity and publish it in its annual report.

References to benefits in the procedures are not limited to conservation. Integrated resource plans may lead to a variety of different resource acquisition strategies, including the development of supply-side resources. Although Western is proposing that customers quantify both demand-side and supply-side investments that add to supply or reduce demand, other less quantifiable benefits may result from a successful IRP. Examples include creating a more diverse, flexible, or reliable resource mix; improving external and internal customer communications; improving the environmental sensitivity in resource planning; and developing improved customer knowledge of its system and its consumers. For utilities in surplus conditions, a marketing

program developed pursuant to an IRP also presents an opportunity to measure benefits.

Research and development efforts related to a customer's IRP should be valid components of the plan, since the result would eventually lead to tangible and measurable benefits.

Western expects that the costs and methods of verifying, monitoring, and reporting on IRPs will vary substantially among Western's customers. For this reason we believe it is infeasible to attempt to set a specific verification standard because of the differences in customer size, type, resource needs, and geography associated with the plans. Western will provide technical assistance, upon request, to its customers in monitoring and verifying the results of IRPs.

9. IRP Cooperatives

a. Background

Customers may form IRP cooperatives under the EPAct and request Western's approval to submit IRPs for those cooperatives.

b. Comments

—Western should consider permitting the formation of cooperatives that could represent the common interests of several customers.
—IRPs should be accepted from generation and transmission (G&T) cooperatives.

c. Discussion

The IRP proposal allows purchasers with common interests, such as where a resource decision block exists, to form an IRP cooperative for the purpose of jointly developing and implementing an IRP. Western is proposing to extend IRP cooperative status to existing first-level and second-level G&T cooperatives that make such requests. For MBAs and IRP cooperatives, individual member responsibilities and participation levels must be identified in the IRP.

10. Technical Assistance

a. Background

Western has provided technical assistance to customers, which includes workshops, equipment loan programs, technical studies and analyses, peer-match evaluations, and other support since 1980.

b. Comments

i. Comments Related to the Cost of Services and Resources

—Caution should be exercised in considering the rate and revenue impacts which offering technical assistance may entail.
—The proposed action should indicate the level of effort that Western intends to devote to the program (budget, staff, etc.).
—How can Western provide technical assistance, review, and approval of IRPs within 120 days as required by the EPAct when it is reducing its personnel?
—Anything beyond nominal technical assistance should be paid for by the benefiting customer.

ii. Comments Related to Services

—Western should develop an idea list by activity and should cofund IRPs and develop packaged demand-side management programs.
—Technical assistance should include cash, grants, reinstating cost-share programs, and other financial assistance for such things as circuit riders, plan monitoring techniques, developing a 'cookbook' for doing IRPs, and/or a general sharing of customer IRPs through an electronic bulletin board or library.
—If IRPs are necessary, we need a copy of the Resource Planning Guide (RPG) and technical assistance.
—In general, we are impressed with the comprehensive and thoughtful nature of the IRP materials Western plans to provide to its customers.
—Western should do less technical assistance on IRPs and emphasize customer acquisition of efficiency instead.

c. Discussion

Technical assistance will continue to be an integral part of Western's programs and services. Western's present technical assistance budget is about $5 million per year. Western also acquires cost sharing and cosponsors whenever possible. We will continue to seek additional funding and resources from potential cosponsors of services and activities in order to leverage the benefits of the service, reduce financial risk, and remove barriers to the successful application of emerging technologies. While Western expects to continue to experience limitations on staffing, we will make every effort to assure that the technical assistance is available to customers upon request, while ensuring review and approval of customer IRPs as provided by the EPAct. The majority of Western's customers have not done an IRP before and need technical assistance. The EPAct specifically directs Western to give priority to providing technical assistance to customers that have limited capability to conduct IRP. Requiring the benefiting customer to pay for technical assistance would raise an obstacle to effective IRP for those customers that have limited resources.

The range of customer technical assistance activities has been extremely diverse and customer driven over the last decade. We do not expect this to change as we focus on technical assistance in the customer preparation and implementation of IRPs. Western is willing to look at reinstating the cost-share program, has provided financial assistance for circuit riders, developed the RPG to assist customers in developing IRPs, and has instituted an electronic bulletin board service. We are willing to assist in the development of IRPs and demand-side management programs. Copies of the RPG are available upon request to Western.

Western believes that an emphasis on IRP technical assistance is appropriate at present and consistent with the EPAct emphasis. A customer should not acquire an efficiency resource before an analysis of cost-effectiveness takes place pursuant to an IRP.

Western's energy services program utilizes a 5-year planning process, reviewed annually to ensure that customers are receiving the best and most appropriate assistance possible. Customers can telephone Western's energy service managers in the appropriate Area Office to discuss their needs for technical assistance.

11. Submittal Timing

a. Background

The EPAct requires updated IRPs to be submitted to Western for review every 5 years. The Program is drafted to assure that customers are benefiting from IRP development and implementation and to ensure that customers meet the IRP criteria. The 5-year timeframe is also consistent with a long-term action plan timeframe thereby ensuring that the action plan is fully updated.

b. Comments

—Every 2 years is too frequent for IRP submittal because power requirements studies for large generation and transmission cooperatives are done every 3 years and end-use surveys are done every 3 years in some utilities, and an IRP would be based on these documents.
—The frequency of submittal could be based on need to meet load growth development.
—Suggestions included 5-year IRP submittal with biannual status reports, and plans should be evaluated and revised every 5 years.
—There should be an evaluation period every 10 years for IRP submittals.

c. Discussion

Western has proposed the 5-year IRP submittal period as set forth in the EPAct. We believe that this period is more compatible with the power requirements study and end-use survey frequencies of many Western customers than other shorter periods of time. The proposal also allows customers to submit other changes to their IRPs to Western as part of the annual progress report.

12. Irrigator Issues

a. Background

Western is proposing that the IRP provisions required by the EPAct apply to all customers, with the exception of those qualifying for the small customer provision. Irrigation districts may qualify for small customer status. This supersedes earlier proposals for accepting previously approved and implemented energy and water efficiency plans submitted to other Federal or State governmental agencies.

b. Comments

—Public review of irrigation district IRPs would be costly and staff-consuming.
—Irrigators should not have to address all IRP elements—some elements apply only to generating entities (e.g., resource comparisons, environmental impacts of actions); it is not cost-effective for small customers to look at all of this.
—Western must recognize water conservation activities.
—IRP rules need to recognize that agriculture is different from other loads and that progress must be measured differently. Western must recognize the unique character of irrigators and give credit for past investments that are still providing benefits. Western's regulations must take into account constraints such as water conservation mandates, weather changes, and individual farmer decisions.
—Irrigators have no access to other sources of power supply.
—Irrigators cannot meet the rigid definition of IRPs as set forth in Western's periodic newsletter; make the language more flexible and allow irrigators to do a different type of energy management plan.
—Western should consider the best management practices plan and State conservation plan as alternatives.
—Preparation of an IRP would be so costly and sophisticated in terms of cost-benefit analysis that irrigators would have to hire consultants at considerable expense to prepare the plan.
—Water districts of 2 megawatts (MW) or less should be exempt from IRP.

c. Discussion

The EPAct limits Western's ability to propose special program requirements or exemptions for irrigators. However, Western believes that IRPs can be beneficial for irrigation customers. IRPs can be developed to assess possible efficiencies in the use of power and water and document accomplishments in water conservation.

An irrigation district might find that its IRP would consider more demand-side resources in its assessment because it has limited control over the supply side. An IRP prepared for a district in one area may look entirely different from one prepared elsewhere due to regional issues such as different soil types, irrigation practices, and water availability and quality, which would necessitate different approaches to planning.

Western recognizes that water conservation may be equated to energy conservation practices and that the IRP process may easily address both. Western feels that the IRP process, as we have now defined it, can accommodate the wide range of differences among its customers. The flexibility contained in the IRP language will allow for creativity in the planning process and in resource selection. An IRP allows customers to use their own resources, experiences, and talents to address the requirements. Consultants need not be retained to do extensive analysis of the costs and benefits of various resource opportunities when the evaluation and resource decision is based on an irrigator's experience or the preexisting analysis of agencies and institutions as it relates to prudent management of resources.

13. Future Program Review

a. Background

The historic program review interval was based upon the existing G&AC requirement of a C&RE program review every 5 years. Western published its initial G&AC on November 13, 1981. An amendment to the G&AC was issued on August 21, 1985, as a result of a 5-year review and passage of the Hoover Power Plant Act of 1984. There is concern that continued 5-year reviews of the program will create uncertainty and work against acceptance of integrated resource planning.

b. Comments

—Western needs to clarify its intentions concerning the current 5-year review period for the C&RE program to assure customers that radical program changes are not anticipated in the near future.
—Western's 5-year review of conservation programs is not acceptable unless significant changes in the Program are mutually agreed to by Western and its customers.
—Periodic review of the Program is necessary; there was objection to linking power contracts to an EMP which might undergo radical revisions every 5 years.
—Customers cannot plan and achieve stability if subject to wholesale revisions every 5 years.
—Program changes should be phased in gradually and done with the approval of Western's customers once the Program is established.

c. Discussion

Western is sensitive to custon er concerns and interest in the planning stability that this Program offers. The EPAct requires that Western review the IRP program requirement beginning 1 year after January 1999 and at appropriate intervals thereafter. The review will be for the purpose of reflecting changes, if any, in technology, needs, or other developments. This review will take place pursuant to a public process.

14. Penalty

a. Background

Western proposed that penalty imposition would be triggered by (1) nonsubmittal of an IRP or a required annual progress report or (2) not addressing each of the required IRP elements. Prior to the alternatives workshops, Western proposed a rate penalty of 10 percent of the firm monthly bill for each of the first 6 months of noncompliance with Program requirements, increasing to 20 percent of the firm power monthly bill for each of the next 6 months of noncompliance, followed by withdrawal of the entire Federal resource commitment if noncompliance persists for more than 1 year. Pursuant to the EPAct, Western is now proposing a graduated surcharge on all power purchased from Western for noncompliance with the Program.

b. Comments

—The allocation loss provision is unacceptable; the addition of another rate penalty layer is better than a resource loss.
—Penalty provisions should be eliminated. Instead, the focus should be on providing incentives.

—The existing 10-percent resource penalty provision should be continued
—A penalty provision with a sliding scale should be adopted. For example, if a customer comes up 10 percent short of its energy efficiency goals, the penalty should be a 10-percent resource reduction.
—An appeals process is necessary. Western should use arbitration or mediation to resolve disputes under the Alternative Dispute Resolution Act.
—Be realistic about the "death penalty" loss of the entire allocation approach. Western cannot be serious about pulling the plug on a customer.
—Penalties should start 1 year after the noncompliance notice, then 10-percent rate penalty for the next year, 20 percent for the next year, followed by a total resource loss.
—Western should adopt a 10-percent penalty for the first year of noncompliance, followed by a 20-percent penalty for the second year, with an additional 10-percent penalty for each succeeding year. A partial loss of an allocation (up to 25 percent) should occur only if a customer is more than 12 months behind in the payment of late charges.
—Compliment Western on the proposal of rate penalties before any resource withdrawal.
—A resource withdrawal penalty is not favored, as it would be the most severe for a customer and probably the most difficult to administer for Western. Resource withdrawal would necessitate customer acquisition of replacement power at higher rates, while Western would be faced with a possible loss of revenues and would create an administrative burden of marketing the withdrawn power.
—Federal agencies that are long-term firm power customers should be exempt from penalty imposition.
—The withdrawal of the total Federal resource should not be permanent. Customers losing their allocation due to noncompliance should be allowed to recapture the power once compliance is achieved.
—Sanctions should be imposed at the final customer level and not on the member-based association.
—How will Western impose a penalty when an IRP is being prepared by an MBA and only one member of the MBA refuses to comply with Western's program?
—There should be only one penalty imposition on a customer.
—Western begins by penalizing existing customers by proposing the extension of less than the resource they possess today and then offers nothing but more penalties for failure to comply with the EMP.
—We recommend a 1.0 mill per kilowatthour (mill/kWh) rate penalty for the first year of customer noncompliance, increasing by .5 mill/kWh increments annually up to a maximum rate penalty of 5.0 mills/kWh. The resulting funds should be used for environmental mitigation activities and energy conservation projects.
—A rate penalty is much preferred because it provides an appropriate penalty without jeopardizing community health or safety. Impacts would be economic rather than operational.
—A resource reduction penalty for noncompliance with the IRP requirements may not be permissible under Federal law for Hoover contractors.

c. Discussion

Since Western's original penalty proposal, Congress enacted the Energy Policy Act of 1992. This law mandates the use of a graduated surcharge on all power purchased by a customer from Western for noncompliance with the Program. An alternative penalty of loss of 10 percent of the resource delivered under a long-term firm power contract after the first 12 months of noncompliance has been proposed by Western.

Due to the action by Congress, Western has lost its flexibility to respond to many comments through changes to Program procedures regarding penalties. Western will adopt the provisions of the EPAct on this issue. Penalties in existing contracts, which provide for a 10-percent reduction in firm power resources for noncompliance with the G&AC, will continue to be in effect for the Program until changed. The EPAct recognizes the appropriateness of the 10-percent resource penalty approach. The graduated surcharge provisions in the EPAct and proposed in these procedures will be incorporated into the contracts that extend resources.

Western does not intend to impose Program penalties in an unreasonable way. Western is much more interested in working with its customers to comply with the IRP requirement so that the benefits of IRPs are realized by electrical consumers. During customer interviews that took place to help Western assess the organizational impacts of the Program, many customers indicated that they supported integrated resource planning. Western will continue to provide technical assistance to customers so that IRP preparation can take place in a timely and acceptable way.

In situations involving an IRP submitted by a member-based association on behalf of its members where a single member does not comply, the proposed penalty would be applied to the member-based association on a pro rata basis in proportion to that member's share of the total member-based association's long-term firm power contract.

Western does not believe that exempting Federal installations from the proposed penalty provisions is good policy. As in the past, Western does not believe that special treatment for any customer is fair or appropriate. Federal installations would have a lesser incentive to realize the potential benefits that may be identified in an IRP if a penalty exemption were to be granted. Cost savings in acquiring appropriate supply- and demand-side resources should be as beneficial to Federal installations as any other customer. Moreover, the EPAct does not exempt Federal installations from the statutory penalty provisions.

Revenues resulting from the imposition of penalties cannot be used to fund environmental mitigation activities and energy conservation projects. By law, all of Western's revenues, including those from penalty imposition, must be deposited in the United States Treasury and are applied to project repayment. For most of Western's projects, revenues cannot be used to fund activities; appropriations from Congress are the budgetary resource from which expenditures are made.

Western does not agree that a resource reduction penalty for noncompliance with the IRP requirements is not allowed for Hoover customers. Section 114 of the EPAct amends Title II of the Hoover Power Plant Act, indicating that Congress intended to apply the penalty to Boulder Canyon Project purchasers. Moreover, existing Hoover contracts already have a resource reduction penalty as part of their terms and conditions. Western sees no obstacle to enforcement of the penalty, if necessary, for purchasers of Boulder Canyon Project power.

Western has adopted several of the comments received. Provisions for dispute resolution and administrative appeal have been included in the proposed Program.

C. Power Marketing Initiative

1 Extension Term

a. Background

Western is proposing to extend resource commitments to existing customers beyond the expiration date of currently effective contracts. In the early stages of the Program public process, Western suggested that 10 to 40 years would be an appropriate range of extension terms. After receiving comments during the EIS scoping process, Western developed a limited extension alternative of 10 years from the date of IRP approval and three extension alternatives for evaluation in the draft EIS: 15 years, 25 years, and 35 years, all from the date existing contracts expire.

b. Comments

—We favor alternative eight in the draft EIS, with a term of 25 years.
—Recommendations for the length of resource extensions to existing customers included 10 or more years, 15 years, at least 20 years, 25 years, 30 or more years, 40 years, and 50 years.
—Preference was expressed for a 15-year extension at a higher level, as opposed to the other alternatives with lower levels of extension.
—Why should I opt for anything longer than 15 years? With uncertainties that exist over Western's marketable resources due to environmental concerns and the rising costs of Western's power, we may not want to be tied into long-term contracts.
—Those who have paid for projects in the past should have first call on future resources.
—Western customers who have developed resource plans with a planning horizon beyond 10 years should be considered for allocation terms of a comparable length.
—As many customers base load their Western allocation, an extension should be for as long as the useful life of base-load capacity, such as a thermal plant.
—The draft EIS alternatives do not provide resource stability.
—In order to meet the needs of fish and wildlife, Western needs to extend resources for a minimal time period or provide for resource adjustment capability. Western should explain the impact of resource stability on fish.
—Western should extend resources for a 50-year period of time, comparable to Federal Energy Regulatory Commission (FERC) licenses.
—A longer-term extension should be granted if the power is linked to a specific renewable resource project with long-term benefits.
—Longer resource extensions at a high level have environmental benefits.
—Resources should be extended for at least 25 years.
—Thirty-five-year contracts have superior environmental benefits as compared to 25 years.
—Suggest 35- to 40-year contracts.
—We support a limited 10-year extension with a resource pool to promote energy conservation and the use of renewables.
—Western should consider extending 70 percent of existing commitments for 10 years.
—We strongly support nonextension alternatives, as resource extensions are not needed for effective IRPs.
—Heavy reliance on long-term contracts is inconsistent with current IRP practices and utility planning in the 1990s.
—Shorter-term planning horizons are needed to be competitive. The trend is moving away from relative stability associated with exclusive franchise monopolies.
—Many public utility commissions are discouraging utilities from incurring costs associated with acquiring long-term resources.
—Customer willingness to fund environmental improvements will be impacted if the Western resource is short-term.
—Twenty-five year contracts are objectionable on environmental grounds; it will be more difficult to change hydropower operations to protect the environment if resources are locked in.
—While it is true that long-term contracts will discourage construction of new generating facilities, this will also be a disincentive to improving energy efficiency and will frustrate IRP.
—The cost of borrowing goes up when resource uncertainty exists, especially for renewables/DSM.
—Western power helps us remain competitive in a changing utility industry.
—We prefer 25-year extensions of 100 percent of our current allocations.
—Existing customers have provided enormous financial support to Western; this should be recognized.
—Long-term contracts maintain the competitive balance in the utility industry.
—Renewable resources, in particular, can require a longer period to amortize and would be easier to select when a dependable cost-effective long-term Western resource complements them in a customer resource mix.

c. Discussion

In developing a proposal for the length of the resource extensions, Western has considerable discretion. One of the limits on that discretion is the prohibition, as set forth in the Reclamation Project Act of 1939, on power sales contracts with terms in excess of 40 years. Western may legally consider commitments of power up to, but not beyond, this 40-year maximum.

Western proposes a resource extension period of 18 years for several reasons. This time period is long enough to maintain a sufficient customer planning horizon. Long-term project financing, whether for supply-side, demand-side, or renewables, would be feasible with such an extension. Western agrees that financing of renewable resources is particularly sensitive to Federal hydropower resource uncertainty. Eighteen years will maintain the resource stability necessary for effective integrated resource planning. At the same time, 18 years is not so long that Western cannot reasonably guarantee the availability of the extended resource. The proposal of a graduated resource pool available to new customers gives Western the flexibility to allocate power equitably over the term of the contract.

Western's goal is to provide a sufficient incentive for new customer preparation of IRPs and to offer an extension compatible with the time horizon for other resources evaluated in IRPs. Another goal is to reduce the amount of Western, customer, and public time and resources spent on marketing plan development. An extension of resource commitments for 18 years beyond the expiration date of contracts with existing customers would mean that new contracts would be in place until at least 2020. Initial extensions would be about 23 years from the date that extension commitments are offered to customers of the Pick-Sloan Missouri Basin Program—Eastern Division; this time period approaches the average useful life of thermal generation.

The concern about being locked into long-term arrangements with Western is answered by existing contractual language. The General Power Contract Provisions, which are part of every long-term contract for the sale of power by Western, allow a customer to terminate the contract if a rate adjustment causes power to become uneconomical. This principle will be retained in contracts extending resources pursuant to the PMI.

Western has provided for resource adjustment capability as part of the PMI.

Extensions would be based on the resource available at the time existing contracts expire. This allows Western to respond to changes in operations at Corps of Engineers (Corps) and Bureau of Reclamation (Reclamation) hydroelectric plants before the term of contract starts for extended resources. In addition, Western can make further adjustments in its marketable resources in response to changes in hydrology and operations upon 5 years' notice. Because of this capability, no need exists to extend resources for a minimal time period to protect fish and wildlife resources. The impact of resource stability on fish can be summarized as an extension of existing commitments, with the recognition that adjustments to the marketable resource as a result of operational accommodations for fish and other wildlife resources can be accomplished within the extension framework.

Western prefers to encourage the development of cost-effective renewable resources through means other than tailoring the extension period to particular renewable resource development/payback time periods. Such an approach would lead to varying contract terms, making project-wide marketing difficult in the future. The proposed extension term of 18 years is sufficiently long to make the long-term financing of renewable resources feasible.

Western realizes that the draft EIS predicts relatively greater environmental benefits for contract terms in excess of 18 years. At the same time, an 18-year proposal has clear future environmental advantages over a shorter extension period, such as those represented by the limited extension alternatives. An even greater environmental advantage exists for 18-year future resource extensions under the Program as compared to the uncertainty and delays associated with a potential project-specific marketing plan approach. Western's proposal balances environmental benefits associated with resource certainty against the need for flexibility to respond to changing circumstances over time.

Some of Western's customers suggest that since they have paid for projects in the past, they should have first call on resources in the future. Western agrees that the resource choices made by customers in the past have led to the construction or purchase of certain supplemental generating resources, as well as investment in transmission resources or negotiation of transmission service contracts. Certainly, Western does not want to disrupt regional power supply and transmission arrangements at considerable economic and environmental cost to the area. At the same time, Western's existing customers have no equity position in Western's facilities, and they have no right to receive power from Western in the absence of a contract. Western believes the public interest is served by having the flexibility to meet a fair share of the needs of new customers from the publicly owned, taxpayer-financed hydroelectric facilities in the West.

Western agrees that the Program does not provide its customers with absolute resource certainty. Instead, the Program attempts to provide as much certainty as possible to facilitate the development of integrated resource plans, while retaining the flexibility to respond to changing conditions and evolving needs.

The holder of a FERC license typically plans, funds, and constructs the hydropower resource itself. A long-term license is appropriate in such a case, given the length of the construction debt service and the responsibilities of the licensee. With Western's resources, the planning, construction, financing, operation, and maintenance of the hydroelectric generation and high-voltage transmission is usually the responsibility of the United States. Since the two situations are not strictly comparable, Western feels that a proposal of an 18-year term of contract is appropriate.

Western does not concur with comments advocating adoption of either a limited extension alternative or 10-year extensions of resources from the date existing contracts expire. Integrated resource planning is a future-oriented planning process that is enhanced by resource stability. Instead of planning for the replacement of Western's resources or customer hedging of bets on the future availability of Western's resources, IRPs can be focused on implementing cost-effective resources, including energy efficiency and renewables, to meet load growth in the future. The Program public process to date illustrates how long Western's marketing initiatives can take to implement. A 10-year resource extension would require Western to commence the development of post-extension, project-specific marketing plans in the near future. The time and resources spent by Western and the public in the continuous development of marketing plans could be better spent on pursuing cost-effective energy efficiency and renewable resource opportunities.

According to the attachments submitted as part of the comments of the Edison Electric Institute, 25 States have mandated planning horizons for regulated utility integrated resource planning; 13 of these States have established a planning horizon of 20 years. Western's 18-year resource extension proposal is consistent with a planning horizon of 20 years.

A comment was received stating that heavy reliance on long-term contracts is unwarranted and incompatible with current IRP practices and utility planning. Western's proposal does not lock a customer into a long-term, take-or-pay arrangement, as the extension contracts would allow a customer the option to terminate a contract upon implementation of a rate adjustment by Western. Western agrees that the utility industry is increasingly dynamic, and that utilities must be flexible and forward-looking in order to be successful. The IRP requirement in this Program will provide Western's customers with the tools necessary to succeed in a changing utility climate. Many comments were received from the public indicating that an extension of resources would assist IRP and not hinder future resource planning.

Western does not agree that long-term contracts will be a disincentive to improving energy efficiency. Short-term contracts cause customers to focus on the uncertainty surrounding the Western resource, rather than looking to implementation of cost-effective energy efficiency and DSM to meet future needs. Western only provides a portion of the resource needs of its customers, about 30 percent on average Western-wide. The cost of supplemental resources, whether supply-side or demand-side, is usually significantly higher than the cost of Western's resources. Supplemental resource prices provide a significant incentive to implementation of cost-effective energy efficiency improvements.

Some customers indicated that their willingness to fund environmental improvements would be impacted by short-term contracts. Western agrees that short-term contracts could be a disincentive to the implementation of environmentally beneficial project improvements.

Several comments were received stating that Western power preserves the competitive balance in the utility industry. Western's hydropower commitments provide a yardstick that enhances competition in the utility industry within Western's marketing area. Eighteen-year contracts help preserve the competitive balance in the regional utility industry.

2. Extension Percentage

a. Background

Western is proposing to extend a major percentage of the power currently under contract with long-term firm customers. In the early stages of the Program public process, Western suggested that 70 percent to 100 percent might be an appropriate extension range. The possibility of extending resources on a graduated scale, weighted towards some customer characteristic, was suggested. After receiving public comments during the EIS scoping process, Western developed three extension alternatives for evaluation in the draft EIS: 98 percent, 95 percent, and 90 percent. A limited extension alternative would extend resources at a 100-percent level for 10 years, starting at the time of IRP approval by Western.

b. Comments

—The extension percentage should be as high as possible. Requests were made for a 100-percent extension and a 98-percent extension.
—Extensions of resources at a high level have environmental benefits.
—The concept of a resource pool goes against Western's expressed goal of providing customers with resource certainty.
—The PMI shifts the risk of resource availability to customers—this does not promote long-term resource stability! Western should meet the risk issue through power pooling or other creative approaches. Western can do this more efficiently than customers due to economies of scale, its extensive transmission system, and its experience.
—Twenty-five percent of Pick-Sloan Missouri Basin Program-Eastern Division power should be made available to Native Americans.
—Get rid of the resource pool. A resource pool is unnecessary given your marketable resource adjustment windows. What is the risk if Western can withdraw?
—If necessary, extension reductions should be phased in. As part of a 35-year extension, Western should extend 98 percent of existing commitments for the first 15 years, 95 percent for the next 10 years, and 90 percent for the last 10 years.
—The impact of changes in hydroelectric commitments on auxiliary suppliers must be considered.
—Extensions of firm, long-term resources should be provided sparingly, and only to customers who are very diligent in setting and meeting energy efficiency goals.
—The Program should be a requirement in all of Western's contracts and should apply to the Central Valley Project's (CVP) post-1994 power marketing criteria.
—Clean Air Act concerns exist if power is not renewed to existing customers. Not only will a customer lose part of the Western power allocation, but a utility must obtain Clean Air Act allowances to generate to meet the shortfall.
—Western should extend 70 percent of the marketable resource presently under contract, as opposed to a higher percentage of a resource to be determined at a later date.
—Twenty-five percent of the power extended to Western's customers should be designated as an "efficiency allocation" that must be earned through energy efficiency efforts and results.
—Western should let customers know how much of their allocation is tied to successful energy efficiency accomplishments.
—Western should allocate only 80 to 90 percent of the marketable resource available to customers on a firm basis, rather than the 98 percent under consideration.
—The need for a resource pool is acknowledged. The resource pool is a good answer to critics of long-term extensions of power to existing customers.
—The resource pool would undermine the tremendous benefit derived by the "yardstick" service to preference customers in sparsely populated areas.
—Up to 10 percent of existing resources would be sitting in a pool and not being used. This policy has a major environmental impact for those customers needing to acquire replacement resources.
—Withdraw capacity only, not both capacity and energy. The withdrawn capacity could be used to firm up renewable resource or cogeneration facilities.
—Build the resource pool with turnbacks of power from existing contractors or out of project-use efficiency upgrades. Pool could also be derived from contractual terminations or new resources that become available.
—Capacity allocation reductions should be phased in at no more than 2 percent per year and should be applied on a pro rata basis to all customers.
—Customers should have the ability to increase their allocations through compliance with the Program.
—Extensions should be given on a pro rata basis; a graduated scale approach is not warranted.
—Opposition is strongly expressed to any type of "graduated scale" extension concept.
—We prefer an extension of resources on an equal percentage basis to all customers. If another concept must be used, the stepped-inverse approach appears best.
—Prefer extension at 100-percent level for those who comply with program regulations.
—Priority in the commitment of resources should be given to existing customers who committed to Federal power when it was not the lowest priced resource in the region. Western should recognize the historic risk that many existing customers took in committing to hydropower and the equity that existing customers have in the existing resources due to their payment of bills through the years.
—Since CVP hydroelectric resources are more than 2,000 MW nameplate, plus 400 MW or more Intertie capacity, a resource pool can be developed without a mandatory reduction of existing contract rates of delivery.
—Reductions in the allocations could degrade the customer's ability to meet obligations with respect to the financing of renewables and would send the wrong signal regarding renewable resource development.
—Instead of reducing resources, Western has the responsibility to develop additional resources.
—Due to the substantial impact on smaller customers of a reduction in resources, Western should purchase power to cover any shortfalls.
—Small customer rates are high enough already. A reduction in the Federal resource would unduly impact consumers and threaten the continued financial stability of small customers.
—A reduction of power is unfair for our cooperative when Western serves a higher percentage of the needs of other customers; this is especially inequitable for Native Americans served by our cooperative.
—A relatively small extension of power would create a shortfall of power for the customer that could not be made up by DSM alone. DSM works well to meet incremental load growth, but a major loss of resource would require supply-side action.
—Western should extend a customer's current allocation in full and provide a 10- to 20-percent bonus if it

currently meets Western's EMP criteria.

—A lower extension amount would be unfair to CVP customers whose contracts expire in 1994.

c. Discussion

Western believes that the Program proposal set forth in this **Federal Register** notice provides certainty in customer planning efforts. An extension of resources at this level is substantial enough so that existing purchasers will not have to build new generation or enter into large purchases of thermal generation. A lesser level of extension could cause customer pursuit of other resources, with potential associated economic and environmental impacts. The resource planning of auxiliary suppliers would be disrupted by the nonextension of a significant percentage of Federal power. Western agrees with the comment that a substantial near-term shortfall in the Federal resource could not likely be met in the short term by DSM alone.

Western agrees with the comment that significant reductions in future allocations could degrade the purchaser's ability to meet obligations with respect to the financing of renewables and would send the wrong signal regarding renewable resource development.

Western also agrees that it is not appropriate under this Program to shift the majority of the risk of resource availability onto purchasers without their consent. Western's contracts will allow customers to take on the responsibility of acquiring firming resources in the future if the customer chooses to do so. If a purchaser prefers that Western carry out this responsibility, Western can take advantage of its extensive transmission system to purchase firming resources, in accordance with IRP principles, to meet contractual obligations during drought conditions. The use of resource adjustment provisions, rather than a large resource pool, meets Western's need for flexibility in making long-term resource commitments. Western agrees that reservation of a large percentage of existing firm resources in an initial resource pool could have economic and environmental impacts. Instead, Western is proposing an incremental resource pool over time. This approach avoids the disruption of one large resource pool implemented all at once, with the potential for power being reserved for future needs but not being used at present.

Western has developed a proposed extension formula that provides equitable treatment to all existing purchasers, as the risk of change in marketable resources before existing contracts expire is shared. Existing purchasers may get more or less power if marketable resources are redefined to a different amount.

Western has reserved the right to change the marketable resource on 5 years' notice. Any change would take place only after an appropriate public process. This flexibility balances the "firm" nature of Western's resource with the need to address changing conditions throughout the contract term. Western agrees that the risk of changing operational constraints is addressed by the resource adjustment capability and a resource pool need not be created for this purpose.

Withdrawal of only capacity from existing purchasers would not meet the needs of new customers in the absence of energy availability from other sources. Purchasing energy to go with this capacity would create additional pressure on Western's firming resource acquisition budget during future drought conditions. However, in the process of determining the amount of project-specific marketable resource, Western would consider the possibility of redefining resources to meet regional needs. An appropriate public process and any necessary NEPA documentation would occur before significant changes in the marketable resource are implemented.

Very little support was received for the concept of extending resources on a graduated-scale basis. The issue here is whether extensions should be offered on a pro rata basis to all existing purchasers or if extensions should take place on some other basis, such as the percentage of the total customer load that is served by Western. Given the lack of public support for the graduated-scale idea and the associated administrative complexities, Western has decided to propose an equitable pro rata policy. All existing purchasers will receive the same treatment in the application of the extension.

Western received a number of comments that the resource pool should be created in ways other than reducing the existing commitments to Western's purchasers. Examples of these options include building a resource pool with turnbacks of power from existing purchasers, project-use efficiency upgrades, contractual terminations, new resources, and power withdrawn from customers due to EMP penalty imposition.

Once the extensions for existing customers and allocations to new purchasers from the resource pool have been made, additional power resources may become available for various reasons.

Power reserved for new purchasers but not allocated and resources offered but not placed under contract may become available. This power would be offered on a pro rata basis to existing customers that contributed to the resource pool through application of the extension formula described in section IV.D.

Power resources freed up by Western's acquisition of cost-effective energy efficiency/DSM may become available. Resources resulting from the enhancement of existing generation, project-use load efficiency upgrades, the development of new resources or resources turned back to Western may also become available. Western proposes that this power be used to reduce the need to acquire firming resources, retained for operational flexibility or allocated by the Administrator.

Resources may become available due to penalty imposition pursuant to section III.H of these procedures; this power may be made available to existing customers, subject to withdrawal on 30 days' notice.

An additional commenter observed that Western has the responsibility to develop additional resources. Western does not agree, as it does not have the statutory obligation to meet load growth. Western markets power from water projects developed by the Corps, Reclamation, and the International Boundary and Water Commission and is not authorized to acquire additional generation as loads grow. One exception to this general statement is contained in Public Law 102–575, which allows Western to identify replacement resources for power that may be lost as a result of decisions stemming from the Glen Canyon Dam EIS and propose legislation necessary for the acquisition of such replacement resources.

One comment suggested that a CVP resource pool could be created without a reduction in commitments to existing purchasers by redetermining the level of risk of availability of the marketable resource. Other comments suggested that Western should purchase power to cover any resource shortfalls, due to the substantial economic impact to small purchasers of a reduction in resources. Western is not proposing to alter existing methods of determining resources available for marketing under the Program. Western has provided for an opportunity to determine, before new commitments are effective, what resource will be available at the end of the term of existing contracts. This would be the appropriate time to

evaluate whether any change in risk level (including the risk of firming resource acquisition) should be made for a particular project.

Several comments were received in favor of customer competition for resources, so that a customer with demonstrated exemplary efforts in energy efficiency and conservation could earn more Federal power than it presently has under contract. Comment was received that long-term firm resource extensions should be provided sparingly and only to customers who are very diligent in setting and meeting energy efficiency goals. Western also received suggestions that 25 percent of the power extended to Western's customers, or some other defined percentage, should be earned and contingent on energy efficiency efforts and results.

Western has not adopted these comments for several reasons. First, power purchased from Western is key to the resource mix that customers possess today and central to a customer's planning for the future. Periodic competition for the Federal hydropower, or requiring that a customer earn a portion of its Federal power periodically, would undercut Western's expressed need for the customer resource stability that is necessary to enhance integrated resource planning. Second, Western is concerned that making Federal power contingent in the suggested manner will induce purchasers to address this uncertainty through construction of new generation or new purchases of thermal generation, with associated economic and environmental impacts. Third, Western believes that it would be very difficult to judge comparatively and reward customers who have pursued and achieved superior energy efficiency results. With the great diversity that exists among Western's customers, it would be a daunting task to decide whether the conservation efforts of a small irrigation district are comparable to the achievements of a much larger, vertically integrated utility. Since larger utilities have more opportunities to excel in this area, competition for power could serve to redistribute power from smaller customers to larger utilities with the staff, resources, and knowledge to succeed. As customers facing load growth have greater opportunity to plan and implement cost-effective DSM and energy efficiency resources, the concept of competition could similarly work to the detriment of customers facing stable loads or experiencing supply-side resource surpluses. However, Western remains open to comments that might assist in determining how to measure energy efficiency achievement.

Western agrees with the observation that the Clean Air Act presents a potential double penalty for existing purchasers if Federal resource commitments are not extended at a high level. Not only will the purchaser be faced with the added expense of replacing any Western resource not extended, but the customer could well be forced to acquire credits under the Clean Air Act emission trading scheme to generate or purchase replacement power.

Western recognizes that existing purchasers made an historic choice to pursue Federal hydropower and that some customers elected to purchase this resource before the economic advantages were clear. However, Western does not believe that the historic enjoyment of the benefits of Federal hydropower means that a purchaser has a perpetual right that cannot be diminished. Western's policy of widespread use and the potential allocation of power to new preference customers must be balanced against the fact that existing purchasers have developed contractual relationships with supplemental suppliers, transmission arrangements with Western or third parties, and in some instances, have constructed transmission facilities to receive Federal power. Western believes that its proposal, as set forth in this **Federal Register** notice, provides for a proper balance among these policy issues. The phasing in of resource reductions over a 35-year time period is a creative approach. However, Western has chosen a less complicated approach of allowing for the adjustment of marketable resources on 5 years' notice in response to changes in river operations and hydrology only.

A CVP customer expressed the point of view that a lower extension amount would be unfair to CVP purchasers whose contracts expire in 1994. This comment has been overtaken by events, as these CVP commitments have been extended to 2004 through the execution of new contracts. CVP customers party to contracts that expired in 1994 are subject to the provisions of the 1994 CVP power marketing plan developed and completed pursuant to a separate public process. The PMI does not apply to these contracts, so no issue of equity exists. However, the IRP provision of the Program will apply to all CVP customers as of the effective date of the final Program.

Western agrees that a 10-percent reservation of power in a resource pool would have an impact on existing customers. The draft EIS documents these impacts.

Western realizes that the draft EIS predicts relatively greater environmental benefits for high-percentage extensions. A need exists to retain the flexibility to meet a fair share of the needs of new customers and other purposes as determined by Western. Western's proposal balances environmental benefits associated with resource stability with the need for flexibility to respond to changing circumstances over time.

The initial extension percentage is directly related to Western's estimate of what hydropower must be reserved in a resource pool to meet a fair share of the needs of potential new customers. Western's project-specific estimate in this proposed Program could be adjusted for certain projects to reflect more accurately potential new customer needs at a time closer to the expiration date for existing contracts.

A reservation for Native Americans of 25 percent of the current power commitments from the Eastern Division of the Pick-Sloan Missouri Basin Program is far greater than that needed to meet a fair share of the power needs of the requesting tribes. Western proposes to allocate power to Native Americans for use on the reservation out of project-specific resource pools but will determine the size of the pool based upon the need to meet an appropriate share of the load for eligible new customers.

Western proposes to define Indian tribe as provided for in the Indian Self Determination Act of 1975, 25 U.S.C. § 450b.

Rather than extend a percentage of the resource available at the end of the term of existing contracts, one comment suggested that Western extend 70 percent of the marketable resource under contract today. Western believes that the approach set forth in the proposed Program will result in a more precise commitment, based upon information available nearer to the time that existing contracts expire. The proposed Program better meets the need to balance resource certainty with the flexibility to react to changing circumstances.

An extension of power at a 100-percent level to customers in compliance with the IRP procedures will not be adopted, as it does not recognize the need to react to changes in hydrology or river operations and does not accommodate the need to make power available to potential new customers.

A cooperative in the upper Midwest commented that it was unfair to extend

a relatively low level of resources when other entities were meeting a higher percentage of their needs with Western's hydropower. This entity remarked that this was especially unfair for Native Americans served by the cooperative. For the same reasons that a graduated-scale extension approach is not being adopted, Western will treat this cooperative the same as all other project customers. Allocations out of the resource pool for the benefit of Native Americans may compensate for any initial reduction of resources currently sold to this cooperative.

3. Resource Pool Uses

a. Background

The originally proposed purposes of the resource pool were to absorb any changes in marketable resources, to make allocations to potential new customers, to reward the energy efficiency accomplishments of existing purchasers, to meet "contingencies" that might arise, and to consider fostering the development of cost-effective renewable resources.

b. Comments

—Western should not use the resource pool for allocations to new customers or as incentives for developing renewable resources.
—Western should encourage development of cost-effective renewable resources through allocations from the resource pool and should expand the list of eligible technologies to include fuel cells.
—Western should not use the resource pool to encourage development of renewable resources; these resources are unneeded and too indefinite to warrant the reservation of firm power.
—There is no reason to use the resource pool to foster new technologies. If these technologies are economical, customers will be motivated to adopt them to save money.
—Western should not require Native Americans to acquire utility status before tribes become eligible for an allocation of power out of the resource pool.
—Western should allocate power based upon need. Our tribe has many members living in poverty.
—Native Americans should receive power from Western, as they sacrificed many acres of prime land when the Corps constructed dams on the Missouri River.
—New customers should get new resources only. New customers should pay for new resources at the marginal cost or at a 10-percent premium.
—Western should provide all power to existing customers. An apt analogy is the first right of refusal for FERC licensees when a hydropower license is up for renewal.
—Resource pool power should be used to reduce purchase power expense and keep existing customer rates down.
—Use of firm power in a resource pool to meet "contingencies" is far too vague. Do not cut back on power to existing customers because of "pie in the sky" future needs.
—Market "contingency" power in the pool to existing customers on a withdrawable basis.
—Concern was expressed that power in the resource pool might be sold to investor-owned utilities or to California pending a decision on how to use it.
—Any use of the resource pool for contingencies should be temporary until Western can acquire "makeup" supplies elsewhere. Shifting the risk of power unavailability to customers means customers and Western are competing against each other for resources; this is not efficient.
—Appreciate Western's recognition that a customer's rate of delivery (CROD) should not be based on EMP compliance.
—Penalize those who do not conserve energy now to get the energy pool you are trying to build.
—The concept of a resource pool is poorly justified by Western. The establishment of the pool is also premature.
—It does not seem prudent to consider potential additional customers at a time when water levels are so low and massive runoff is needed to avoid purchases or reductions of CROD.
—Limit the use of a resource pool to just what is needed for an enhanced planning and management program.
—The use of the resource pool is ill-defined. We object to reducing Federal power commitments to existing customers for events that might occur in the future.
—The resource pool should be used for resource adjustments first, before withdrawals from existing customers.
—A customer should not be restricted from receiving an entitlement above its current allocation.
—Existing customers should have the first right to any unallocated power resulting from diminished extensions.
—Several existing preference customers (such as the National Aeronautics and Space Administration Ames Research Center) are heavily engaged in research and development activities in the fields of energy conservation and environmental protection. These activities benefit not only the residents in the area served by Western but the entire population of the United States. The contributions of these customers should be recognized by additional allocations from the resource pool.
—New customers should compensate existing customers for the benefit they receive from not paying for all of the original investment.
—Offer prospective new customers a portion of the excess energy available from time to time from Western on a nonfirm basis and leave the capacity and energy already under existing contracts with the existing customers.
—The only capacity that should be reserved in the resource pool is the capacity needed to cover projected load growth.
—Only those customers who contribute to the pool by reduction of their CROD prior to extensions should receive pool allocations. Historic investments in energy efficiency should be recognized in resource pool allocation criteria.
—Increase the energy allotment by a percentage of load growth of existing customers.
—Resource pool allocations should be completed 5 years versus 3 years in advance of the delivery of power to assist utilities in their resource planning.
—Western must recognize the increased need for electrical energy to enhance water pumping operations resulting from wildlife refuge expansion, undependable surface water supplies, and other factors. Meeting the goals for an anadromous fish hatchery production, including the listed winter-run Chinook salmon, also would increase the electrical energy needed for water chillers, disease control, and other water treatment technologies.
—Several Indian tribes desire an allocation of 25 percent of the Pick-Sloan Missouri Basin Program-Eastern Division resources. Western should provide a mechanism for wheeling preference power over existing transmission and distribution lines.
—The Nebraska cities of South Sioux City, Wakefield, Madison, and Randolph request that their allocations be firmed up and that their allocations be sized so as to compensate them for past losses.

c. Discussion

Western is persuaded that the Program goal of providing existing customers with long-term resource stability is undermined by the

immediate creation of a large resource pool out of unextended power, with the potential for firm power to be unused for a period of time. Instead, an incremental resource pool is proposed.

Western is not proposing to extend all of the existing long-term firm resource to existing purchasers. Balance must be achieved between avoiding disruption in existing customer power supply and transmission arrangements and Western's policy of encouraging widespread use of the Federal resource. Principles of widespread use of preference power are better served by making an appropriate amount of power available to new customers who have not previously enjoyed the benefits of Federal hydropower. Precedent for this approach exists for many of Western's projects, including the Pick-Sloan Missouri Basin Program-Eastern Division post-1985 power marketing plan, the post-1989 power marketing plans for both the Loveland Area Projects and the SLCA/IP, and the CVP 1994 power marketing plan.

An advantage to making some power available to new customers is that the benefits of IRP preparation will be available to a broader customer base. In addition to receiving power from Western, new customers not approved for small customer status will be required to engage in integrated resource planning, a planning approach that many utilities have found to result in lower-cost resources being provided to the ultimate consumer.

Western will not adopt comments opposing resource pool use to foster renewable energy and other new technologies. The resource pool will be available to meet a fair share of the power needs of new customers and other purposes found to be appropriate by Western. Western believes that fostering renewable energy and new technologies is an appropriate use for Federal hydropower. Western also will assist in developing renewable resource technologies through such avenues as providing transmission access, targeted technical assistance based upon demonstrated or promising cost-effective technologies, and shaping and storage service.

Western does not believe that new customers should pay a premium to existing customers or pay for power at a level higher than the rate charged existing customers for Western's hydropower resources. Neither equity nor administrative convenience is served by the creation of different classes of customers dependent upon the timing of initial service from Western. Given the relatively small amount of power being proposed for availability to new customers, the existing customer rate impacts of charging a higher rate to new customers is not significant.

A comment was received suggesting that the resource pool could be used to offset the need to purchase firming power. As described elsewhere in this **Federal Register** notice, Western will employ IRP principles in its acquisition of firming resources in the future. Western will not use the resource pool power to mitigate the need to acquire firming resources, as this would unfairly limit the power available to new customers. Resources made available to Western from the enhancement of existing generation, improved project use efficiencies or the development of new resources could be used to lessen Western's resource acquisition needs.

Western recognizes that allocations of power to new customers during prevalent drought conditions may not seem prudent. However, drought periods are cyclical in nature, and some regional water conditions have improved recently.

Western sees no need to reserve capacity in the resource pool to meet future load growth of existing customers. Keeping power in a resource pool that otherwise could be marketed to preference customers has an adverse impact on the stability of the Federal resource for existing customers and may impact Western's rates in the future. Withdrawing power from existing purchasers to meet future load growth of other existing purchasers creates a present need for power that would not exist if the withdrawal did not take place in the first instance.

Several existing and potential new customers commented that they should receive new or increased allocations of Federal power. The merits of allocating power to applicants not presently receiving the benefits of Federal hydropower will be determined under a separate, future public allocation process for each project.

Western disagrees with the suggestion that new customers should be offered only a portion of the excess energy available from time to time instead of a long-term firm commitment. This approach would relieve new customers from the IRP provision and would mean that the benefits of IRPs would not be available to a broader Western customer base. In addition, Western expects many potential new customers will not be in a position to use excess energy because of their small size and lack of operational personnel. No change in Western's policies on excess energy marketing is proposed at this time; this is a subject appropriate for consideration at the time that any project-specific determinations of changes to marketable resources are proposed.

With regard to Native Americans, Western has always considered tribes to be preference entities. Proposals for providing allocations directly to the tribes will be developed on a project-by-project basis during the allocation of power from project-specific resource pools.

This flexibility is critical, since an allocation of power is of no value unless an organization has the means to receive power; the potential customer must be ready, willing, and able to take delivery of power. The resource pools proposed in this Program are sized to include a fair-share amount for allocation to Native American tribes. Western is not requiring utility status for tribes as a precondition to receive an allocation of power from Western.

4. Resource Adjustment Provisions

a. Background

Western originally proposed that both a resource pool and resource adjustment provisions were necessary to allow Western the flexibility to meet changing conditions, including changes in river operations and hydrology. The adjustment provisions set forth fixed windows of opportunity to adjust marketable resources; the timing of these adjustment opportunities varied depending on the extension terms discussed during alternatives workshops.

b. Comments

—Instead of fixed windows, define the withdrawal criteria up front. Prefer 5 to 10 years' notice over a predefined time window.

—The reopener provision makes Western's power less than firm; it is not a firm commitment when open-ended windows are featured.

—Limit resource adjustments to changes in hydrology or mandated operational changes.

—Adjustments should be made on 5 years' notice only for changes in hydrology or "Law of the River."

—Resource adjustments should be limited to those that make Western's resources as firm as possible, while reducing the need for firming purchases.

—Limit resource adjustments to changes in hydrology.

—Extend resources for 35 years and review the need for any change in marketable resources after 15 years, but do not actually adjust the resource until 25 years into the extension term.

—Limit resource adjustment provisions to hydrology, with operational changes handled on a pass-through-cost basis like the SLCA/IP contract amendments.
—Resource adjustments should be limited to 5 percent of existing contact rates of delivery.
-Any adjustments in allocations due to the shortfalls in water runoff as found under applicable hydrology studies should be accomplished upon completion of the studies.
—The adjustment provisions are not sufficiently defined.
—Establish a floor/limit on withdrawals pursuant to contract.
—Allow a 10-year notice by Western for adjustment, with a shorter period for customers to terminate in the event that Western power becomes uneconomical.
—Western should establish a contract period that allows sufficient advance notice of any change to accommodate utility planning horizons.
—Western needs to consider the ecological impacts of altering the flow of Colorado River water into the northern Gulf of California.
—Program alternatives limit Western's flexibility to respond to environmental issues and other changes that are sweeping the utility industry.

c. Discussion

Western no longer proposes to use the resource pool as a means to meet any changes in the marketable resources during the term of the extended resource. Instead, Western believes that customer resource stability is better served by an ability to adjust the marketable resource upon 5 years' notice for changes in river operations and hydrology only. This length of notice allows for timely response to changes in river operations and hydrology, while giving customers ample notice before any adjustments. In this way, Western believes a balance will exist between customer resource stability and the ability to respond to possible resource acquisition requirements to meet Western's long-term firm resource commitments.

Western has also proposed to provide for flexibility prior to the time that existing contractual commitments expire. In Western's proposed Program, a proposal is set forth that would base pro rata extensions on the resource available at the end of the term of existing contracts. This would allow Western's commitments to take place with full knowledge of any operational or hydrology study results. If the determination of the future available resource is significantly different from existing resource commitments, the change will only take place after an appropriate public process. Any appropriate National Environmental Policy Act documentation would also be prepared at that time.

Western cannot commit to a floor or a limit on use of these adjustment opportunities at present. The future is too uncertain for a guarantee that the marketable resource cannot be changed beyond certain limits. However, Western fully understands the need for customer resource stability and will evaluate any changes in marketable resources with an appreciation of the importance of any significant change in Western commitments.

Existing contractual rights, as set forth in the applicable General Power Contract Provisions, allow a customer to terminate its contract if Western's rates become noncompetitive. Western plans to retain this provision in future contracts.

Western's Program proposal is neutral on the issue of operations for a particular project or hydropower facility. The approach set forth in this **Federal Register** notice flexibly allows for changes in operations but does not influence such changes. Any proposed changes in river operations are properly evaluated on a project-specific basis separate and apart from the Program proposal.

5. PMI Implementation

a. Background

Western originally proposed to make extensions of resource commitments when the Record of Decision on the Program EIS is published in the **Federal Register**. Later, Western asked the public for input on what event should trigger contract execution. Initial extensions would be offered to purchasers from the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects.

b. Comments

—Why does Western feel a need to offer extensions of the Pick-Sloan Missouri Basin Program-Eastern Division power before the Corps finishes the revision of the Master Operating Manual? If we wait, everyone will know what the resource is.
—Western's approach of making an early commitment to extend allocations to existing customers is supported and endorsed.
—Concerned that these allocation decisions will be made before Western's customers can reasonably be expected to have engaged in meaningful experiments with energy efficiency.
—Western should not limit the extension of resources to only those projects where contracts expire between the years 1995 and 2004. If the Program is desirable for some of Western's customers, it should be desirable for all of them, including CVP customers.
—Resource extensions should not be considered for SLCA/IP resources until all outstanding issues related to the Colorado River are resolved.
—SLCA/IP customers should receive the same treatment under the PMI as other customers and receive an extension of resources as soon as the Program regulations become effective.
—No new allocations should be made until such time as it is known with reasonable certainty what reductions in resources Western is likely to experience.
—Contract extensions should be limited to term, resource, and IRP implementation.
—Contract execution should be triggered by IRP submittal.
—Extension terms should start when existing contracts expire.
—The resource should be precisely defined—a number should be in the contract.
—The commitment of Western power needs to be specific, and adjustments well-defined, for transmission-dependent utilities to negotiate wheeling agreements.
—Resources made available for tribes should be provided through their present power supplies.
—Contract execution should be triggered by issuance of the EIS Record of Decision.

c. Discussion

As Western receives IRPs from existing Pick-Sloan Missouri Basin Program-Eastern Division customers, Western proposes to offer contracts to those customers. This approach provides an incentive for customers to prepare an IRP expeditiously, to avoid the uncertainty of not having a signed contract for future resources. Extensions of resources upon IRP receipt offers Western the flexibility of using the new penalty provisions required by EPAct, as opposed to the 10-percent resource reduction penalty in existing contracts. Extension terms will start when existing contracts expire. Customers can include Federal hydropower as a current resource in their IRPs based upon the provisions of these procedures. Contracts will be offered to existing LAP purchasers after the redetermination of

marketable resources, pursuant to existing LAP contracts, takes place.

There is no guarantee that the Master Operating Manual completion schedule will be free from delay. Mechanisms exist in the proposed Program to adjust the marketable resource if necessary to reflect the results of the Master Operating Manual revisions.

Through the extension formula and the provision that allows for adjustments to marketable resources on 5 years' notice, Western has retained the flexibility to consider marketing changes in the event that resource reductions are experienced. New allocations can be made under these circumstances.

An early commitment to extend resources provides the foundation for effective integrated resource planning. Western believes that customer energy efficiency planning and achievement is enhanced by the stability provided by resource extensions. Meaningful resource planning, including demand-side and renewable resource evaluation, is difficult if the existing resource is not relatively well-defined and stable. Energy efficiency investments should take place following, and not before, the preparation of IRPs. Otherwise, there is no way to assure that investments are cost-effective. IRPs cannot be prepared with assurance until resource extension commitments have taken place.

Western is proposing the initial application of the PMI be limited to the Pick-Sloan Missouri Basin Program-Eastern Division and, after any adjustment to resources pursuant to existing contracts, the Loveland Area Projects. CVP resources under contracts expiring in 1994 have been marketed under a separate public process, and Western is preparing an EIS on the 2004 marketing plan for the CVP. Given the existing uncertainties regarding CVP marketing, application of the PMI to the CVP will be determined at a future date. Western would evaluate applying the PMI to the SLCA/IP after its electric power marketing EIS is completed and the associated marketing criteria and contracts are modified consistent with the results of the SLCA/IP EIS. Western received comments that SLCA/IP customers should receive the same treatment under the PMI as other customers and receive an extension of resources as soon as the Program becomes effective. Such an approach would extend resources committed under a marketing plan and contracts that are not yet final. Western believes that offering contracts at such an early date would be premature for the SLCA/IP.

Western expects to provide Federal hydropower to Native Americans. Proposals for providing allocations directly to the tribes, or providing the benefits of an allocation to tribes through a rural electric cooperative, will be developed on a project-by-project basis during the allocation of power from project-specific resource pools.

Extensions of resources under the PMI could take place either through amendments to existing contracts or new contracts, depending on the project. The nature of extension implementation would take place on a project-specific basis.

Western has not adopted the comment that the resource should be defined precisely and immediately in the contract through a numerical commitment of capacity and energy. Western must retain the flexibility to adjust its resource commitments. Numbers reflecting Western's precise capacity and energy commitments will be included in each long-term firm contract as soon as practicable, but this would not be possible until the generating agencies have answered ongoing operational questions, after extension commitments are offered pursuant to this proposed Program.

6. Purchase Power

a. Background

Western proposed to continue its past practice of purchasing firming resources to meet its firm power commitments.

b. Comments

—Western may overcommit its resources by providing contract extensions up to 98 percent of the available resource. Such a large commitment can have enormous consequences, both on the interconnected electrical network and the regional environment. We believe these purchases influence unit dispatch, regional loop flows, and emissions from coal plants. Western will be under considerable pressure from its utility customers to provide large amounts of energy even when Western cannot, on a firm basis, provide such quantities from its hydropower resources.

—In response to these purchase power concerns, Western should ensure the electricity it markets is used in the most efficient manner possible and assist its customers to provide energy services to retail customers in the most economical and environmentally benign fashion.

—Western could exchange power with BPA to avoid purchase power needs for the SLCA/IP

c. Discussion

In the proposed PMI, Western has set forth mechanisms to assure that an appropriate level of resource is marketed. Western anticipates that the extension formula, which allows for the determination of future resources prior to the date that deliveries under new contracts start, will allow for a better determination of a prudent level of commitment. Significant changes from existing levels of resource commitments will take place only after an appropriate public process. In addition, Western has reserved the right to change the marketable resource commitment on 5 years' notice after the new contracts become effective. In this way, Western can adjust its commitments of resources if necessary. An important factor in changes to Western's marketable resources is the resource acquisition risk. Resource acquisition risk factors to be evaluated would include economics and the availability of firming resources.

In the future, Western will meet its firming resource needs through employment of IRP principles. While Western has carried out the role of acquiring firming resources on behalf of its customers in the past, Western will design contracts which would allow customers to take on this responsibility in the future. Whether Western or its customers carry out this role in the future, there should not be a dual standard in planning for and acquiring resources. The acquisition of resources in support of Western's hydroelectric commitments should be based on integrated resource planning principles, with cost-effective renewable resources, demand-side management, and energy efficiency being treated as viable alternatives to the purchase of firming energy.

Western has in the past explored the potential for mutually beneficial exchanges of power between the SLCA/IP and BPA. Suitable transmission arrangements are key to such an arrangement. Western will continue to pursue cost-effective exchange arrangements in the future.

7. Other Marketing Issues

a. Background

Historically, Western has marketed firm power at a level defined in project-specific marketing criteria. During periods of drought, Western has purchased firming power to meet the obligations defined in the marketing criteria. When water conditions are good, surplus energy (and occasionally surplus capacity) may be available for sale on a short-term basis. Typically, these surpluses are sold to regional

utilities. These regional utilities may or may not be long-term firm power customers; these sales are often made to both preference entities and IOUs.

Western's marketing approach has historically been project-specific, based on public comment and policy decisions made during the development of specific marketing criteria. Some resources are marketed on a resource pattern basis, while others are based on the load pattern of the customer. Restrictions on scheduling Western's hydropower resources are also project-specific in nature.

Western is proposing to extend a major percentage of the power currently committed to existing customers beyond the expiration date of existing contracts. Western is not proposing to acquire new resources to meet customer load growth.

b. Comments

—Western should market all surpluses to preference customers in the marketing area and not to California or to IOUs. Extension of less than 100 percent of present commitments to existing customers means IOUs would get the benefit of power currently sold as a firm resource. Marketing to IOUs violates the preference clause as set forth in Reclamation law.
—Western should expand its role to meet the wholesale power needs of all CVP public power utilities and should also do power pooling and scheduling for small entities.
—Western should take on a greater level of risk regarding its long-term firm commitments. The Billings Area Office should follow the example of the Loveland Area Projects and market capacity on a 90-percent level-of-probability basis.
—Western should market power on a load-pattern basis as opposed to a resource-pattern approach.
—Western should market surplus power available in good water years to existing customers first; this commitment would be in addition to the base extension of long-term firm contracts.
—It is important that Western evaluate the type of product being offered and consider the mix of capacity and energy. Western should study reshaping the amount of energy being supplied because of the base load capabilities of power suppliers such as Basin Electric.
—Western should consider changing the marketing approach for the Eastern Division of the Pick-Sloan Missouri Basin Program to a resource-pattern allocation rather than the existing load-pattern policy. There will be greater direct benefit to customers, and it will improve hydrothermal integration.
—The flexibility of hydroelectric resources in load following and peaking must be retained.
—By changing the product from a predominately load-following resource to a more capacity-oriented product and achieving greater energy sufficiency through integration with regional thermal sources, we believe that there is great potential to maintain or increase capacity resources to existing customers and still supply resources to a pool.
—Western should not market to nonpreference customers.
—Alternative reformulations of the commodities should be evaluated, such as moving to a run-of-the-river basis for energy.
—Western should consider offering more flexibility in scheduling firm power, such as on an hour-by-hour or monthly basis.
—Department of Defense and State of South Dakota allocations must be fixed in place for the Pick-Sloan Missouri Basin Program—Eastern Division.
—Consider allowing adjustment of fixed deliveries, as this would delay the need for new generation.
—Cost-effective investments should be made by Western in hydro facilities.

c. Discussion

The preference clause generally applies to sales of capacity and energy by Western. For most of Western's projects, long-term firm power is offered to preference entities first before any resource is made available to nonpreference entities. Short-term surplus Federal energy is generally sold on a shared-savings basis. Within a range of rates, short-term firm energy is usually made available first to preference entities and then to IOUs. Short-term surplus energy is made available to both preference entities and IOUs. Changes to this short-term marketing policy, and other marketing approaches referred to in the comments set forth above, are not within the scope of this proposal and are not appropriate on a Western-wide basis, given the wide variety of customer needs and regional differences that exist within Western's 15-State service territory. Changes in Reclamation law and the preference clause are outside the scope of the Program and its EIS.

Changes in Western's current marketing approach for a specific project can be appropriately considered in a separate project-specific proceeding at a later date. The extension formula provides for a pro rata commitment to existing purchasers, based on the new resource available at the end of the term of existing contracts. Changes in the marketable resource are best addressed at that time on a project-specific basis and not at this stage of the Western-wide development of the PMI. Marketable resource issues that might be appropriate for discussion at that time include adjustments to fixed deliveries, scheduling flexibility, load pattern versus resource pattern, and the way we sell nonfirm energy.

Western has no general legal obligation to acquire additional resources to meet the load growth needs of its customers. Western is open to discussions to provide power pooling and scheduling services with any of its customers as long as such services are feasible and cost-effective. However, these discussions should take place outside the process of developing the Program.

Western does not have the authority to make cost-effective investments in hydroelectric facilities. However, Western is willing, in cooperation with the generating agencies, to use its existing contractual authorities to support cost-effective investments by other parties in hydroelectric improvements under appropriate terms and conditions.

For the Pick-Sloan Missouri Basin Program—Eastern Division, both the State of South Dakota and the Department of Defense have been allowed to transfer Western power from one location to another. After existing contracts expire, Western proposes to require that power commitments to specific State and Defense sites not be changed unless the contract rate of delivery exceeds the total load at that site. If the contract rate of delivery exceeds the total load at a State or Defense site, Western proposes that only the excess power at that site may be transferred to other State or Defense sites.

Transfers are subject to negotiation of transmission service contracts for the delivery of transferred power. To be consistent with requirements for other firm power deliveries, Western further proposes to require the delivery of a proportional share of firm Pick-Sloan Missouri Basin Program-Eastern Division power at each State or Defense site in both the summer and winter seasons. If there is closure of a Defense installation or facility after the year 2000, the allocation may be impacted by the report required in section 2929 of the 1993 National Defense Authorization Act, Pub. L. No. 103–160. Section 2929 requires the Secretary of Energy, in consultation with the

Secretary of Defense, to submit a report to Congress by November 30, 1994; this report must contain recommendations regarding the disposition of hydroelectric power allocations to military installations closed or approved for closure outside of the marketing area of the Central Valley Project.

D. Other Issues

1. IRP by Western

a. Background

Western purchases firming energy and/or capacity to meet its firm power contractual commitments when hydropower is unavailable, such as during periods of drought. Firming purchases are typically made on a least-cost basis. Western engages in regional transmission planning with other entities and pursues joint participation in transmission line planning and construction whenever possible.

b. Comments

—Western should not make conservation purchases; this should be done by the utility responsible for load growth.
—Western should not do an integrated resource plan itself.
—Certain of Western's practices are in need of reform, such as acquisition of supplementary resources to meet customer needs, construction and use of transmission, moving of renewables to market, and encouraging efficiency.
—Better decisional processes based on IRP are needed for Western's purchase power/transmission investment and operation practices.
—Western should develop a strategic energy efficiency and renewable resource plan with input from customers, National Renewable Energy Laboratory, Department of Energy, and environmental groups.
—Western needs to diversify its resource acquisition practices.

c. Discussion

Western agrees that integrated resource planning principles should be used in its future acquisition of firming resources. Customers rely on Western to purchase firming energy on a least-cost basis. To meet this responsibility in the future, Western will consider all energy alternatives in its purchase mix, including renewables and energy efficiency. Cost-effective renewable, energy efficiency, and demand-side resources would all compete on an equal basis, with adverse environmental effects of new resource acquisitions being minimized to the extent practicable. Western wants to assume leadership in helping to create a bigger renewables and efficiency resource in the west.

Western's customers will benefit by receiving the lowest possible rates; the environment will benefit from Western's purchases of environmentally sensitive sources of energy; and the larger public interest will be served by Western's efforts to foster the use of clean energy.

Western needs to develop policies that respond to changing circumstances. In the future, Western will issue requests for proposals to meet long-term resource needs, and the solicitation will not be limited to conventional supply-side resources. While Western has carried out the role of acquiring firming resources on behalf of its customers in the past, Western will design contracts which would allow customers to take on this responsibility in the future. Whether Western or its customers carry out this role in the future, there should not be a dual standard in planning for and acquiring resources. The acquisition of resources in support of Western's hydroelectric commitments should be based on integrated resource planning principles, with cost-effective renewable resources, demand-side management, and energy efficiency being treated as viable alternatives to the purchase of firming energy.

Western also commits to the use of applicable integrated resource planning principles and processes in its transmission planning. Use of integrated resource planning principles and processes would be beneficial to Western's ratepayers by assuring that investments are cost-effective. Environmental benefits could also result as Western evaluates new transmission or, as appropriate, significant line upgrades in accordance with IRP principles.

Use of integrated resource planning principles in Western's transmission planning would complement the decision rules recently adopted by Western as part of its strategic planning process. Proposals for construction of new facilities must pass at least one of three criteria before Western will consider construction: (1) Increased revenues from the new facilities must exceed the annual cost over the first 5 years of service, (2) customers must benefit sufficiently to support the new facilities in spite of a possible rate increase, or (3) the new facilities will be funded by others. Western will also continue to engage in regional transmission planning with other entities and pursue joint participation in transmission line planning and construction whenever possible.

While the commitment is clearly being made in this **Federal Register** notice, the use of integrated resource planning principles for Western's purchase power and transmission planning activities will be pursued independently from the Program. One possible vehicle for implementing this commitment is through a Western process to consider developing an IRP, pursuant to section 111 of the Energy Policy Act of 1992. Coordination with interested entities will take place.

Western is not proposing to develop a regional IRP to plan for the resource needs of its customers. The use of IRP principles by Western will be limited to Western's resource acquisition needs for firming of its hydroelectric resources and to Western's transmission planning activities.

2. Price and Rate Design

a. Background

Western is committed to providing power to its customers, as directed by Congress, at the lowest possible cost consistent with sound business principles. However, rate issues are best dealt with in project-specific rate processes. Rates and rate design are outside the scope of the Program.

b. Comments

—Western has stated that a goal of the Program is to provide resource stability to customers so they can engage in effective integrated resource planning. Rates can contribute to resource stability or instability. Western should commit to price stability.
—Western should commit to consistent rate design policies, particularly for the CVP, to enhance resource stability.
—Western should coordinate the development of the Program with its rate adjustment activities.
—Western should develop rates that send appropriate price signals to customers and the ultimate consumer.
—Western's rates must remain stable if the resource is to remain dependable for customer planning purposes.
—Some suggest that rate increases are justified simply because they create the incentive to become more efficient in energy use. In this regard, Western has not been lax in exerting rate pressures on its customers in recent years.
—Incentive rates are the first step to repayment reform as advocated by the Office of Management and Budget.
—As opposed to establishing incentive rates by Western, incentive rates for conservation must be set at the customer level so that price signals are presented directly to the retail consumer.

—Incentive rates are undesirable because they may penalize those who have already invested in agricultural systems that have maximized conservation measures.
—Providing differential price signals to elicit appropriate conservation and load management responses could provide a substitute for or could supplement the power allocation approach proposed by Western. Rates could be designed for different types of service at different times that better reflect the cost of service, including the incremental costs and benefits associated with energy management activities.
—Rewards and penalties must be devised to make customers act as if they were facing efficiency prices, rather than Western's below-market prices. Because Western's prices are far less than "market" prices, more effort is required to reduce demand for Western's power.
—We are concerned about a lack of competitive pricing, as low-cost power sold by Western is offsetting customer efficiency goals.
—Rate design changes should be analyzed.
—Western should adopt an honest, market-based pricing system.

c. Discussion

Due to drought conditions, changes in operations at certain hydroelectric plants, increasing purchase power expense, and other factors, rates for power from several projects have increased substantially over the last several years. Western recognizes that such increases adversely impact the customers' power supply expense and hold the potential for disruptions in power supply planning.

Western is committed to cost containment so as to provide its customers with a predictably priced resource. However, major portions of these rate increases, such as those associated with certain changes in river operations, are beyond the control of Western. Western will continue to use its best efforts to keep rates stable into the future. Western also commits to evaluate fully all equity and stability issues prior to making any changes in rate design. The appropriate place for accomplishing this is through project-specific rate adjustment processes.

Incentive rates and rate design modifications should not be analyzed as part of the Program EIS, as they are outside the scope of the proposed Program. Rate issues, including incentive rates and rate design, should be addressed within Western's long-established public ratemaking process.

Although not within the scope of the Program, some discussion of the price and rate design issue may help in understanding Western's existing policies. Western markets power predominately at wholesale to utilities for resale to that utility's retail consumers. In some cases, Western markets its power to MBAs that blend the Federal resource with thermally generated or purchased power prior to sale to utility members, adding another organizational layer between Western and the ultimate consumer. Price signals are most effective when they take place at the retail level. Attempts to influence consumer actions through pricing strategies at least one level removed from the consumer are not as effective.

Western does not meet the total power requirements of its customers. Given the price differential between Western's power and the cost of power from other sources, customer energy efficiency is driven by the cost of supplemental power supply. Western believes that the price signals resulting from this price disparity offer a significant incentive to its customers.

Western's Salt Lake City Area Office is providing technical assistance to two customers who will participate in a 5-year pilot project to determine the effects of a change in rate design. The objective of the pilot project will be to shift load from on-peak to off-peak using price differentials to encourage DSM and to improve the efficiency of the overall power system.

Western anticipates that the use of incentive rates and rate design by Western's utility customers could be a reasonable option to pursue as part of their IRPs. Western will provide technical assistance on this subject to customers on request.

3. Incentives

a. Background

When Western originally proposed the Program, extending a major portion of long-term firm commitments was viewed as a major incentive for IRP preparation by existing customers. As part of this proposal, it was suggested that a resource pool, made up of unextended resources, could be established. One of the possible uses of this pool was allocation of power to preference customers for exemplary achievement in energy efficiency.

b. Comments

—Western's proposal is far too heavy on penalties and not heavy enough on incentives. Carrots would do more than sticks to assure Program compliance.
—Western should consider such incentives as (a) rate reductions/billing credits; (b) maintaining existing rates; (c) bonus MW out of a pool or from new resources; (d) allocate surplus energy; (e) build resources through efficiency improvements (such as project use); (f) build transmission for those who have no access; (g) do not charge for the full CROD when customers are trying to manage loads; (h) rebates; (i) buybacks—if a customer with 100-MW allocation saves 10 MW, Western could sell the 10 MW on a shared-revenue basis and return the 10 MW to the customer later when it is needed; (j) put dollar penalties into a pool to buy power to reward good performers; (k) if a customer does not need an allocation at present due to conservation, Western should allow future use of the full allocation; and (l) allocate dollars out of an assistance pool to customers to help energy efficiency and renewables investments.
—Western should impose a surcharge on all of its customers to create a conservation/DSM fund.
—Western should follow the example of the collaborative process in California, where incentives for IOUs rather than penalties are emphasized. Why should Western approach this issue differently?
—The resource pool should be composed of power resources from penalty imposition or dollars resulting from penalty imposition; this resource should be available to reward good EMP compliance. Dollar penalties could also enhance Western's IRP and DSM assistance programs.
—Incentives should not be created by reducing existing allocations or otherwise penalizing existing customers.
—Western should return to the original incentive-based pool, where EMP accomplishments would allow existing customers to earn 100 percent or more of their existing allocations as a reward for aggressive conservation efforts.
—Western should let a customer resell Western power that is saved.
—Existing customers should be allowed to fund new resources and system upgrades and receive the resulting power benefits.
—Western should acquire resources and promote more hydropower development instead of diminishing commitments to existing customers.
—Incentives like additional CVP allocations to promote renewable resources, like those that took place in

1981, should be considered. Power could be derived from Shasta rewinds and conservation savings from project-use efficiency improvements.

—Incentives favor larger utilities at the expense of smaller customers. All customers pay for incentives, but larger customers are more likely to benefit from the incentive program itself.

—Western needs to proactively administer meaningful and balanced incentives and penalties.

—The rates of supplemental suppliers are much higher than the costs of Western's power. Customer energy efficiency is driven by the cost of supplemental supply. This price differential is much more effective than any incentive rates developed by Western.

—Western needs to identify barriers to wind energy development in its region. Cost-sharing by Western on the first major renewable energy power plants in the region would help to overcome a critical barrier to widespread wind development.

—Western should quantify environmental costs and establish a system of rewards for technologies, such as wind, which do not generate any air pollutants.

—Western should consider establishing system-wide C&RE goals and institute a system of tradable credits (similar to the Clean Air Act) among Western's customers. This would allow the lowest cost opportunities for conservation to be acquired first, no matter their geographic location.

—The provision for a 10-percent withdrawal of power creates the necessary incentive mechanism.

—Western's package of incentives and penalties should include rate surcharges and power supply reductions for noncompliance, Western cost-sharing of conservation measures, short-term allotments of power for the achievement of goals, purchase of conserved power at prices higher than Western's contract rate, and other "feebate" schemes that reward overachievers and penalize underachievers. Western should fund the EMP through power rates so that customers will receive a price signal to participate in the Program.

—Western can get a headstart on the proposed Program by leading workshops on DSM and least-cost energy planning, devising peak pricing schedules, enforcing existing penalty provisions, and financing cost-effective energy conservation improvements.

—Set aside some part of revenue from surplus power sales to fund conservation and other Program activities.

—Failure to comply should be penalized rather than compliance being rewarded.

—Customers in compliance should be rewarded with a 10- to 20-percent bonus of firm power over and above existing allocations.

—Energy conservation measures should be funded through add-on charges to the monthly Western power bill.

—Prefer extension at a 100-percent level for 35 years for those who comply with Program regulations.

—Stricter requirements for IRP are acceptable if contract extensions are more generous.

—Contracts should be extended an additional 25 years at the customer's option upon approval of subsequent IRPs by Western.

—Western provides a significant incentive to its customers by keeping its costs as low as possible, as this will motivate customers to do whatever is necessary to retain the resource.

c. Discussion

Western serves a wide variety of different types of customers. Western has recognized from the outset that there will be varying levels in the sophistication and complexity of IRPs, reflecting each customer's size, type, resource needs, and geographic area. Resource choices and the timing of implementation will vary depending upon the circumstances involved. Given this diversity of customer characteristics and resource strategies, Western has not found an equitable way to judge and appropriately reward the energy efficiency achievements of its customers. For this reason, this proposed Program does not feature rewards for exceptional energy efficiency achievement, such as the allocation of long-term firm power.

Western has decided against providing incentive allocations out of a resource pool for an additional reason. When an incentive allocation is made up of long-term firm power taken from existing customers, Western undermines its need to provide resource stability to existing customers. Due to customer uncertainty of receipt of power from such a pool, otherwise unnecessary power purchases could take place, causing increased expense to the consumer. In regions where surpluses are not available for purchase on a long-term basis, construction of supply-side generation or transmission lines could be induced if Western creates a relatively large resource pool from power currently allocated to existing purchasers. Balance must be achieved between avoiding disruption in existing power supply and transmission arrangements and the development of appropriate incentives for IRP preparation.

The planning stability that results when a purchaser can depend on its Federal power commitment can be seen as an incentive. Planning for the future cannot take place with any confidence if this stability is compromised. Energy-efficient resource choices, with their associated economic and environmental benefits, cannot be realized if the existing resource base is uncertain. The financing of new renewable and DSM resources could be adversely impacted if existing resources are not sufficiently firm for planning purposes.

Western also views its technical assistance program as offering a significant incentive for customers to pursue energy efficiency. A major goal of Western's technical assistance program is to inform its customers of the economic benefits of energy efficiency and strategies for selecting and implementing C&RE activities, so that opportunities identified in IRPs are pursued with an understanding of the benefits. Technical assistance will continue to be available from Western to aid customers in developing consumer incentives for energy efficiency.

Western supports the concept of a pool of assistance dollars that could help supplement and support customer investments in energy efficiency and renewables. Budgetary constraints prevent Western from implementing such a pool in the near future.

Technical assistance will also support the marketing efforts of Western's customers as they pursue cost-effective DSM activities. The benefits resulting from IRP preparation, developed with full public participation, are sufficient incentives for IRP implementation without further incentive from Western.

Western originally viewed the extension of resource commitments to existing customers as a significant inducement to preparing IRPs. With the passage of the EPAct, Western's long-term firm power customers now must prepare IRPs whether resources are extended or not. However, the availability of power for allocation to new customers remains a powerful incentive for the preparation of IRPs by those not presently receiving the benefits of Federal hydropower.

Western is not proposing the imposition of a surcharge on its customers to create a conservation/DSM fund as part of this Program, since rate issues are outside of the scope of the Program proposal. Use of the funds

collected pursuant to a surcharge would not be authorized without an appropriation or establishment of a revolving fund.

In response to the suggestion that Western should establish a system of credits like the Clean Air Act, such an approach is too costly and administratively burdensome and would excessively impact rates. Western's role is principally one of a power supplier to preference entities and not to all regional utilities. The setting of C&RE goals for the region would inject Western into the planning process of regional utilities to an inappropriate degree.

Western cannot reserve power for potential new customer needs if contracts are extended at a 100-percent level for those entities that comply with the Program. Extensions of contracts for an additional 25 years at the customer's option, upon approval of subsequent IRPs by Western, would cause hydropower resources to be extended too far into the future for Western to respond to changing circumstances over time.

Western will not make the PMI extensions more generous as a quid pro quo for a tough IRP requirement. The stringency of the IRP requirement is fundamentally set forth in section 114 of the EPAct. The character of the PMI more appropriately is determined by such factors as the need to support quality IRP through resource stability and balancing the need for certainty with flexibility requirements.

Western disagrees with the comment that a customer should be allowed to resell Western power that is saved as an incentive for conservation. Resale of power to a nonpreference entity would violate the preference clause set forth in Reclamation law. Even if the power were proposed for sale to another preference entity, several policies and laws could be undermined by a purchaser's resale of Federal power. Power produced from Federal hydrogeneration is made possible by the appropriation of public funds and should not be a vehicle for profit. The legal requirement that Western's rates be cost based would be undermined if that power could be resold at a higher cost to others. The Administrator's allocation decisions, made during an open and public process, would be undermined and distorted if the benefits of Federal hydropower were subject to resale. Sales outside of the marketing area for a particular project would be in violation of the marketing criteria for a particular project. For all of these reasons, Western declines to adjust its policies, as reflected in its long-term firm power contractual language.

Even though Western remains convinced that additional Western-wide incentives to encourage energy efficiency are not necessary, the possibility exists that regional incentives might be appropriate. Western reserves the right, on a project-by-project basis, to develop targeted incentives if such an approach has regional merit. One opportunity for consideration of such an incentive approach would be at the time that Western determines the resources available at the end of the term of existing contracts.

4. Project Use

a. Background

Project-use power is that power reserved to meet project needs. Western markets power available in excess of that needed to serve project purposes.

b. Comments

—Western should work with Reclamation to assure that cost-effective efficiency improvements for project-use power are identified.
—Project-use power efficiencies should go to those customers who assist project-use customers in reducing those inefficiencies.
—Western should invest in energy-use efficiencies for project-use loads. Western could then allocate the energy saved to preference customers or reduce firming purchase power requirements.
—Customers could be given the opportunity to make project-use efficiency improvements in exchange for energy saved.

c. Discussion

Investment opportunities have been discussed with Reclamation and the Corps, which are responsible for project-use facilities. A December 1991 evaluation report by Western and Reclamation on project-use efficiency opportunities for the CVP indicated limited cost-effective opportunities for development. However, the four potential generation improvements that were cost-effective could increase project generation by 123 GWhs per year at a cost of 0.7 to 36.9 mills/kWh. Most of this energy is attributable to the potential uprating of generation at Shasta Dam.

Within the scope of its legal authority, Western will pursue opportunities that are cost-effective and feasible but will not address this issue within the Program. Opportunities will be pursued independently from the Program.

5. Support of Renewables and DSM

a. Background

Western has purchased power from cost-effective suppliers of renewable resources in the past and has a transmission access policy that allows for delivery of renewable resources to load.

b. Comments

—Western should/should not fund customer DSM activities and pilot programs.
—Western should share in the capital costs of renewables since financing is a key barrier to development.
—Western should do more with renewables to fund site studies, transmission analysis, and feasibility.

c. Discussion

Western will use IRP principles in its resource acquisition programs in the future and will pursue cost-effective DSM and renewable resources. In a period of cost containment and declining budgetary resources for Federal agencies, Western cannot commit to extensive funding for investments in resources that are not needed to firm its hydroelectric resources. Western will continue to provide technical assistance in the planning, design, and evaluation of feasibility of DSM and renewable resources. Western will also continue to provide transmission access for renewable resources and look for other opportunities to promote DSM and renewable resource development. Western remains open to taking on a greater role in this area should budgetary resources become available for these purposes in the future.

6. Profile Data

a. Background

Western proposed that all customers would provide an annual update of information for implementing and evaluating the EMP. The data was proposed to be used for analyzing overall Program impacts; comparative analysis and annual reporting on Program benefits; identifying basic supply, load, or consumption data for plan evaluations; and assisting Western in targeting technical assistance for customers.

b. Comments

—The profile data sheet included in the April 14, 1991, **Federal Register** notice did not ask for information that would have addressed the purposes proposed, especially measuring program effectiveness.

—Western should accept the current Rural Electrification Administration Form 7 in place of Western's proposed form or any other form currently being prepared for other agencies or regulatory bodies.

c. Discussion

Western has reconsidered this aspect of its Program. In an effort to decrease the administrative burden of proposed Program provisions and because this information is available elsewhere, Western is eliminating the annual profile data requirement from its proposal. While the need for this type of information still exists, Western has the capability of acquiring the data from other sources such as the Rural Electrification Administration and the Energy Information Administration or published customer annual reports and annual progress reports.

7. Proprietary Information

a. Background

Western serves a few retail customers who do not sell to other consumers.

b. Comments

—Some of the retail customers of MBA members objected to providing Western information that they consider proprietary to their business concerns, knowledge of which by outside parties could be detrimental to the customers' business.

c. Discussion

Although Western proposes to require certain information from customers and customer members in fulfillment of IRP provisions, customers who feel that information being provided is proprietary should so state and identify the sensitive information. Western will make every effort to honor this confidentiality.

8. Transmission Access

a. Background

Early in the development of this proposal, Western received a variety of comments concerning the issue of transmission access.

Neither the PMI nor the EMP features of this Program proposal have included a specific transmission access component.

b. Comments

—Western should provide transmission service to other utilities at cost-based rates.

—Transmission access beneficiaries should provide compensation to those who own the lines.

—Customers having transmission capacity should be encouraged to provide, and be given credit for providing, transmission service to other utilities at cost-based rates.

c. Discussion

Western has a transmission access policy which provides transmission service to other utilities at cost-based rates. There is a specific cost-based transmission rate for each ratesetting system. Ratemaking proceedings are open to the public.

Western agrees that transmission access should yield compensation to the transmission provider. The issue here as related to this Program proposal is that transmission access may be a key in the implementation of a particular strategy identified in an IRP. In the absence of transmission access, otherwise beneficial resource choices are foreclosed. Availability of transmission access above a certain rate level has the same effect.

The comment that customers with transmission capacity should be encouraged to provide, and be given credit for providing, transmission service to other utilities at cost-based rates was primarily related to an earlier proposed option called the Performance Plan. This option has since been replaced by a proposal for IRP for all customers. Western encourages an open transmission access policy by its customers.

[FR Doc. 94–19294 Filed 8–8–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51837; FRL–4899–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 118 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–1381, 94–1382, 94–1383, 94–1384, 94–1385, 94–1386, 94–1387, 94–1388, 94–1389, 94–1390, 94–1391, 94–1392, 94–1393, 94–1394, 94–1395, 94–1396, 94–1397, 94–1398, July 10, 1994.

P 94–1399, July 9, 1994.

P 94–1400, 94–1401, 94–1402, 94–1403, 94–1404, 94–1405, 94–1406, July 11, 1994.

P 94–1407, 94–1408, 94–1409, July 12, 1994.

P 94–1410, 94–1411, July 13, 1994.

P 94–1414, 94–1415, 94–1416, July 16, 1994.

P 94–1417, 94–1418, 94–1419, July 17, 1994.

P 94–1420, July 13, 1994.

P 94–1421, 94–1422, 94–1423, July 17, 1994.

P 94–1424, 94–1425, 94–1426, July 18, 1994.

P 94–1427, 94–1428, July 19, 1994.

P 94–1429, July 18, 1994.

P 94–1430, 94–1431, 94–1432, July 20, 1994.

P 94–1433, 94–1434, July 23, 1994.

P 94–1435, 94–1436, 94–1437, 94–1438, 94–1439, 94–1440, 94–1441, 94–1442, 94–1443, 94–1444, 94–1445, 94–1446, 94–1447, 94–1448, July 24, 1994.

P 94–1449, 94–1450, 94–1451, 94–1452, 94–1453, July 26, 1994.

P 94–1454, 94–1455, 94–1456, 94–1457, 94–1458, 94–1459, July 27, 1994.

P 94–1460, 94–1461, 94–1462, 94–1463, July 30, 1994.

P 94–1464, 94–1465, 94–1466, July 31, 1994.

P 94–1467, August 1, 1994.

P 94–1468, August 9, 1994.

P 94–1469, July 30, 1994.

P 94–1470, 94–1471, 94–1472, 94–1473, 94–1474, 94–1475, August 2, 1994.

P 94–1476, 94–1477, 94–1478, August 3, 1994.

P 94–1479, 94–1480, 94–1481, 94–1482, 94–1483, August 6, 1994.

P 94–1484, 94–1485, 94–1486, August 7, 1994.

P 94–1487, August 6, 1994.

P 94–1488, 94–1489, 94–1490, 94–1491, 94–1492, 94–1493, 94–1494, 94–1495, 94–1496, 94–1497, 94–1498, 94–1499, 94–1500, August 7, 1994.

Written comments by:

P 94–1381, 94–1382, 94–1383, 94–1384, 94–1385, 94–1386, 94–1387, 94–1388, 94–1389, 94–1390, 94–1391, 94–1392, 94–1393, 94–1394, 94–1395, 94–1396, 94–1397, 94–1398, June 10, 1994.

P 94–1399, June 9, 1994.

P 94–1400, 94–1401, 94–1402, 94–1403, 94–1404, 94–1405, 94–1406, June 11, 1994.

P 94–1407, 94–1408, 94–1409, June 12, 1994.

P 94–1410, 94–1411, June 13, 1994.

P 94–1414, 94–1415, 94–1416, June 16, 1994.

P 94–1417, 94–1418, 94–1419, June 17, 1994.
P 94–1420, June 13, 1994.
P 94–1421, 94–1422, 94–1423, June 17, 1994.
P 94–1424, 94–1425, 94–1426, June 18, 1994.
P 94–1427, 94–1428, June 19, 1994.
P 94–1429, June 18, 1994.
P 94–1430, 94–1431, 94–1432, June 20, 1994.
P 94–1433, 94–1434, June 23, 1994.
P 94–1435, 94–1436, 94–1437, 94–1438, 94–1439, 94–1440, 94–1441, 94–1442, 94–1443, 94–1444, 94–1445, 94–1446, 94–1447, 94–1448, June 24, 1994.
P 94–1449, 94–1450, 94–1451, 94–1452, 94–1453, June 26, 1994.
P 94–1454, 94–1455, 94–1456, 94–1457, 94–1458, 94–1459, June 27, 1994.
P 94–1460, 94–1461, 94–1462, 94–1463, June 30, 1994.
P 94–1464, 94–1465, 94–1466, July 1, 1994.
P 94–1467, July 2, 1994.
P 94–1468, July 10, 1994.
P 94–1469, June 30, 1994.
P 94–1470, 94–1471, 94–1472, 94–1473, 94–1474, 94–1475, July 3, 1994.
P 94–1476, 94–1477, 94–1478, July 4, 1994.
P 94–1479, 94–1480, 94–1481, 94–1482, 94–1483, July 7, 1994.
P 94–1484, 94–1485, 94–1486, July 8, 1994.
P 94–1487, July 7, 1994.
P 94–1488, 94–1489, 94–1490, 94–1491, 94–1492, 94–1493, 94–1494, 94–1495, 94–1496, 94–1497, 94–1498, 94–1499, 94–1500, July 8, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51837]" and the specific PMN number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460 (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., 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 TSCA Nonconfidential Information Center (NCIC), NE–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94–1381

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

P 94–1382

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

P 94–1383

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

P 94–1384

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compounds.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

P 94–1385

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

P 94–1386

Manufacturer. Confidential.
Chemical. (G) Substituted polyhydroxy aromatic compound.
Use/Production. (G) Chemical for metal treatment. Prod. range: Confidential.

P 94–1387

Manufacturer. United Chemical Technoloies, Inc.
Chemical. (G) Phenethyldialkylsilane.
Use/Production. (S) Bonded phase silica in chromotography columns. Prod. range: Confidential.

P 94–1388

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Vinyl acetate-vinyl amide copolymer.
Use/Production. (G) Adhesive additive open, non-dispersive. Prod. range: Confidential.

P 94–1389

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Poly (vinyl alcohol)-co-(*N*-ethlflormamide).
Use/Production. (G) ≥ Emulsion≥ additive open, non-dispersive use. Prod. range: Confidential.

P 94–1390

Manufacturer. Air Products and Chemicals.
Chemical. (G) Poly (vinyl alcohols)-co-(vinyl amine.
Use/Production. (G) ≥Emulsion≥, adhesive additive, paper additive, open non-dispersive use. Prod. range: Confidential.

P 94–1391

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.
Use/Production. (G) Emulsion additive-open, non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential.

P 94–1392

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.
Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1393

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.
Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1394

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.
Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1395

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.

Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1396

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.

Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1397

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.

Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1398

Manufacturer. Air Products and Chemicals, Inc.

Chemical. (G) Vinyl alcohol-vinyl amine copolymer salt.

Use/Production. (G) Emulsion additive-open. non-dispersive use; adhesive additive-open, non-dispersive use; paper additive-open, non-dispersive use; hair conditioner-highly dispersive use;. Prod. range: Confidential

P 94–1399

Manufacturer. Innovachem Inc.

Chemical. (S) Pol(oxy-1,2 ethanedyil),.alpha. 3-pentadecylphenol,. omega. hydroxy.

Use/Production. (S) Textile softener. Prod. range: 25,000–40,000 kg/yr.

P 94–1400

Importer. Confidential.

Chemical. (G) Anthraquinone reactive dyestuff preparation.

Use/Import. (S) Dyestuff-for coloration of cellulose textiles. Import range: Confidential.

P 94–1401

Importer. Confidential.

Chemical. (G) Fiber reactive copper phthalocyanine dyestuff.

Use/Import. (S) Colorant in the production of printed textile (cellulosic textiles). Import range: Confidential.

P 94–1402

Importer. Confidential.

Chemical. (G) Aliphatic polyisocyanate.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94–1403

Importer. Confidential.

Chemical. (G) Aliphatic polyurethane resin.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94–1404

Importer. Confidential.

Chemical. (G) Aliphatic polyurethane resin.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94–1405

Importer. Confidential.

Chemical. (G) Polyester/styrene-acrylic grafted resin.

Use/Import. (G) Resin for photo-copy or openn non-dispersive use. Import range: Confidential.

P 94–1406

Importer. Confidential.

Chemical. (G) Alkoxylated alkyl phenol amino alkylether.

Use/Import. (G) Gasoline additive. Import range: Confidential.

P 94–1407

Importer. Confidential.

Chemical. (G) Saturated polyester.

Use/Import. (G) Open, non-dispersive use in printing inks, coatings, or adhesives. Import range: Confidential.

P 94–1408

Importer. Hoechst Celanese Corporation.

Chemical. (S) Resorcinol; formaldehyde; styrene; toluene sulfonic acid catalyst; triethylamine catalyst.

Use/Import. (G) Rubber additives. Import range: 100,000-500,000 kg/yr.

P 94–1409

Importer. Confidential.

Chemical. (G) Polyether polyol.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–1410

Manufacturer. Tornanaga Technologies, Inc.

Chemical. (G) Aliphatic ester oligomer.

Use/Production. (S) Adhesion promoter in electrically conduction ink formulation and in plastic substrate materials. Prod. range: Confidential.

P 94–1411

Manufacturer. Nisseki Chemical Texas, Inc.

Chemical. (S) Light ends from distillation of polyethyl benzene residue, comprised primarily of alkylbenzenes, alkylindanes, alkyltetralins, and alkylnaphthalenes. with a boiling point range of roughly 180°–245° C.

Use/Production. (S) High octane component booster for blending with gasoline and motor fuel. Prod. range: 2,500,000–3,300,000 kg/yr.

P 94–1414

Manufacturer. Confidential.

Chemical. (G) Fatty acid modified polyester.

Use/Production. (G) Paint additive for industrial paint manufacture. Prod. range: Confidential.

P 94–1415

Manufacturer. Confidential.

Chemical. (G) Poly hydroxy poly amino resin.

Use/Production. (G) Component of highly dispersed coating. Prod. range: 200,000–1,000,000 kg/yr.

P 94–1416

Manufacturer. Deguassa Corporation.

Chemical. (S) Platinum (2+) tetraammine, dinitrate.

Use/Production. (S) Precursor catalyst. Prod. range: Confidential.

P 94–1417

Manufacturer. Confidential.

Chemical. (G) Fatty alkanolamide.

Use/Production. (G) Open, non-dispersive use as a plastics additive. Prod. range: Confidential.

P 94–1418

Importer. Royal Lubricants Company, Inc.

Chemical. (S) 2-Propanoic acid, 2-methyl-,Cg-18-alkyl esters.

Use/Import. (S) Aircraft turbine oil. Import range: Confidential.

P 94–1419

Importer. Confidential.

Chemical. (G) Substituted naphthalene.

Use/Import. (G) Highly dispersive use. Import range: Confidential.

P 94–1420

Manufacturer. Arco Chemical Company.

Chemical. (G) Alkenyl polymer.

Use/Production. (S) Polyurethane foam production. Prod. range: Confidential.

P 94–1421

Manufacturer. 3M Company.

Chemical. (G) Poly(isobutylmethacrylate-co-methyl FOSEA)-g-poly(dimethylsiloxane).

Use/Production. (S) Water repellent ingredient used in a protective coatadg on painted durable goods. Prod. range: Confidential.

P 94-1422

Importer. Confidential.
Chemical. (G) Rosin modified phenolic resin.
Use/Import. (G) An open, non-dispersive use. Import range: Confidential.

P 94-1423

Importer. Confidential.
Chemical. (G) Rosin modified phenolic resin.
Use/Import. (G) An open, non-dispersive use. Import range: Confidential.

P 94-1424

Manufacturer. Sybron Chemicals, Inc.
Chemical. (G) Polymer of ethenyl benzene, diethenyl benzene, ethylenthenyl, chloromethylated and aminated with trialkylamine.
Use/Production. (S) Ion exchange resin for water purfication. Prod. range: Confidential.

P 94-1425

Importer. Toyo Ink America Incorporated.
Chemical. (G) Polyurethane of isophorome diisocyanate and diols.
Use/Import. (G) Binder for industrial coatings. Import range: 5,000–15,000 kg/yr.

P 94-1426

Importer. Ciba-Geigy Corporation.
Chemical. (G) Benzenesulfonic, bis-2-substituted naphthalenesulfonic acid amino triazine substituted hexanediamino azo.
Use/Import. (G) Textile dye for knit goods. Import range: Confidential.

P 94-1427

Importer. Confidential.
Chemical. (G) Polyether polysiloxane.
Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94-1428

Importer. Wacker Chemicals (USA), Inc.
Chemical. (S) CyclododecaneethNOL, beta-methyl.
Use/Import. (S) Scent oils, for deterogents. Import range: Confidential.

P 94-1429

Manufacturer. MacDermid Inc.
Chemical. (G) Halogenater aryl benzimidazol.
Use/Production. (G) Intermediate for organicmsynthesis. Prod. range: 1,000–2,000 kg/yr.

P 94-1430

Manufacturer. Confidential.
Chemical. (G) Polyester of aromatic acids and aliphatic polyols and maleic anhydride.
Use/Production. (G) Component of coating with either open or highly dispersive use. Prod. range: 40,000–50,000 kg/yr.

P 94-1431

Manufacturer. Confidential.
Chemical. (G) Polyester of aromatic acids and aliphatic polyols and maleic anhydride.
Use/Production. (G) Component of coating with either open or highly dispersive use. Prod. range: 40,000–50,000 kg/yr.

P 94-1432

Manufacturer. Confidential.
Chemical. (G) Thiol resin salts.
Use/Production. (G) Processing aid. Prod. range: Confidential.

P 94-1433

Manufacturer. Confidential.
Chemical. (G) Ethylene glycol recovery residues.
Use/Production. (S) Polyol manufacture. Prod. range: Confidential.

P 94-1434

Manufacturer. Confidential.
Chemical. (G) Ethylene glycol recovery residues.
Use/Production. (S) Polyol manufacture. Prod. range: Confidential.

P 94-1435

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymeric polyol.
Use/Production. (G) A polyol for polyurethanes. Prod. range: Confidential.

P 94-1436

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymeric polyol.
Use/Production. (G) A polyol for polyurethanes. Prod. range: Confidential.

P 94-1437

Manufacturer. Confidential.
Chemical. (G) Polyurthane polymeric polyol.
Use/Production. (G) A polyol for polyurethanes. Prod. range: Confidential.

P 94-1438

Manufacturer. AKZO Resins.
Chemical. (G) Polyester resin solution.
Use/Production. (S) Resin used to manufacture industrial coatings. Prod. range: Confidential.

P 94-1439

Manufacturer. Confidential.
Chemical. (G) Poly(amide-ester).
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 94-1440

Manufacturer. Olin Corporation.
Chemical. (G) Alcohol alkoxylate.
Use/Production. (S) Surfactant/rinse aid household, industrial, and institutional automatic dishwashing. Prod. range: Confidential.

P 94-1441

Manufacturer. Xerox Corporation.
Chemical. (G) Phthalocyanine pigment.
Use/Production. (G) Reprographic photoreceptor pigment. Prod. range: Confidential.

P 94-1442

Manufacturer. Confidential.
Chemical. (G) Isocyanate terminated urethane polymer.
Use/Production. (G) Urethane adhesive. Prod. range: Confidential.

P 94-1443

Importer. USR Optonix Inc.
Chemical. (S) Zinc sulfide (ZnS) silver doped.
Use/Import. (S) The activating ingredient which is added to zinc sulfide 99.999% pure to manufacture P-22 blue phosphor. Import range: 8,100–10,800 kg.

P 94-1444

Manufacturer. Ricon Resins, Inc.
Chemical. (S) (1,3-Dihydroxypropyl)-2' methylpropenate) monoester of maleic anhydride adducted polybutadiene (hydroxy propyl methacrylted) C11O6H15)n(C4O3)m(C4H5)i.0
Use/Production. (S) Coating moisture resistant for metal, curative for rubber, adhesive promoter tso. Prod. range: 1,000–10,000 kg/yr.

P 94-1445

Manufacturer. Hardwicke Chemical Inc.
Chemical. (S) Methacrylene bis benzoate.
Use/Production. (G) . Prod. range: 18–45 kg/yr.

P 94-1446

Manufacturer. Confidential.
Chemical. (G) Organophosphorous halide.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94-1447

Manufacturer. The P. D. George Company.

Chemical. (S) Adipic acid; phthalic anhydride; fatty glycol; diethylene glycol; acrylic acid.
Use/Production. (S) Fiber-optic cable coating. Prod. range: 20,000 kg/yr.

P 94–1448

Manufacturer. Confidential.
Chemical. (G) Poly(amide-ester) modified phenolic rosin ester resin.
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 94–1449

Manufacturer. Criterion Catalyst Company L. P.
Chemical. (G) Aluminium complex to enhance catalytic activity.
Use/Production. (G) Aluminum complex which, enhances catalystic activity in hydroprocessing catalyst. Prod. range: Confidential.

P 94–1450

Importer. Kuaray International Corporation.
Chemical. (G) Modified polyvinyl alcohol.
Use/Import. (G) Raw material for cast film. Import range: Confidential.

P 94–1451

Manufacturer. Confidential.
Chemical. (G) Hetero, quinacridone pigment.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–1452

Manufacturer. Confidential.
Chemical. (G) Quinacridone derivative.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–1453

Manufacturer. Confidential.
Chemical. (G) Hydrochloroflucarbon.
Use/Production. (S) Resin component in production of heat-set, web offset and sheetfed inks. Prod. range: Confidential.

P 94–1454

Manufacturer. Arizona Chemical Company.
Chemical. (G) Fatty ester.
Use/Production. (S) Resin component in production of heat-set, web offset web sheetbed inks. Prod. range: Confidential.

P 94–1455

Manufacturer. E. I. du Pont de Nemours & Company.
Chemical. (G) Haloalkylsulfonic salt.
Use/Production. (S) Surfactant. Prod. range: Confidential.

P 94–1456

Manufacturer. Gor-Star, Inc.
Chemical. (S) (Dimethylterephthalate; (1,4-Butanediol); (diethyl oxalate).
Use/Production. (S) Extruded monofluorofilament for fishing line. Prod. range: 31,000–110,000 kg/yr.

P 94–1457

Importer. Confidential.
Chemical. (G) Methacrylooyloxyethyl betaine-ally methacrylates-cyclohexyl methacrylate copolymer.
Use/Import. (G) Contained use additive. Import range: Confidential.

P 94–1458

Manufacturer. Confidential.
Chemical. (G) Methacryloyloxy ethyl betaine-alkyl methacrylates-cyclohexyl methacrylate coploymer.
Use/Production. (G) Contained use additive. Prod. range: Confidential.

P 94–1459

Importer. Confidential.
Chemical. (G) Organic ammonium salt.
Use/Import. (G) Agent for copier. Import range: Confidential.

P 94–1460

Manufacturer. Confidential.
Chemical. (G) Amide carboxylate salt.
Use/Production. (S) Lubricant additive and corrosion inhibitor in coatings. Prod. range: Confidential.

P 94–1461

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 94–1462

Importer. DNP (America), Inc.
Chemical. (G) Triazole derivative.
Use/Import. (S) Colorant in thermal and transfer ink film. Import range: 10–500 kg/yr.

P 94–1463

Manufacturer. Confidential.
Chemical. (G) Silica-supported organometallic complex.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 94–1464

Importer. Confidential.
Chemical. (G) Polyurethane/acrylic grafted copolymer, dimethylaminoethanol salt.
Use/Import. (G) Paint. Import range: Confidential.

P 94–1465

Manufacturer. Confidential.
Chemical. (G) Polymer of substituted alkoxysilane and aliphatic acrylates and methacrylates.
Use/Production. (G) Component of spray applied coating. Prod. range: 306,000 kg/yr.

P 94–1466

Manufacturer. Confidential.
Chemical. (G) Polymer of substituted alkoxysilane and aliphatic acrylates and methacrylates.
Use/Production. (G) Component of applied coating. Prod. range: 122,000–306,000 kg/yr.

P 94–1467

Manufacturer. Confidential.
Chemical. (G) Halobenzoic acid derivative.
Use/Production. (G) Chemical intermediate. Prod. range: 5,000 kg/yr.

P 94–1468

Manufacturer. Adhesive Coatings, Company.
Chemical. (G) Polymer of epoxy rosin, hexamethylene, dimethoxy methyluron.
Use/Production. (S) Paint and coatings resin adhesive resins. Prod. range: 1,430,000–17,908,800 kg/yr.

P 94–1469

Manufacturer. Hercules Incorporated.
Chemical. (G) Epoxy amine reaction product.
Use/Production. (G) Theroset resin system component open, non-dispersive use. Prod. range: Confidential.

P 94–1470

Manufacturer. American Maize-Products Company.
Chemical. (G) Chemically modified cyclodextrin.
Use/Production. (G) Inclusion complexation agent. Prod. range: Confidential.

P 94–1471

Importer. Confidential.
Chemical. (G) Rosin modified alkyd.
Use/Import. (G) Paint. Import range: Confidential.

P 94–1472

Importer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Import. (G) Paint. Import range: Confidential.

P 94–1473

Importer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Import. (G) Paint. Import range: Confidential.

P 94–1474

Manufacturer. Confidential.
Chemical. (G) Polyamide alloy.
Use/Production. (G) Polymeric material open, non-dispersive. Prod. range: Confidential.

P 94–1475

Manufacturer. Novo Nordisk Bioindustrials, Inc.

Chemical. (G) An asporogenic aspergillus oryzae strain genetically modified using recombinent DNA techniques to contain a cellulose(endo-1,4-beta-glucanase) gene from humicola insolens.

Use/Production. (G) The PMN microorgenism will be used for the biosynthesis of cellulose an enzyme for use by the detergent and other industries. Prod. range: Confidential.

P 94–1476

Importer. Goldschmidt Chemivcal.

Chemical. (G) Modified silicone resin.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–1477

Manufacturer. Confidential.

Chemical. (G) Polymer of methylenebis(isocyanatobenzene) with propylene oxide-ethylene oxide glycerol ether and polyethyl glycol.

Use/Production. (S) Flexible foam. Prod. range: Confidential.

P 94–1478

Manufacturer. Confidential.

Chemical. (G) Modified oil solution.

Use/Production. (S) Printing inks, particular lithographic and web offset inks. Prod. range: 15,000–30,000 kg/yr.

P 94–1479

Manufacturer. Confidential.

Chemical. (G) Metal carbonate silicate organic diacid complex.

Use/Production. (G) Contained use additive for gas treatment. Prod. range: Confidential.

P 94–1480

Importer. Ciba-Geigy Corporation.

Chemical. (G) Benzenesulfonic acid, bis substituted phenyl azo substituted phenyl amino azo substituted triazine substituted propanediamine.

Use/Import. (G) Textile dye for knit goods. Import range: Confidential.

P 94–1481

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer, acrylic emulsion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1482

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polmer, acrylic emulsion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1483

Manufacturer. S. C. Johnson & Son, Inc.

Chemical. (G) Emulsion polymer, acrylic emulsion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–1484

Manufacturer. Confidential.

Chemical. (G) Formaldehyde copolymer, potassium salt.

Use/Production. (S) To bond mineral aggregates (sand), bonded sand is used in the production of metal coatings. Prod. range: Confidential.

P 94–1485

Manufacturer. C. J. Osborn Corporation.

Chemical. (G) VT copolymer alkyd.

Use/Production. (G) Pigmented coatings. Prod. range: Confidential.

P 94–1486

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (G) Coating for open, non-dispersive use in original equipment manufacture. Prod. range: Confidential.

P 94–1487

Importer. MTC America, Inc.

Chemical. (G) Thia alkanethiol.

Use/Import. (S) Application: paint, of polythiourethane, adhesives of epoxy type, lenses of polythiourethane. Import range: Confidential.

P 94–1488

Importer. Ciba-Geigy Corporation.

Chemical. (G) Pyrrolopyrrol.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–1489

Manufacturer. Confidential.

Chemical. (G) Starch, dihydrogen phosphate, disubstituted alkyl ether.

Use/Production. (G) Cellulose binder. Prod. range: Confidential.

P 94–1490

Manufacturer. Confidential.

Chemical. (G) Toluene diisocyanate polymer with polybutadiene polymer, polyether polyol and glycol.

Use/Production. (S) Single component urethane rubber membrane. Prod. range: Confidential.

P 94–1491

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified bismaleimide.

Use/Production. (G) Manufacture of plastic composite articles. Prod. range: Confidential.

P 94–1492

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (G) Colorant. Prod. range: Confidential.

P 94–1493

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1494

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1495

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1496

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1497

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1498

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1499

Manufacturer. Confidential.

Chemical. (G) Polymeric colorant.

Use/Production. (S) Colorant. Prod. range: Confidential.

P 94–1500

Manufacturer. Gen Urethane Corporation.

Chemical. (G) Aqueous modified polyvinyl acetate.

Use/Production. (S) As a hand builder for lace as manufactured by our parent company. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: August 2, 1994.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–19400 Filed 8–8–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS-51838; FRL-4900-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 130 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94-1501, 94-1502, 94-1503, 94-1504, 94-1505, 94-1506, August 8, 1994.

P 94-1507, 94-1508, 94-1509, August 9, 1994.

P 94-1510, 94-1511, 94-1512, 94-1513, 94-1514, 94-1515, 94-1516, August 10, 1994.

P 94-1517, 94-1518, 94-1519, August 13, 1994.

P 94-1520, August 14, 1994.

P 94-1521, August 13, 1994.

P 94-1522, 94-1523, 94-1524, 94-1525, August 14, 1994.

P 94-1526, August 13, 1994.

P 94-1527, 94-1528, 94-1529, 94-1530, 94-1531, August 14, 1994.

P 94-1532, 94-1533, August 15, 1994.

P 94-1534, August 29, 1994.

P 94-1535, 94-1536, 94-1537, August 15, 1994.

P 94-1538, 94-1539, 94-1540, 94-1541, 94-1542, 94-1543, 94-1544, 94-1545, August 16, 1994.

P 94-1546, August 17, 1994.

P 94-1547, 94-1548, 94-1549, 94-1550, August 20, 1994.

P 94-1551, June 20, 1994.

P 94-1552, August 21, 1994.

P 94-1553, August 20, 1994.

P 94-1554, 94-1555, 94-1556, 94-1557, August 21, 1994.

P 94-1558, August 20, 1994.

P 94-1559, 94-1560, August 21, 1994.

P 94-1561, 94-1562, 94-1563, 94-1564, August 22, 1994.

P 94-1565, 94-1566, 94-1567, August 23, 1994.

P 94-1568, 94-1569, 94-1570, 94-1571, 94-1572, August 24, 1994.

P 94-1573, 94-1574, 94-1575, 94-1576, 94-1577, 94-1578, August 28, 1994.

P 94-1579, 94-1580, 94-1581, 94-1582, 94-1583, 94-1584, 94-1585, 94-1586, 94-1587, 94-1588, 94-1589, 94-1590, 94-1591, 94-1592, 94-1593, 94-1594, 94-1595, 94-1596, 94-1597, 94-1598, 94-1599, 94-1600, 94-1601, 94-1602, 94-1603, 94-1604, 94-1605, 94-1606, 94-1607, 94-1608, 94-1609, 94-1610, 94-1611, 94-1612, 94-1613, 94-1614, 94-1615, 94-1616, 94-1617, 94-1618, 94-1619, 94-1620, 94-1621, 94-1622, 94-1623, 94-1624, 94-1625, 94-1626, 94-1627, 94-1628, 94-1629, 94-1630, August 29, 1994.

Written comments by:

P 94-1501, 94-1502, 94-1503, 94-1504, 94-1505, 94-1506, July 9, 1994.

P 94-1507, 94-1508, 94-1509, July 10, 1994.

P 94-1510, 94-1511, 94-1512, 94-1513, 94-1514, 94-1515, 94-1516, July 11, 1994.

P 94-1517, 94-1518, 94-1519, July 14, 1994.

P 94-1520, July 15, 1994.

P 94-1521, July 14, 1994.

P 94-1522, 94-1523, 94-1524, 94-1525, July 15, 1994.

P 94-1526, July 14, 1994.

P 94-1527, 94-1528, 94-1529, 94-1530, 94-1531, July 15, 1994.

P 94-1532, 94-1533, July 16, 1994.

P 94-1534, July 30, 1994.

P 94-1535, 94-1536, 94-1537, July 16, 1994.

P 94-1538, 94-1539, 94-1540, 94-1541, 94-1542, 94-1543, 94-1544, 94-1545, July 17, 1994.

P 94-1546, July 18, 1994.

P 94-1547, 94-1548, 94-1549, 94-1550, July 21, 1994.

P 94-1551, May 21, 1994.

P 94-1552, July 22, 1994.

P 94-1553, July 21, 1994.

P 94-1554, 94-1555, 94-1556, 94-1557, July 22, 1994.

P 94-1558, July 21, 1994.

P 94-1559, 94-1560, July 22, 1994.

P 94-1561, 94-1562, 94-1563, 94-1564, July 23, 1994.

P 94-1565, 94-1566, 94-1567, July 24, 1994.

P 94-1568, 94-1569, 94-1570, 94-1571, 94-1572, July 25, 1994.

P 94-1573, 94-1574, 94-1575, 94-1576, 94-1577, 94-1578, July 29, 1994.

P 94-1579, 94-1580, 94-1581, 94-1582, 94-1583, 94-1584, 94-1585, 94-1586, 94-1587, 94-1588, 94-1589, 94-1590, 94-1591, 94-1592, 94-1593, 94-1594, 94-1595, 94-1596, 94-1597, 94-1598, 94-1599, 94-1600, 94-1601, 94-1602, 94-1603, 94-1604, 94-1605, 94-1606, 94-1607, 94-1608, 94-1609, 94-1610, 94-1611, 94-1612, 94-1613, 94-1614, 94-1615, 94-1616, 94-1617, 94-1618, 94-1619, 94-1620, 94-1621, 94-1622, 94-1623, 94-1624, 94-1625, 94-1626, 94-1627, 94-1628, 94-1629, 94-1630, July 30, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51838]" and the specific PMN number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG-099 Washington, DC 20460 (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., 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 TSCA Nonconfidential Information Center (NCIC), NE-B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 94-1501

Manufacturer. 3M Company.

Chemical. (G) Fluoroalkene dimer.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94-1502

Manufacturer. Confidential.

Chemical. (S) 5-Oxatricyclo(8.2.0.0 4.6)dodecane, 4,12, 12-trimthyl-9-methylene-.

Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

P 94-1503

Importer. AT Polymers and Films.

Chemical. (G) Olefin-silane polymer.

Use/Import. (G) Component of plastic articles and coatings. Import range: Confidential.

P 94-1504

Importer. AT Polymers and Films.

Chemical. (G) Olefin-silane polymer.

Use/Import. (G) Component of plastic articles and coatings. Import range: Confidential.

P 94-1505

Importer. Confidential.

Chemical. (G) Azo dyestuff.

Use/Import. (G) Open non-dispersive Import range: Confidential.

P 94-1506

Manufacturer. The Dow Chemical Company.

Chemical. (G) Glycerrol ester derivative of a modified acrylic acid.

Use/Production. (G) Chemical intermediate for destructive use. Prod. range: Confidential.

P 94–1507

Manufacturer. 3M Company.
Chemical. (G) Modified 2-propenoic acid, 2-methyl-, methyl estercopolymer.
Use/Production. (G) Coating. Prod. range: Confidential.

P 94–1508

Manufacturer. 3M Company.
Chemical. (G) Fluorinated polysiloxane.
Use/Production. (G) Protectve sealers for masonry substrates. Prod. range: Confidential.

P 94–1509

Manufacturer. 3M Company.
Chemical. (G) Fluorinated polysiloxane.
Use/Production. (G) Protective sealers for masonry substrates. Prod. range: Confidential.

P 94–1510

Manufacturer. Eastman Chemical Company.
Chemical. (G) Alkanoic anhydride.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 94–1511

Manufacturer. Confidential.
Chemical. (G) Bis phenyl substituted urea.
Use/Production. (G) Used in a paper coating formulation. Prod. range: Confidential.

P 94–1512

Manufacturer. Confidential.
Chemical. (G) Bis phenyl substituted urea.
Use/Production. (G) Used in a paper coating formulation. Prod. range: Confidential.

P 94–1513

Manufacturer. Confidential.
Chemical. (G) Amino-benzothiazolyl substituted phenol.
Use/Production. (S) Site limited intermediate. Prod. range: Confidential.

P 94–1514

Manufacturer. Confidential.
Chemical. (G) Amino-benzothiazolyl substituted phenol.
Use/Production. (G) Site limited intermediate. Prod. range: Confidential.

P 94–1515

Manufacturer. Confidential.
Chemical. (S) Polyster amideimide resin.
Use/Production. (S) Intermediate to be used in a wire coating formulation. Prod. range: Confidential.

P 94–1516

Manufacturer. Confidential.
Chemical. (G) Polyolefin phenolic amide.
Use/Production. (G) Destructive. Prod. range: Confidential.

P 94–1517

Importer. Morimura Brothers, (U.S.A.), Inc.
Chemical. (S) 2-(-Ethylphenyl) benzimidazous.
Use/Import. (S) Anti-tarnish coating of copper used in the interconnections of electronic components, *E.G.* Printed circu. Import range: 100–300 kg/yr.

P 94–1518

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional polyester polyol.
Use/Production. (G) Dispersively applied coating. Prod. range: 75,000–225,000 kg/yr.

P 94–1519

Manufacturer. Confidential.
Chemical. (G) Alkyleneindole.
Use/Production. (G) Destructive. Prod. range: Confidential.

P 94–1520

Manufacturer. Confidential.
Chemical. (G) Phenolic modified polyether.
Use/Production. (S) Lithographic printing ink and gravure printing ink. Prod. range: Confidential.

P 94–1521

Manufacturer. Confidential.
Chemical. (G) Adipic acid, polymer with diols and a monohydric alocohol.
Use/Production. (G) The PMN substance is used as a plasticizer for PVC. Prod. range: Confidential.

P 94–1522

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthylene disulfonic acid.
Use/Production. (S) Powder formulation of fiber-reactive dye for cellulose. Prod. range: 5,000–25,000 kg/yr.

P 94–1523

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthylene disulfonic acid.
Use/Production. (S) Powder formulation of fiber-reactive dye for cellulose. Prod. range: 5,000–25,000 kg/yr.

P 94–1524

Importer. Confidential.
Chemical. (G) Isophorene diisocyanate polyester-type polyurethane.
Use/Import. (G) A component used in coatings for plastics. Import range: Confidential.

P 94–1525

Importer. Confidential.
Chemical. (G) Acrylic-modified chlorinated polypropylene emulsion.
Use/Import. (G) A component used in coating of plastics. Import range: Confidential.

P 94–1526

Importer. Resource Trading Company.
Chemical. (S) Accimel is a blend containing pentachlorothiophenol disulphide with activator and dispersing agent.
Use/Import. (S) Peptizing agent for natural and synthetic rubber compounding. Import range: 300,000–500,000 kg/yr.

P 94–1527

Importer. Hoechst Celanese Corporation.
Chemical. (G) Aromatic polyhydroxy compound.
Use/Import. (G) Microelectronics chemical. Import range: Confidential.

P 94–1528

Importer. Ciba-Geigy Corporation.
Chemical. (G) Precipitated salt of monoazo pigment.
Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94–1529

Manufacturer. Confidential.
Chemical. (G) Aliphatic isocyanate terminated prepolymer.
Use/Production. (G) Urethane products. Prod. range: Confidential.

P 94–1530

Manufacturer. Bedoukian Research, Inc.
Chemical. (S) E-Hexen-1-ol, acetate, (E)-.
Use/Production. (S) Fragrance (perfume) use, fragrance use (soap, detergents, air fresheners, scented papers). Prod. range: Confidential.

P 94–1531

Manufacturer. Confidential.
Chemical. (G) Polyamide alloy.
Use/Production. (G) Polymeric material: open, non-dispersive. Prod. range: Confidential.

P 94–1532

Manufacturer. Confidential.
Chemical. (S) 1,3,-Propanediame,*N*(C_3–(C_3·3–10 alkyloxy)propyl)-.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.

P 94–1533

Manufacturer. Confidential.

Chemical. (S) Propanenitrile, 3-amino-,*N*-(3-(9–10 alkyloxy)propyl)-.
Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.

P 94–1534

Manufacturer. Confidential.
Chemical. (G) Fatty polyamine compounds with organic acid.
Use/Production. (G) Industrial emulsifier emulsifier. Prod. range: Confidential.

P 94–1535

Manufacturer. Confidential.
Chemical. (G) Fatty polyamine compounds with organic acids.
Use/Production. (G) Industrial emulsifier. Prod. range: Confidential.

P 94–1536

Manufacturer. Confidential.
Chemical. (G) Fatty polyamine compounds with organic acids.
Use/Production. (G) Industrial emulsifier. Prod. range: Confidential.

P 94–1537

Manufacturer. Confidential.
Chemical. (G) Fatty amine compounds with organic acids.
Use/Production. (S) Flotation reagent for use in mining. Prod. range: Confidential.

P 94–1538

Manufacturer. Confidential.
Chemical. (G) Organoaluminum compound.
Use/Production. (G) Container destructive use. Prod. range: Confidential.

P 94–1539

Manufacturer. 3M Company.
Chemical. (S) 1,3-Benzenedicarboxylic acid, 5-sulfo-, 1,3-dimethylester, soduim salt; 1,4-Benzenedicarboxylic acid, dimethylester; 1,3-Benzenedicarboxylic acid, dimethylester 1,2-ethanediol; 2-Oxepanone, polymer 2,2' oxybis(ethanol).
Use/Production. (G) Polymer coating. Prod. range: Confidential.

P 94–1540

Manufacturer. Slovay Enzymes, Inc.
Chemical. (G) An asporogenic strain of Bacillus licheniformis which is genetically modified using recombinant DNA techniques to contain a xylanase gene from Bacillus pumilus. The PMN microorganism also contains intergeneric plasmiids.
Use/Production. (G) The PMN microoganism will be used for the biosynthesis of an enzyme, xylanase, for by use pulp and paper industry. Prod.range: Confidential.

P 94–1541

Manufacturer. Solvay Enzymes, Inc.
Chemical. (G) An asporogenic strain of Bacillus licheniformis which is genetically modified using recombinant DNA techniques to contain a pullulanase gene from Bacilus deramificans. The PMN microorganism also contains intergeneric plasmiids.
Use/Production. (G) The PMN microoganism will be used for the biosynthesis of an enzyme, pullulanase, for use by the ethanol industry. Prod.range: Confidential.

P 94–1542

Importer. Hoechst Celanese Corporation.
Chemical. (G) Polyurethane acrylate.
Use/Import. (S) Powder coating. Import range: 6,800–27,300 kg/yr.

P 94–1543

Manufacturer. Confidential.
Chemical. (G) Alkoxy aluminum chelate complex.
Use/Production. (G) Printing ink/paint additive. Prod. range: Confidential.

P 94–1544

Manufacturer. Confidential.
Chemical. (G) Polyester-urethane-urea).
Use/Production. (G) Polymeric colorant for inks. Prod. range: Confidential.

P 94–1545

Importer. NOF America Corporation.
Chemical. (S) (2-Hydroxyethyl) dimethyl (3-tallow alkylamide propyl)-ammoniumn perchlorate.
Use/Import. (S) Antistatic agent for polyvinyl chloride resin. Import range: Confidential.

P 94–1546

Manufacturer. Confidential.
Chemical. (G) Triazine azo dyestuff.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.

P 94–1547

Manufacturer. Henkel Corporation.
Chemical. (S) Trimethylol propane, ester with heptanoic acid, C_8–C_{10} and C_6–C_{12} fatty acid.
Use/Production. (G) ubricant basestock for aircraft turbine lubricant. Prod. range: 500,000–1,000,000 kg/yr.

P 94–1548

Manufacturer. Henkel Corporation.
Chemical. (S) Trimethylol propane, ester with heptanoic acid, Hack-C_8–C_{10} and C_6–C_{12} fatty acid.
Use/Production. (S) Lubricant basestock for aircraft turbine lubricant. Prod. range: 500,000–1,000,000 kg/yr.

P 94–1549

Manufacturer. Confidential.
Chemical. (G) Polyether polyester polyurethane.
Use/Production. (S) Resin for adhesive formulations, coatings and inks. Prod. range: Confidential.

P 94–1550

Importer. Ciba-Geigy Corporation.
Chemical. (G) Naphthalenesulfonic acid, bis substituted alkyl diamino substituted triazinyl amino substituted phenyl azo substituted phenyl azo.
Use/Import. (G) Textile dye for knit goods. Import range: Confidential.

P 94–1551

Manufacturer. Confidential.
Chemical. (G) Isophthalic acid polymer with difunctional aromatic carboxylic acid, benzoic acid, cylclicalcohol, cycloakyldiamine, alkyl polyol and aklanolamine.
Use/Production. (G) Additive for inks. Prod. range: Confidential.

P 94–1552

Manufacturer. Confidential.
Chemical. (G) Isopthalic acid polymer with benzoic acid, cyclicalcohol, cycloalkyldiamine, and alkanolamine.
Use/Production. (G) Additive for inks. Prod. range: Confidential.

P 94–1553

Importer. Confidential.
Chemical. (G) Polyalkyl substituted diphosphonate.
Use/Import. (G) Manufacturing process additive. Import range: Confidential.

P 94–1554

Manufacturer. Confidential.
Chemical. (G) Mixed polyacrylate.
Use/Production. (G) Textile chemical intermediate. Prod. range: Confidential.

P 94–1555

Manufacturer. Confidential.
Chemical. (G) Mixed polyacrylate.
Use/Production. (G) Textile chemical intermediate. Prod. range: Confidential.

P 94–1556

Importer. Confidential.
Chemical. (S) Annatto extract.
Use/Import. (S) Colorant for fragrances. Import range: 100–1,000 kg/yr.

P 94–1557

Manufacturer. Buckman International, Inc.
Chemical. (G) Hydrate alkaline earth metal salts of metalloid oxyanions.
Use/Production. (G) An additive for polymeric and resinous formulations in contact with metal. Prod. range: Confidential.

P 94–1558

Manufacturer. Genencor International, Company.

Chemical. (G) Escherichia coli *K*-12 microorganisms genetically modified using recombinant DNA techniques.

Use/Production. (G) The PMN microorganisms will be used to biosynthesize a dye which will be used for dyeing cotton for use in fabric. Prod. range: Confidential.

P 94–1559

Importer. Unichema North America.

Chemical. (S) Zinc (1,2,3-propanetriolato(2-) 01, 02) homopolymer, stereoisomer.

Use/Import. (G) Open non dispersive use-additive. Import range. Confidental.

P 94–1560

Manufacturer. Confidential.

Chemical. (G) Alkyl substituted spiro heterocycle.

Use/Production. (G) Printing inks for paper and T-shirt. Prod. range: Confidential.

P 94–1561

Manufacturer. Confidential.

Chemical. (G) Calcium salts of alkyl salicylate and alkyl phenote sulfide.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 94–1562

Manufacturer. Confidential.

Chemical. (G) Calcium salts of alkyl salicylate and alkyl phenote sulfide.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 94–1563

Manufacturer. Confidential.

Chemical. (G) Calcium salts of alkyl salicylate and alkyl phenote sulfide.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 94–1564

Manufacturer. Confidential.

Chemical. (G) Calcium salts of alkyl salicylate and alkyl phenote sulfide.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 94–1565

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyoxy alkene glycol.

Use/Production. (S) Isolated intermediate polymer. Prod. range: Confidential.

P 94–1566

Manufacturer. Confidential.

Chemical. (S) Tetrakis (diethylamido) titanium.

Use/Production. (S) Source reagent for chemical vapor deposition of titanium nitrate. Prod. range: Confidential.

P 94–1567

Importer. Confidential.

Chemical. (G) Alkoxylated alkyl phenol.

Use/Import. (G) Gasoline additive (intermediate). Import range: Confidential.

P 94–1568

Importer. Ciba-Geigy Corporation.

Chemical. (S) Substituted pyrrolopyrrole.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

P 94–1569

Manufacturer. Confidential.

Chemical. (G) Alkylbenzene sulfonic acid.

Use/Production. (G) Intermediate used in the manufacture of salts. Prod. range: Confidential.

P 94–1570

Manufacturer. Confidential.

Chemical. (G) Alkylbenzene sulfonic acid, calcium salt.

Use/Production. (G) Lubricanting oil additive. Prod. range: Confidential.

P 94–1571

Importer. Confidential.

Chemical. (S) Benzoic acid, 4-alkyl-4-cyano-3-fluorophenyl ester.

Use/Import. (S) Component of liquid crystal mixture for liquid crystal display. Import range: Confidential.

P 94–1572

Manufacturer. Confidential.

Chemical. (G) 2-Propen-1-aminium, *NN*-dimethyl-*N*-2-propenyl chloride, polyer with 2-propenamide and *N,N,N*-trimethyl-2-[(1-oxo-2-propenyl)oxy] ethanaminium chloride.

Use/Production. (G) Polymer of this type. Prod. range: Confidential.

P 94–1573

Manufacturer. Resinall Corporation.

Chemical. (G) Hydrocarbon modified rosin resin.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

P 94–1574

Manufacturer. Confidential.

Chemical. (G) Ortho substituted benzota ester of a glycidyl alkanoate.

Use/Production. (G) Photoinitiator for curable inks and coatings. Prod. range: Confidential.

P 94–1575

Importer. Confidential.

Chemical. (G) Hydroxy acrylic polymer.

Use/Import. (G) Automotive refinish paint. Import range: Confidential.

P 94–1576

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Alkylalkoxysilane.

Use/Production. (S) Site limited intermediate for a surface coating. Prod. range: Confidential.

P 94–1577

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Emulsifier stabilized alkylsilane emulsions.

Use/Production. (S) Surface coating. Prod. range: Confidential.

P 94–1578

Manufacturer. Confidential.

Chemical. (G) Aliphatic Isocyanate terminated prepolymer.

Use/Production. (G) Urethane products. Prod. range: Confidential.

P 94–1579

Manufacturer. Confidential.

Chemical. (G) Triazine azo dyestuff.

Use/Production. (G) Open, non-disperse. Prod. range: Confidential.

P 94–1580

Manufacturer. Confidential.

Chemical. (G) Mixed unsaturated alipphatic esters.

Use/Production. (G) Chemical intermediate. Prod. range: 45,000–50,000 kg/yr.

P 94–1581

Manufacturer. Confidential.

Chemical. (G) Mixed unsaturated aliphatic esters.

Use/Production. (G) Chemical intermediate. Prod. range: 45,000–50,000 kg/yr.

P 94–1582

Manufacturer. Confidential.

Chemical. (G) Mixed unsaturated aliphatic esters.

Use/Production. (G) Chemical intermediate. Prod. range: 45,000–50,000 kg/yr.

P 94–1583

Manufacturer. Confidential.

Chemical. (G) Modified polymer of styrene and aliphatic maleate.

Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1584

Manufacturer. Confidential.

Chemical. (G) Modified polymer of styrene and aliphatic maleate.

Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1585

Manufacturer. Confidential.

Chemical. (G) Modified polymer of styrene and aliphatic maleate.

Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1586

Manufacturer. Confidential.
Chemical. (G) Mofidied polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1587

Manufacturer. Confidential.
Chemical. (G) Modified polymer od styrene and aliphatic maleated.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1588

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1589

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1590

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1591

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1592

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1593

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1594

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1595

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1596

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleated.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1597

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1598

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1599

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1600

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1601

Manufacturer. Confidential.
Chemical. (G) Modified polymer od styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1602

Manufacturer. Confidential.
Chemical. (G) Modified polymer od styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1603

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1604

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1605

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1606

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1607

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1608

Manufacturer. Confidential.
Chemical. (G) Modified polymer of dtyrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1609

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1610

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1611

Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1612

Manufacturer. Confidential.

Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1613
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1614
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1615
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1616
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1617
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1618
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1619
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1620
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1621
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1622
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1623
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1624
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1625
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1626
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1627
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1628
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1629
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

P 94–1630
Manufacturer. Confidential.
Chemical. (G) Modified polymer of styrene and aliphatic maleate.
Use/Production. (G) Component of spray applied coating. Prod. range: 90,000–100,000 kg/yr.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: August 2, 1994.

Frank V. Caesar,
Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–19399 Filed 8–8–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 4, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037 (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

Note: The Commission has requested emergency review of this item by August 12, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: None.
Title: FCC Cable Services Bureau (Competition Division) Informational Survey in Connection with Annual Report to Congress on the Status of Competition in the Delivery of Video Programming: Overbuilds, Direct and Effective Competition and Ownership of Competing Technologies.
Action: New collection.
Respondents: State or Local governments and businesses or other for-profit.
Frequency of Response: Annual reporting requirement.
Estimated Annual Burden: 30 responses; 1.50 hours average burden per response; 45 hours total annual burden.

Needs and Uses: This survey will be used to prepare a statutorily mandated report to Congress, and to discharge other statutorily mandated duties. Because the Commission adopted regulations implementing Section 19(c) on April 1, 1993, *First Report and Order,* MM Docket No. 92–265, the first such annual Competition Report must be submitted to Congress no later than October 1, 1994. Moreover, the Report must be completed and ready for submission some weeks earlier, because it must be approved at the last Commission meeting prior to October 1. That meeting will be held on September 9, 1994. In connection with preparation of the initial Competition Report, and in furtherance of the Commission's ongoing statutory obligation to monitor competition, the Competition Division of the Commission's Cable Services Bureau needs to collect information on some specific competition issues. Local franchising authorities, cable operators and alternative technology-based providers will be questioned regarding overbuilds and ownership issues. Without the information, the Commission's ability to prepare the Report and meet its statutory obligations will be impaired.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

In reply refer to: Approved by OMB, 3060–0000, expires 00/00/00.

Questions: Overbuilds, Direct and Effective Competition

1. How many homes does your system pass?
2. How many homes are in your franchise area?
3. How many subscribers do you have?
4. How long has an overbuild situation existed in your franchise area?
5. When did your system begin service?
6. What is your system's channel complement?
7. Please provide current rate information for your system's various programming tiers.
8. Who owns your system? (MSO involvement/Municipal involvement).
9. Is your system under common ownership with any other system with a headend within a fifty mile radius of your headend?

(These same questions may possibly be asked of a small number of wireless cable operators in an effort to gather additional and more specific data on the wireless portion of the industry).

Question: Ownership of Competing Technologies

10. This question concerns relationships between your company and companies in similar businesses. "Your company" includes its directors and officers, major shareholders of which you have actual knowledge, and businesses that are affiliates of your company (parent entities and subsidiaries). "Relationships" includes debt, equity, contracts of any kind, and directorships. State below all relationships that exist between your company and entities in the following businesses:

—telecommunications
—electricity distribution
—transmission by radio (terrestrial or satellite)
—reception of signals by radio, including satellite master antenna television, direct-to-home satellite delivery and wireless cable
—over-the-air broadcasting
—other potential substitutes for cable television

For each interest, state its holder, its form, its dollar value, and the date of its acquisition.

Public reporting for this information collection is estimated to average 1.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Washington, DC. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Paperwork Reduction Project (3060–0000), Washington, DC 20503

[FR Doc. 94–19428 Filed 8–8–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION.**

The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

FOR FURTHER INFORMATION CONTACT:

Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 1717 H Street NW., Washington, DC 20006. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims First State Bank & Trust Company, #2561, Edinburg, Texas.

Dated: August 3, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–19311 Filed 8–8–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 29, 1994.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated July 7, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994: Telfair County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–19409 Filed 8–8–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-1032-DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA-1032-DR), dated July 1, 1994, and related determinations.

EFFECTIVE DATE: July 29, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated July 1, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 1, 1994: Richland County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-19411 Filed 8-8-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1032-DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA-1032-DR), dated July 1, 1994, and related determinations.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 5, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-19410 Filed 8-8-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1036-DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA-1036-DR), dated August 2, 1994, and related determinations.

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from the continuing effects of the warm water currents known as El Nino on the 1994 Coho and Chinook salmon fishing season on May 1, 1994, through October 31, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Oregon.

You are authorized to provide Disaster Unemployment Assistance in the designated areas pursuant to Section 410 of the Stafford Act. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Disaster Unemployment Assistance and administrative expenses in the designated areas.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leonard F. Lombari of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Disaster Unemployment Assistance only for the counties of Clatsop, Columbia, Coos, Curry, Douglas, Lane, Lincoln, and Tillamook.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: August 3, 1994.

James L. Witt,

Director.

[FR Doc. 94-19412 Filed 8-8-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1031-DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA-1031-DR), dated June 21, 1994, and related determinations.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 29, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-19413 Filed 8-8-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1037-DR]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-1037-DR), dated August 2, 1994, and related determinations.

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 2, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from the continuing effects of the warm water currents known as El Nino on the 1994 Coho and Chinook salmon fishing season on May 1, 1994, through October 31, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Washington.

You are authorized to provide Disaster Unemployment Assistance in the designated areas pursuant to Section 410 of the Stafford Act. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Disaster Unemployment Assistance and administrative expenses in the designated areas.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leonard F. Lombardi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

Disaster Unemployment Assistance only to the Counties of Clallum, Grays Harbor, Jefferson, Pacific and Wahkiakum.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: August 3, 1994.

James L. Witt,

Director.

[FR Doc. 94–19426 Filed 8–8–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

First Empire State Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 26, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. First Empire State Corporation, Buffalo, New York; to acquire Ithaca Bancorp, Inc., Ithaca, New York, and thereby acquire Citizens Savings Bank, F.S.B., Ithaca, New York, a savings association engaged in activities authorized under § 225.25(b)(9) of the Board's Regulation Y, and control of Citizens Financial Services, Inc., Ithaca, New York, engaged in the sale as agent or broker of insurance designed to repay the principal amount of credit extended in the event of death, disability or involuntary unemployment of the borrower, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Immediately subsequent to the acquisition, Ithaca Bancorp, Inc., will be merged with and into First Empire State Corporation and Citizens Savings Bank, F.S.B., Ithaca, New York, will be converted into a New York chartered savings and loan association that will then be merged with and into First Empire State Corporation's subsidiary bank, Manufacturers and Traders Trust Company, Buffalo, New York. As an alternative, under certain circumstances First Empire State Corporation will exercise an option to acquire up to 16.7 percent of the shares of Ithaca Bancorp, Inc.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Alpha Financial Group, Inc., Minonk, Illinois; to acquire 2.5 percent of the voting shares of Upper Illinois River Valley Community Development Corporation, Springfield, Illinois, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–19367 Filed 8–8–94; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 2, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Texas National Bankshares, Inc., Midland, Texas, and thereby indirectly acquire Texas National Bank, Midland, Texas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Mesa Financial Corporation, Sweetwater, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Texas Delaware Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire Texas National Bank, Sweetwater, Texas, a *de novo* bank. In connection with this application Texas Delaware Bancshares, Inc., Dover, Delaware, proposes to become a bank holding company by acquiring 100 percent of the voting shares of Texas National Bank, Sweetwater, Texas, a *de novo* bank.

2. Pioneer Bankshares, Inc., Fredericksburg, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer II Bankshares, Inc., Dover, Delaware, and thereby indirectly acquire Pioneer National Bank, Fredericksburg, Texas. In connection with this application Pioneer II Bankshares also proposes to become a bank holding company by acquire 100 percent of the voting shares of Pioneer National Bank, Fredericksburg, Texas.

Board of Governors of the Federal Reserve System, August 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–19368 Filed 8–8–94; 8:45 am]

BILLING CODE 6210–01–F

St. Francis Capital Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. St. Francis Capital Corporation, Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Bank, East Central, Kewaskum, Wisconsin.

In connection with this application, Applicant has also applied to acquire St. Francis Bank, F.S.B., Milwaukee, Wisconsin, and thereby engage in operating a savings association which engages in deposit taking, lending, and other activities pursuant to § 225.25(b)(9) of the Board's Reg. Y.

2. St. Francis Capital Corporation, Milwaukee, Wisconsin; to acquire St. Francis Equity Properties, Inc., Milwaukee, Wisconsin, a wholly-owned subsidiary of St. Francis Bank, F.S.B., Milwaukee, Wisconsin, and thereby engage in retaining its indirect investment in St. Francis Equity Properties, Inc., which invests in community development projects pursuant to § 225.(b)(6) of the Board's Regulation Y. In addition Applicant proposes to retain its investment in a loan and thereby engage in the activity of making and servicing loans pursuant to § 225.(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Alexandria Securities and Investment Company, Alexandria, Minnesota, and thereby indirectly acquire Community State Bank of Alexandria, Alexandria, Minnesota.

In connection with this application, Applicant's subsidiary, Norwest Investment Services, Inc., has also applied to acquire the discount brokerage business of Community State Bank of Alexandria, and integrate it into its overall operation. Following consummation Norwest Investment Services, Inc., will engage in full-service brokerage, government securities, and limited underwriting activities pursuant to §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y, and 76 Federal Reserve Bulletin 79 (1980).

Board of Governors of the Federal Reserve System, August 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–19369 Filed 8–8–94; 8:45 am]

BILLING CODE 6210–01–F

Summit Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 29, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Summit Financial Corporation, Greenville, South Carolina; to engage *de novo* through its subsidiary Freedom Finance, Inc., Greenville, South Carolina, in making and servicing consumer finance loans; acting as agent for insurance to borrowers that is directly related to the extension of credit by the finance company, including credit life and accident and health insurance; and acting as agent for insurance related to ensuring repayment of the outstanding balance for the extension of credit in the event of loss or damage to any property used as collateral for the extension of credit, pursuant to §§ 225.25(b)(1)(i), (8)(i), and (8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–19370 Filed 8–8–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR - 496]

Announcement of Cooperative Agreement to the Association of Occupational and Environmental Clinics

Summary

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement with the Association of Occupational and Environmental Clinics (AOEC) for managing and preventing diseases related to hazardous substances. Approximately $300,000 is available in FY 1994 to fund this project. It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this program is to collaborate with AOEC to continue to provide environmental health prevention education for health professionals and community members; support clinics who have access to the expertise for diagnosing, treating and remediating environmental health problems; serve as a referral service for primary care practitioners, and conduct research that can be applied to environmental education and scientific studies.

ATSDR will assist in the identification of priority target audiences and their environmental education needs; provide technical assistance for National Priorities List (NPL) site-specific education activities; provide technical review of draft materials; assist with evaluation of training activities; provide technical assistance for conducting needs assessments; and collaborate in establishing a communication and environmental resource network between clinics, State and local health departments, and other environmental organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority: This program is authorized under sections 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604 (i)(14) and (15)].

Smoke-Free Workplace

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to AOEC. No other applications are solicited. The program announcement and application kit have been sent to AOEC.

AOEC has had two successive cooperative agreements with ATSDR called "Managing and Preventing Diseases Related to Hazardous Substances." This cooperative agreement is designed to continue its previous work. AOEC is unique as an organization of academically-based occupational/environmental clinics. It is a well-known, highly regarded professional association committed to improving the quality and standards for clinical care in the area of occupational/environmental medicine/health. AOEC has emerged as a leader in environmental health prevention and education. AOEC clinic members are often called upon to provide technical expertise as clinicians and information pertaining to environmental health effects related to hazardous substance exposure to primary care providers and public health professionals. As experts on hazardous exposure, AOEC members are called on to: 1) provide clinical expertise; 2) act as peer reviewers for environmental health materials; 3) develop curricula in environmental medicine; and 4) conduct environmental health educational programs.

Executive Order 12372

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement No. 496 and contact Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6797.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1994.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–19347 Filed 8–8–94; 8:45 am]

BILLING CODE 4163–70–P

[ATSDR–493]

Announcement of Cooperative Agreement to the National Association of County Health Officials

Summary

The Agency for Toxic Substance and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement with the National Association of County Health Officials (NACHO) to provide community environmental health education activities. Approximately $354,000 will be available in FY 1994 to support this project. It is expected that this award will begin on or about September 30, 1994, for a 12-month budget and project period.

The purpose of this cooperative agreement is to work cooperatively with NACHO to address community environmental health education needs at National Priorities List (NPL) and other hazardous waste sites. The processes and tools developed for site-specific community health education by NACHO should serve as models for community involvement and cooperative action between Federal, State, and local governments in working with communities at NPL sites nationwide.

ATSDR will provide technical assistance and information to develop community profiles; implement, and evaluate the needs assessment process; develop action plans for communities for which profiles and needs assessments have been developed; and develop and evaluate a guidebook on assessment of community environmental health education needs for use at the local health department level.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information").

Authority: This program is authorized under sections 104(i)(14), (15) and (17) and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(14), (15) and (17), and 42 U.S.C. 9620 and 10 U.S.C. 2704].

Smoke-Free Workplace

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to NACHO for this project. No other applications are solicited. The program announcement and application kit have been sent to NACHO.

NACHO is the sole national health organization that serves all 2936 county health departments. This county health organization has been identified for assessing and prioritizing community environmental health education needs at Superfund sites because of the following reasons: (1) There may be multiple EPA National Priorities List (NPL) sites in an area that are best addressed collectively by an educational effort at a county level, such as in Bucks County, Pennsylvania, where there are six NPL sites, each in a different city, town, or township; (2) in NPL sites in rural areas, such as the Midstate Disposal Superfund Site in Marathon County, Wisconsin, there may be no municipal health jurisdiction responsible for the education of nearby communities; and (3) there are many States, including Florida and Georgia, that have no municipal health departments. Michigan, which has 86 NPL sites, has only one municipal health department which is located in Detroit. In cases such as these, the county health department is the local health agency with the community baseline information, background, contacts, and recognition to be able to conduct the activities described in the SUMMARY.

Through their previous educational activities as well as through producing the *National Profile of Local Health Departments* and other surveys of county health departments on local environmental health issues, community priorities, and staff training needs, NACHO has developed a unique understanding of the environmental health needs of communities and the operations of county health departments. As an organization, NACHO has direct, familiar, and certain access to its membership of county public health officials, participating municipalities, and their affiliated networks, and therefore has an unparalleled capacity to carry out the purpose of this cooperative agreement in an appropriate, timely, and efficient manner.

Executive Order 12372 Review

This program is not subject to Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 493 and contact Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6797.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary

Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1994.

Claire V. Broome, M.D.,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–19349 Filed 8–8–94; 8:45 am]

BILLING CODE 4163–70–P

[Announcement 492]

Development and Implementation of Risk Communication Education for Environmental Health Professionals

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for the Development and Implementation of Risk Communication Education for Environmental Health Professionals.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority: This program is authorized under Sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i) (14) and (15)].

Smoke-Free Workplace

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are national organizations representing environmental health professionals of State, tribal, local, or other government entities. Applicants must provide nationally recognized certification for environmental health professionals.

Availability of Funds

Approximately $60,000 will be available in FY 1994 to fund one award. It is expected that the award will begin on or about September 30, 1994, for a 12-month budget period, with a 3-year project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds. The funding estimate outlined above may vary and is subject to change.

Purpose

This cooperative agreement will train environmental health professionals in effective methods to educate their communities about health risks associated with exposure to substances at hazardous waste sites. This training in risk communication will develop a cadre of environmental health professionals skilled in providing appropriate health risk information to citizens. In addition, this training will provide continuing education credits necessary to maintain certification in environmental health.

Program Requirements

In conducting activities to achieve the purpose of the program the awardee shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop and provide continuing education for local, State, county and tribal health officials about (a) risk communication strategies for health risks resulting from exposure to hazardous substances in the environment, and (b) understanding the role of various participants in the decision making processes associated with hazardous waste sites.
2. Work with other public health organizations to link all levels of health officials involved with Superfund site-specific activities.
3. Develop an environmental health committee to give guidance to the recipient on relevant environmental health education activities.
4. Evaluate the effectiveness of all programs developed and presented.

B. ATSDR Activities

1. Provide required information and instructional resources about National Priorities List (NPL) sites for course development and presentation.
2. Assist in the identification of effective approaches to the development and delivery of a unified environmental health program for local, county, and State health professionals.
3. Provide assistance in the presentation of classes.
4. Provide site-specific assistance and direction on cost recovery.
5. Assist in the evaluation of courses and materials developed.

Evaluation Criteria

The application will be reviewed and evaluated by an objective review panel based on the adequacy of the proposal relative to the following criteria:

A. Proposed Project and Appropriateness of Project Design—50%

1. Applicant's understanding of the project's purpose.
2. Applicant's understanding and justification of the need or problem to be addressed.
3. Identification of target group and needs.
4. Quality of project objectives in terms of specificity, measurability, and feasibility.
5. Specificity and feasibility of the proposed schedule for implementing project activities.
6. Appropriateness and thoroughness of the methods used to evaluate the project.

B. Proposed Project Management—30%

1. Ability of the applicant to provide appropriate program staff and support staff to the project.
2. Ability of the applicant to provide staff time, facilities, space, equipment, financial, and other resources required to perform the applicant's responsibilities in the project.
3. Extent to which the applicant has provided an administration plan, outlined strategic and operational plans for the 3-year project period, and designated a qualified administrator to manage the project.

C. Other—20%

1. Because this is to be a coordinated effort among environmental health officials/scientists, the applicants' membership must reflect diversity. The applicant represents occupations within the field of environmental health and levels of involvement (local, county, and State).
2. Applicants will have environmental health activities within their organization and submit documentation of this activity.
3. Recipient provides nationally recognized certification for environmental health professionals.

D. Proposed Project Budget—Not Scored

The extent to which the proposed budgets are reasonable, clearly justified

with budget narratives, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

The application submitted under this announcement is not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health Reporting System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Cost Recovery

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, provides for the recovery of costs incurred for response actions at Superfund sites from potentially responsible parties. Grantee would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect costs, as appropriate for the site. Grantee would also maintain documentation that describes the site-specific actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed related to a site. Grantee will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit, or other action involving the specific site, then the records will be maintained until resolution of all issues at the specific site.

B. Materials Developed

1. Any materials developed by awardee with ATSDR funds is to carry the following statement: This material was developed under a cooperative agreement (Award No. _____-) from the Agency for Toxic Substances an Disease Registry, Public Health Service, U.S. Department of Health and Human Services with funding from the Comprehensive Environmental Response and Compensation Act (CERCLA) 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) 1986.

2. Material developed under funding by ATSDR will not be copyrighted and is to remain in the public domain to encourage wide distribution. However, awardee is allowed to charge fees for conferences, workshops, computer programs, etc., at a level below or equal to other similar programs offered by awardee. These fees may be retained by awardee and used to offset the development and cost of the material. ATSDR will receive final copies of all material developed by awardee including course notebooks, brochures, computer programs (with appropriate operating software and instructions), pamphlets, but not excluding other materials not mentioned here.

Application Submission and Deadline

Applicants must submit an original and two copies of application PHS Form 5161–1 to Henry Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before September 9, 1994. (By formal agreement, the Centers for Disease Control and Prevention (CDC), Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the 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 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant. Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 492. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Gayle Alston, Health Education Specialist, Division of Health Education, ATSDR, 1600 Clifton Road, NE., Mailstop E–33, Atlanta, GA 30333, telephone (404) 639–6206.

Please Refer to Announcement Number 492 When Requesting Information and Submitting an Application

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1994.

Claire V. Broome, M.D.,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–19348 Filed 8–8–94; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees in the Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Drug Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 16 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among

qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations for membership, except for consumer-nominated members should be sent to Adele S. Seifried (address below). All nominations for consumer-nominated members should be sent to Susan K. Meadows (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except consumer-nominated membership: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Regarding all nominations for consumer-nominated members: Susan K. Meadows, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following 17 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Anesthetic and Life Support Drugs Advisory Committee*: Five vacancies occurring March 31, 1995.

2. *Anti-Infective Drugs Advisory Committee*: Two vacancies occurring November 30, 1994, and three vacancies occurring November 30, 1995.

3. *Antiviral Drugs Advisory Committee*: Three vacancies occurring immediately, including that of the consumer-nominated member, two vacancies occurring October 31, 1994, and three vacancies occurring October 31, 1995.

4. *Arthritis Advisory Committee*: Six vacancies occurring immediately and three vacancies occurring September 30, 1995.

5. *Cardiovascular and Renal Drugs Advisory Committee*: Three vacancies occurring immediately and three vacancies occurring June 30, 1995.

6. *Dermatologic Drugs Advisory Committee*: Three vacancies occurring August 31, 1995.

7. *Endocrinologic and Metabolic Drugs Advisory Committee*: One vacancy occurring immediately and two vacancies occurring June 30, 1995.

8. *Fertility and Maternal Health Drugs Advisory Committee*: Three vacancies occurring June 30, 1995.

9. *Gastrointestinal Drugs Advisory Committee*: One vacancy occurring immediately and two vacancies occurring June 30, 1995, including that of the consumer-nominated member.

10. *Generic Drugs Advisory Committee*: One vacancy occurring immediately, six vacancies occurring October 31, 1994, including that of the consumer-nominated member, and three vacancies occurring October 31, 1995.

11. *Medical Imaging Drugs Advisory Committee*: Six vacancies occurring immediately, including that of the consumer-nominated member, and four vacancies occurring June 30, 1995.

12. *Nonprescription Drugs Advisory Committee*: Three vacancies occurring May 31, 1995.

13. *Oncologic Drugs Advisory Committee*: Two vacancies occurring June 30, 1995.

14. *Peripheral and Central Nervous Systems Drugs Advisory Committee*: Two vacancies occurring January 31, 1995, including that of the consumer-nominated member.

15. *Psychopharmacologic Drugs Advisory Committee*: Two vacancies occurring June 30, 1995.

16. *Pulmonary-Allergy Drugs Advisory Committee*: Three vacancies occurring immediately and four occurring May 31, 1995.

The functions of the 16 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational human drugs for use in the area of medical specialties, indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

17. *Drug Abuse Advisory Committee*: One vacancy occurring immediately and two vacancies occurring May 31, 1995.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medical evaluation of information gathered by the Department of Health and Human Services (DHHS) and the Department of Justice on the safety, efficacy, and abuse potential of drugs; and (2) recommend actions to be taken by DHHS regarding the marketing, investigation, and control of such drugs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as anesthesiology, surgery, internal medicine, infectious disease, asthma, rheumatology, microbiology, pediatrics, ophthalmology, cardiology, clinical/medical oncology, hematology, radiology, nuclear medicine, biostatistics, epidemiology, dermatopathology/immunodermatology, dermatology, psychopharmacology, neurochemistry, neuropharmacology, endocrinology, obstetrics and gynecology, reproductive endocrinology, gastroenterology, pharmacology, clinical pharmacology, hepatology, virology, pharmaceutical manufacturing, bioavailability and bioequivalence research, pharmacokinetics, neurology, psychiatry, psychology, neuropharmacology, neuropathology, pulmonary disease, allergy, immunology, clinical immunology, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for

membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: August 2, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–19359 Filed 8–8–94; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Members on Public Advisory Committees in the Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on certain public advisory committees in the Center for Biologics Evaluation and Research. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selections from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations for membership, except for consumer-nominated members should be sent to Jack Gertzog (address below). All nominations for consumer-nominated members should be sent to Susan K. Meadows (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except consumer-nominated membership: Jack Gertzog, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1054.

Regarding all nominations for consumer-nominated members: Susan K. Meadows, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of members for the following four advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. *Allergenic Products Advisory Committee:* Three vacancies occurring August 31, 1995.

2. *Biological Response Modifiers Advisory Committee:* One vacancy occurring immediately.

3. *Blood Products Advisory Committee:* Five vacancies occurring September 30, 1995.

4. *Vaccines and Related Biological Products Advisory Committee:* Three vacancies occurring January 31, 1995.

The functions of the four committees listed above are to review and evaluate scientific, technical, and medical data concerning the safety, effectiveness, and appropriate use of allergenic products, blood and products derived from blood and serum, vaccines, immunological products, biological response modifiers, and other biological products intended for use in the diagnosis, prevention, or treatment of human diseases, and to make appropriate recommendations to the Commissioner of Food and Drugs. These four committees also review and evaluate intramural research programs.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of each committee in such fields as allergenic products, internal medicines, cytokines, lymphokines, molecular biology, rDNA technology, infectious diseases, viral oncology, cellular kinetics, epidemiology, statistics, hematology, immunology, blood banking, virology, bacteriology, pediatrics, microbiology, nuclear biology, and biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominees as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will

be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: August 3, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–19358 Filed 8–8–94; 8:45 am]

BILLING CODE 4160–01–F

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services National Advisory Council in September 1994.

The meeting of the Center for Mental Health Services National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. The Council will also be performing review of applications for Federal assistance; therefore, portions of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of council members may be obtained from: Gloria Yockelson, Committee Management Officer, Center for Mental Health Services, Room 18C–07, Parklawn Building, Rockville, Maryland 20857, telephone number (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council

Meeting Dates: September 19–20, 1994

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue Bethesda, Maryland 20814

Closed: September 19, 9:00 a.m.–adjournment

Open: September 20, 9:00 a.m.–5:00 p.m.

Contact: Anne Mathews-Younes, Ed.D., Room 11C–26, Parklawn Building, Telephone (301) 443–3606

Dated: August 3, 1994.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–19361 Filed 8–8–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3683; FR–3560–N–04; Docket No. N–94–3755; FR–3622–N–03; Docket No. N–94–3765; FR–3650–N–02]

Funding Adjustments to FY 1993 and 1994 NOFAs for the Fair Housing Initiatives Program and FY 1993 Affirmative Fair Housing Marketing Reinvention Lab Project

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Adjustments to FY 1993 and 1994 Fair Housing Initiatives Program (FHIP) Notices of Funding Availability (NOFAs).

SUMMARY: This notice makes funding adjustments to the FY 1993 and FY 1994 FHIP NOFAs, and the FY 1993 FHIP Affirmative Fair Housing Marketing Reinvention Lab Project NOFA.

DATES: The application due dates are not affected by this Notice.

ADDRESSES: To obtain application kits, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1–800–343–3442. Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice makes funding adjustments to the FY 1993 FHIP NOFA published on December 22, 1993 (58 FR 68000), the FY 1994 FHIP NOFA published on May 16, 1994 (59 FR 25532) and the FY 1993 FHIP Affirmative Fair Housing Marketing Reinvention Lab Project NOFA published on June 16, 1994 (59 FR 31072).

To ensure that sufficient time is available for full consideration to be given to applications under the FY 1993 FHIP Affirmative Fair Housing Marketing Reinvention Lab Project NOFA, the Department is replacing the $1 million of FY 1993 Education and Outreach Initiative funds made available under this NOFA with $1 million in FY 1994 Education and Outreach Initiative funds. The $1 million in FY 1993 Education and Outreach Initiative funds from the Affirmative Fair Housing Marketing Reinvention Lab Project NOFA will instead be made available to fund additional eligible Education and Outreach Initiative applicants under the FY 1993 FHIP NOFA, and to complete the funding of grantees under that NOFA who were only partially funded. As a result, the amount now available under the Education and Outreach Initiative in the FY 1994 FHIP NOFA is $2 million.

The Department retains the right to shift funds between FHIP Initiative within statutorily prescribed limitations. The amounts included in this Notice are subject to change based on fund availability.

Dated: July 27, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–19316 Filed 8–8–94; 8:45 am]

BILLING CODE 4210–28–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3749; FR–3660–N–03]

Limited Extension for Public and Indian Housing Youth Sports Program FY 1994 Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice of Limited Extension of Time for Submission of Applications.

SUMMARY: This Notice announces an extension of the application deadline for the Public and Indian Housing Youth Sports Program grant (YSP) for those Indian Housing Authority (IHA) applicants whose applications were submitted late to the Denver Office of Native American Programs (DONAP) as a result of conflicting instructions issued by that office.

DATES: For affected applicants, the deadline date is being extended to July 29, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Department of Housing

and Urban Development, Office of Native American Programs, B–133, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–0088. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: On Wednesday, May 11, 1994, HUD published a Notice of Funding Availability (NOFA) for the Public and Indian Housing Youth Sports Program (59 FR 24548). In this NOFA, HUD established an application deadline of June 20, 1994, at 4:30 p.m. local time, at the local HUD field office or, in the case of IHAs, in the local HUD Office of Native American Programs, with jurisdiction over the PHA or IHA. On Monday, June 20, 1994, HUD published a Notice of Extension for the Public and Indian Housing Youth Sports Program (59 FR 31646). The purpose of this Notice was to extend the time for submission of applications until July 20, 1994.

Because conflicting information given to potential IHA applicants by the DONAP concerning the deadline for receipt of applications (July 29, 1994, instead of July 20, 1994), HUD is extending the application deadline only for those IHA applicants who were given the incorrect deadline information and whose applications arrived by July 29, 1994. For those applicants who qualify (IHAs informed by the DONAP that the application deadline was July 29, 1994), the application deadline is extended until Friday, July 29, 1994, 4:20 p.m., local time, at the DONAP.

Dated: August 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–19314 Filed 8–8–94; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and the Office of Management and Budget, Washington, DC 20503, telephone 202–395–7340.

Title: Indian School Equalization Program.

Abstract: Student transportation funds are distributed on a formula basis to all Bureau-funded schools. Vehicle miles, transportation tickets and charter costs are used to calculate the distribution of funds. About 49.5% of the Bureau-funded schools are operated through contract or grants with Indian tribes, and are required to submit this data to receive funding.

Frequency: Annually.

Description of Respondents: Principals, School Administrators.

Estimated completion time: 1.5 hour per collection.

Annual Response: 94.

Annual Burden Hours: 141 Hours.

Bureau Clearance Officer: Gail Sheridan 202–208–2685.

James Martin,

Acting Director—OIEP.

[FR Doc. 94–19365 Filed 8–8–94; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NM–010–4210–06; NMNM 91323]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 4,409.18 acres of public land in Taos and Rio Arriba Counties to protect the recreational, visual, fish, and wildlife resources of the Rio Grande within the Racecourse and Agua Caliente Areas of Critical Environmental Concern. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 7, 1994.

ADDRESSES: Comments and requests for a public meeting should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Chet Grandjean, BLM Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On April 4, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 23, N., R. 10 E.,
- Sec. 1, lots 1 and 2, S½NE¼, and N½SE¼;
- Sec. 11, lots 5 and 6, and SW¼SW¼;
- Sec. 12, lots 8 to 15, inclusive, SE¼NE¼, N½NW¼, S½SW¼, N½SE¼, and SW¼SE¼;
- Sec. 13, NW¼NW¼;
- Sec. 14, lots 1 to 3, inclusive, NE¼NE¼, SW¼NE¼, SE¼NW¼, N½SW¼, and SW¼SW¼;
- Sec. 15, lots 1, 2, 3, and 5, NW¼NE¼, NE¼SE¼, and S½SE¼.

T. 23, N., R. 11 E.,
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 1 to 4, inclusive, and S½N½;
- Sec. 5, lots 1 to 4, inclusive, and S½N½;
- Sec. 6, lots 1 to 11, inclusive, SE¼NE¼, SE¼SW¼, N½SE¼, and SW¼SE¼;
- Sec. 7, N½NW¼ and SW¼NW¼.

T. 24, N., R. 11 E.,
- Sec. 31, S½;
- Sec. 32, NW¼SW¼ and SE¼SE¼;
- Sec. 33, lots 5 to 7, inclusive, S½SW¼, NE¼SE¼, amd S½SE¼;
- Sec. 34, SW¼.

The area described contains approximately 4,409.18 acres in Taos and Rio Arriba Counties.

The purpose of the proposed withdrawal is to protect the recreational, visual, fish, and wildlife resources of the Rio Grande within the Racecourse and Agua Caliente Areas of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during the segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: August 2, 1994.

Steve Henke,

Acting Associate District Manager.

[FR Doc. 94-19304 Filed 8-8-94; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

All-American Canal Lining Project, Imperial County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: The purpose of this action is to provide notice of the availability of the Record of Decision regarding implementation of the All-American Canal Lining Project (Project) located in Imperial County, California. The Project was authorized by Congress in Title II of Pub. L. 100-675, which provides for non-Federal funding of the Project along part of the existing unlined All-American Canal which is under Federal ownership.

ADDRESSES: Interested parties should request copies of the Record of Decision from William E. Rinne, Regional Environmental Officer, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470.

FOR FURTHER INFORMATION CONTACT: John Redlinger at 702-293-8592.

SUPPLEMENTARY INFORMATION: Four action alternatives were developed in compliance with the National Environmental Policy Act (NEPA), and documented in the final Environmental Impact Statement/Environmental Impact Report (EIS/EIR), All-American Canal Lining Project, Imperial County, California, March 1994 (FEIS Number INT-94-9), which was filed with the Environmental Protection Agency on April 14, 1994, and noticed in the Federal Register 59 FR 18573, Apr. 19, 1994.

The four action alternatives, which include mitigation measures to compensate for potential impacts on fish and wildlife habitat and the No Action Alternative were evaluated in the April 1994, EIS/EIR. The alternatives include:

1. The Parallel Canal Alternative which consists of constructing a new concrete-lined canal parallel to 23 miles of the earthen All-American Canal, beginning approximately 1.6 miles downstream of Pilot Knob and ending at Drop 3. The Parallel Canal Alternative is cited as the preferred alternative in the final EIS/EIR.

2. The Drop 3 Alternative which consists of constructing an in-place underwater lining from Pilot Knob to Drop 3.

3. The Drop 4 Alternative which consists of constructing an in-place underwater lining from Pilot Knob to Drop 4.

4. The Well Field Alternative which consists of drilling wells and pumping water back into the existing canal between Pilot Knob and Drop 2. The Well Field Alternative is the environmentally preferred alternative.

5. The No Action Alternative which consists of allowing the canal to remain unlined and the current seepage loss to continue.

The Parallel Canal Alternative was selected from among the canal lining alternatives because it had the lowest construction cost estimate, used a well established construction method, and would have the shortest construction period. This alternative avoids disturbance of the 1,430 acre wetland complex between Drop 3 and Drop 4, and disturbance of cultural resources in the Pilot Knob Area of Critical Environmental Concern. While construction of a parallel canal could potentially cause significant impacts to the environment, measures that avoid, minimize, or compensate for such environmental impacts, are included with this alternative, as described in the EIS/EIR.

The decision is to construct the parallel canal, with associated mitigation measures. All environmental issues identified in the EIS/EIR have been addressed.

Execution of the Record of Decision completed the NEPA process. The final EIS/EIR was prepared in response to the environmental disclosure regulations of the Federal Government and the State of California.

Dated: August 3, 1994.

Lawrence F. Hancock,

Regional Director, Lower Colorado Region.

[FR Doc. 94-19350 Filed 8-8-94; 8:45 am]

BILLING CODE 4310-94-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 164X)]

Southern Pacific Transportation Company—Abandonment Exemption—in Bee and San Patricio Counties, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Southern Pacific Transportation Company of the southern segment of its Rockport Branch line in Bee and San Patricio Counties, TX. The 29.0-mile line is located between milepost 91.8, near Beeville, in Bee County, and milepost 120.8, near Sinton, in San Patricio County, TX. The exemption is subject to endangered species, public use, and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 8, 1994. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 19, 1994, petitions to stay must be filed by August 24, 1994, and petitions for reconsideration must be filed September 6, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB-12 (Sub-No. 164X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927-5610. [TDD for the hearing impaired (202) 927-5721.]

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 service (202) 927-5721].

Decided: August 2, 1994.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

By the Commission, Chairman McDonald. Vice Chairman Phillips, Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–19380 Filed 8–8–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the Agency's final decision on the Canadian Standards Association's application for its Pointe-Claire (Montreal), Richmond (Vancouver), Edmonton, Moncton, and Winnipeg facilities for inclusion in the previous recognition of its Rexdale facility as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Canadian Standards Association (CSA), which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or material listed below.

The addresses of the laboratories covered by this recognition are:

Canadian Standards Association, Pointe-Claire (Montreal) Facility, 865 Ellingham Street, Pointe-Claire (Montreal), Quebec H9R 5E8, Canada

Canadian Standards Association, Richmond (Vancouver) Facility, 13799 Commerce Parkway, Richmond (Vancouver), British Columbia V6V 2N9, Canada

Canadian Standards Association, Edmonton Facility, 1707–94th Street, Edmonton, Alberta T6N 1E6, Canada

Canadian Standards Association, Moncton Facility, 40 Rooney Cresent, Moncton, New Burnswick E1E 4M3, Canada

Canadian Standards Association, Winnipeg Facility, 50 Paramount Road, Winnipeg, Manitoba R2X 2W3, Canada.

Background

The Canadian Standards Association is an independent organization providing integrated services in the fields of standards development and conformity assessment. The Certification and Testing Division provides conformity assessment programs including laboratory testing, certification, inspection and quality management services.

CSA originated in 1919 as the Canadian Engineering Standards Association (CESA), which was changed in 1944 to the present name. In 1940, CSA began to test and certify products.

CSA's initial application, dated April 20, 1989 (Ex. 2A), was amended by letter dated January 16, 1990 (Ex. 2C) to expand the original request for NRTL recognition to test and certify products from only two standards to more than 360 acceptable test standards. By letter dated December 20, 1991 (Ex. 2M), CSA further amended its application for recognition as follows:

1. The scope of this application relating to certification services is to be limited to in-house testing, and
2. (a) The initial phase of the recognition is to be limited to the Rexdale (Toronto) facility.

(b) In parallel with the above, proceed with the assessments of the remaining CSA facilities.

An on-site evaluation of the Rexdale facility was conducted from November 4 through November 8, 1991, and the results discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey.

A notice of CSA's application together with a positive preliminary finding was published in the **Federal Register** on June 3, 1992 (57 23429–23434), (Ex. 1).

The notice of CSA's recognition of its Rexdale facility as a nationally recognized testing laboratory was published in the **Federal Register** on December 24, 1992 (57 FR 61452–61460), (Ex. 6). This recognition was expanded on February 4, 1994 (59 FR 5447).

On-site evaluations were carried out at the Pointe Claire (Montreal) facility on December 14 and 15, 1992, and at the Richmond (Vancouver) facility on December 16 and 17, 1992. Evaluations of the Moncton, Winnipeg, and Edmonton facilities were based upon response to a questionnaire sent to each facility, supportive documentation, and video tapes of each site depicting the facility, test equipment, typical procedures, files, and staff.

The final review report and evaluations (Ex. 11) consisting of both on-site and other evaluations of the five facilities listed above, including administrative and technical practices, and the OSHA staff recommendations, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of CSA's application together with a positive preliminary finding were published in the **Federal Register** on March 3, 1994 (59 FR 10173–10180). Interested parties were invited to submit comments.

There were no responses to the **Federal Register** notice of the CSA application and preliminary finding (Docket No. NRTL–2–92).

Canadian Standards Association Overview

The Canadian Standards Association is an organization that has six main test facilities located in Canada. In addition, CSA either maintains test facilities overseas or enters into contract arrangements with foreign laboratories and inspection organizations. CSA is a standards producing organization that is actively working towards harmonizing the Canadian and United States Standards.

Organizational Structure

Facilities

The Rexdale facility houses the headquarters of the Central Operations. The Rexdale Facility contains the corporate headquarters, a Standards Division, Finance and Administration Division, and a Certification and Testing Division. The laboratory, established in 1919, has been at this location since 1954. The Central Operations includes the Prairie Region (Winnipeg) and the Central Region (Rexdale). In addition, the explosion testing laboratory in Ottawa, under the Canadian Department of Energy, Mines and Resources, where CSA performs explosion testing, is monitored out of the Central Region.

The Montreal (Pointe-Claire) facility houses the headquarters of the Eastern Operations. The Eastern Operations includes the following regional operations: Eastern Region (Pointe-Claire), Atlantic Region (Moncton), and European Area (Brussels). The Eastern Region and Atlantic Region maintain testing and inspection facilities for Eastern North America. The European Area maintains a facility in Brussels and includes Europe, Africa and the Middle East, and is not covered by this recognition. Testing in the European

Area is contracted to acceptable laboratories in the European community. Certification of products, review of the follow-up, and review of the test results are accomplished by the CSA Brussels Office.

The Vancouver (Richmond) facility houses the headquarters of the Pacific Rim Operations. The Pacific Rim Operations include the following regional operations: the Pacific Region (Richmond), Western Region (Edmonton), Japan Operations (Tokyo) and the Hong Kong Operations. The Pacific Region and Western Region maintain testing and inspection facilities for Western North America. The Japan and Hong Kong Operations include CSA testing facilities in Japan, Hong Kong, Korea, Taiwan, and either CSA or contracted inspection facilities throughout the Pacific Rim countries, and are not covered by this recognition.

Quality Assurance

The Certification and Testing Division's Engineering and Quality Assurance (EQA) Office reports to the Vice President in charge of the Certification and Testing Division. The Eastern Operations, Central Operations, and the Pacific Operations each has a Quality Assurance Office, and all of the nine Regional (Area) Offices also have Quality Assurance Offices. The Regional Quality Assurance Offices have a reporting relationship with the respective Operations Quality Assurance Office, and with the EQA.

Each Regional Quality Assurance Office is responsible for the quality assurance at its respective facility. Each Operations Quality Assurance Office is responsible for the respective quality assurance at its operation and all the regions within its operation. The EQA is responsible for the Certification and Testing Division Quality Assurance, including all of the operations and regions.

Document Structure

The Certification & Testing Division's (C&T) Divisional Director of Engineering and Quality Assurance (EQA) establishes the quality assurance philosophy for the three Operations: the Eastern, Central, and Pacific Rim. EQA uses Divisional Quality Documents (DQD) to establish Quality Assurance Procedures; Certification and Testing Division Operating Procedures (CDOP) and Test Packs to provide evaluation procedures for products submitted for testing; Technical Information Letters (TIL) to document technical interpretations of standards; and Engineering Policy Supplements (EPS) to provide policies.

Audit Structure

The CSA audit structure is multilevel. EQA audits the regions, the Operations Quality Assurance Office audits the regions, and each Regional Quality Assurance Office performs self audits. In addition, such outside agencies as the Standards Council of Canada (SCC) perform yearly audits which involve EQA representation during the audit. Thus, the Edmonton and Moncton regions were subjected to at least five audits since July of 1991, and the Winnipeg region to at least four audits. In addition, specific technical audits of each region are performed by the senior technical engineer from the operations office.

Requirements of 29 CFR 1910.7

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

Based upon the on-site review reports and evaluations and the products and standards in question, CSA's facilities have adequate floor space for testing and evaluation and an adequate number of technical and professional personnel to accomplish the services required for the present workload in the areas of recognition CSA seeks.

CSA submitted personal resumes and position descriptions for the key C&T Division personnel, which include general accountability, reporting relationships, specific accountabilities, dimensions, and nature and scope. All personnel appear to be suitably educated and trained to carry out their assigned duties.

Test equipment is available to perform testing in accordance with the standards. Test equipment not available is purchased as required.

An inventory list identifies the various pieces of equipment by inventory number, instrument name, model and serial number, location in laboratory, range, accuracy, and manufacturer. The calibration lab maintains a separate equipment inventory list. Operational status and calibration information is maintained on instrument history files in the calibration laboratory.

Manufacturer's instructions on use and maintenance of test equipment are on file in the calibration laboratory. Instruction manuals are available at the appropriate work stations. Test equipment subjected to overloading or mishandling, or giving suspect results, is returned to the calibration laboratory. Defective equipment is retained in the instrumentation repair department. After repairs are completed, the instruments are re-calibrated before release. Tests that have been performed with defective equipment are reevaluated.

The manager of service quality has responsibility for the operation of the metrology laboratory which includes three full time calibration technologists who report, in turn, to a team coordinator.

All electrical measuring instrumentation is calibrated once per year at a minimum. Where equipment manufacturer recommended calibration intervals are exceeded, the instrument history records are used to determine any necessary reduced calibration intervals. New and repaired test equipment is calibrated prior to use. Power supplies, although not accurately calibrated, have their output set using calibrated equipment. Dated calibration labels are affixed to the instruments to indicate the calibration status.

Calibration and repair records are maintained on the metrology laboratory computer database. The data is maintained for the life of the equipment. The metrology laboratory computer database generates monthly recall lists on instruments due for calibration the following month. The team coordinators and quality assurance representatives ensure that the instruments are returned for calibration.

Calibration standards are traceable to the National Research Council of Canada (NRCC) or to the National Institute of Standards and Technology (NIST).

Published standards, test procedures, the quality assurance manual, divisional quality documents, and divisional operating procedures all contain construction or testing parameters to be met by the product being evaluated. These documents specify, as required, chronological order of evaluation. Experienced and trained personnel are responsible for conducting various stages of the investigation. The testing personnel are generally technical college graduates.

At the time of the on-site evaluation, not all requests for testing were documented. A directive has been issued requiring the documentation in the job files of all requests for tests or evaluations that are received from customers.

The engineering and quality assurance group develops, reviews and

maintains the divisional quality documents (procedures). Procedures are reviewed once per year. Senior staff, audits and investigations staff, and engineering and quality assurance representatives are responsible for determining if procedures are followed. Work orders are prepared for the testing staff which specify the standards and clause numbers to be followed.

A letter is sent to the clients describing the construction or test deficiencies encountered during the course of the evaluation. No approval is granted until all deficiencies have been resolved.

The shipping/receiving department applies identification labels directly on the test samples to enable identification after they have been removed from shipping cartons. Technicians apply further identification tags, labels or direct markings to differentiate between similar samples or sets of samples.

Technical policy decisions regarding standards interpretations and deviations are developed by a consensus of technical experts. The laboratory distributes technical letters describing standards policy decisions. The engineering and quality assurance group is responsible for the development and issuance of technical policy decisions.

The tests procedures contain the following: Instructions on equipment; preparation of test samples; standard testing techniques; references to specific standards including titles and dates; testing equipment and accuracies; precautionary statements for operator safety; test data to be obtained, measurement resolution and data recording time; ambient conditions and adverse environmental conditions; and acceptance criteria during tests.

Test procedures are reviewed and approved by the engineering and quality assurance group. The procedures are reviewed once per year.

Test data sheets and attached work order contain the following: standard and clause numbers; product model number; measuring and test instruments; test date and file number, signature of tester and reviewer; ambient conditions; test observations and deviation; test data in the form of compliance, non-compliance, or the need for further review. An Engineering Policy has been issued that requires the documentation of the rationale for the waiving of any tests specified in the applicable standard.

The Certification and Testing Division maintains a quality assurance (QA) system for CSA's world-wide network. The QA Program of the Testing Laboratory is registered by Quality Management Institute (QMI) to ISO 9003 and Z299.3. The Corporate Engineering and Quality Assurance (EQA) Group has the responsibility and authority for overseeing all activities related to the Quality Program. The object of the QA system is to ensure technical excellence, consistency of interpretation and application of standards, consistency of implementation of certification programs and procedures, the integrity of the CSA Mark, and continuous improvement. In addition, the QA System is designed to meet National and International Accreditation Criteria, and OSHA has determined that it meets its criteria. The QA System is documented as follows:

—"Quality Assurance Policy Manual" (QAPM). It contains the quality policies for the Certification and Testing Division and establishes the responsibilities for implementation of these policies.

—"Quality Assurance Manual" (QAM). These manuals describe in detail the system and procedures outlined in the QAPM. They are issued by each Operation Unit after approval by EQA.

—"Divisional Quality Documents" (DQDs). They are issued and controlled by Engineering and Quality Assurance (EQA) and consist of additional operating procedures and guidelines to be used by operations staff.

OSHA is satisfied that the conditions noted above meet the requirements.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

The Canadian Standards Association maintains effective procedures for producing creditable findings or reports that are objective and without bias as demonstrated by its application as well as the on-site review report.

CSA has in force an appeals procedure, designed primarily for their clients, which consists of a comprehensive system for handling complaints and ultimately providing an unbiased review of any controversial matter. All complaints and disputes are resolved, whenever possible, by those directly involved with the work contested or at the level of authority appropriate for the nature of the complaint/dispute. If the issue cannot be resolved, there are specific steps, including appeals, which may be followed.

There is also a system in effect enabling any interested party to file complaints concerning certification related matters, manufacturing related matters, or test standards discrepancies. Upon receipt of a complaint from a concerned party, the appropriate CSA section would take the matter under advisement to determine what corrective action should be taken. All complaints are investigated to determine if and what corrective action may be necessary.

CSA routinely investigates incidents involving CSA marked products. This is done with the help of regulatory and law enforcement authorities, consumers and manufacturers. The investigations are performed by the Special Support Services group. Their mandate is to protect the integrity of the Registered CSA Mark. The Special Support Services group investigates fires, examines products, does research, conducts fact finding studies, analyzes failures and trends and, when required, presents evidence in court.

Permanent records are compiled to document all technical and quality related activities of the Certification and Testing Division. The system for controlling all technical and quality records is described in the Quality Assurance Manuals for each CSA Office.

The certification reports contain the following: name and location of submitter and factory; title, number, and date of standard used for evaluation; file number, report date, edition number and revision date; description of product including drawings, specifications, and photographs; conditions of product use; construction and testing narratives which describe how the product(s) comply with the standard; tests and results of tests; deviations and technical rationale for acceptance.

The jobholder, or certification engineer, is responsible for the preparation and review of the final report. The test report is written by the technician. The senior technician also is responsible for reviewing and signing the test report before it is reviewed by the certification engineer. Certification reports are revised with replacement pages. A new report is prepared if extensive changes are required. Copies of the certification report are given to the customer, jurisdictional authorities, where required, and are placed in follow-up inspection files and main certification files.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. CSA has applied for recognition in the first category. The test standards included in this recognition are the same as those covered in the Rexdale (Toronto) recognition. They were found to be appropriate test standards during that recognition.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

The applicant provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production run of such items at factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. A submitter must enter into a written contract (service agreement) with CSA to permit the use of the CSA Mark on the product. This agreement clearly specified the submitter's responsibilities and the terms and conditions for maintaining certification, such as the right of access by CSA inspection staff to listed factories, and notifying CSA when changes are made to certified products. These terms and conditions are designed to protect the integrity of the CSA Mark, which is also registered as a certification mark with the U.S. Patent Office.

CSA established a comprehensive field service program to ensure that manufactured products bearing any CSA Mark continue to meet the applicable requirements. The program consists of three elements:

Follow-up Inspections;
Re-examination Testing; and
Field Monitoring.

Follow-up inspections are conducted at the point of manufacturing and labeling to ensure, among other things, that:

—the CSA Mark is applied only to certified products;
—that the terms of the Agreement are met when the CSA Mark is used;
—defects noted during previous inspections have been corrected;
—the manufacturer is aware of any new services and requirements;

The inspections are unannounced and are based on performing a minimum of four inspections per factory per year. The frequency varies with production volumes, the types of product and the manufacturer's track record.

When products fail to meet the requirements, Field Service Representatives take action to have the manufacturer correct the defect immediately, quarantine the stock until the product can be reworked or re-evaluated by certification staff, and remove the CSA Mark from the product.

In cases where it is difficult to determine if a product or component complies with the requirements strictly by visual examination, such products are reexamined and tested on a yearly basis.

CSA has an independent, special investigation unit, the Audits and Investigations Group, to monitor products in the field, investigate field complaints, and provide feedback to the standards writing and certification process.

Independence

Section 1910.7(b)(3) requires that an NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendors of equipment or materials being tested. The applicant stated in its application that it is in complete compliance with this requirement.

The applicant has demonstrated that it is an independent, not-for-profit membership association, without share capital, incorporated under the laws of Canada in 1919, engaged in developing national standards and providing a certification service for manufacturers wishing to have their products certified as complying with national standards or standards of foreign countries. The applicant further demonstrated that the organization has no affiliation with manufacturers or suppliers of the products submitted for testing and certification. Several documents were submitted as a part of the CSA application to address the issue of independence.

Test Standards

Section 1910.7 requires that an NRTL use "appropriate test standards", which are defined, in part, to include any standard that is currently designated as an ANSI safety designated product standard. As to the non-ANSI UL test standards for which CSA has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). (See 54 FR 25643, 25645 (6/16/89), "Dash, Straus and Goodhue, Inc.; Recognition as a Nationally Recognized Testing Laboratory". That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

The laboratory subscribes to the ANSI/UL standards updating service. Standards and revisions are distributed to appropriate laboratory personnel. Revised or superseded standards are archived.

All other aspects of the testing and certification process, including test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, and details concerning personnel, are addressed in the On-Site Review Report (Survey), Ex. 10A(2), as follows, and are found to be acceptable:

Ponte-Claire (Montreal) Facility—Exhibit 10A(2)(A);
Richmond (Vancouver) Facility—Exhibit 10A(2)(B);
Moncton Facility—Exhibit 10A(2)(C);
Winnipeg Facility—Exhibit 10A(2)(D);
Edmonton Facility—Exhibit 10A(2)(E).

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site report and evaluations, and public comments, OSHA finds that the Canadian Standards Association, the Pointe-Claire (Montreal), the Richmond

(Vancouver), the Edmonton, the Moncton, and the Winnipeg facilities, have met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the Canadian Standards Association, the Pointe-Claire (Montreal) Facility, the Richmond (Vancouver) Facility, the Edmonton Facility, the Moncton Facility, and the Winnipeg Facility are hereby recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

CSA has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI Z21.1—Household Cooking Gas Appliances
ANSI Z21.5—Gas Clothes Dryers
ANSI Z21.10—Gas Water Heaters
ANSI Z21.11—Gas-Fired Room Heaters
ANSI Z21.12—Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas appliance Pressure Regulators
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.47—Gas-Fired Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI/ASME B17.5—Elevators and Escalator Electrical Equipment
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 20—General-Use Snap Switches
ANSI/UL—Electric Amusement Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Electrical Cabinets and Boxes
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices
ANSI/UL 114—Electric Office Appliances and Business Equipment
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating pads
ANSI/UL 133—Wires and Cables With Varnished Cloth Insulation
UL 141—Garment Finishing Appliances
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 198M—Mine-Duty Fuses
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 231-Electric Power Outlets
ANSI/UL 224A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
ANSI/UL—Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
ANSI/UL 399—Drinking-Water Coolers
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 478—Information-Processing and Business Equipment
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures

ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fir Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Speciality Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electric Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedence-Protected Motors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Motor-Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphis Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Groups C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electric Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
ANSI/UL 863—Electric Time-Indicating and Recording Appliances
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
UL 896—Oil-Burning Stoves
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorscent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heated Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetric Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use In Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements

ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
UL 1059—Terminal Blocks
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
UL 1092—Process Control Equipment
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
UL 1323—Scaffold Hoists
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio- and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1419—Professional Video and Audio Equipment
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
UL 1492—Audio and Video Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and Class II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1676—Discharge Path Resistors
UL 1681—Wiring Device Configurations
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
ANSI/UL 1773—Termination Boxes
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1963—Refrigerant Recovery/Recycling Equipment
UL 1995—Heating and Cooling Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment.

The Canadian Standards Association must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition applies to the Canadian Standards Association facilities in Canada only. Specifically, CSA's facilities in Pointe-Claire (Montreal) Richmond (Vancouver), Edmonton, Moncton, and Winnipeg;

Products tested or evaluated at other CSA facilities (or independent facilities that may be used by CSA for the purpose of testing equipment) must be re-evaluated by a CSA facility recognized as an NTRL by OSHA (i.e., the recognized CSA facilities will critically review the complete test data package, ensure the data was collected by qualified and independent sources,

and physically evaluate the product's components and construction;

This recognition also does not apply to any aspect of any Canadian Standards Association program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to CSA's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA shall not engage in or permit others to engage in any misrepresentation of the scope of conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

CSA will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSA will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date

This recognition will become effective on August 9, 1994 and will be valid for a period of five years from the date of the recognition of the Rexdale (Toronto) facility, that is, until December 24, 1997, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94-19387 Filed 8-8-94; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-9679 and D-9680]

Proposed Exemptions; Lake Dallas Telephone Company, Inc. Defined Benefit Pension Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Lake Dallas Telephone Company, Inc. Defined Benefit Pension Plan (Pension Plan) and Lake Dallas Telephone Company, Inc. 401(k) Profit Sharing Plan (P/S Plan; Collectively, the Plans) Located in Lake Dallas, Texas

[Application Nos. D-9679 and D-9680]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale from the Plans of two interests (the Interests) in a certain partnership to Lake Cities Land and Development, Inc. (Lake Cities), an affiliate of the Plans' sponsor and a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(1) the sale will be a one-time cash transaction;

(2) no commissions or fees will be paid by the Plans as a result of the sale; and

(3) the sale price will be the higher of: a) the aggregate fair market value of the Interests on the date of the sale; or b) the aggregate investment cost of the Interests to the Plans of $129,146.64.

Summary of Facts and Representations

1. The Plans were established January 1, 1985. The Pension Plan is a defined benefit plan, and the P/S Plan is a profit sharing plan. The Plans have approximately 30 participants which participate in both Plans. As of December 31, 1993, the Pension Plan had $433,943.19 in total assets, and the P/S Plan had $1,708,137.83 in total assets. Lake Dallas Telephone Company, Inc. is the sponsor of the Plans (the Employer). The Employer is a regulated telephone company with $19.5 million in assets incorporated in the State of Texas, and it provides telephone service to approximately 4,900 subscribers in Denton County, Texas. The Employer is a wholly-owned subsidiary of Tele-Max, Inc. Lake Cities is an affiliate of the Employer. The Plans' trustees are Kitna R. Griggs, President of the Employer, Greg A. Gross, Executive Vice President of the Employer, and Helen Hutto, Director of Administration of the Employer (the Trustees).

2. In April and May of 1986, respectively, the Pension Plan purchased a 4.76% interest (P/P Interest) for $24,500 in cash; and the P/S Plan purchased a 20.48% interest for $105,350 in cash (P/S Interest, collectively; the Interests) in CFNVEST Southlake Joint Venture (the Partnership). The Interests are minority interests and are not publicly traded. The Plans' Trustees made the decision for the Plans to invest in the Partnership. At the time of acquisition, the P/P Interest represented approximately 56% of the Pension Plan's assets and the P/S Interest represented approximately 39% of the P/S Plan's assets.[1]

3. The Partnership is a general partnership joint venture created in 1986 for the exclusive purpose of purchasing a 3.75 acre tract of undeveloped land in Southlake, Texas (the Land) and holding it as investment. It is represented that the Land is the only asset owned by the Partnership, which holds no investments and conducts no business other than holding and managing the Land. The Partnership was designed primarily for investment by tax exempt entities such as employee retirement plans, although ownership of Partnership interests is not limited to such entities. The Partnership currently consists of eighteen partners, fourteen of which are employee retirement plans. The assets of the Partnership are managed by Robert Cecil, the general partner and consultant to the Partnership. The Partnership is an unrelated party to the Plan, the Employer, the holding company and affiliates of the Employer. At the time the Partnership was formed, the city of Southlake, Texas was expected to expand rapidly. However, it is represented that the real estate market has not proven to be as profitable as originally projected.

4. It is represented that because there is not an established market for the Interests and because the Land is the only asset owned by the Partnership, the Interests are valued according to the proportionate value of the underlying Land. In this regard, the applicant submitted an affidavit dated April 6, 1994, prepared by Mr. Cecil (the Affidavit). In the Affidavit, Mr. Cecil stated that he is independent of the Plans, the Employer and Lake Cities, the proposed purchaser of the Interests. Mr. Cecil represented that when considering the book value of the Partnership, its financial condition, lack of earning capacity, the potential return on the investment, as well as the history and nature of the Partnership and the lack of a market or comparable sales for the Interests, it was his opinion that the Interests have no value in and of themselves. Rather, the only value to be attributed to the Interests is the proportionate underlying value of the Land. Each Plan's pro rata ownership Interest in the Land represents the maximum fair market value of that Interest, before any discounts for minority interests and lack of marketability.

5. The Land was appraised (the Appraisal) on June 29, 1993, by Jeffrey A. Walburn (Mr. Walburn), an independent certified real estate appraiser in the State of Texas. The Land, which is located in the City of Southlake, Tarrant County, Texas, is vacant and contains 3.75 acres. Mr. Walburn determined that the fair market value of the Land was $450,000 as of June 29, 1993. Accordingly, the maximum fair market value of the P/P Interest was $21,420 and the fair market value of the P/S Interest was $92,160, for an aggregate fair market value of $113,580. As such, as of December 31, 1993 the P/P Interest represents 4.94% of the Pension Plan's total assets, and P/S Interest represents 5.4% of the P/S Plan's total assets.

6. Currently, the Plans are receiving no income from their investment. To date, the P/S Plan and the Pension Plan have received distributions of $3,845.37 and $894.28, respectively, from their investment.[2] Since the original acquisition of the Interests, certain additional capital contributions and holding costs have been paid to the Partnership by the Plans in the aggregate amount of $4,036.29 (the Holding Costs), with the P/S Plan and the Pension Plan paying $3,394.76 and $641.53, respectively.

7. The Trustees have made several unsuccessful attempts to sell the Interests to the other members of the Partnership. In this regard, the Partnership also has attempted to sell the Land, and a "for sale" sign has been posted on the Land for approximately two years. In this regard, the applicant represents that in rural areas it is the custom to sell undeveloped lots by posting signs on the property rather than hiring a real estate broker. The Trustees believe that their inability to sell the Interests is primarily due to the fact that the Interests are minority interests and also due to a decline in the real estate market. It is represented that there is no established market for the Interests. Moreover, because the Plans hold minority Interests, they cannot force a sale of the Land.

8. On April 1, 1993, the Employer amended the P/S Plan in order to provide participant directed investments pursuant to section 404(c) of the Act and the regulations thereunder. The P/S Plan participants will be able to invest in mutual funds provided by PaineWebber Trust Company (Paine Webber). Paine Webber will provide third party administration and record keeping required to administer the P/S Plan. The applicant represents that because Paine Webber mutual funds are unable to accept in-kind transfers of the P/S Plan's assets, all P/S Plan assets must be liquidated before they can be invested in the mutual fund options and subject to participant direction. Until that time, the P/S Plan must incur the added administrative expense of separately trusteeing and accounting for the P/S Interest.

[1] The Department notes that the decisions to acquire and hold the Interests are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Interests by the Plans.

[2] Proceeds were paid by the State of Texas to the Partnership as payment for a right of way on the Land. The Partnership in turn distributed the payments to each partner on a proportionate basis.

9. For these reasons, the applicant proposes to sell the Interests to Lake Cities, a wholly owned subsidiary of Tele-Max, Inc., and therefore an affiliate of the Employer. Lake Cities desires to purchase the Interests in a one-time cash transaction. The purchase price will be the greater of: a) the aggregate fair market value of the Interests on the date of the sale; [3] or b) the aggregate investment cost (the Aggregate Investment Cost) of the Interests to the Plans of $129,146.64.[4] It is also represented that neither Lake Cities, nor any of its affiliates own property adjacent to or near the Partnership Land. Furthermore, no individual owner of the Employer (or any parent or subsidiary) own any interests in the Partnership, interest in the underlying Land, or interest in any real property adjacent to or near the Partnership Land.

10. It is represented that the proposed transaction is administratively feasible, in the interest and protection of the Plans' participants and beneficiaries. The sale would be a one-time cash transaction and the Plans would incur no expenses or commissions with respect to the sale. The proposed transaction would enable the Plans to liquidate its assets and would facilitate restructuring of the P/S Plan. The proposed sale is protective of the Plans because Lake Cities will purchase the Interests from the Plans for the greater of: a) the aggregate fair market value of the Interests on the date of the sale; or b) the Aggregate Investment Cost of the Interests to the Plans of $129,146.64. Also, the Plans will be relieved of any liability with respect to the Partnership. Furthermore, the applicant represents that any amounts received by the Plans as a result of the proposed transaction, which are in excess of the fair market value of the Interests, will be treated as contributions to the Plans, but that these contributions will not exceed limitations of section 415 of the Internal Revenue Code.

11. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) the sale will be a one-time cash transaction;

(2) no commissions or fees will be paid by the Plans as a result of the sale;

(3) the sale will enable the Plans to liquidate its assets and will facilitate restructuring of the P/S Plan;

(4) the sale will allow the Plans to divest of non-income producing Interests that have depreciated in value; and

(5) the sale price will be the higher of: a) the aggregate fair market value of the Interests on the date of the sale; or b) the aggregate investment cost of the Interests to the Plans of $129,146.64.

Tax Consequences of Transaction

The Department of Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or an affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Prudential Insurance Company of America Located in New Jersey

[Application No. D–9692]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, effective December 31, 1991, the restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transfer by the Prudential Insurance Company of America (Prudential) of certain assets from its general account (the General Account) into a separate account (the Separate Account), established and managed by Prudential, in connection with the conversion of one of Prudential's non-participating group annuity contracts (the Non-Participating Annuity Contract) to a participating group annuity contract (the Participating Annuity Contract), issued by Prudential to the Retirement Program Plan for Employees of Union Carbide Corporation and its subsidiary companies (the Plan) and funded through the assets transferred to the Separate Account; provided that the following conditions are met: (a) Prudential transferred to the Separate Account sufficient assets to create a reserve the value of which equaled or exceeded 103% of the value of the Participating Annuity Contract liabilities, as of December 31, 1991; (b) an independent qualified appraiser determined the fair market value of the assets transferred into the Separate Account, as of the date of such transfer; (c) Prudential irrevocably guarantees the payment of benefits under the Participating Annuity Contract to the former participants of the Plan who retired prior to December 31, 1985, (the Retirees); (d) no additional contribution from the Union Carbide Corporation (Union Carbide) or its subsidiary companies or the Plan was or will be required to fund benefits to the Retirees or to any other participants and beneficiaries of the Plan; (e) prior to the transfer of assets between the General Account and the Separate Account, Union Carbide, acting as fiduciary on behalf of the Plan, determined that the transaction was feasible, in the interest of, and protective of the Plan and its participants and beneficiaries and would not affect the payment of benefits to the Retirees; (f) Union Carbide determined that the terms and conditions of the transaction were at least as favorable as those negotiated at arm's length in similar transactions with unrelated third parties; (g) prior to the conversion, Union Carbide negotiated, reviewed, and approved the transaction, and will monitor the transaction; (h) Union Carbide reviewed the appraisal and approved the transfer of each of the assets into the Separate Account prior to the date the transaction was entered; and (i) the Plan incurred no fees, commissions, costs, expenses, or other charges associated with the transaction and will pay no addition compensation as a result of the conversion of the Non-Participating Annuity Contract to the Participating Annuity Contract.[5]

Effective Date: If granted, this exemption will be effective December 31, 1991.

[3] The applicant represents that the fair market value will not be discounted for the Interests' lack of marketability or the fact that the Interests are minority interests.

[4] The Aggregate Investment Cost is determined as follows. The aggregate purchase price to the Plans was $129,850 ($24,500 for the P/P Interest + $105,350 for the P/S Interest) plus the aggregate Holding Costs of $4,036.29 ($641.53 for the Pension Plan + $3,394.76 for the P/S Plan) minus the aggregate distributions to the Plans of $4,739.65 ($894.28 for the P/P Interest + $3,845.37 for the P/S Interest). Numerically, this is as follows (($129,850 + $4,036.29) − $4,739.65)) = $129,146.64 for the Aggregate Investment Cost to the Plans.

[5] For purposes of this proposed exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Summary of Facts and Representations

1. The Plan is a defined benefit plan that is tax qualified under section 401(a) of the Code. The Plan is funded by a trust that is exempt from tax under section 501(a) of the Code. Manufacturers Hanover Trust Company serves as the trustee for the Plan. The Plan had total assets of approximately $3.1 billion and $2.58 billion, as of December 31, 1990, and 1991, respectively. It is also represented that there were approximately 64,000 active individual participants in the Plan, as of December 31, 1991, and approximately 23,900 Retirees.

2. The sponsor of the Plan is Union Carbide and its subsidiaries. Union Carbide is a large chemical manufacturer with operations in the United States and in countries abroad. Union Carbide is a New York corporation with its principal place of business located in Danbury, Connecticut. Union Carbide employs approximately 37,756 persons and, as of December 31, 1990, had total assets of approximately $8.133 billion.

3. Prudential provides a variety of insurance products and services, including participating and non-participating annuity contracts, funding, and asset management to pension and profit-sharing plans subject to the provisions of Title I of the Act. In this regard, it is represented that Prudential and its affiliates provided insurance products and services to the Plan prior to the conversion. Accordingly, Prudential and its affiliates were parties in interest with respect to the Plan when the transaction was entered.

4. On September 30, 1985, Union Carbide established a plan (the Spinoff Plan) that was separate from the Plan which is the subject of this proposed exemption. At that time, the liabilities for the accrued benefits of former participants who had retired on or before September 30, 1985, and assets in an amount exceeding all such liabilities were transferred from the Plan to the Spinoff Plan. Union Carbide then, pursuant to section 4043 of the Act, filed a notice of intent to terminate the Spinoff Plan under section 4041 of the Act and received a favorable determination letter from the Internal Revenue Service and the Pension Benefit Guaranty Corporation. Accordingly, the Spinoff Plan was then terminated and the excess assets reverted to Union Carbide.

It is represented that Union Carbide purchased irrevocable annuity contracts from Prudential to cover all vested accrued benefits of the former participants in the Spinoff Plan at the time it was terminated. One of the annuity contracts purchased was the Non-Participating Annuity Contract which is involved in this proposed exemption. However, because the actual date of Union Carbide's purchase of the Non-Participating Annuity Contract was subsequent to the effective date of the termination of the Spinoff Plan, Union Carbide determined that it would cover certain additional former participants of the Plan who had retired between September 30, 1985, and December 31, 1985. Accordingly, under the terms of the Non-Participating Annuity Contract, Prudential agreed to provide an irrevocable commitment to cover and guarantee the payment of all benefits for those former participants who retired on or before December 31, 1985, and their beneficiaries. It is represented that these Retirees ceased to be participants of the Plan, pursuant to 29 CFR § 2510.3-3(d)(2)(ii) of the Department's regulations, as such individuals received a certificate describing the benefits to which they were entitled, the entire benefit rights of such individuals were fully guaranteed by Prudential, and such rights are enforceable by the sole choice of such individuals against Prudential. However, because the Non-Participating Contract covered this additional group of retirees it is represented that the Non-Participating Contract was issued by Prudential to the Plan. Further, because the Plan is the named holder under the provisions of such contract, it is represented that the Non-Participating Annuity Contract is deemed to be an asset of the Plan and is subject to the discretion of Union Carbide, acting as fiduciary for the Plan.

5. Subsequent to the purchase of the Non-Participating Annuity Contract, the Separate Account was established for the purpose of converting the Non-Participating Annuity Contract held by the Plan into a Participating Annuity Contract funded through the Separate Account. The Separate Account was funded with fixed income investments (the Fixed Income Assets) transferred from the segment of Prudential's General Account to which liability for the benefits provided under the Non-Participating Annuity Contract had been assigned. It is represented that the in-kind transfer of the Fixed Income Assets avoided transaction costs in connection with the acquisition by the Separate Account of a suitable portfolio.

It is represented that the Non-Participating Annuity Contract was converted to a Participating Annuity Contract funded through the Separate Account in order for the Plan and the Retirees to take advantage, in the event of Prudential's insolvency, of the additional protection from the creditors of the insurer which is typically available from a separate account structure, and also to obtain for the Plan the opportunity to participate risk free in any Separate Account earnings. It is represented that when the transaction was entered, the terms of the Participating Annuity Contract were at least as favorable as those provided under the Non-Participating Annuity Contract. Union Carbide further represents that the Participating Annuity Contract provides the same level and guarantee of benefit payments to Retirees as were provided under the terms of the Non-Participating Annuity Contract. In this regard, it is represented that the contractual relationship of the Retirees with Prudential was not impacted by the conversion of the Non-Participating Annuity Contract to the Participating Annuity Contract, as the individual certificates which were issued to the Retirees described the benefits which the Retirees are entitled to receive and provided those Retirees with the right to enforce the obligation to pay those benefits directly against Prudential. It is further represented that neither of these factors was affected by the conversion, because the guarantees provided in the individual certificates are not dependent on the continuation of the particular group annuity contract under which the certificates were issued. No additional contribution of assets was or will be required from Union Carbide or the Plan to Prudential or the Separate Account in order to fund benefits guaranted under the terms of the Participating Annuity Contract. In the event that the Fixed Income Assets transferred to the Separate Account are insufficient to pay all benefits, it is represented that Prudential's General Account continues to provide an irrevocable guarantee for the payment of benefits.

Prudential established the Separate Account, and selected and transferred the assets into the Separate Account, subject to the approval of Union Carbide acting as fiduciary on behalf of the Plan. Once transferred, all of the underlying assets of the Separate Account were managed by Prudential or its affiliates exclusively. However, it is represented that Prudential did not provide investment advice to Union Carbide nor exercise discretionary control with respect to the decision to convert the Non-Participating Annuity Contract into the Participating Annuity Contract.

6. The Separate Account was established by Prudential as a separate account under the definition as set forth in section 3(17) of the Act. The investment guidelines for the Separate

Account (the Investment Guidelines) imposed certain percentage limitations on the amount that the Separate Account could invest in each sector of the fixed income security market and restricted investment to no more than five percent (5%) of its assets in securities issued by a single issuer. Other restrictions included that the Separate Account could invest no more than twenty-five percent (25%) of its assets in securities rated Baa, and a maximum of seventy-five percent (75%) of its assets in a combination of securities that have been rated A or Baa by one or more rating agency selected by the issuer of such securities. These Investment Guidelines corresponded to the guidelines relating to the quality of investments held in the segment of Prudential's General Account to which the Non-Participating Annuity Contract was assigned. Further, the Separate Account is required to be passively managed by Prudential in a manner intended to maintain this asset/liability match.

7. Once the Separate Account was established, Prudential transferred the Fixed Income Assets in-kind from its General Account to the Separate Account. The Fixed Income Assets consisted entirely of a dedicated bond portfolio, containing either publicly traded or privately placed bonds.[6] Further, the value of the Fixed Income Assets transferred from the General Account represented the remaining liabilities under the Non-Participating Annuity Contract plus an amount in excess of such liabilities sufficient to establish a reserve as required by applicable state insurance law. Prudential's intention was to use the Fixed Income Assets to provide for the payment of benefits and reasonable expenses related thereto under the terms of the Participating Annuity Contract maintained by the Separate Account. However, Prudential has also provided an irrevocable commitment of the assets of its General Account to pay benefits to the Retirees under the terms of the Participating Annuity Contract and the Separate Account. For this reason, it is represented that there was no incentive for Prudential to have transferred assets other than those of the highest quality to the Separate Account. Accordingly, on December 31, 1991, Prudential transferred Fixed Income Assets, valued at approximately $1 billion, from its General Account to the Separate Account.[7] Prudential represents that this method of funding the Separate Account avoided the transaction costs that would have been incurred, had assets held in Prudential's General Account been liquidated and appropriate securities been purchased on behalf of the Separate Account with the proceeds from such a sale.

8. Prudential is uncertain as to whether the transaction, as consummated, involved violations of section 406(a) and 406(b) of the Act. In this regard, the prohibited transaction analysis depends on whether the Separate Account is deemed to hold "plan assets" that are subject to the fiduciary responsibility provisions of the Act, such that Prudential's transfer of such assets from the General Account to the Separate Account may have constituted a direct or indirect transfer of assets between a plan and a party in interest, described in section 406(a)(1)(A) and (D) of the Act.[8]

If the Separate Account contained Plan assets, the question becomes whether Prudential acted as a fiduciary with respect to the Separate Account at the time the Fixed Income Assets were transferred. In Prudential's view, exemptive relief from section 406(b) may be necessary, because Prudential approved the assets transferred to the Separate Account from the segment of Prudential's General Account that formerly backed the Non-Participating Annuity Contract, or because Prudential is the manager of the Separate Account, even though the Separate Account did not hold any cash or other assets until after the transfer took place. In this regard, however, Prudential represents that Union Carbide acted as fiduciary with respect to the Plan, as discussed more fully in paragraph number eleven below. Accordingly, Prudential has requested exemptive relief from section 406(a) and 406(b) for the transaction described herein.

9. It is represented that all of the assets in the Separate Account are and will be managed exclusively by Prudential or its affiliates and that Prudential receives from the Separate Account certain customary fees and charges to compensate for services performed and risks assumed by Prudential. In this regard, Prudential receives an annual administrative charge equal to .05% of the outstanding liabilities under the terms of the Participating Annuity Contract and an annual investment management and custodial fee equal to .45% of the value of the Separate Account. Prudential also receives risk charges fixed at .90% of the Participating Annuity Contract liability amount which accrues daily beginning January 1, 1992. In this regard, it is represented that such risk charges are deducted from the Separate Account on a quarterly basis and that withdrawal of risk charges from the Separate Account is permitted only to the extent that the assets in the Separate Account exceed 107% of the contract liability amount of the Participating Annuity Contract which is equivalent to 110% of the actual benefit liabilities then remaining under the Participating Annuity Contract. It is further represented that other than the fees and charges described in this paragraph, Prudential does not receive any part of the earnings in the Separate Account, and that the Plan receives the entire benefit of favorable investment experience, if any, in the Separate Account.

With respect to the fees Prudential receives from the Separate Account, Prudential represents that for two reasons it cannot under any circumstances receive more compensation in connection with the

[6] It is represented that a portfolio is considered dedicated if there is a cash-flow match to the liabilities under the contract for the first twelve months and thereafter a duration match (within one-half year) on subsequent liabilities.

[7] Prudential represents that the in-kind transfer of the Fixed Income Assets to the Separate Account also permitted Prudential to recognize certain statutory gains on its financial statements. It is represented that at the time of the transfer, the market value of the transferred assets exceeded the book value at which the assets had been carried on Prudential's financial statements. Because assets in a separate account must be reported at market value, the statutory income statement surplus reflected a gain in the amount of the difference between book value and market value. As the surplus of a mutual insurance company is the equivalent of equity capital, it is represented that the surplus gain reflected on Prudential's financial schedules reflected a strengthening of its financial condition.

[8] Section 29 CFR 2510.3-101(h) of the Department's regulations provides, in part, that a separate account does not hold "plan assets" for purposes of the Act, if it is maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable to the plan are not affected in any manner by the investment performance of the separate account. In the opinion of Prudential, because there is a possibility that the Plan may participate in the investment performance of the Separate Account under the terms of the Participating Annuity Contract, it would appear that the underlying assets of the Separate Account are not eligible for this exception to the plan assets regulation and that such assets are "plan assets."

Further, Prudential believes that the Separate Account could be deemed to hold "plan assets" for purposes of the Act, because the assets of the Separate Account do not appear to be held in connection with a "guaranteed benefit policy," as defined in section 401(b)(2)(B) of the Act. Section 401(b)(2)(B), defines the term "guaranteed benefit policy" to mean an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account. Under section 401(b)(2), the assets of a plan are deemed to include such "guaranteed benefit policy" but are not, solely by reason of the issuance of such policy deemed to include the assets of the insurer

provision of services to the Separate Account under the terms of the Participating Annuity Contract than it was entitled to receive through the single premium for the Non-Participating Annuity Contract when initially purchased by Union Carbide. First, Prudential represents that generally it charges higher premiums for a participating annuity contract than for a non-participating annuity contract. However, with respect to conversion of the Non-Participating Annuity Contract to the Participating Annuity Contract that is the subject of this proposed exemption, no additional premiums or other consideration, beyond the single premium already paid by Union Carbide for the Non-Participating Annuity Contract, were or will be charged by Prudential to Union Carbide or the Plan in connection with the Participating Annuity Contract.

Second, with regard to the fees and charges received by Prudential under the terms of the Participating Annuity Contract, it is represented that generally the same types of costs are taken into account for purposes of calculating the premium required for a non-participating annuity contract. It is further represented that because such fees and charges are not the continuing obligation of the holder of a non-participating annuity contract, they are not set forth in a fee schedule but are primarily a matter of internal record keeping. According to Prudential, similar fees and charges were built into the single sum premium under the terms of the Non-Participating Annuity Contract and were pro-rated for the purpose of the conversion to the Participating Annuity Contract. It is represented that in accordance with the terms of the Participating Annuity Contract, Prudential transferred to the Separate Account assets attributable to the pro-rated value of those internal fees and risk charges which had not yet accrued under the Non-Participating Annuity Contract at the time of the transfer. According to Prudential, it is entitled to reimbursement for the amount of such internal fees and risk charges over the life of the Participating Annuity Contract, and that such reimbursement does not constitute additional compensation.[9]

10. Prior to the transfer of the Fixed Income Assets between the General Account and Separate Account, Prudential hired an independent accounting firm, Deloitte & Touche, to perform an independent appraisal of each of the Fixed Income Assets. In preparing this appraisal, Deloitte & Touche was provided with and reviewed information on: (a) the historical and prospective financial credit risk of the issuers; (b) the terms of the Fixed Income Assets; and (c) credit market data. Deloitte & Touche represents that it has extensive experience in the valuation of securities and that it receives less than one percent of its income from Prudential. Further, Deloitte & Touche represents that it had no present or contemplated future interest in the assets which were the subject of the appraisal and had no personal interest or bias with respect to the Fixed Income Assets or the parties involved. Deloitte & Touche also represents that the compensation it received in connection with preparation of the appraisal report was in no way contingent on the conclusions drawn therein.

As described in paragraph number seven above, the Fixed Income Assets initially transferred to the Separate Account were publicly and privately placed debt instruments. In determining the fair market value of privately placed Fixed Income Assets, Deloitte & Touche read and analyzed summaries of pertinent provisions of the loan agreements, including interest rates, collateral provisions, call provisions, sinking fund provisions, and other terms having a material influence on value. With respect to the publicly traded Fixed Income Assets, Deloitte & Touche determined their value by applying the trading price on the date of transfer to the number of securities transferred into the Separate Account. Deloitte & Touche concluded that the publicly traded Fixed Income Assets and the privately placed Fixed Income Assets were valued, respectively, at $609,715,883 and $474,251,095, as of December 31, 1991. Accordingly, the total fair market value of the Fixed Income Assets was approximately $1.083 billion dollars, as of the same date.

Initially due to delays in the availability of trade pricing information, it is represented that the fair market value of the Fixed Income Assets transferred into the Separate Account on December 31, 1991, was based on fair market value of such assets, as of December 27, 1991. This date was chosen for valuation purposes to insure that a consistent valuation date could be applied to each of the Fixed Income Assets. Once valuation information became available, Prudential, complying with state insurance law, provided for the transfer to the Separate Account of sufficient assets to create a reserve[10] which equaled or exceeded 103% of the value of the Participating Annuity Contract liabilities on December 31, 1991.

Following the transfer, the valuation of the assets in the Separate Account and the calculation of the liabilities under the Participating Annuity Contract were reconciled. This reconciliation of assets and liabilities resulted in Prudential's transfer of two additional assets (the Additional Assets) to the Separate Account on January 10, 1992, in connection with three minor adjustments to the valuations. The transfer of these Additional Assets was approved by Union Carbide. The three adjustments are described in the three paragraphs immediately below.

First, the valuation, as of December 27, 1991, assumed all coupons attached to the securities would be transferred to the Separate Account on December 31, 1991. However, a $920,000 coupon payment was due and paid to Prudential's General Account on December 30, 1991. Thus, the value of

[9] Prudential has not requested relief for the institution of the fee schedule nor the receipt of fees from the Separate Account in accordance with the terms of the Participating Annuity Contract. The Department is expressing no opinion as to whether the change in the manner in which fees were and are charged to the Plans by Prudential as a result of the conversion from the Non-Participating Annuity Contract to a Participating Annuity Contract constituted a violation of section 406 of the Act. Accordingly, no relief is proposed, herein, beyond that covered by section 408(b)(2) of the Act for the provision of services by Prudential to the Separate Account or the receipt of fees for services rendered in connection with the transaction described in this proposed exemption.

[10] Prudential maintains that funds of the General Account contributed in order to establish a reserve amount in the Separate Account, as required under state insurance law, are equivalent to "seed money," and should not be treated as "plan assets for purposes of the Act. In this regard, Prudential cites to the analysis contained in Advisory Opinion 83-38A (July 22, 1983), for the proposition that "seed money" allocated by an insurer to its pooled separate accounts would not be treated as "plan assets" for purposes of the Act and that the redemption of the units of participation in these separate accounts by the insurer, according to the rules governing the redemption rights of those participating units, would not, solely by reason of the redemption, constitute a violation of section 406(a)(1) (A) and (D) and 406 (b)(1) and (b)(2) of the Act. Accordingly, Prudential has not requested exemptive relief from section 406(a)(1) (A) and (D) and 406 (b)(1) and (b)(2) of the Act with respect to the contribution to or with respect to the withdrawal from the Separate Account of such reserve amounts. In this regard, the Department, herein, is expressing no opinion whether any such transactions would violate section 406 of the Act and is offering no relief for such contribution or withdrawal of "seed money."

However, as the bulk of the assets in the Separate Account would not constitute "seed money" under Prudential's analysis, Prudential requests and the Department, herein, is proposing relief for the transfer of assets from the General Account to the Separate Account to the extent that such transaction may have constituted a prohibited sale or exchange, or use of plan assets for the benefit of a party in interest in violation of section 406(a)(1) (A) and (D) of the Act.

the Additional Assets which were transferred to the Separate Account equaled or exceeded the value of the coupon.

Second, the option pricing model utilized in the December 27th appraisal overestimated the duration of some publicly traded bonds which resulted in a $530,000 overstatement in the initial valuations of these securities. It is represented that because these bonds were actually subject to a high call probability, the model should have assigned a duration of zero, instead of the three or four year duration actually assumed.

Finally, the decline in interest rates between December 27, 1991, and December 31, 1991, resulted in an increased market value for the Separate Account, which caused the value of certain securities tentatively transferred to the Separate Account to exceed the dollar limitations established for the Separate Account by the Investment Guidelines. The securities that exceeded these limitations were valued at $900,000. Accordingly, they were replaced by portions of the Additional Assets described in the paragraph below.

The Additional Assets transferred to the Separate Account in connection with the reconciliation were valued at $3,576,650, as of December 31, 1991. Although the value of these Additional Assets exceeded the amount required to be transferred by approximately $1.2 million, these Additional Assets were selected, because they were the smallest available denominations that met the Investment Guidelines.

11. It is represented that Union Carbide exercised fiduciary discretion with respect to this proposed transaction. In this regard, it is represented that Union Carbide is independent of Prudential in that it is not affiliated with Prudential and receives less than one percent of its annual income from Prudential.

Before reaching its conclusions on the proposed transaction, Union Carbide, was provided with and reviewed the following information: (a) the appraisals of the value of the Fixed Income Assets prepared by Deloitte & Touche; (b) the terms of the Participating Annuity Contract, including the compensation to be retained by Prudential pursuant to such contract; (c) the calculation of the current value of the liabilities under the Participating Annuity Contract performed by Prudential using the methodology and assumptions, as set forth in the Participating Annuity Contract; (d) the list of the Fixed Income Assets selected by Prudential for transfer into the Separate Account; (e) a copy of the Investment Guidelines for the portfolio of the Separate Account; and (f) all additional information provided by Prudential or requested by Union Carbide.

As fiduciary with respect to this transaction, Union Carbide represents that it: (a) reviewed the general investment strategy regarding the assets that were assigned to meet the liabilities under the Non-Participating Annuity Contract; (b) reviewed the Investment Guidelines of the Separate Account, and determined that such were appropriate, and that the transfer of the Fixed Income Assets was consistent with the Investment Guidelines; (c) reviewed the quality and diversification of the Fixed Income Assets transferred to the Separate Account and found such assets to be of high investment quality and sufficiently diverse to protect the interests of the Plan; (d) approved each of the Fixed Income Assets selected by Prudential from its General Account before such assets were transferred into the Separate Account; (e) reviewed the appraisal report prepared by Deloitte & Touche and determined that such report was reliable and complete, notwithstanding the fact that Deloitte & Touche relied on certain information provided by Prudential; (f) reviewed and approved the methodology for valuing the liabilities and the assumptions with respect to interest rates, mortality, and expenses that are set forth in the Participating Annuity Contract; (g) based on its review of the Deloitte & Touche appraisal report and on Prudential's calculations of the current value of contract liabilities, determined that the Fixed Income Assets were transferred to the Separate Account at fair market value and were sufficient to meet the liabilities due under the terms of the Participating Annuity Contract, as of the date of the transfer; (h) reviewed and approved the reconciliation as described more fully in paragraph number ten above; (i) reviewed and analyzed the terms of the Participating Annuity Contract, including the compensation Prudential receives thereunder, and determined that such terms were at least as favorable as those which could have been obtain in arm's length negotiations with unrelated third parties; (j) determined that the conversion was in the best interest of the Retirees, because it did not affect Prudential's irrevocable commitment to use the assets in its General Account to provide payment for benefits under the certificates issued to the Retirees and because in the event Prudential becomes insolvent, the assets in the Separate Account will be protected from the claims of Prudential's general creditors; and (k) gave due consideration to the cash flow of the liabilities under the terms of the Participating Annuity Contract.

Accordingly, prior to the transfer of the Fixed Income Assets between the General Account and the Separate Account, Union Carbide, determined that the transaction was in the best interest of the Plan and that adequate safeguards were adopted to protect the interest of the Retirees and of the Plan and its participants and beneficiaries. In addition, Union Carbide, acting as fiduciary, reviewed and approved the risk charges described in paragraph nine above.[11]

Five officers either of Union Carbide or Benefit Capital Management Corporation (BCMC), a wholly-owned subsidiary of Union Carbide that manages the investment portfolio of the Plan, were responsible for carrying out Union Carbide's functions as a fiduciary with respect to the transaction. As a group, it is represented that these individuals were qualified in that they had extensive experience with sophisticated investment analysis techniques, in-depth expertise relating to investments suitable to the Plan, and skill in negotiating terms and conditions of investments. These individuals had at their disposal various outside experts and in-house professionals to advise them in areas where more specialized expertise is required. It is represented that these individuals were responsible, either directly or through oversight of outside managers, for approximately $3.8 billion in assets of plans sponsored by Union Carbide.

These individuals were employed by Union Carbide to perform the analysis and evaluation of the transaction and to issue a fiduciary report. Such a fiduciary report (the Original Report), as summarized above in this paragraph eleven, was issued in March of 1992. Subsequently, on February 3, 1993, one of the preparers of the Original Report, a Senior Vice President of BCMC and the investment manager of the Plan's fixed income portfolio, was arrested and incarcerated for tax fraud. As a result of this event, on April 27, 1993, Union Carbide terminated the employment of this individual (the Former Employee), effective August 17, 1992. Thereafter, this Former Employee on August 31,

[11] In this regard, the Department expects that Union Carbide, acting as fiduciary to the Plan, prudently considered the relationship of fees for services and risk charges paid by the Plan to the level of services provided by Prudential to the Separate Account and the risks assumed by Prudential in connection with the Participating Annuity Contract.

1993, was indicted for mail fraud, securities fraud, kickbacks with respect to an employee benefit plan, and on February 2, 1994, pled guilty in connection with these activities.

BCMC and Union Carbide are cooperating with the U.S. Attorney's office in the investigation and prosecution of the matters described in the paragraph above. In this regard, an investigation was conducted under the direction of the law department of Union Carbide which found no indication that anyone else was implicated or was aware of the illegal activities of the Former Employee. It is represented that BCMC had preventative practices and procedures in place at the time and has enhanced such procedures, since the discovery of the wrongdoing on the part of the Former Employee.

Union Carbide estimates that the loss to the Plan from the illegal activities of the Former Employee totaled approximately $3.5 million. In this regard, Union Carbide has made a claim against the insurer which provides fraud and dishonesty coverage to BCMC and the Plans. In addition, Union Carbide anticipates filing suit against various parties seeking satisfactory recovery of the loss to the Plan.

Subsequently, three of the individuals who signed the Original Report, plus a fourth individual, issued a supplemental fiduciary report (the Supplemental Report), dated September 2, 1993. It is represented that the Former Employee did not participate in the preparation of the Supplemental Report. It is represented that the Supplemental Report confirmed that the conversion of the Non-Participating Annuity Contract to the Participating Annuity Contract was in the best interest of the Retirees, because (1) such action does not affect Prudential's irrevocable commitment to use its General Account assets to provide payment for all benefits provided under the certificates issued to Retirees, and (2) the assets in the Separate Account should be protected from the claims of Prudential's general creditors in the event of insolvency.

Subsequently, on March 28, 1994, the four individuals who signed the Supplemental Report, plus the fixed income investment manager who replaced the Former Employee, issued another report (the Restated Report) which reached the identical conclusions in support of the transaction which were issued in the Original Report. In this regard, the Restated Report contained the following conclusions: (1) Any earnings from the Separate Account that are not required to reimburse certain risk charges, management fees and administrative fees will be used to meet Plan liabilities; (2) in the event that the assets in the Separate Account are insufficient to cover all Participating Annuity Contract liabilities, Prudential will continue to provide the same irrevocable commitment to use its general assets to provide payment of all benefits provided under the Participating Annuity Contract; (3) under no circumstances will Union Carbide or the Plan be required to contribute additional assets to fund benefits under the Participating Annuity Contract; (4) in the event of Prudential's insolvency, the assets of the Separate Account should not be reached by Prudential's creditors; (5) the transfer of assets permits the Separate Account to avoid transaction costs in connection with the acquisition of a suitable portfolio; (6) the type and quality of the assets transferred to the Separate Account are consistent with the Separate Account's investment guidelines; (7) based on a review of the Deloitte & Touche appraisal report, the assets transferred to the Separate Account were transferred at fair market value and were sufficient to meet the liabilities due under the Non-Participating Annuity Contract as of the date of the transfer; and (8) the transaction is at least as favorable to current and former Plan participants and beneficiaries as an arm's length transaction with an unrelated third party. Further the Restated Report confirmed that Union Carbide would have performed the same analysis and reached the same conclusions set forth in Original Report, if the Former Employee had not participated in the original review of the transaction.

The applicant maintains that exemption should be granted on the basis of Union Carbide's Restated Report for the following reasons: (1) Union Carbide, not the Former Employee individually, acted as the fiduciary on behalf of the Plan; (2) the Former Employee was only one of several persons assigned to carry out Union Carbide's duties as fiduciary; (3) Union Carbide has reconfirmed each of its determinations in the Original Report; (4) the securities transferred from the General Account of Prudential into the Separate Account were in no way involved with the Former Employee's improper activities; and (5) the indictment of the Former Employee did not affect whether the transaction was in the best interest of the Plan.

12. In addition to the responsibilities described above, as named fiduciary on behalf of the Plan, Union Carbide is also responsible for monitoring the performance of any investment manager that it appoints on behalf of the Plan. Because the Separate Account is structured with a "buy and hold" strategy, it is represented that relatively little oversight should be required. As the transaction did not involve any ongoing prohibited transaction, no specialized continuing oversight is anticipated by Union Carbide. However, it is represented that Union Carbide will yearly arrange for an independent audit of the Separate Account for the purpose of reconciling the benefit payments made out of the Separate Account, determining the remaining contract liability, and calculating whether additional reserves are necessary, as the reserve amount that is required to be maintained in the Separate Account may vary with time and quality of the assets held in such Separate Account.

13. It is represented that Union Carbide received no payments or other compensation in connection with the transaction, except to the extent that Union Carbide received reimbursement for the "direct expenses" of providing services to the Plan, pursuant to sections 408(b)(2) and 408(c)(2) of the Act.[12] In addition, Prudential will indemnify Union Carbide with respect to any action or threatened action to which Union Carbide is made a party by reason of Union Carbide's services as fiduciary.[13]

14. In summary, Prudential, as applicant, represents that the transaction met the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Prudential transferred to the Separate Account sufficient assets to create a reserve the value of which equaled or exceeded 103% of value of the Participating Annuity Contract liabilities, as of December 31, 1991;

(b) the fair market value of the Fixed Income Assets transferred into the Separate Account was determined by an independent qualified appraiser, as of the date the transaction was entered;

(c) Prudential irrevocably guarantees the payment of benefits to the Retirees;

(d) no additional contribution from Union Carbide or the Plan was or will be required to fund benefits to the Retirees;

[12] The Department expresses no opinion, herein, as to whether the provision of services by Union Carbide and the compensation received therefor satisfy the terms and conditions as set forth in section 408(b)(2) of the Act.

[13] The Department does not hereby construe any exculpatory clauses agreed to between Union Carbide and Prudential, nor do such agreements in any way modify the fiduciary duties and responsibilities of either Union Carbide or Prudential with respect to the Plan, as imposed by reason of part 4, title I, of the Act.

(e) the Plan avoided transaction costs inherent in liquidating assets of the General Account in order to initially fund the Separate Account;

(f) funding the Participating Annuity Contract through the Separate Account protects the Plan and the Retirees from the general creditors of Prudential;

(g) prior to entering the transaction, Union Carbide, acting as fiduciary on behalf of the Plan, determined that the transaction was feasible, was in the interest of, and was protective of the Plan and its participants and beneficiaries and would not affect the payment of benefits to the Retirees;

(h) after full disclosure, including the provisions regarding the compensation to be paid to Prudential, Union Carbide determined that the terms of the transaction were at least as favorable as those negotiated at arm's length with unrelated third parties in similar transactions;

(i) prior to the conversion, Union Carbide negotiated, reviewed, and approved the transaction, and will monitor the transaction;

(j) Union Carbide reviewed the appraisal and the transfer of each of the assets into the Separate Account prior to entering into the transaction; and

(k) according to Prudential, the Plan incurred no fees, commissions, costs, expenses, or other charges associated with the transaction and will pay no additional compensation as a result of the conversion of the Non-Participating Annuity Contract to the Participating Annuity Contract.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Berean Capital, Inc. (Berean) Located in Chicago, Illinois

[Application No. D–9745]

Proposed Exemption

I. Transactions

A. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[14]

B. Effective June 27, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[15] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective June 27, 1994, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[16]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party

[14] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[15] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[16] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. Certificate means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Berean or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. Trust means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Berean;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Berean; or

(3) any member of an underwriting syndicate or selling group of which Berean or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *independent* of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) which is secured by equipment which is leased;

(b) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) the trust holds a security interest in the lease;

(b) the trust holds a security interest in the leased motor vehicle; and

(c) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Effective Date: This exemption, if granted, will be effective for transactions occurring on or after June 27, 1994.

Summary of Facts and Representations

1. Berean is a financial services company involved in securities brokerage. It is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934, and with the National Association of Securities Dealers. Berean is incorporated in the State of Delaware and is owned by two individual shareholders. The applicant represents that Berean has extensive experience in underwriting and trading of mortgage-backed and other asset-backed, pass-through securities.

Trust Assets

2. Berean seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts; [17] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[18]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[19]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Berean, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates made to date and all of the public offerings of certificates presently contemplated have been or are to be underwritten on a firm commitment basis. In addition, Berean has privately placed certificates on both a firm commitment and an agency basis. Berean may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed 45 days. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Berean requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[20]

Fast-pay/slow-pay certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates have been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[21]

[17] The Department notes that PTE 83-1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Berean requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Berean has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

[18] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[19] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[20] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[21] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department

6. For tax reasons, the trust must be maintained as an essentially passive entity Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates. Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) a special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Berean, the trust sponsor or the servicer. Berean represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor or the trust as specified in the pooling and servicing agreement. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Berean. In other cases, however, affiliates of Berean may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. Where the sponsor of a trust is not the originator of receivables included in a trust, the sponsor generally purchases the receivables in the secondary market, either directly from the originator or from another secondary market participant. The price the sponsor pays for a receivable is determined by competitive market forces, taking into account payment terms, interest rate, quality, and forecasts as to future interest rates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters. In some transactions, the sponsor or an affiliate may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for receivables sold to the trust. The transfer of the receivables to the trust by the sponsor, the sale of certificates to investors, and the receipt of the cash proceeds by the sponsor generally take place simultaneously.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[22] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support or

notes that the exemption does not provide relief for plan investment in such subordinated certificates.

[22] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

deposited into a reserve fund. Any funds on deposit in a reserve fund after the certificateholders (and the credit enhancement provider, if any) have been paid in full are generally paid to the sponsor or the servicer. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees and fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. Berean will receive a fee in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what Berean receives for the certificates that it distributes and what it pays the sponsor for those certificates. In some public offerings, however, Berean may sell certificates on an agency basis in a best efforts underwriting. In those cases, Berean would receive an agency commission paid by the sponsor plus reimbursement for out-of-pocket expenses. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or the creation of a class of certificates with subordinated cash flow) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. However, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are

passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information

regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. It is Berean's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Berean's intention to attempt to make a market for any certificates for which Berean is lead or co-managing underwriter.

Retroactive Relief

25. Berean represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Therefore, Berean requests relief retroactive for transactions which have occurred on or after June 27, 1994, the date Berean originally filed its exemption application with the Department.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Berean seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Berean has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[23]

[23] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Berean represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[24] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[25] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Berean represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Berean represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Berean represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 4th day of August, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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BILLING CODE 4510–29–P

residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[24] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Berean or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[25] The applicant represents that where a trust sponsor is an affiliate of Berean, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Berean is not a fiduciary with respect to plan assets to be invested in certificates.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before September 23, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency

record managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture—Animal and Plant Health Inspection (N1–463–94–1). Routine and facilitative records for the improvement of internal office operations.

2. Department of the Air Force (N1–AFU–94–9). Routine records of closing bases.

3. U.S. Army (N1–AU–93–5). Administrative reports, statistics, and individual case files accumulated in connection with the Exceptional Family Member Program.

4. Department of the Army (N1–AU–94–7). Routine administrative records pertaining to provisioning systems.

5. Department of the Army (N1–AU–94–9). Army reservists reenlistment eligibility records.

6. Department of the Army (N1–AU–94–10). Routine and facilitative records pertaining to management of the Army electromagnetic spectrum.

7. Department of the Army (N1–AU–94–11). Routine and facilitative records relating to the maintenance of Army supplies and equipment.

8. Department of the Army (N1–AU–94–12). Routine and facilitative records pertaining to surface transportation.

9. U.S. Army, Corps of Engineers (N1–AU–94–29). Routine administrative application and testing records relating to wetlands delineator certification.

10. U.S. Army, Corps of Engineers (N1–AU–94–31). Routine administrative files relating to the issuance of civilian uniforms.

11. U.S. Department of Education, National Advisory Council on Educational Research and Improvement (N1–441–94–3). Routine administrative records.

12. Department of Justice, Bureau of Prisons (N1–129–92–2). Fragmentary statistical reports.

13. Department of the Treasury, Internal Revenue Service (N1–58–94–2). A reduction in the retention period for certified and registered mail records for tax and non-tax related mail.

14. Department of the Treasury, Office of Thrift Supervision (N1–483–93–13). Database and printouts for the Regulatory Plan System and the Profile Data System.

15. National Foundation on the Arts and the Humanities, National Endowment for the Arts (N1–288–94–2). General correspondence of the Office of Policy, Planning and Research.

16. Railroad Retirement Board (N1–184–94–1). Grievant petitions and related records.

17. Tennessee Valley Authority (N1–142–90–22). Correspondence files for the Office of Corporate Services and Vice President Services.

18. Tennessee Valley Authority, energy function (N1–142–93–6). Transmission line profile and substation contours and topo books.

Dated: August 1, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–11320 Filed 8–8–94; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; FERMI 2]

Detroit Edison Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–43, issued to Detroit Edison Company, (the licensee), for operation of the Fermi 2 facility, located in Monroe County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of Appendix E, Section IV.F.3 of 10 CFR part 50 to conduct a partial participation emergency preparedness exercise in 1994.

The proposed action is in accordance with the licensee's application for exemption dated April 19, 1994, as supplemented by letter dated June 23, 1994.

The Need for the Proposed Action

The licensee has stated that its response to the turbine failure emergency event on December 25, 1993, demonstrated the adequacy of its emergency plan and its ability to successfully respond to an accident. Granting of the proposed exemption would allow the licensee to spend resources which would normally be dedicated to the planning and conduct of the exercise on repairing the damage to the plant and restarting the facility. The licensee would still support the State and local authorities during the conduct of their offsite exercise on September 20, 1994, and would conduct its next onsite exercise in July 1995.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time exemption from the requirement to conduct an emergency preparedness exercise. The licensee has demonstrated excellent performance in the area of emergency preparedness during the last two systematic assessment of licensee's performance periods. Additionally, the licensee has demonstrated an ongoing commitment to maintain the high performance level of the emergency preparedness program by conducting five full-scale drills, and a medical drill since its last annual partial participation exercise in July 1993.

During the December 25, 1993, turbine failure accident, the licensee was required to implement its emergency plan and activate a portion of its emergency response organization including the technical support center, operations support center and alternate operations support center. Additionally, a declaration of Alert was made in response to the turbine failure which caused a reactor scram, a fire and severe damage to turbine auxiliary systems. The Augmented Inspection Team report following the event identified some problems with event classification, personnel accountability and response of the fire brigade. In response to these

findings, the licensee has performed additional training, modified procedures and conducted an integrated onsite drill on June 8, 1994.

The licensee will support the State and local offsite exercise in September 1994. State and local authorities who are involved with emergency preparedness, and the Federal Emergency Management Agency, have indicated their concurrence with the licensee's proposed exemption. The staff has determined that the granting of this exemption will not degrade the effectiveness of the licensee's emergency preparedness program nor will it present an undue risk to public health and safety. Therefore, post-accident radiological releases are not expected to exceed previously determined values as a result of the proposed action. Further, the exemption is not expected to have an impact on plant radiological effluent releases.

The change will not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in the use of resources to conduct the emergency preparedness exercise which would be utilized for the repair and restart of the damaged turbine.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Fermi 2 plant, dated August 1981.

Agencies and Persons Consulted

The staff consulted with the State of Michigan official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this proposed action, see the licensee's request for exemption dated April 19, 1994, as supplemented on June 23, 1994. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC 20555, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 29th day of July 1994.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate III-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–19392 Filed 8–8–94; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 5.68, "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants," provides guidance acceptable to the NRC staff on protecting nuclear power plants against the malevolent use of vehicles at nuclear power plant sites.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 3120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 21st day of July 1994.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 94–19394 Filed 8–8–94; 8:45 am]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued Revision 4 of NUREG–1307 entitled "Report on Waste Burial Charges." The report provides power reactor licensees updated information to allow them to adjust periodically the projected waste burial cost component when estimating the cost of decommissioning their nuclear plants.

Copies of NUREG–1307, Revision 4 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P. O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

For further information contact George J. Mencinsky, Division of Regulatory Applications, Office of Nuclear Regulatory Research, Mail Stop T–9 C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6206.

Dated at Rockville, Maryland, this 2nd day of August, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–19393 Filed 8–8–94; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Standard Form 113–G

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request submitted to OMB for clearance to continue to collect information for the Monthly Report of Full-time Equivalent/Work-Year Civilian Employment (Standard Form 113–G). The data collected are used by OMB and OPM to: (1) monitor agencies' progress in increasing part-time employment; (2) aid OMB and the President in making decisions on agencies' budget appropriations for the next fiscal year; and (3) monitor agency work year usage under total approved FTE levels during the current fiscal year. One hundred thirty-one Federal agencies provide monthly reports to OMB. It takes two hours to complete one report, for an annual total information collection burden of 3,144 hours. For copies of the clearance package, call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908–8550.

DATES: Comments on this information collection should be received on or before September 8, 1994.

ADDRESSES: Send or deliver comments to:

May Eng, U.S. Office of Personnel Management, Room 7494, 1900 E Street NW., Washington, DC 20415

And

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684, U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–19262 Filed 8–8–94; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on July 5, 1994 (59 FR 34455). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1 and June 30, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

No Schedule A authorities were established or revoked during June 1994.

Schedule B

No Schedule B authorities were established or revoked during June 1994.

Schedule C

Department of Agriculture

Staff Assistant to the Under Secretary for Small Community and Rural Development. Effective June 2, 1994.

Staff Assistant to the Chief, Soil Conservation Service. Effective June 2, 1994.

Confidential Assistant to the Under Secretary for Small Community and Rural Development. Effective June 6, 1994.

Confidential Assistant to the Executive Assistant to the Secretary. Effective June 7, 1994.

Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective June 13, 1994.

Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective June 28, 1994.

Department of the Air Force (DOD)

Secretary (OA) to the Assistant Secretary of the Air Force (Financial Management and Comptroller). Effective June 24, 1994.

Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment). Effective June 28, 1994.

Department of Commerce

Confidential Assistant to the Director, Office of External Affairs. Effective June 2, 1994.

Deputy Director of Scheduling to the Director of Scheduling, Office of the Secretary. Effective June 2, 1994.

Confidential Assistant to the Director, Office of External Affairs. Effective June 2, 1994.

Confidential Assistant to the Director, Secretariat Staff, Office of the Executive Secretariat. Effective June 2, 1994.

Confidential Assistant to the Deputy Assistant Secretary for Economic Development. Effective June 13, 1994.

Director of Public Affairs to the Assistant Secretary for Communications and Information. Effective June 13, 1994.

Confidential Assistant to the Director, Office of Public Affairs. Effective June 17, 1994.

Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration. Effective June 30, 1994.

Special Assistant to the Director, Office of the White House Liaison. Effective June 30, 1994.

Congressional Liaison Specialist to the Chief, Legislative and Intergovernmental Affairs Division, Minority Business Development Agency. Effective June 30, 1994.

Department of Defense

Personal and Confidential Assistant to the Counsellor to the Secretary of Defense and Deputy Secretary of Defense. Effective June 30, 1994.

Department of Education

Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region IX, San Francisco, CA. Effective June 6, 1994.

Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative. Effective June 6, 1994.

Special Assistant to the Director, Office of Public Affairs. Effective June 15, 1994.

Confidential Assistant to the Chief of Staff. Effective June 16, 1994.

Special Assistant to the Director, Office of Public Affairs. Effective June 20, 1994.

Special Assistant to the Assistant Secretary, Office of Human Resources Division. Effective June 23, 1994.

Special Assistant to the Assistant Secretary, Office of Human Resources

and Administration. Effective June 23, 1994.

Confidential Assistant to the Director, Community Reform Initiatives Services. Effective June 27, 1994.

Secretary's Regional Representative—Region II—New York, NY to the Director of State, Local and Regional Services Staff. Effective June 28, 1994.

Department of Energy

Special Assistant to the Deputy Assistant Secretary for Planning and Administration, Office of Environment, Safety and Health. Effective June 2, 1994.

Staff Assistant to the Administrator, Office of Energy Information Administration. Effective June 2, 1994.

Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective June 21, 1994.

Department of Health and Human Services

Executive Assistant to the Assistant Secretary for Public Affairs. Effective June 20, 1994.

Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective June 22, 1994.

Department of Justice

Secretary (OA) to the United States Attorney, Middle District of Louisiana. Effective June 2, 1994.

Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development. Effective June 9, 1994.

Confidential Assistant to the United States Attorney, Western District of California. Effective June 16, 1994.

Secretary (OA) to the United States Attorney, Western District of Arkansas. Effective June 24, 1994.

Special Assistant to the Assistant Attorney General, Criminal Division. Effective June 30, 1994.

Department of Labor

Special Assistant to the Assistant Secretary for Occupational Safety and Health, Occupation Safety and Health Administration. Effective June 3, 1994.

Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration. Effective June 7, 1994.

Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective June 14, 1994.

Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration. Effective June 7, 1994.

Special Assistant to the Executive Secretary. Effective June 16, 1994.

Special Assistant to the Chief of Staff Effective June 16, 1994.

Public Affairs Specialist to the Director, Women"s Bureau. Effective June 17, 1994.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 20, 1994.

Special Assistant to the Assistant Secretary for Public Affairs. Effective June 24, 1994.

Department of State

Foreign Affairs Officer to the Deputy Assistant Secretary. Effective June 22, 1994.

Foreign Affairs Officer to the Deputy Secretary. Effective June 22, 1994.

Department of Transportation

Scheduling Assistant to the Special Assistant for Scheduling and Advance, Office of the Secretary. Effective June 16, 1994.

Department of the Treasury

Legislative Assistant to the Director, Office of Legislative Affairs. Effective June 30, 1994.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 13, 1994.

Environmental Protection Agency

Special Assistant to the Regional Administrator, Region III, Philadelphia, PA. Effective June 2, 1994.

Director, State/Local Relations Division to the Associate Administrator, for Regional Operations and State/Local Relations. Effective June 22, 1994.

Farm Credit Administration

Congressional Affairs Specialist to the Director, Congressional and Public Affairs. Effective June 14, 1994.

Federal Labor Relations Authority

Executive Assistant to the General Counsel. Effective June 2, 1994.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective June 22, 1994.

National Endowment for the Humanities

Special Assistant to the Deputy Chairman. Effective June 2, 1994.

Office of National Drug Control Policy

Staff Assistant for Scheduling to the Director. Effective June 2, 1994.

Public Affairs Specialist to the Director of Public and Legislative Affairs. Effective June 2, 1994.

Public Affairs Specialist (Speechwriter) to the Director of Public and Legislative Affairs. Effective June 2, 1994.

Office of Personnel Management

Speech Writer to the Director, Office of Communications. Effective June 3, 1994.

Securities and Exchange Commission

Confidential Assistant to the Commissioner. Effective June 30, 1994.

United States Information Agency

Director, Office of International Visitors, to the Associate Director of the Bureau of Educational and Cultural Affairs. Effective June 8, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 19263 Filed 8–8–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34478; File No. SR–DTC–94–11]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Fee Schedule for Commercial Paper and Money Market Instruments

August 2, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 15, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–94–11) as described in Items I, II, and III below, which Items have been prepared primarily by DTC. 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

DTC is filing herewith the following change in its fee schedule:

[1] 15 U.S.C. § 78s(b)(1) (1988).

Service	Present fee	Proposed fee
VIII.		
Commercial Paper/Money Market Instrument Activity:		
• Deliver orders	$1.26 to the deliverer $1.11 to the receiver	$1.41 to the deliverer. $1.26 to the receiver.
• Maturity or reorganization presentments	$1.06 for each item delivered or received.	$1.21 for each item delivered or received.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

On April 22, 1994, the Commission temporarily approved a proposed rule change expanding and improving DTC's Money Market Instrument ("MMI") programs.[2] As an interim solution to the concerns raised by DTC's regulators about the application of unwind procedures related to a MMI issuer insolvency, DTC proposed to obtain an additional $500 million committed line of credit. This line of credit has been acquired and is dedicated to the completion of settlement in the event a participant fails to settle after DTC has reversed certain transactions in an insolvent issuer's MMIs. This line of credit does not increase participants' fixed or adjustable net debit caps.[3] The subject proposed fee change, which will be effective for services provided on or after August 1, 1994, including services in corporate commercial paper, will recover the cost of the $500 million line of credit by adding $.15 per side to MMI deliver order and maturity presentment service fees.

The proposed rule change is consistent with Section 17A(b)(3)(D)[4] of the Act, as amended, which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable fees for the services which it provides to participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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. The proposed rule change will more equitably allocate fees among participants.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received. Earlier this year, DTC advised participants that the proposed fee increases would be implemented if acquiring the additional line of credit was necessary to obtain regulatory approval for the expanded MMI program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(ii[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] in that the proposed rule change establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of this 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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of DTC. All submissions should refer to File No. SR–DTC–94–11 and should be submitted by August 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19374 Filed 8–8–94; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act Release No. 33958 (April 22, 1994), 58 FR 59283 [File No. SR–DTC–12] (order temporarily approving proposed rule change until April 30, 1995).

[3] The addition of this line of credit to DTC's previous $750 million in liquidity resources has brought DTC's total liquidity resources to $1,250 million. As agreed upon with DTC's regulators, if DTC finds as they expand the MMI program that $1,250 million of liquidity is insufficient, DTC will add to the $500 million dedicated line of credit accordingly

[4] 15 U.S.C. § 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. § 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2) (1993).

[7] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34480; File No. SR–DTC–94–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Establishing a Fee Schedule for Certain Inter-Depository Deliveries

August 2, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 7, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to

[1] 15 U.S.C. § 78s(b)(1) (1988).

solicit comments on the proposed rule change from interested groups.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is proposing the following changes in its fee schedule:

Service	Present fee	Proposed fee
XVIII.		
Inter-Depository Delivery Fees to Participants:		
• Valued (third-party)	$.77*	No Change.
• Free delivery	None*	$.64*.
• Fourth-party delivery	None	$.32* to each depository.

*In addition to the regular Deliver Order fee charged to a Participant for each item delivered, received or reclaimed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make changes to the fee schedule for inter-depository deliveries. DTC maintains interfaces with two other registered securities depositories, the Midwest Securities Trust Company ("MSTC") and Philadelphia Depository Trust Company ("Philadep"). DTC processes four types of inter-depository deliveries: Regional Interface Operations ("RIO") deliveries, Valued ("Third-Party") deliveries, Free deliveries, and Fourth-Party deliveries. Currently, DTC charges fees for RIO and Third-Party deliveries.[2]

RIO deliveries are interregional clearing corporation deliveries related to continuous net settlement deliveries into or out of the National Securities Clearing Corporation's ("NSCC") account at DTC. A RIO delivery represents the net of all trades in a security settling that day on DTC's books between two clearing corporations. Valued (Third-Party) deliveries occur when a DTC participant delivers to or receives from a counterparty that is a participant only in another depository. Free deliveries typically relate to a DTC participant's moving a securities position to or from its DTC account from or to its account at another depository. Fourth-Party deliveries are deliveries between MSTC and Philadep participants that are routed through DTC. The deliveries occur through DTC because the interface between MSTC and Philadep is through DTC.

DTC incurs both internal and external expenses in operating the interfaces. The Internal expenses include computer usage and support; dividend, reorganization, and redemption processing; reconciliation of positions; and certificate inventory management. The external costs to DTC are fees imposed by the other depositories as agreed to by DTC and each depository.

DTC now recovers some interface expenses from the RIO and Third-Party delivery fees. Each of these fees is designed to recover DTC's estimated annual internal expense for the service. In DTC's 1994 fee schedule, the RIO delivery fee is $.70, up from $.42 in 1993; the Third-Party delivery fee is $.77, up from $.49 in 1993.[3] DTC has received no adverse comment on the RIO or Third-Party fees in recent years.

DTC's proposed rule change will establish new fees for Free deliveries and Fourth-Party deliveries at a level that will recover DTC's estimated internal 1994 service cost based on budgeted transaction volumes. Under the proposed rule change, the Free delivery fee will be $.64, which is in addition to the regular Deliver Order fee, and the Fourth-Party delivery fee charged to each depository will be $.32 plus the regular Deliver Order fee. Establishment of these two fees at these levels will raise DTC's interface cost recovery from inter-depository delivery fees from 29% to 59%.[4] Subject to Commission approval of the proposed rule change, DTC will seek in a subsequent proposed rule filing to reduce DTC's Deliver Order fee by $.03 because $.03 of interface expenses will be recovered from the actual interface users through the proposed new fees for Free and Fourth-Party deliveries.[5] The average Deliver Order fee is now $.30 in the Next-Day Funds Settlement system.

The policy of the Board of Directors of DTC has always been that DTC's costs arising from use of the interfaces

[2] In 1977, DTC filed a proposed rule change under Section 19(b)(2) of the Act seeking Commission approval to impose a surcharge on participants that deliver or receive securities through interface accounts (*i.e.*, RIO or Third-Party). Securities Exchange Act Release No. 14109 (October 27, 1977), 42 FR 58991 [File No. SR-DTC-77-10] (notice of filing of proposed rule change). Subsequently, the Commission issued two orders instituting proceedings to determine whether to approve or disapprove Fine No. SR-DTC-77-10. Securities Exchange Act Release Nos. 20461 (December 7, 1983), 48 FR 55854 and 23083 (March 31, 1986), 51 FR 12421. Pending Commission action on File No. SR-DTC-77-10, DTC filed a separate proposed rule change under Section 19(b)(2) of the Act seeking approval for Third-Party delivery fees. Securities Exchange Act Release No. 14655 (April 11, 1978), 43 FR 16576 [File No. SR-DTC-78-6] (notice of filing of proposed rule change). Subsequently, DTC amended File No. SR-DTC-78-6 to change it from a filing under Section 19(b)(2) of the Act to a filing under Section 19(b)(3)(A) of the Act. As a result, the Third-Party delivery fees became effective immediately. Securities Exchange Act Release No. 14835 (June 9, 19978), 15 SEC Docket 4 (June 27, 1978).

[3] Securities Exchange Act Release No. 33985 (May 2, 1994), 59 FR 23905 [File No. SR-DTC-94-03] (notice of Filing and immediate effectiveness of proposed rule change setting forth DTC's 1994 fee schedule).

[4] During each of the two years following Commission approval of the subject proposed fees, DTC will file with the Commission under Section 19(b)(2) of the Act proposed changes in those fees that will have the effect of gradually increasing its interface cost recovery from interface fees to 100%. During this period, DTC also intends to continue its practice of including changes in the fees for valued inter-depository deliveries in the schedules of revised DTC services that are filed annually under Section 19(b)(3)(A) of the Act.

[5] Telephone Conversation between Richard B. Nesson, General Counsel, DTC, and Margaret J. Robb, Staff Attorney, Division of Market Regulation, Commission (July 18, 1994).

between DTC and other securities depositories should be translated into DTC fee charges to those who actually use the interfaces. Because depositories have a more diverse set of participants, many of whom never use such interfaces and most who do use the interfaces do so infrequently, interface costs are not mutualized at depositories as they are at clearing corporations. For example, an analysis of inter-depository deliveries during the first four months of 1994 shows that while Free deliveries (largely self-deliveries) between participants' MSTC or Philadep accounts and their DTC accounts were made by 62% of DTC participants, 3% of DTC participants account for 80% of all such deliveries.

Some participants making self-deliveries deposit certificates in another depository and make self-deliveries of positions back to their DTC accounts. This leaves DTC to deal with the consequences that the physical certificates are still on deposit at the other depository. Those consequences affect all DTC participants by increasing DTC service fees, delaying reorganization activity, and reducing dividend, interest, and reorganization investment income refunds to DTC participants due to later receipt of payments. Other adverse consequences for all DTC participants occur when DTC's access to securities underlying the positions moved to DTC by book-entry is limited.

DTC believes the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(D)[6] of the Act which authorizes DTC to provide for the equitable allocation of reasonable fees among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC 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. The proposed rule change will more equitably allocate DTC's costs between DTC participants that use the interfaces and participants that do not.

Among other things, inter-depository interfaces allow companies in one or more geographic areas to do business with companies in another geographic area at a small fraction of the cost they would incur if they were dealing with physical securities even after paying depository interface fees. Such is the extraordinary cost savings and competitive effect derived from securities immobilization and book-entry delivery. So long as interface fees do not exceed interface costs, such fees are not only fair but fully justified.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has not solicited comments on the proposed rule change. DTC will send a memorandum to its participants concerning this proposal and the rationale for DTC recovery of its interface costs from cost-based fees charged to interface users. Any comments received by DTC will be forwarded to the Commission for inclusion in the Commission's public file on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of DTC. All submissions should refer to File No. SR–DTC–94–10 and should be submitted by August 30, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19375 Filed 8–8–94; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. § 78q–1(b)(3)(D) (1988).

[7] 17 CFR 200.30–3(a) (12) (1991).

[Release No. 34–34479; File No. SR–NASD–94–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for the Late Payment of Service Charges

August 2, 1994.

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 May 27, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On July 29, 1994, the NASD filed with the Commission Amendment No. 1 to the proposed rule change.[1] 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 proposes to adopt a uniform and consistent methodology for assessing fees for late payment of Nasdaq Stock Market service charges. (Additions are in italics; deletions are bracketed.)

Schedule D

Part IX

* * * * *

H. Late Fees

All *charges imposed by The Nasdaq Stock Market, Inc. that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1½%) of the amount past due for the first month plus one and one-half percent (1½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.*

To illustrate how later fees are assessed, if an account is past due $1,000 for 45 days,

[1] Amendment No. 1 to the proposal corrects a mathematical error in an example provided in the language of the proposed rule change, and explains that the new late fee established by the proposal will be assessed to accounts that are in arrears prior to the implementation of the new late fee charge. Letter from Joan Conley, Corporate Secretary, NASD, to Elizabeth MacGregor, Branch Chief, Commission, dated July 28, 1994.

the late fee would be $30.22. This charge reflects a charge of $15 for the first month past due ($1,000×1½%) and $15.22 for the second month past due ($1,015×1½%).

[NASDAQ charges, except those for NASDAQ Level 1 and NASDAQ/NMS Last Sale services, that are past due for 60 days or more shall be subject to a late fee of ten percent (10%) of the amount past due.

Charges for NASDAQ Level 1 and NASDAQ/NMS Last Sale services that are past due shall be subject to a late fee equal to one and one-half percent (1½%) per month of the unpaid balance commencing forty-five (45) days after the invoice date.]

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

1. Purpose

In view of the NASD's implementation of a consolidated billing system for virtually all direct subscriber services provided by The Nasdaq Stock Market, Inc. ("NSM"), the NASD proposes to adopt a uniform and consistent methodology for assessing fees for the late payment of NSM charges. Specifically, for NSM charges that are past due 45 days or more, the NASD proposes to assess late fees by taking the summation of one and one-half percent (1½%) of the amount past due for the first month plus one and one-half percent (1½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

Currently, Section H of Part IX of Schedule D to the By-Laws provides that charges for Nasdaq Level 1 and Nasdaq/NMS Last Sale services which are past due 45 days will be assessed a fee equal to 1½% per month of the unpaid balance. For all other Nasdaq charges, namely, charges for the Nasdaq Level 2/3 service, Over-the-Counter Bulletin Board ("OTCBB"), Mutual Fund Quotation Program, and Nasdaq Workstation service (collectively referred to hereinafter as "Nasdaq charges"), the late payment fee presently is equal to 10% of the amount past due for 60 days or more. By eliminating the current practice of using these two different methods to assess late fees for various NSM charges, the NASD's operational efficiency will be enhanced and public confusion concerning the NASD's late fee policy likely will be diminished.

The NASD also is proposing to amend Section H to provide that the section governs fees for the late payment of NSM charges instead of "NASDAQ charges." This amendment reflects the merger, effective June 30, 1993, of two of the NASD's corporate subsidiaries, Nasdaq, Inc. and NASD Market Services, Inc. ("MSI"), into one consolidated subsidiary called The Nasdaq Stock Market, Inc. In addition, this amendment serves to subject charges for services provided by MSI (the NSM after the merger) to late payment fees (*e.g.*, SOES, SelectNet, and ACT charges). Currently, other than for Nasdaq/NMS Last Sale service charges, there is no fee for the late payment of service charges that previously were assessed by MSI but now are assessed by the NSM after the merger. Thus, the proposal enhances the consistency and uniformity of late payment charges assessed by the NSM.

The NASD notes that the current 10% late fee charge has produced revenues of approximately $35,000 annually. However, the NASD also notes that its implementation of a subscriber deposit policy in April 1990 has been very effective in offsetting potential losses from subscribers with delinquent accounts.[2] Therefore, the NASD believes the 10% fee for late payments is no longer necessary and that the 1½% fee for amounts past due over 45 days is a reasonable way to impose fees for the late payment of service charges.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Specifically, by instituting a uniform and consistent policy for assessing fees for the late payment of service charges imposed by the NSM, the NASD believes that the amount charged for the late payment of fees will be reasonable and equitably allocated. Moreover, the uniform late fee policy will enhance the efficiency of the NASA's new consolidated billing system and likely decrease confusion concerning the method by which fees for the late payment of NSF charges are determined.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Commerce 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 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 August 30, 1994.

[2] See Securities Exchange Act Release No. 27924 (April 20, 1990), 55 FR 17694 (File SR-NASD-90-25).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-19376 Filed 8-8-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34476; File No. SR-NSCC-94-14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Regarding an Expansion of the Limited Money Settlement Service for a New York Window Participant

August 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 1, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II, below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comment from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis until January 31, 1995.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to offer the limited money settlement service to an additional participant in the New York Window 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, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

NSCC currently operates a pilot program for the New York Window service.[2] In January 1994, the pilot program was expanded to include a limited money settlement service for two New York Window participants.[3] The current proposed rule change will expand the pilot program to provide limited money settlement services to an additional New York Window participant.[4]

NSCC has stated that the proposed rule change will be implemented consistent with NSCC's statutory obligation under Section 17A of the Act to safeguard securities and funds in NSCC's custody or control and to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received any comments. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17(A)(a)(1)(B) of the Act sets forth Congress findings that inefficient procedures for clearance and settlement of securities transactions impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[5] The Commission reasserts its belief, as stated in the previous New York Window approval orders, that NSCC's pilot program should help minimize inefficient procedures employed by individual New York City participants by concentrating these operations in one centralized facility.[6] The Commission believes that expanding the limited money settlement service to include an additional New York Window participant should provide a more efficient mechanism by which the participant can settle its debits and credits generated by the New York Window processing. Furthermore, it will give NSCC an expanded field in its study of its limited money settlement service during the pilot program.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[7] The Commission believes that the safety procedures established for the limited money settlement service and approved in the previous New York Window approval order[8] will continue to enable NSCC to meet its obligations under Section 17A of the Act with an additional participant using the limited money settlement service. For example, NSCC will continue to not make any payment on behalf of or to the limited money settlement services participants until NSCC has received funds sufficient to cover the amount of NSCC's payment.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the Commission has previously published notice of and has approved the limited money settlement service. NSCC's previous proposed rule change did not generate any comment letters, and none are expected on this proposal. In addition, accelerated approval will allow the additional participant to begin utilizing the limited money settlement service immediately and to begin benefiting from the efficient and centralized payment procedures provided by NSCC. During the temporary approval period, NSCC will continue to evaluate the limited money settlement service.

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[3] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(i) (1988).

[2] For a complete description of the New York Window program, refer to Securities Exchange Act Release No. 32221 (April 26, 1993), 58 FR 26570 [File No. SR-NSCC-93-03] (order approving pilot program on a temporary basis until April 30, 1994).

[3] For a complete description of limited money settlement service, refer to Securities Exchange Act Release No. 33558 (January 31, 1994), 59 FR 5807 [File No. SR-NSCC-93-14] (order approving pilot program on a temporary basis until January 31, 1995, and expanding the pilot program to offer limited money settlement services to two participants).

[4] This filing covers the period of the temporary approval. Currently, NSCC is seeking permanent approval of the New York Window services, which includes the money settlement service. Securities Exchange Act Release No. 34470 (August 1, 1994) [File No. SR-NSCC-94-12] (notice of filing seeking permanent approval of New York Window service).

[5] 15 U.S.C. 78q-1(a)(1)(B).

[6] *Supra* notes 2 and 3.

[7] 15 U.S.C. 79Q-1 (b) (3) (F).

[8] *Supra* Note 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549 and the principal offices of NSCC. All submissions should refer to File No. SR–NSCC–94–14 and should be submitted by August 30, 1994.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NSCC–94–14) be, and hereby is, approved until January 31, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19377 Filed 8–8–94; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1993).

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Facelifters Home Systems, Inc., Common Stock, $.01 Par Value) File No. 1–13058

August 3, 1994.

Facelifters Home Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, the average daily trading volume in the Company's Common Stock has fallen since it began trading on the Exchange from the volume on NASDAQ/Small Cap Market; trading in the Company's stock on the Amex has been unorderly and inconsistent because of trading in the "third market" by former market makers in the Common Stock; there have been occurrences of a "locked market" and sales occurring above the offer; and brokerage firms have complained to the Company that the bid and asked prices were not accurately reported.

Any interested person may, on or before August 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–19378 Filed 8–8–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (TII Industries, Inc., Common Stock, $.01 Par Value) File No. 1–8048

August 3, 1994.

TII Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously adopted resolution on July 6, 1993, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS").

According to the Company, the Board of Directors believes that the availability of multiple market makers afforded by NASDAQ/NMS, as opposed to the one specialist system of the Exchange, is in the best interests of the Company's stockholders by providing increased visibility, liquidity and market depth for the Company's Common Stock. The Company expects that these factors will become increasingly important to it as the shares of Common Stock issued by the Company in an August 1992 private placement become available for sale under the provisions of Rule 144 promulgated under Securities Act of 1933, as amended, beginning August 10, 1994.

Any interested person may, on or before August 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–19379 Filed 8–8–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Zero Stage Capital V, L.P.; Filing of an Application for a License to Operate as a Small Business Investment Company

[Application No. 99000093]

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Zero Stage Capital V, L.P., 101 Main Street, 17th Fl., Cambridge, MA 02142, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Zero Stage Capital Associates, L.P. 101 Main Street, Cambridge, MA 02142	1.0
Limited Partners:	
Massachusetts Bay Transportation Authority Retirement Fund, 99 Summer Street, Suite 1700, Boston MA 02110	22.6
Middlesex County Retirement System, New Superior Court House, East Cambridge, MA 02141	11.3
National Bancorp of Alaska, Inc., 301 Northern Lights Blvd., Fl. 2, Anchorage, AK 99503	33.9
New Hampshire Dept. of Resources and Economic Development, 172 Pembroke Road, Concord, NH 03301	11.3
11 Limited Partners each owning less than 10%	19.9
	100.0%

Zero Stage Capital V, L.P. will be managed by Zero Stage Capital Company, Inc. The officers and directors of Zero Stage Capital Company, Inc. are:

Name	Relationship to manager	Percentage ownership of manager
Gordon B. Baty.	Secretary	33.3
Paul M. Kelley.	President	33.3
Edward B. Roberts.	Shareholder	33.3

The applicant will begin operations with committed capital of approximately $8.8 million and will be a source of debt and equity financings for qualified small business concerns. The applicant will invest across the continent United States, with higher concentration in the Northeast and Mid-Atlantic regions.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Boston, MA.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: July 27, 1994.

Robert D. Stillman,

Associate Adminstrator for Investment.

[FR Doc. 94–19416 Filed 8–8–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27649]

Environmental Impact Statement (EIS); Effects of Changes of Aircraft Flight Patterns Over State of New Jersey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing a supplement to the draft environmental impact statement (DEIS) for the Expanded East Coast Plan (EECP) on the effects of changes in aircraft flight patterns over the State of New Jersey. The FAA believes that issuance of a supplemental DEIS will best serve the public interest and promote the purposes of the National Environmental Policy Act (NEPA). Due to the complexity of this EIS and the high degree of public interest in the issue, the FAA afforded the public a period of 369 days to comment on the DEIS. This is well in excess of requirements under NEPA. The supplement is intended to afford the public an opportunity to comment on information generated after the DEIS was issued, including: (1) A measure developed by the FAA to mitigate the noise impact of the EECP in its existing form; (2) the agency's analysis of the New Jersey portion of the proposal by the New Jersey Coalition Against Aircraft Noise (NJCAAN) to route aircraft departing Newark International Airport over the water twenty-four hours a day; and (3) other new and updated information that has been developed in response to public comments.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. William J. Marx, FAA Office of Air Traffic System Management, Environmental Issues Program Office, ATM–700 Washington, DC 20591, telephone (202) 267–7900.

SUPPLEMENTARY INFORMATION: The DEIS was issued November, 1992, presenting four alternatives for further consideration. These alternatives are:

- Alternative A. Maintain the current (as defined in 1991) EECP structure. (Proposed action and no action)
- Alternative B. Return to 1986 air traffic routes and procedures using 1991 traffic. (Rollback)
- Alternative C2. Route Newark south flow departure traffic from over Raritan Bay to over the ocean (at night only) via a specific path defined by the Solberg and Colts Neck navigational aids. (Nighttime only oceanic/military routing)
- Alternative D3. Spread aircraft departing Newark runways 22L and 22R to three different headings. (Spreading or fanning)

During the process of developing a final EIS (FEIS), the FAA has identified a potential mitigation measure to minimize the impacts of the EECP. The FAA believes that the public would benefit from the opportunity to comment even though not required to do so. The FAA has also studied the routing proposal developed by the NJCAAN and submitted to the FAA during the comment period on the DEIS. While the FAA rejected a similar concept—Oceanic/Military Routing (24 hours per day)—in the DEIS because it was not operationally feasible, the FAA conducted a detailed analysis of the operational and noise effects of the NJCAAN proposal in consideration of the public interest in the proposal and the fact that the NJCAAN comments on the DEIS were funded in part by Federal funds. The FAA analysis of the NJCAAN proposal will be included in the supplement for public review and comment.

Finally, the supplement will include other information developed in response to comments on the DEIS, including a more detailed explanation of noise metrics, a further explanation of the Expanded Integrated Noise Model, an analysis of noise complaints, and an appendix that indentifes noise levels by census block for alternatives, the proposed mitigation measure, and the NJCAAN routing proposal.

This notice is published to inform the public that the FAA intends to issue a supplemental DEIS by September 30, 1994. The public will be afforded a 45-day period to comment after release of the supplement. The agency's intent is to move expeditiously to develop a FEIS after consideration of comments received in response to the supplemental DEIS. Copies of the supplement will be mailed to all individuals who requested a copy of the

DEIS. The supplement will be made available for review at public libraries in select locations throughout New Jersey.

Issued in Washington, DC on Thursday, August 4, 1994.

Jacqueline L. Smith,

Acting Deputy Administrator for Air Traffic.

[FR Doc. 94–19415 Filed 8–5–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 184; Minimum Performance and Installation Standards for Taxi-Hold Position Lights; Second Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the Special Committee 184 meeting to be held September 7–8 1994, starting at 9:30 a.m. The meeting will be held at the Federal Aviation Administration (FAA) Technical Center, Atlantic City International Airport, Atlantic City, N.J.

The agenda is as follows: (1) Administrative announcements; (2) Chairman's introductory remarks; (3) Review and approval of meeting agenda; (4) Overview of on-site visit schedule for day and night visits; (5) On-site observation of L–804 installations (Daylight and darkness); (6) Review draft work plan; (7) Assign tasks; (8) Other business; (9) Set agenda for next meeting; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on August 2, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–19407 Filed 8–8–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–66]

License Cancellations

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

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker licenses have been cancelled due to the death of the broker. These licenses were issued in various Customs Districts.

John Serra—license no. 4107
William S. Beame—license no. 1778
William P. Emerson—license no. 2101
Dorothy Lindsey—license no. 3210

Dated: August 3, 1994.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 94–19427 Filed 8–8–94; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Cash Surrender or Policy Loan, VA Form 29–1546

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 title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 273–7011.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 8, 1994.

Dated: August 1, 1994

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Reinstatement

1. Application for Cash Surrender or Policy Loan, VA Form 29–1546.
2. The form is used by the insured to apply for cash surrender value or policy loan on his/her insurance. The information is used by VA to initiate the processing of the insured's request for a policy loan or cash surrender.
3. Individuals or households.
4. 4,939 hours.
5. 10 minutes.
6. On occasion.
7. 29,636 respondents.

[FR Doc. 94–19308 Filed 8–8–94; 8:45 am]

BILLING CODE 8320–01–M

Child Development Centers at VAMC Sepulveda, CA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Sepulveda, CA Veterans Affairs Medical Centers for Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the best quality child development and care at the greatest economic advantage for children of VAMC employees. The developer will be responsible for all aspects of construction, ownership, maintenance, and operation of the Child Development Center.

FOR FURTHER INFORMATION CONTACT: Brian McDaniel, Office of Asset and Enterprise Development (089), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: July 15, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–19307 Filed 8–8–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 152
Tuesday, August 9, 1994

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).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-29; Emergency Notice]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR?—dated August 8, 1994.

Notice is given that the Commission has voted to cancel the meeting on August 5, 1994 at 10:00 a.m.

The Commission has determined by circulation of an action jacket that Commission business requires cancellation of this meeting and that no earlier notice of the cancellation was possible, and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning this matter, please contact the Secretary of the Commission at (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

By order of the Commission.

Issued: August 4, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-19472 Filed 8-5-94; 10:15 am]

BILLING CODE 7020-02-P

Corrections

Federal Register
Vol. 59, No. 152
Tuesday, August 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91-401-000]

Wallkill Generating Company, L.P.; Issuance of Order

Correction

In notice document 94-18475 appearing on page 38601 in the issue of Friday, July 29, 1994, the Docket number should have appeared as set forth above.

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 8

[Notice 1994-8]

National Voter Registration Act of 1993

Correction

In rule document 94-15199 beginning on page 32311 in the issue of Thursday, June 23, 1994, make the following corrections:

1. On page 32316, in the third column, under *F. Occupation*, in the third line, "vote" should read "voter".

2. On page 32317, in the third column, in the first full paragraph, in the sixth line, "under" should be capitalized.

§ 8.4 [Corrected]

3. On page 32324, in the first column, in § 8.4(a)(2), in the fifth line, the period after "name" should be a semi-colon.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the Southern Rocky Mountain Population of the Boreal Toad as Endangered

Correction

FR Document 94-17866 was published beginning on page 37439 in the issue of July 22, 1994. This document was a notice of petition findings and initiation of status review. It was published in the Rules section of the **Federal Register**. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34306; File No. SR-CBOE-94-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options and Regular Reduced-Value Long-Term Options on the CBOE Real Estate Investment Trust Index

Correction

In notice document 94-16749 beginning on page 35536 in the issue of Tuesday, July 12, 1994, the Release number should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
August 9, 1994

Part II

Environmental Protection Agency

40 CFR Part 125

Discharges Into Marine Waters; Modification of Secondary Treatment Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–5025–7]

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating final amendments to the regulations contained in 40 CFR part 125, subpart G, which implement section 301(h) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. section 1311(h). Section 301(h) provides for modifications of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) that demonstrate their compliance with the section 301(h) criteria. These regulatory revisions are being promulgated to respond to the amendments to section 301(h) contained in section 303 of the Water Quality Act of 1987 ("WQA") and to reflect program experience. These amendments revise portions of the existing part 125, subpart G, regulations and simplify and revise the application requirements contained in Appendices A and B of subpart G.

DATES: *Effective Date:* These regulations take effect on September 8, 1994.

Promulgation Date: In accordance with 40 CFR 23.2, the Administrator's promulgation occurs at 1:00 p.m. EDT on August 23, 1994.

ADDRESSES: Copies of comments submitted and the docket for this rulemaking are available for review at EPA's Water Docket; Room L–102, 401 M St., SW., Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–8448. An amended Technical Support Document (TSD) has been prepared to provide guidance for preparing applications and complying with provisions of the regulations. This amended TSD completely supersedes the 1982 revised section 301(h) TSD, and will be available soon after these regulations are published in the **Federal Register**. Requests for the amended TSD should be made to Virginia Fox-Norse at the address given in this section.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background
- A. History of the section 301(h) Program
- B. Water Quality Act Amendments of 1987
- C. Overview of Public Comments
- D. Summary of Changes Made from the 1991 Proposal

II. Section by Section Analysis

III. Supporting Documentation
- A. Regulatory Flexibility Act Analysis
- B. Executive Order 12291
- C. Paperwork Reduction Act

I. Background

A. History of the Section 301(h) Program

Under section 301(b)(1)(B) of the Clean Water Act of 1972 (hereinafter CWA or Act) (33 U.S.C. § 1311(b)(1)(B)), POTWs were required to achieve secondary treatment by July 1, 1977. The secondary treatment requirements establish technology-based effluent limitations for biochemical oxygen demand (BOD), suspended solids (SS), and pH. *See* 40 CFR part 133. Some municipalities with POTWs that discharged into marine waters argued that secondary treatment might not be necessary to protect certain marine waters where deeper waters with large tides and currents can allow for greater dilution and dispersion than discharges into fresh waters. As a result, Congress amended the CWA in 1977 to add section 301(h), 33 U.S.C. 1311(h), to allow the Administrator, upon application by a POTW and with the concurrence of the State, to issue a National Pollutant Discharge Elimination System (NPDES) permit that modifies the secondary treatment requirements of section 301(b)(1)(B). In order to obtain a section 301(h) waiver, the applicant must demonstrate to the satisfaction of the Administrator that the proposed discharge complies with a set of criteria intended to protect the marine environment. In addition, section 301(j)(1)(A) of the Act established a deadline for filing a section 301(h) application. EPA regulations and an accompanying technical support document (TSD) to implement the section 301(h) program were issued in 1979. (44 FR 34784, June 15, 1979.)

Section 301(h) was later amended by the Municipal Wastewater Treatment Construction Grants Amendments (MWTCGA) of 1981 (Pub. L. 97–117, 95 Stat. 1623). The MWTCGA extended the deadline for filing section 301(h) applications to December 29, 1982, and modified applicant eligibility requirements. In response to the MWTCGA and program experience, the section 301(h) regulations and the TSD were revised in 1982. (See 47 FR 24918, June 8, 1982, and 47 FR 53666, November 26, 1982.)

B. Water Quality Act Amendments of 1987

On February 4, 1987, Congress passed the Water Quality Act of 1987 (Pub. L. 100–4, hereinafter WQA), further amending section 301(h) of the CWA. Section 303 of the WQA, which contains the amendments to section 301(h), made the following changes to section 301(h) of the CWA:

(1) The discharge of pollutants, in accordance with modified requirements, cannot interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of water quality which assures the protection of the resources and uses listed in CWA section 301(h)(2).

(2) The scope of required monitoring is limited to only those scientific investigations necessary to study the effects of the proposed discharge.

(3) For POTWs serving a population of 50,000 or more, with respect to any toxic pollutant introduced by an industrial source for which pollutant there is no applicable pretreatment requirement in effect, the applicant must demonstrate that sources introducing waste into the POTW are in compliance with all applicable pretreatment requirements, the applicant will enforce those requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from the POTW, removes the same amount of such toxic pollutant as would be removed if the POTW were to apply secondary treatment and had no pretreatment program for such pollutant. (For purposes of this preamble, this requirement will be referred to as the "urban area pretreatment requirement").

(4) At the time the section 301(h) modification becomes effective, the applicant will be discharging effluent which has received at least primary or equivalent treatment and which meets water quality criteria established under CWA section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which the effluent is discharged. The statutory amendments define primary or equivalent treatment as treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent each of BOD and of SS, and disinfection, where appropriate.

(5) No modification may be issued for a discharge into marine waters unless those waters exhibit characteristics

assuring that water providing dilution does not contain significant amounts of previously discharged effluent from the POTW.

(6) No section 301(h) modified permit may be issued authorizing the discharge of any pollutant into saline estuarine waters which at the time of the application exhibit certain stressed conditions specified in the statute, without regard to the presence or absence of a causal relationship between those conditions and the applicant's current or proposed discharge.

(7) No permits may be issued for section 301(h) modified discharges into the New York Bight Apex.

(8) Any POTW that had a contractual agreement before December 31, 1982, to use an outfall operated by another POTW which has applied for or received a section 301(h) modified permit may apply for a section 301(h) permit in its own right within 30 days of WQA enactment.

(9) Certain provisions of the WQA amendments do not apply to applications which received final or tentative approval before enactment of the WQA. These permits will, however, be subject to the new section 301(h) requirements upon permit renewal.

C. Overview of Public Comments

EPA proposed regulations on January 24, 1991, responding to the requirements of the WQA and program experience (56 FR 2814). The preamble to the proposed regulations explains the proposed changes in the regulations in response to the WQA. On March 7, 1991, EPA held a public hearing in Washington, DC, to receive comment on the proposal. The public comment period was open for 60 days and closed on March 25, 1991. Although some comments were not received until April 8, 1991, EPA has elected to consider all comments received in developing this final rule. EPA received both written comments and comments at the public hearing on the proposed rule from a total of 17 commenters: eight section 301(h) applicants, two State governments, four independent consultants, and three environmental/public interest groups.

Although the comments received addressed many of the proposed changes, the principal areas of concern to commenters focused on primary or equivalent treatment requirements, urban area pretreatment, and the water quality criteria requirements. A brief summary of the comments on these areas is set out below, and a more detailed discussion of all comments received is set out later in the section-by-section analysis of this preamble.

Comments regarding primary treatment raised issues related to the 30 percent removal requirement for BOD, the cost to small communities of complying, and the time limit to meet the primary treatment requirement. Comments on urban area pretreatment raised issues about use of the pilot plant approach to demonstrate secondary removal equivalency for toxics, development of local pretreatment limits, which pollutants are subject to this requirement, the time limit to meet this requirement, and the cost of compliance. Comments regarding the section 304(a)(1) water quality criteria focused on setting risk levels for carcinogens, determining mixing zones for evaluating compliance with State water quality standards, and the role of the section 304(a)(1) water quality criteria in cases where the State has adopted a different water quality standard under CWA section 303.

D. Summary of Changes Made From the 1991 Proposal

For the convenience of the reader, the following discussion provides a brief overview of the sections and subject areas in which today's final rule makes changes from the January 24, 1991, proposal. Table 1 of the preamble also provides a summary of those changes. A full discussion of the changes made in the regulations and proposal is set out later in the section-by-section analysis of today's preamble.

Today's final rule would make a clarifying change from the 1991 proposal in § 125.58(n), which defines the term "ocean waters." This change is intended to clarify the distinction between "saline estuarine waters" and "ocean waters," a distinction important to the application of the WQA provisions prohibiting section 301(h) discharges into stressed saline estuarine waters.

Today's final rule makes a change from the 1991 proposal in § 125.59, which addresses general application requirements. The proposal allowed the granting of tentative approvals if the applicant demonstrated good faith to come into compliance with all the requirements of this subpart, based on a schedule in accordance with § 125.59(f)(3)(ii). EPA received a comment asking that this section be clarified. The commenter stated that because § 125.59(f)(3)(ii) only applies to primary treatment and urban area pretreatment requirements, the section could be interpreted as allowing compliance schedules only for those requirements and not for all requirements. Section 125.59(h) has been amended to allow compliance schedules for all requirements.

This change merely clarifies EPA's original intent.

Today's final rule makes a change from the 1991 proposal in § 125.60, which addresses the WQA requirements for compliance with primary or equivalent treatment. The proposal specified a monthly averaging period for determining compliance with the 30 percent BOD removal requirement for BOD and SS established by the WQA. In response to comments on this issue, the final rule adds the opportunity under certain special circumstances for applicants unable to meet the 30 percent removal requirement for BOD on the basis of a monthly average to request a longer averaging period (up to annual) in order to provide needed flexibility in calculating compliance. This averaging basis is not available for those POTWs that have already shown a consistent ability to meet the 30-percent removal requirement for BOD on a monthly basis. Because no comments were received indicating a need for flexibility in the monthly averaging period for determining compliance with the 30 percent suspended solids removal requirement, this change applies *only* to the BOD removal requirements.

The final rule makes a change to the proposed regulatory language of § 125.62 with regard to determining compliance with State water quality standards. Comments were received on the issue of mixing zones, and in evaluating these comments, EPA noted that the proposal had inadvertently omitted language contained in the existing 1982 section 301(h) regulations on meeting applicable water quality standards at and beyond the zone of initial dilution. The final rule promulgated today would retain that language so that the original requirement of the 1982 regulations for meeting State water quality standards at the edge of the zone of initial dilution remains in effect.

The final rule also makes a change from the 1991 proposal in § 125.63, which addresses section 301(h) monitoring programs. While implied, the proposal did not include explicit regulatory language requiring monitoring to determine compliance with the primary treatment requirements. It also did not include, under general requirements, an explicit requirement to have a monitoring program to demonstrate compliance with water quality criteria as well as water quality standards, as applicable. The final rule adds these requirements to § 125.63 (a)(1) and (d)(2) in order to ensure that applicants provide data on

their compliance with these requirements over the life of the permit.

In addition, in response to comments, the final rule makes several clarifying changes to § 125.65, which addresses the urban area pretreatment requirements. The changes are intended to provide additional guidance on implementation of this section with regard to the development of pretreatment requirements and secondary equivalency for toxics removal.

Some conforming and organizational changes were made to the application questionnaire contained in the Appendix to these regulations. These changes address amendments made in the final rule and simplify its use by applicants and the Agency to determine compliance with the 301(h) requirements.

The remaining sections of the rule (§§ 125.56, 125.57, 125.61, 125.64, 125.66–125.68) remain unchanged from the 1991 proposal.

TABLE 1

Final subpart G	Contents	Changes from 1991 Proposal
125.56	Scope and Purpose	Unchanged.
125.57	Law governing issuance of a modified permit	Unchanged.
125.58	Definitions	Clarified ocean water definition.
125.59	General	Clarified requirements for compliance schedules.
125.60	Primary or equivalent treatment requirements	Change to BOD removal averaging period under certain circumstances.
125.61	Existence of and compliance with applicable water quality standards	Unchanged.
125.62	Attainment or maintenance of water quality which assures protection of water supplies, and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.	Change to mixing zone provisions.
125.63	Establishment of a monitoring program	Monitoring provisions regarding primary treatment compliance added.
125.64	Effect of discharge on other point and nonpoint sources	Unchanged.
125.65	Urban area pretreatment program	Clarifying language added.
125.66	Toxics control program	Unchanged.
125.67	Increase in effluent volume or amount of pollutants discharged	Unchanged.
125.68	Special conditions for section 301(h) modified permits	Unchanged.
Appendix	Applicant questionnaire for modification of secondary treatment requirements	Conforming and Organizational changes made.

II. Section-by-Section Analysis

This section provides a description of each section in the regulation and discusses the public comments received. Citations to sections of the part 125, subpart G, regulations in the discussion below refer to the section numbers of the regulations as numbered under today's rule.

Although portions of the section 301(h) regulations that were not proposed for change are being reprinted with today's action, this has been done for the convenience of the reader. EPA did not reconsider those existing portions of the regulations and they are not subject to challenge as part of this final rulemaking.

Section 125.56: This section establishes the general scope and purpose of the regulations. EPA did not propose to revise this section, and no comments were received. This section remains unchanged.

Section 125.57: This section sets forth the statutory language applicable to section 301(h) modified permits. No comments were received, and this section remains unchanged from the proposed rule.

Section 125.58: This section sets forth the definitions applicable to the subpart G regulations. As a result of section 303 of the WQA, the 1991 proposal added definitions of "primary or equivalent treatment," "pretreatment," "categorical pretreatment standard," "secondary removal equivalency," "water quality criteria," "permittee," and "New York Bight Apex." In addition, the proposal made changes to existing definitions for "industrial source," "ocean waters," and "stressed waters." EPA received significant comments on two aspects of the primary or equivalent treatment requirements and the definition of saline estuarine waters.

Definition of Primary Treatment

Section 125.58(r) of the proposed rule defined "primary or equivalent treatment" as treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding (BOD) material and of the suspended solids (SS) in the treatment works influent, and disinfection, where appropriate. This definition was taken directly from the language of section 303(d) of the WQA. The preamble to the proposed rule further explained that the terms "sedimentation" and "skimming" could include a range of treatment techniques such as coagulation and precipitation (physical adjuncts to sedimentation), and flotation and subsequent removal by skimming, in order to achieve the required 30 percent removal of BOD and SS. (56 FR 2818). Although certain types of treatment are specified in the statutory definition (i.e., screening, sedimentation, and skimming), EPA believes the principal intent of the statutory definition is to ensure compliance with the 30 percent BOD and SS removal requirements, rather than specifying the exact methods used to achieve such removal rates. For example, chemical addition, coagulation, and precipitation might be necessary in addition to the specific treatment processes listed in the definition in order to achieve the mandated 30 percent removal, and this would be allowable.

Several commenters sought a change to the definition due to concerns with the requirement to achieve 30 percent BOD removal. As discussed below in more detail, the commenters' concerns centered on the practical difficulties in achieving 30 percent BOD removal by the physical processes of primary treatment. Some noted that from an engineering standpoint, technologies for primary treatment are aimed at removing solids, rather than soluble BOD.

Some commenters stated that their review of the legislative history of the WQA amendments to section 301(h)

shows that Congress did not articulate any rationale for defining primary treatment as 30 percent removal of BOD. The commenters argued that Congress' intent was to stop the discharge of untreated sewage from waiver recipients. They also pointed out that Congress defined primary treatment as consisting only of skimming, screening, and sedimentation, and did not include more sophisticated technologies, such as coagulation and precipitation. Therefore, they state, EPA must adopt that literal definition and acknowledge that skimming, screening and sedimentation might not be enough to achieve 30 percent removal of BOD. Commenters sought a change to the definition of primary treatment to reflect only the physical processes and not the 30-percent removal requirements.

Another commenter disagreed and argued that the advantages of using clear, uniform 30-percent standards in the statute and regulations are obvious, and that the fact that these advantages and other plausible rationales were not stated explicitly in the legislative history is insufficient grounds for ignoring the plain and unambiguous statutory requirements.

Some commenters noted that primary treatment generally is intended to remove settleable solids and floating materials rather than BOD and therefore inclusion of 30 percent BOD removal as part of the definition of primary treatment is technically inappropriate. In support, several commenters cited the literature of wastewater engineering and stated that BOD reductions achieved by primary treatment are the result of insoluble (solid form) BOD being removed along with the settleable or floatable materials. The commenters pointed out that soluble BOD would not be removed by the physical processes of screening, skimming, and sedimentation, and that the BOD removal rates achievable by primary treatment would therefore vary depending upon the relative amounts of soluble and insoluble BOD. Commenters also cited situations where pretreatment of discharges by industrial dischargers that removes much of the insoluble BOD (e.g., fish processors removing settleable fish wastes) results in a high proportion of soluble to insoluble BOD. One commenter noted that the key statutory term in section 303(d)(2) of the WQA is "material," implying that Congress intended that 30 percent removal refers to insoluble BOD, not total BOD. Section 303(d)(2) states that "primary or equivalent treatment means the removal of at least * * * 30 percent of the biological oxygen demanding *material* * * *" (emphasis added). The commenters therefore sought a change to the regulations' definition of primary treatment to require 30 percent removal of insoluble BOD, with soluble BOD being excluded from the 30 percent removal requirement.

Some commenters were concerned that they might have difficulty in achieving 30 percent BOD removal by the physical processes of primary treatment because their influent BOD levels were very dilute, that is, relatively low concentrations of BOD in the raw wastewater would make 30 percent removal hard to achieve. These commenters pointed to a number of factors leading to such dilute wastewater and difficulties in achieving removal efficiencies such as (1) cold climates which result in freeze/thaw problems including inflow and infiltration from snow melt and cracked or broken pipes with attendant dilution of the influent by the resulting influx of fresh water; (2) insufficient industrial or commercial sources with high concentrations of BOD in the wastewater discharges to the municipal sewage system to offset otherwise dilute influents with low BOD concentrations; (3) cold wastewater temperatures resulting in relatively less efficient treatment; and (4) extremely high tides and high precipitation. These commenters recommended that EPA not require 30 percent removal during periods of extremely dilute and clean inflows.

After considering these comments, EPA made no changes to the definition of primary or equivalent treatment in § 125.58(r). However, as discussed below in the section-by-section analysis for § 125.60, the Agency is making changes to how compliance with the 30 percent removal requirement is calculated for BOD. Specifically, EPA is allowing the demonstration of compliance with the 30 percent BOD removal requirement to be averaged over a longer time period than proposed, in some circumstances. This added flexibility should provide some of the relief sought by commenters.

Although EPA recognizes that from a technical or engineering perspective, primary treatment is generally thought of as physical processes to remove solids, the statutory definition of primary treatment adopted by Congress for purposes of section 301(h) is unambiguous in requiring 30 percent BOD removal. In addition, EPA disagrees with the commenters who stated that the statutory definition precludes the use of additional treatment processes such as chemical addition to enhance primary treatment's physical processes (e.g., chemical addition, coagulation, and precipitation) in order to achieve the required 30 percent removal of BOD.

With regard to the commenters' suggestions that the definition be revised to define BOD as insoluble BOD only, EPA recognizes that removal of BOD in primary treatment normally is associated with the removal of settleable (i.e., insoluble) materials. While the literature cited by the commenters indicates that BOD removals for traditional primary treatment range from about 20 to 40 percent, the reported range is a result of many factors including treatment plant design, subsequent additional treatment and influent qualities such as the presence of soluble versus non-soluble BOD. Furthermore, Congress set the BOD removal standard without incorporating such a distinction. Both soluble and insoluble BOD exert the similar effect of depressing dissolved oxygen levels in the receiving waters. Limiting the required removal to only insoluble BOD ignores this fact and also would be inconsistent with the existing approach of the Agency's secondary treatment regulations, which do not distinguish between removal of soluble and insoluble BOD. EPA disagrees that the use of the term "material" in section 303(d)(2) indicates that Congress intended that 30 percent removal refer only to insoluble BOD. *See*, e.g., 40 CFR part 133.

The definition in today's regulations comports with the express statutory language, and if an applicant does have difficulty meeting the 30 percent BOD removal requirement with treatment by screening, sedimentation, and skimming, for such reasons as dilute influent, cold temperatures, or soluble-to-insoluble BOD ratios, applicants can increase BOD removal efficiencies through the application of treatment processes which may include physical processes enhanced by chemical processes. Accordingly, given the unambiguous statutory language on percent removal and the ability to use enhanced treatment processes when necessary, EPA believes the definition should not be amended to allow for less than 30 percent removal of BOD or to exclude soluble BOD from the removal requirements established by Congress. Compliance with the 30 percent removal requirement, which may require enhanced or additional technologies, is more appropriate than limiting treatment strictly to the three technologies listed in the statute and not achieving 30 percent in some cases. The term material, EPA believes, does not imply insoluble, and, as explained above, such an interpretation makes

little sense, given that soluble and insoluble BOD exert similar effects in the receiving waters.

Other commenters requested that the definition be changed to require that the combined average of both BOD and SS percent removal be at least 30 percent. EPA considered this option but did not deem it acceptable for two reasons. First, the statute states that primary treatment requires the removal of at least 30 percent of the biological oxygen demanding material and of the suspended solids. Combining the BOD and SS removal requirements into an overall 30 percent average, in EPA's view, would not satisfy the statutory language or intent. Second, after considering both information submitted by commenters and EPA's own assessment of primary treatment removal data from POTWs (See Technical Review of the Influent/Effluent Characteristics of POTWs, June 1994), EPA concludes that most POTWs are removing greater than 30 percent of SS, and some are removing greater than 60 percent of SS. Adopting the suggested change thus would allow for an actual relaxing of both BOD and SS removal even for applicants capable of meeting the 30 percent removal of BOD and 30 percent removal of SS. There is no indication that Congress intended this result. Moreover, properly run primary treatment plants should be able to meet 30 percent SS removal and no comments or data were received that indicate otherwise. EPA believes one objective of the primary treatment provision is to ensure the proper design and operation of treatment plants, and this objective would not be met under the commenters' suggested interpretation.

Similar to the above comments, some commenters requested the definition be changed to require that the combined average of both BOD and SS percent removal be greater than 60 percent. As stated above, EPA does not believe that the statutory language and intent are consistent with combining BOD and SS removals to meet the 30-percent removal requirement. Using a standard of 60 percent would stray even further from the plain meaning of the statute. Moreover, if Congress had intended to provide a 60 percent removal requirement it could easily have so specified in the statute, however, the statute makes no reference to a 60 percent removal of BOD and SS. Finally, as with the previous comment, this interpretation could allow for even greater relaxing of treatment efficiencies for BOD removal (or SS), leading to less efficient plant operations than applicants are currently achieving.

Some commenters suggested that the requirement for 30 percent removal should reflect a "credit system," under which the removal efficiency for BOD would be calculated based on a combination of the BOD removal by industrial dischargers' pretreatment, plus the removal achieved by treatment processes at the POTW. This approach is inconsistent with the plain statutory language and thus cannot be adopted. The statute unambiguously specifies that the 30 percent removal rate is to be achieved with respect to the applicant's influent. Such influent would already have been subject to industrial dischargers' pretreatment, and because the statute requires that the 30 percent removal rate be achieved for the influent to the POTW, credit cannot be given for upstream treatment by industrial dischargers.

In contrast to the above comments seeking a change in the definition of primary treatment, other comments supported the definition of primary treatment as 30 percent removal of BOD and of SS as proposed. These commenters noted that this definition is consistent with the plain, unambiguous definition specified by Congress in the WQA as discussed above, and these commenters agree with EPA that the suggested changes to the definition that EPA has rejected would be inappropriate.

Definitions of Saline Estuarine Waters and Ocean Waters

Under section 303(e) of the WQA, section 301(h) modified discharges are prohibited into saline estuarine waters exhibiting certain signs of stress (i.e., degradation to water quality) specified in the statute. In contrast, this flat prohibition does not apply to "ocean waters." As a result, in the proposed rule, EPA amended the term "ocean waters" in § 125.58(n) to clarify that ocean waters are distinct from saline estuarine waters because discharges to saline estuaries are now subject to additional regulatory criteria not applicable to discharges to oceans.

Although the existing definition of saline estuarine waters was not proposed for amendment, some commenters expressed the view that it is too broad and thus might give the prohibition on section 301(h) discharges to stressed saline estuarine waters greater scope than intended. These commenters sought a definition giving more precise boundaries to saline estuarine waters.

The narrative definition of saline estuarine waters has remained unchanged since its original 1979 promulgation in the section 301(h) regulations, and the section 301(h) regulations have always placed additional restrictions on discharges to saline estuarine waters compared to ocean waters. Section 125.61(c)(4) (1982) places additional limits on impacts within the zone of initial dilution for saline estuarine discharges. EPA's experience with the use of a general narrative definition of saline estuarine waters for purposes of making regulatory distinctions is that this approach is workable. EPA believes that it is not feasible for the purposes of the section 301(h) regulations to develop a definition establishing fixed boundaries between ocean and estuarine waters, but that all relevant local circumstances should be considered and the distinction should be made on the basis of the site-specific circumstances.

The commenters' concern appears to center on the meaning of the term "semi-enclosed waters" in the definition of saline estuarine waters. In this regard it is important to note that under § 125.58(v), not all semi-enclosed coastal waters are treated as saline estuaries. Under the section 301(h) regulations, while some embayments and other indentations along the coastline lie inside the baseline from which the territorial sea begins, they are treated for purposes of section 301(h) as being ocean waters. See preamble to 1979 section 301(h) regulations (44 FR 34784, 34795, June 15, 1979). As noted in the preamble to the 1979 section 301(h) regulations (44 FR 34795), it is the presence of fresh water inflows that is the distinguishing characteristic of estuaries. EPA notes today that saline estuarine waters typically are waters lying inside the baseline in which the salinity is diluted by fresh water inflows. In contrast, embayments or indentations along the coastline that are not influenced by such fresh water inflows are not estuaries. To further clarify that ocean waters and saline estuarine waters are distinct and mutually exclusive terms for purposes of section 301(h), the final rule, as in the proposal, amends the definition of "ocean waters" to note that this term specifically excludes saline estuarine waters.

Commenters also inquired about situations where an outfall crosses through estuarine waters, but the actual discharge is into offshore waters. Because both the statute and the implementing regulations make clear that the prohibition applies to discharges of pollutants into saline estuarine waters, the statute and implementing regulations already adequately address this case.

Section 125.59: This section describes the general requirements for section 301(h) applications, including filing procedures and deadlines, procedures for revising applications, and procedures for State determinations. EPA proposed to make several changes to this section. In the proposed rule, EPA added procedures for permit renewal, clarified language regarding State determinations, and added provisions for the submission of additional information to demonstrate compliance with the urban area pretreatment program and primary or equivalent treatment requirements. EPA also proposed to amend the regulations in accordance with section 303(g) of the WQA to exclude certain applicants from the water quality criteria provisions of § 125.62(a), primary or equivalent treatment program requirements (§ 125.60) and urban area pretreatment program requirements (§ 125.65) until permit renewal. As provided by the WQA, and explained later on in this preamble, these grandfathering provisions in today's final rule apply only to those section 301(h) applications that received tentative or final section 301(h) modified permit approvals prior to enactment of the WQA.

The new requirements for submitting additional information are found in § 125.59(e) and (f). Under those provisions, permittees and applicants to whom EPA has issued a final or tentative decision, including those that have been grandfathered under WQA section 303(g), must submit a letter of intent explaining how the permittee or applicant will meet the primary treatment and urban area pretreatment requirements. Under § 125.59(f)(3), applicants that are not grandfathered have two years from publication of the regulation to comply with the primary treatment and urban area pretreatment requirements; applicants that are grandfathered have until permit renewal or two years from date of publication of these regulations, whichever is later. Under § 125.59(e), the letters of intent must contain a project plan, including a schedule, to ensure that timely implementation of the requirements is accomplished.

Some commenters expressed the view that two years from the date of promulgation of the regulations is not sufficient time to enable compliance with the primary treatment and urban area pretreatment requirements. One of these commenters expressed concern over the impact of such a deadline on a consent decree schedule it has entered into for development of a pretreatment program. Further, this commenter was concerned that the time would not be sufficient to develop pretreatment limits for all 126 toxic priority pollutants. Another commenter expressed concern that two years was not sufficient given their short construction season and reliance on obtaining funds from a State legislature whose timing is not in the commenter's control. Other commenters expressed the view that two years is a reasonable timeframe. Another commenter expressed the view that two years is an excessive timeframe and in fact should not apply to requirements which were either (1) in effect prior to the 1987 amendments or (2) clear on the face of the 1987 amendments (e.g., 30 percent BOD/suspended solids removal standards).

With regard to requirements in effect prior to the 1987 WQA, the two-year time frame is not applicable. The two-year time frame applies only to the urban area pretreatment program and primary or equivalent treatment requirements, both of which were added by the WQA.

EPA recognizes that for some applicants, compliance with a two-year deadline from the date of promulgation of the regulations may be more difficult than for others, for example, those who may have to obtain funding to design and build an upgraded facility to meet the primary treatment requirements. However, none of the commenters opposing the two-year deadline provided persuasive information demonstrating why this deadline could not be met. One commenter subject to court-ordered deadlines and consent decree time-lines asked how to reconcile these deadlines with the consent decree time-lines. That commenter also noted that there are a number of different activities that need to be performed to establish a local limit, such as gathering data, developing computer models, and obtaining government approvals. That commenter, however, provided no information supporting why these activities cannot be accomplished within the time established in the regulation. EPA notes that several of these activities can be performed simultaneously. In response, the commenter will have to comply with the deadlines included in the consent decree. This comment is moot because of the time that has elapsed between the proposed rule and today. The deadlines in the rule should not affect the dates in consent decree. In addition, the commenter has been on notice for several years. EPA continues to believe that the two-year time frame for compliance provides sufficient time to achieve compliance. It should also be noted that the requirement to develop local pretreatment limits does not necessarily apply to all 126 priority pollutants, but only those that are known or suspected to be introduced to the plant by industry, as discussed later in this preamble. The Agency notes that the statutory provisions giving rise to these requirements were enacted in 1987, and that the proposed regulations and draft technical support document were issued in 1991. In addition, the Agency has had other final guidance on the development of pretreatment programs in place for several years. Even in cases where commenters claim they have large numbers of dischargers and large numbers of pollutants will need to be addressed, EPA continues to believe that sufficient time and notice has been given to achieve compliance. EPA agrees with the commenter who noted that applicants have been on notice of the need to comply with the primary treatment and urban area pretreatment requirements for quite some time, and could have already initiated work on the planning and development of measures to achieve compliance. The Agency also recognizes that in the absence of final regulations on these issues, applicants should not be expected to have completely developed and implemented final plans. Given this situation, and in the absence of supporting information to show that the two-year time frame of the proposal is inappropriate, the Agency is retaining the proposal's two-year time frame from the date of publication of the final regulations in the **Federal Register** to achieve compliance. This date, August 9, 1996, is inserted in the regulatory text of this rule.

One commenter asked for additional time to comply with the urban area pretreatment and primary treatment equivalency requirements for a plant that has not yet been constructed. In response, these applicants will have to demonstrate compliance with these requirements based on a predictive analysis of their flows. The applicant must base their prediction on potential industrial sources and pollutants, and, to the best of their ability, support such predictions within the two-year time frame.

In proposed § 125.59(h), EPA added language to clarify that the Agency may tentatively approve a section 301(h) permit modification where an applicant has demonstrated a good faith effort to come into compliance with all requirements of the section 301(h) regulations, based upon a schedule approved by the Agency for meeting any outstanding section 301(h) requirements. This provision is consistent with the existing regulations and practice and was proposed for

addition only as a clarifying change. In addition, the proposal made no changes to the existing requirement that in order to receive a final section 301(h) modification, applicants must demonstrate actual compliance with all of the part 125, subpart G, requirements before EPA will issue a final section 301(h) modified permit. *See* 40 CFR § 125.59(g)(1) (1982).

One commenter supported the approach taken by EPA on tentatively approving an application based on a schedule with respect to outstanding requirements if an applicant has demonstrated a good faith effort to come into compliance. However, the commenter is concerned that § 125.59(h) creates an ambiguity regarding the permissible scope of the schedules for meeting 301(h) requirements. Section § 125.59(h) allows EPA to tentatively approve an application if the applicant is making a good faith effort to comply with "all requirements of this subpart." (emphasis added) The section continues on, however, to require that the schedule for meeting these requirements must be "approved by the Administrator in accordance with § 125.59(f)(3)(ii), which refers only to schedules of compliance with § 125.60 (primary or equivalent treatment) and § 125.65 (urban area pretreatment).

EPA agrees with the commenter and is clarifying § 125.59(h) to allow schedules for satisfying the 301(h) requirements for all requirements. It was not the Agency's intent to limit compliance schedules to the requirements of §§ 125.60 and 125.65. The Agency's intent was that the limitations of § 125.59(f)(3)(ii) apply only to compliance schedules for meeting the §§ 125.60 and 125.65 requirements. Therefore, we are adding a phrase to § 125.59(f)(3)(ii) that reflects the Agency's intent.

Some commenters expressed the view that EPA should not grant tentative approvals before all the section 301(h) requirements are met. Additionally, one of these commenters felt that if a tentative approval is granted prior to such compliance, the applicant may be encouraged to relax its effort to comply.

Based on its past experience with this approach, EPA believes that the provisions of the proposed regulation are appropriate and contain adequate safeguards to prevent abuse. The regulatory provision specifically requires that applicants must be making a good faith effort to achieve compliance and requires that EPA establish a schedule for achieving compliance. In addition, this approach provides an opportunity for EPA, through the tentative decision document, to put the public and applicants on notice of specific deficiencies and the steps and time frame required to correct such deficiencies. Rather than creating a disincentive to timely compliance, the regulatory provision requires that a schedule for compliance be established. In addition, EPA believes that by advising applicants that they may receive a final section 301(h) waiver if the identified deficiencies are corrected as required, the provision provides an added incentive for applicants to achieve timely compliance. Finally, by addressing such deficiencies through the tentative approval, the more lengthy process of tentative denial followed by application revision is avoided. For these reasons, EPA believes that the regulatory provision is reasonable and is promulgating that provision today as proposed with the clarification noted above.

One commenter recommended that the EPA regional office issue a letter to the applicant stating that its permit has been administratively extended in accordance with § 122.6. In response, EPA notes that this is a procedural issue governed by the NPDES regulations. It is not a subject of this rulemaking.

EPA notes in reviewing this section that § 125.59(d)(5) might be misinterpreted to mean there is no opportunity to present new information on applications for permit renewal. Paragraph (d)(5) is referring to the one-time revisions allowed in § 125.59(d)(1) and (d)(2). Applicants who are authorized or requested to submit additional information under § 125.59(g) may still do so.

Section 125.60: The proposal added § 125.60 to the regulations to implement the primary or equivalent treatment provision in section 303(d) of the WQA. Issues related to the definition of primary treatment have been previously dealt with in the discussion of § 125.58.

Proposed § 125.60 required an applicant's discharge, at the time the waiver becomes effective, to have received at least primary or equivalent treatment. Additionally, under the proposal, applicants were to comply with this treatment requirement based on the monthly average results of the monitoring for SS and BOD.

A number of commenters recommended that EPA consider lengthening the period of time over which monitoring data are averaged to determine compliance with the 30 percent BOD removal requirement. These commenters presented information on the difficulties with achieving the 30 percent removal because of such factors as dilute wastewaters, cold climates that impact treatment design parameters (e.g., settling rates), and proportionately low amounts of insoluble BOD. One of the options identified by these commenters was to change from monthly averaging of monitoring data to annual averaging (or some period in between). Commenters pointed out that this was a reasonable approach which was necessary to account for variations in influent quality or other factors affecting removal rates that might occur over a year's time. Other commenters supported meeting the primary treatment removal requirements on a monthly average basis.

The Agency believes that the proposed period for averaging monitoring results (i.e., monthly) to determine compliance with the 30 percent BOD removal requirement will be appropriate for most applicants. However, as noted in the discussion for the primary treatment definition in § 125.58, the Agency also recognizes that the 30 percent removal rate for BOD may be difficult to achieve on a monthly average basis in certain cases, e.g., dilute wastewater or proportionately low concentrations of insoluble BOD. Because of this, the final rule has been modified to provide flexibility in certain instances by allowing compliance monitoring to be averaged for a period longer than monthly, up to annually.

EPA anticipates that compliance monitoring requirements established for longer than monthly average periods will be the exception, not the general practice. An applicant who has demonstrated a consistent ability to achieve 30 percent removal of BOD on a monthly average basis over one year prior to the publication date of these regulations will not be eligible for the longer than monthly averaging period. The longer period will be available only to those applicants who have some historical data on BOD removal, and not for newly constructed facilities. Eligibility for the longer period is limited to those who, based on circumstances listed below, and subject to the qualifications listed below, truly cannot achieve 30 percent removal on a monthly average.

It is the Regional Administrator's decision whether to allow the longer averaging period. The Regional Administrator will judge each eligible case on its individual circumstances, taking into account climatic, seasonal, or other factors beyond the applicant's control which cause significant fluctuations in influent characteristics that could impact BOD removal efficiencies. Appropriate circumstances may include:

• Seasonally dilute influent BOD concentrations due to relatively high (although nonexcessive) inflow and infiltration;

• Relatively high soluble to insoluble BOD ratios on a fluctuating basis; or

• Cold climates resulting in cold influent.

The longer period must be requested by the applicant, and the burden of justifying a longer averaging period will be on the applicant. In addition to justifying the application on conditions listed above, to qualify for the longer averaging period the applicant will have to demonstrate to the satisfaction of the Regional Administrator that the treatment facility is properly designed and operated; that the applicant will be able to meet all section 301(h) requirements with the longer averaging basis; and because of circumstances beyond the applicant's control (examples listed above), the applicant cannot achieve the 30 percent removal requirement for BOD on a monthly averaging basis. The final rule also requires that inflow and infiltration (I/I) is nonexcessive in order to ensure that applicants have corrected, as feasible, deficiencies in their collection system that result in extremely dilute wastewater. The definition of excessive I/I in 40 CFR 35.2005(b)(16) will be used to determine whether the I/I is excessive, plus the additional criterion that inflow is nonexcessive if the total flow to the primary treatment plant is less than 275 gallons per capita per day, consistent with 40 CFR 133.103(d) of the secondary treatment regulations.

It should be noted that permit writers can still incorporate interim limits into the permit. When compliance determinations with interim limits indicate that the ability to achieve 30 percent removal of BOD for the designated period is compromised, action to determine and, if possible, fix the problem should be taken. Monitoring frequencies for BOD should remain the same as they would be if the compliance determination for BOD removal was on a monthly average basis. For enforcement purposes, there is the potential that allowing longer averaging periods may prove more costly to the POTW in violation. POTWs should note that if a longer period is granted, they should be aware of the risk that a violation of an annual average limit may result in 365 days of violation.

Other commenters requested that EPA set a baseline level of BOD in the treatment works influent above which 30 percent removal would be required, with 30 percent removal not required for influent cleaner than that threshold level. This option relies on a level of BOD in the influent that hypothetically represents a typical BOD influent concentration. The statute specifies 30 percent removal and does not tie this requirement to some specific concentration in the influent. The Agency believes that making the statutory 30 percent removal requirement dependent on a hypothetical influent baseline concentration would not meet the statute's intent.

One commenter stated that the approach to section 301(h) waivers should be based on water quality effects and not on any "equivalencies," e.g., primary treatment and secondary removal equivalency. In response to this general comment, EPA reiterates that it is promulgating these regulations to implement the new provisions of the WQA which mandate primary or equivalent treatment. Today's regulatory scheme is fully consistent with the new WQA amendments.

Some commenters raised concerns about the financial impact on some individual dischargers if additional capital improvements are needed to meet the 30 percent BOD removal requirement. They see the costs of meeting the new primary treatment requirements as having a disproportionate impact on small communities. For example, one commenter stated that this requirement would result in a 20 percent rate increase; that polymers alone would cost $100,000. Others commented that cost should not be a factor in justifying a lower removal efficiency and that EPA should not guarantee a cap on sewage treatment costs.

As part of this rulemaking EPA has prepared an economic analysis of the impacts of the regulations. Although some communities may need to make improvements to their plants to meet the primary treatment requirements, the statute does not authorize any waiver of those requirements on the basis of financial hardship. In addition, EPA believes that as shown in the economic analysis, the final regulations' requirements do not unduly impact small communities in terms of overall cost of compliance. Specifically, none of the small communities, including the community that indicated in its comments a 20 percent increase in rates, will end up spending more than 1 percent of median household income on wastewater treatment. Municipal financial impact models used by EPA assume that ratios of wastewater treatment costs to median household income of less than 1 are not expected to create economic hardship for households. Moreover, although current treatment costs may increase, small communities will still realize an overall cost savings if less-than-secondary treatment is approved through the section 301(h) process. Finally, as discussed above, the Agency in today's rule has provided the opportunity for adjusting the averaging period for calculating compliance with the primary treatment requirement for BOD under certain circumstances. This added flexibility should further serve to reduce any potential adverse financial impacts. The new flexibility may allow POTWs with dilute influent, provided it is not excessive I&I to qualify with less cost to achieve compliance. The cost of improving collection systems to fix excessive I&I would impact small communities, but is not a cost of this rule. In response to a comment that the need for this flexibility results from future increases in treatment capacity due to population growth, EPA agrees that this is not an appropriate reason, and has not based its decision to allow flexibility on costs of additional treatment due to future growth. There are other more appropriate and legitimate reasons, as spelled out earlier in this preamble, for some measure of flexibility.

Section 125.61: No changes to this section were proposed or are promulgated today. This section addresses the existence of, and compliance with, water quality standards for the pollutant for which the modification is requested. No comments were received.

Section 125.62: This section contains requirements for the attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities. In response to the requirement of WQA section 303(d) for discharges to meet CWA section 304(a)(1) water quality criteria, EPA proposed language at § 125.62(a)(1)(i)–(iii) and 125.62(a)(2) and (3) to implement that additional requirement. The proposal also amended § 125.62(f) to implement requirements of WQA section 303(a) regarding combined impacts of section 301(h) discharges and made a conforming change in light of the WQA prohibition on section 301(h) discharges to stressed estuaries to clarify that the regulations' stressed waters test applies only to ocean waters. Comments on this section addressed issues related to water quality criteria, including human health carcinogenic risk levels, mixing zones, combined impacts, and stressed waters.

Water Quality Criteria

Under the proposal to implement the WQA requirement that discharges meet EPA section 304(a)(1) water quality criteria, EPA would first determine whether there is an EPA-approved State water quality standard that directly corresponds to the EPA section 304(a)(1) water quality criterion for the specific pollutant. If there is, EPA would apply this directly corresponding State standard. In the absence of such a State standard, the section 304(a)(1) water quality criterion would be applied instead. Under the proposal, an EPA-approved State water quality standard would be deemed to "directly correspond" if (a) the State water quality standard addresses the same pollutant as EPA's water quality criterion; and (b) the State water quality standard specifies a numeric criterion for that pollutant, or an objective methodology for deriving such a pollutant-specific criterion. The preamble to the proposed rule discusses this subject in more detail (56 FR 2818–2819).

A commenter felt that the regulations should require compliance with the CWA section 304(a)(1) criteria at a minimum, and that compliance with a directly corresponding State standard that may be less stringent instead was unacceptable. The commenter argued that Congress was aware of State water quality standards, and had Congress intended that an applicant's discharge meet State water quality standards, then Congress would have provided language so mandating. The commenter also asserted that 301(h) waiver requirements should be strictly construed in favor of water quality because 301(h) waivers represent an exception to the general requirement to meet secondary treatment. Other commenters supported the proposal to defer to EPA-approved State water quality standards. The commenters believed that this approach appropriately recognizes the State's discretion to set its own standards.

EPA continues to believe that compliance with the EPA-approved, directly corresponding State water quality standard in lieu of the EPA section 304(a)(1) water quality criterion is appropriate. EPA water quality criteria are national criteria, primarily issued to serve as guidance for the States to use in establishing their water quality standards under CWA section 303.

Under the CWA, States may develop water quality standards based on the section 304(a)(1) criteria, as modified to reflect site-specific conditions, or they may use other scientifically defensible methods for developing water quality standards. State standards are subject to EPA review and approval. They are developed by the States to protect the types of biota in, and beneficial uses of, their local waters, and thus represent scientifically appropriate standards for each State's specific situation. EPA does not believe that, in amending section 301(h), Congress intended to interfere with this statutory scheme, nor require compliance with the national guidance contained in the section 304(a)(1) criteria when the CWA section 303 standard-setting process results in adoption of different standards to reflect local conditions and those standards have been subject to EPA review and approval. Rather, EPA believes that the intent of this provision was to ensure compliance with the national section 304(a)(1) criteria in those cases where the States have not adopted a directly corresponding State standard and EPA has not itself promulgated a standard in light of such State inaction. Today's final rule therefore retains the proposal's approach. In the absence of an EPA-approved State water quality standard that directly corresponds to the section 304(a)(1) water quality criteria, the final rule requires compliance with the section 304(a)(1) water quality criteria.

For carcinogens, the EPA section 304(a)(1) criteria provide a range of risk levels and corresponding criterion for each specific risk level. In the proposal, EPA did not establish a specific risk level for use in the section 301(h) program. As explained in the preamble (56 FR 2819, 2820), EPA instead would consider all relevant information in determining the pollutant concentration that represents an appropriate risk level for a specific carcinogen. This information would include evidence that the State has consistently used a particular risk level when establishing its water quality standards for other carcinogens. In the absence of such a consistent State policy, EPA would consider a State recommendation of a particular risk level if the State demonstrates to the satisfaction of EPA that the particular risk level is justified. The State demonstration would need to account for the relevant exposure and uncertainty factors, show adequate public participation in the selection of the risk level, and show that use of the selected risk level is adequately protective of human health. In cases where there is no consistent State policy or satisfactory State demonstration on which to base a risk level, under the proposal, EPA would set a specific risk level (for example, 10^{-6}) based on the circumstances of each case. *See* preamble to the proposed rule, 56 FR 2818–2820, for a detailed explanation of a satisfactory State demonstration of a recommended risk level and EPA's approach to setting risk levels.

EPA received a number of comments addressing the issue of whether to set a specific risk level by regulation as opposed to allowing it to be set on a case-by-case basis. A commenter stated that rather than assuming that a zero discharge level is unattainable for any known carcinogen, EPA should require the discharger to prove that, in fact, zero discharge in a particular situation either would create severe economic hardship or is not technologically feasible. These commenters also stated that under no circumstances involving carcinogenic pollutants should the allowable discharge exceed a 10^{-6} risk level or the applicable State standard, whichever is more stringent. Other public comments received on the issue of water quality criteria for carcinogens also said the regulations should specify a human health risk level that is no less protective than the 10^{-6} incremental cancer risk and asserted that EPA had done so in other national programs. One commenter stated that there should not be a flexible, case-by-case approach toward establishing risk levels for carcinogens. Instead, the commenter suggested that EPA establish a minimum risk level, the least protective risk level that is acceptable, (and corresponding maximum permissible discharge concentration) but allow for flexibility to choose a more stringent risk level based upon a given State's past practice.

With regard to the zero-risk level, as mentioned in the preamble to the proposed rule, EPA believes that a zero effluent concentration is essentially unattainable. Therefore, EPA has approved numeric State water quality standards for carcinogens under CWA section 303 that correspond to risk levels above zero. The approach adopted in the proposed rule provides consideration of the State's views on an appropriate risk level, or in the absence of such State input, provides for EPA to consider all relevant information in setting a risk level. EPA believes that establishing a presumption in favor of a zero risk level would be inappropriate because even apart from questions of achievability, compliance could not be demonstrated due to limitations in analytical methods. Further, the commenter provided no basis to refute EPA's belief that zero risk levels are not achievable. EPA thus is not amending

the regulations to establish a presumptive zero risk level.

With regard to whether the section 301(h) regulations should establish a single uniform risk level for use in the section 301(h) program, the establishment of risk levels is a national issue which is not limited to the section 301(h) program. As noted in the preamble to the proposed rule (56 FR 2819), EPA expected that many or most coastal States already had established or soon would establish one or more EPA-approved water quality standards for toxic carcinogenic pollutants, pursuant to section 303(c)(2)(B) of the CWA.

Subsequent to the proposal of these revised section 301(h) regulations, EPA applied risk levels in the National Toxics Rule, which sets water quality standards for priority pollutants in States that did not have approved standards, pursuant to Sections 303(c)(2)(B) and 303(c)(4) of the CWA (57 FR 60848, December 22, 1992). More specifically, the National Toxics Rule establishes water quality standards pollutant-by-pollutant for fourteen States that did not have an EPA-approved standard for the toxic pollutant in question where section 304(a)(1) water quality criteria have been developed. EPA set legally enforceable water quality standards with incremental cancer risk levels for carcinogens and corresponding numeric values based on specific exposure and other modeling assumptions. It should be noted that EPA did not adopt a uniform nationwide 10^{-6} risk level in other contexts, e.g., the National Toxics Rule, as suggested by a commenter, who advocated that as a minimum level of protection.

In each State covered by the National Toxics Rule, the carcinogenic risk level used to set the State's standard(s) was based on the best information available to the Agency regarding that State's policy or practice for risk levels used or that should be used in regulating carcinogens in surface waters. For most of the affected States, the risk level is based on a State-adopted or formally proposed risk level. For some, the risk level is based on an expressed State policy preference. With the National Toxics Rule, all States are now in compliance with section 303(c)(2)(B). Hence, for purposes of implementing § 125.62, EPA will now look to the guidance contained in the preamble and regulations of the National Toxics Rule to establish the appropriate human health risk level and numeric value in the absence of a directly corresponding State standard for any section 304(a)(1) criterion later established.

EPA believes that the carcinogenic risk provisions of proposed § 125.62(a)(2)(ii) are consistent with the National Toxics Rule, 40 CFR § 131.36, and the guidance provided in the preamble to the rule (57 FR 60848). Accordingly, today's rule at § 125.62(a)(ii) is promulgated as proposed, with a minor editorial change. In the absence of an EPA-approved State water quality standard for a carcinogenic pollutant, the Administrator will consider a consistently used, or State-adopted or formally proposed risk level recommendation with a satisfactory demonstration that the level is adequately protective of human health in light of exposure and uncertainty factors and population exposed. Exposure factors would include, for example, local patterns of fish consumption, cumulative effects of multiple contaminants and local population sensitivities. Factors related to uncertainty would include, for example, the weight of scientific evidence concerning exposures and health effects and the reliability of exposure data.

One commenter noted that determinations of compliance with water quality criteria will be dependent on the frequency and types of sampling methods used and the effects industrial users' pretreatment programs have on effluent quality. The commenter urged a flexible approach in determining compliance because of these variables. EPA notes, in response, that the regulations do not specify rigid sampling requirements and frequencies, and thus already allow for consideration in designing sampling programs to adequately characterize effluent quality for purposes of evaluating compliance with water quality criteria.

New section 301(h)(9) of the CWA requires that the discharge meet the section 304(a)(1) water quality criteria "after initial mixing in the waters surrounding or adjacent to the point at which [the] effluent is discharged." The zone of initial dilution (ZID) is defined in existing § 125.58(w) as "the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards." The existing 1982 regulations required that all applicable State water quality standards adopted under section 303 of the CWA be met at and beyond the boundary of the ZID.

New language was proposed in § 125.62(a)(1)(i) to implement the requirement of new section 301(h)(9) to comply with the section 304(a)(1) water quality criteria or the directly corresponding State water quality standards, but inadvertently omitted those State water quality standards that do not directly correspond to the section 304(a)(1) water quality criteria. In so doing, EPA inadvertently omitted the existing requirement that all applicable State water quality standards, including those that do not directly correspond, must still be met at and beyond the ZID. This requirement has been retained in the final regulation. For purposes of this discussion, there are three categories of water quality requirements: State water quality standards that directly correspond to water quality criteria, State water quality standards that do not directly correspond to water quality criteria, and water quality criteria. It is the second category, those State water quality standards that do not directly correspond to water quality criteria, that was inadvertently left out of the proposed regulation.

Two commenters questioned whether the proposed rule, by referring to the ZID for purposes of calculating compliance with section 303 State water quality standards, raised a potential conflict with State-specified mixing zones adopted as part of the section 303 standard-setting process. One of these commenters requested that the regulations be clarified to specify that compliance with State water quality standards is to be determined under the methods and conditions specified by the State in its standards.

EPA agrees that the proposed language could create confusion. Today's final rule includes the existing requirement of the 1982 regulations that all applicable State water quality standards adopted under section 303 of the CWA be met at and beyond the boundary of the ZID and promulgates as proposed the new section 301(h)(9) requirement. The effect of today's rule is to retain the existing practice of the section 301(h) program in determining compliance with State water quality standards. As stated in the preamble to the proposed rule, EPA's purpose in promulgating these revisions to the regulations on this issue was to implement the new requirements of the WQA. EPA did not intend to change existing regulatory requirements not affected by the WQA. As promulgated today, § 125.62(a)(1) reflects the existing regulations with the additional requirements of section 301(h)(9) of the CWA, and EPA intends no changes to how determinations of compliance with State water quality standards are made.

One commenter pointed to inconsistencies between language in the technical support document (TSD) on

ZID size and the actual definition of the ZID as contained in § 125.58(dd) of the regulations and requested that this be addressed by amending the ZID definition. The ZID definition was not proposed for amendment in the 1991 proposal and is not being changed today. EPA responded to the comment by adding a clarification to the final TSD on the technical issues regarding calculation of the ZID size.

Combined Impacts of Discharge

Section 303(a) of the WQA requires an applicant to demonstrate that the section 301(h) modified discharge will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of water quality to protect the uses specified in section 301(h)(2). As noted in the preamble to the proposed rule (56 FR 2816), although EPA believes this requirement is consistent with the existing 1982 regulations, EPA added language in proposed § 125.62(f) to clarify this point. Proposed § 125.62(f) requires an applicant to demonstrate that its modified discharge meets § 125.62 (a) through (e), both alone, and taking into account the discharge in combination with pollutants from other sources.

One commenter noted that cumulative impact assessments would need to be performed to demonstrate that the POTW is not causing impact alone or in combination with other dischargers and that the information needed to make the assessment may not be available. The commenter recommends that EPA provide sufficient guidance on performing the needed cumulative impact assessments, including information on regional waste load allocations, nonpoint source information, beneficial use quantification, and regional water quality monitoring data. EPA agrees that such information would be useful in making the required demonstration of compliance. The availability of such site-specific information will vary depending on local circumstances. Applicants should work closely with their EPA Region and State water agencies to identify possible sources of such information. EPA considered this comment and made changes to the final TSD for the regulations in order to provide additional guidance on this issue.

Stressed Waters

EPA received comments on two related aspects of the statutory requirements and regulatory provisions regarding stressed waters: (1) Demonstrating that no causal relationship exists between stressed conditions and the applicant's discharge, and (2) prohibitions on 301(h) modified discharges to stressed saline estuaries. One commenter on § 125.62(f) (1) through (3) (the "stressed waters test") requested that EPA state that an applicant can still make the demonstration required by § 125.62(f) (1) through (3) by showing that no causal relationship exists between the stressed conditions and the applicant's discharge. Other commenters supported the continued requirement to demonstrate that no causal relationship exists between the stressed conditions and the proposed section 301(h) modified discharge. As previously noted, paragraphs (f) (1) through (3) are the same as provisions contained in the existing 1982 section 301(h) regulations, and applicants must demonstrate an absence of a causal relationship between their discharge and stressed conditions as specified in those paragraphs. The three substantive requirements for such a demonstration were not proposed for change. As in the past, applicants invoking this provision may avoid the need to demonstrate compliance with paragraphs (a) through (e) by demonstrating that the modified discharge does not:

(1) Contribute to, increase or perpetuate stressed conditions;

(2) Contribute to further degradation; and

(3) Retard recovery if perturbations from other sources decrease.

To reiterate, despite the addition of the word "entirely," an applicant still can make the demonstration required by § 125.62(f) (1) through (3) by showing that no causal relationship exists between the stressed conditions and its proposed discharge.

Prior to the 1987 WQA, section 301(h) and the 1982 implementing regulations allowed section 301(h) modified discharges to stressed waters only under certain limited conditions, with no distinction made between stressed saline estuaries and stressed ocean waters. The 1987 WQA amendments tighten this restriction with respect to saline estuaries by prohibiting section 301(h) modified discharges altogether to saline estuaries that are stressed (i.e., that exhibit certain characteristics specified in the statute). The amendments also specify that this prohibition applies without regard to whether it is the applicant's discharge that is causing or would cause the stressed water quality conditions. To implement this new statutory prohibition, EPA proposed a change to the existing regulations regarding stressed waters. EPA proposed adding this new prohibition to § 125.59(b)(4), and making conforming changes to § 125.62(f) to prohibit section 301(h) waivers where stressed saline estuaries are involved. Section 125.62(f) is the provision that allows discharges to stressed waters under certain conditions. The proposal altered this provision so that such discharges would be allowed only with respect to stressed ocean waters and not saline estuarine waters.

Commenters expressed the view that Congress did not intend to make section 301(h) waivers available for any severely degraded waters, whether in estuaries or oceans, and recommended limiting the reach of the stressed waters exception to those locations where severe environmental degradation has not occurred. The commenters noted that if an exception must be available to POTWs discharging to stressed waters, the commenters supported the approach taken in proposed § 125.62(f). In response to this comment, EPA notes that the 1987 WQA flatly prohibits section 301(h) modifications with respect to stressed estuaries only. In contrast, applicants can satisfy 301(h)(2) by showing that their discharges will not "interfere, alone or in combination," with certain water quality objectives. EPA continues to believe that § 125.62(f) fully meets this statutory directive. There is no basis for the suggestion that Congress intended categorically to prohibit waivers with respect to all stressed waters. Indeed, the legislative history cited by the commenter does not lead to a contrary opinion. EPA believes that the provisions adopted in today's final regulations to implement the WQA prohibition on discharges to stressed estuaries are fully consistent with the statute and that extending this prohibition to ocean waters would be inconsistent with the plain statutory language. Accordingly, the stressed waters provision in this section is promulgated as proposed.

Section 125.63: This section outlines the general requirements for monitoring programs required under section 301(h)(3) of the CWA. In the proposal, EPA added language to this section to respond to section 303(b) of the WQA, which restricts the required scope of section 301(h) biological monitoring programs to those scientific investigations necessary to study the effects of the proposed discharge. EPA also noted in the preamble to the proposed rule that the requirements of such monitoring programs under the existing regulations are in fact already focused on the effects of the discharge. The proposal also added a requirement that applicants monitor their discharges

to ensure compliance with water quality criteria (if applicable under § 125.62(a)), in addition to water quality standards based on the provision of section 301(h)(9).

EPA received one comment regarding monitoring. The commenter requested that EPA add a provision for amending monitoring programs in existing permits, including permits administratively extended beyond their expiration dates, when the changes are technically justified. EPA appreciates that changes to section 301(h) monitoring programs during the life of the permit may be appropriate. EPA notes that this is a procedural issue governed by the NPDES regulations and is not the subject of this rulemaking. *See* 40 CFR 122.6.

Monitoring for Removal Efficiency Requirements

Some commenters suggested that the demonstration of removal efficiency (defined as removal of 30 percent of BOD and TSS) should be made throughout the year, and not simply at the time the modification becomes effective. Other comments suggested that EPA require a demonstration of removal efficiency of BOD as an initial threshold determination only, that is, a one-time demonstration. In response, EPA believes that demonstration of the removal efficiency should be an ongoing requirement, and § 125.60(b) requires that compliance be demonstrated based on monthly averaging, as proposed (subject to the exceptions discussed above). In addition, the statute does not state a one-time requirement but instead envisions an ongoing requirement that the applicant "will be" discharging effluent that has received primary treatment. Given the statutory requirement for primary treatment, it would make little sense to require a one-time demonstration of removal efficiency, with the possible result that less-than-primary treatment could occur during the course of the section 301(h) modified permit and go undetected.

To ensure that data are available for purposes of section 301(h) permit renewals, ongoing monitoring of compliance with the removal efficiency requirement is necessary. EPA thus continues to believe that section 301(h) permittees should monitor for compliance with the primary treatment requirement over the life of the permit at the frequency required in § 125.60 (i.e., monthly, unless a less frequent monitoring period is specified). Although already required in § 125.60(b), to clarify this point the final rule adds a new paragraph, § 125.63(d)(2), to ensure that the permit monitoring requirements provide adequate data for demonstrating compliance with the removal efficiency requirement over the life of the permit.

EPA is also making a conforming change to § 125.63(a)(1)(i) to clarify that monitoring programs must be designed to evaluate water quality criteria, as well as water quality standards. This conforms to the proposed change in § 125.63(c), reflecting WQA language.

Changes to Monitoring Requirements

Some commenters requested that EPA identify the practical impact the new limitation on the scope of monitoring will have on current monitoring programs. As previously discussed, EPA does not believe that WQA language limiting section 301(h) biological monitoring to investigations necessary to evaluate the discharge effects represents a substantial change in the program. The purpose of the required monitoring programs has always been to evaluate discharge effects. Since the monitoring program was already focused on evaluating discharge effects, the new statutory and regulatory language should not result in substantial changes to existing monitoring programs.

Other commenters expressed concern over potentially increased monitoring costs. The additional monitoring requirements to ensure compliance with the WQA's water quality criteria and primary or equivalent treatment requirements are a necessary and reasonable outgrowth of those new statutory requirements. Given those substantive requirements and the need for data to evaluate continued compliance and to support future requests for permit renewal, EPA believes it is necessary to require monitoring in these areas. As with other section 301(h) monitoring requirements, the exact nature and frequency of such monitoring by a particular applicant would be set on a permit-by-permit basis in order to reflect individual circumstances. Burdens associated with these monitoring requirements were addressed in the supporting documentation for the information collection request accompanying the regulations. Although some extra costs may be incurred, many of these are one-time costs, and are not excessive, especially in light of the economic benefits to the discharger receiving a section 301(h) waiver.

Section 125.64: This section contains criteria related to the impacts of the modified discharge on other point and nonpoint sources and implements section 301(h)(4) of the CWA. There were no proposed changes to this section and no comments were received. This section remains unchanged.

Section 125.65: This new section sets forth the urban area pretreatment program requirements of section 303(c) of the WQA (CWA section 301(h)(6)). These requirements apply to POTWs serving a population of 50,000 or more, with respect to any toxic pollutant as defined by § 125.58(aa) introduced into the POTW by an industrial source. Applicants subject to this provision must demonstrate that industrial sources are in compliance with all applicable pretreatment requirements, and that the applicant will enforce those requirements. Also, for each toxic pollutant for which there is no applicable pretreatment requirement in effect, the applicant must have in effect a pretreatment program which, in combination with the treatment of discharges from the POTW, removes the same amount of such pollutant as would be removed if the POTW were to apply secondary treatment and had no pretreatment program for such pollutant.

To implement these provisions, the proposed rule added § 125.65 and added or revised certain definitions in § 125.58. Proposed § 125.65(a)(2) clarified that the requirements of § 125.65 are to apply in addition to any applicable pretreatment requirements contained in 40 CFR part 403 and that nothing in § 125.65 is intended to waive or relax the 40 CFR part 403 requirements.

Section 125.65 provides two methods for satisfying the urban area pretreatment requirements. For each toxic pollutant introduced by an industrial discharger, the applicant must demonstrate that it either (1) has an "applicable pretreatment requirement in effect" or (2) has in effect a program that achieves "secondary removal equivalency." EPA received a number of comments requesting clarification of this provision, as well as comments related to pretreatment requirements, which toxic pollutants should be subject to urban area pretreatment requirements, demonstration of secondary equivalency, and enforcement of pretreatment requirements.

Scope of Pollutants to be Addressed

Some commenters believe that the urban area pretreatment program requirements should apply only to "pollutants of concern," rather than applying to all priority pollutants introduced by industrial dischargers. Commenters were concerned that the requirements might be interpreted to apply to all 126 priority pollutants,

whether or not these are known or suspected to be discharged to the POTW by industry. They believe the urban area pretreatment requirements should be limited to those priority pollutants that are specifically known to pose a threat or potential threat to human health, safety, or environmental quality. These commenters stated that pollutants of concern should not include pollutants that do not pose such a risk and provided several options for identifying pollutants of concern, i.e., by excluding from coverage pollutants (1) only discharged in small amounts by one industry; (2) meeting water quality standards at the boundary of initial mixing; (3) discharged in effluent at a threshold level percent of an applicable water quality standard, criterion, or permit limit; (4) discharged in low concentrations; (5) which do not interfere or threaten to interfere with the attainment or maintenance of water quality objectives as found in § 125.62; or (6) not detected in the effluent of the POTW. These commenters felt that developing local limits for all toxic pollutants would be difficult and overly burdensome. The commenters further stated that a distinction should be made between significant and insignificant industrial dischargers.

EPA has not adopted these suggested changes in today's rule. The statute clearly states that the urban area pretreatment requirement applies to any toxic pollutant introduced into the POTW by an industrial discharger. Therefore, EPA believes the regulations should address all such toxic pollutants. However, this means only those toxic pollutants known or suspected to be introduced to the POTW by an industrial discharger. Thus, if all 126 priority pollutants are not discharged to a given POTW, not all 126 priority pollutants will need an applicable pretreatment requirement, e.g., categorical standard or local limit. EPA notes, however, that the industrial user's survey must be comprehensive, addressing all non-domestic sources, to assure that the POTW takes all toxics from industrial sources into account. Guidance is provided in the TSD to help identify toxics known or suspected to be discharged from several industries not subject to categorical pretreatment regulations.

One commenter asserted that receiving waters should be the focus of this requirement; that is, it is inappropriate to have technology-based requirements when receiving waters do not warrant them. The commenter further stated that the requirement should focus on whole effluent toxicity. In response, EPA notes that the statutory provision is technology-based, and refers to each toxic pollutant introduced by industrial sources. Other Clean Water Act provisions address whole effluent toxicity and this has been taken into account.

Applicable Pretreatment Requirements

As specified in § 125.65(c) of the proposed regulations, applicable pretreatment requirements could take the form of federal categorical pretreatment standards promulgated by EPA under section 307 of the CWA, local limits developed in accordance with 40 CFR part 403, or a combination of both. As proposed, therefore, applicable pretreatment requirements consist of the following as stated in § 125.65(c):

(i) for each industrial source discharging to the applicant's treatment works for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant satisfying the requirements of 40 CFR part 403 and § 125.62;

(ii) for each industrial source discharging to the applicant's treatment works that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard plus a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403 and § 125.62.

One commenter stated that "applicable pretreatment requirements" should be developed to ensure compliance with 40 CFR part 403 and not also to ensure compliance with requirements in § 125.62, which addresses protection of a balanced indigenous population (BIP). This commenter pointed out that the requirements to achieve a BIP already must be satisfied under § 125.62 if the section 301(h) permit modification is to be granted. Further, it is unnecessarily restrictive to specify that the BIP requirements be met by applying local limits rather than through other means.

EPA agrees and has clarified this provision in the final rule by deleting the reference to § 125.62 from § 125.65 (c)(1) (i), (ii) and (2). Any section 301(h) discharge must comply with the BIP requirements of the regulations, but how this is achieved, whether by local pretreatment standards or other toxics control measures, is at the discretion of the applicant. The Agency never intended to require that local limits alone must be shown to independently protect a BIP. The intent was that local limits would be developed to meet 40 CFR part 403 and § 125.65 and would be at least one aspect of overall toxic control efforts by the applicant that would contribute as a whole to meeting the requirements of a BIP. It should be noted, however, that conditions necessary to achieve and perpetuate a BIP may be used as a basis for setting a local limit.

Because the regulations already require compliance with § 125.62, and in light of the concerns raised over linkage of local limits to the § 125.62 requirement, EPA is making this change to the final regulations. This change does not alter the requirement to meet all other section 301(h) provisions.

Some commenters believe that provisions should be included for local limits to consider sludge quality and the potential for air toxic emissions. Under the Agency's existing local limit program under 40 CFR part 403, and sewage sludge regulations at 40 CFR parts 257, 403 and 503, local limits may be required where necessary to protect sludge quality so as not to interfere with its management and ultimate disposal or beneficial use, and where necessary to protect plant workers. The pretreatment regulations address air toxic emissions within the POTW to protect worker health and safety. The commenters' concerns regarding sludge quality and incineration, and resultant air emissions are addressed by the Agency's pretreatment regulations, sewage sludge regulations and regulations under the Clean Air Act. The Agency has begun to address standards for air toxic emissions from POTWs.

The comments taken as a whole show some confusion about how EPA expects the "applicable pretreatment requirement in effect" provision of the urban area pretreatment program to be implemented. Commenters were concerned that these requirements were overly burdensome and sought flexibility. Commenters pointed out that requirements for every industrial user are unnecessary for ensuring an adequate local limit for the toxic pollutant. After considering these comments, EPA has revised its approach as follows. First, the POTW need not apply a specific local limit to each and every industrial source of each toxic pollutant. Instead, after conducting a local limits analysis, the POTW may apportion the allocation to industrial sources of the toxic in the way that the POTW deems most appropriate, subject to the approval of the Regional Administrator. This could include not imposing any limit for the pollutant on certain industrial users. This modification should achieve the same end result as the proposal, that is, to attain the same level of toxic pollutant reduction, while providing flexibility to the POTW to implement the provision

The Guidance Manual on the Development and Implementation of Local Discharge Limitations under the Pretreatment Program discusses how to allocate local limits among industrial sources for all POTWs, not just 301(h) applicants. EPA believes that the approach of POTWs under 301(h)(6) should be consistent with that guidance. This approach is less burdensome to implement while still achieving equivalent reductions in toxics.

Second, the applicant can show an "applicable pretreatment requirement in effect" for those toxic pollutants for which there is no applicable categorical pretreatment standard, and for which the applicant determines, based on the 40 CFR part 403 analyses, that a local limit is not necessary. The permit in these cases will require the applicant to demonstrate on an annual basis over the permit term, that a local limit is not necessary and, where appropriate, will require the applicant to institute industrial management practices plans.

The following steps are intended to clarify how EPA will implement the "applicable pretreatment requirement in effect" provision for toxic pollutants:

(1) The applicant must conduct an industrial user survey as required by 40 CFR part 403 and § 125.66;

(2) The applicant must conduct representative sampling and analysis of the POTW's influent, effluent, and sludge for toxic pollutants;

(3) The applicant must implement the national categorical standards for each industrial source subject to categorical standards;

(4) For those toxic pollutants known or suspected to be introduced by an industrial source, the applicant must conduct an analysis under 40 CFR part 403 to assess the need for local limits;

(5) For those toxic pollutants for which the applicant determines, based on the 40 CFR part 403 analysis, a need for local limits, the applicant must set local limits;

(6) For those toxic pollutants for which the applicant determines, based on the 40 CFR part 403 analysis, that local limits are not necessary, the applicant must continue to monitor the POTW influent and effluent during the term of the permit and/or conduct technical reviews of data on discharges from industrial sources during the term of the permit, and where appropriate require industrial users to institute industrial management practices plans (IMPs) and other pollution prevention activities, to reduce or control the levels of these toxic pollutants from industrial sources. These plans and activities could include Best Management Practices (BMPs). See TSD and EPA Guidance Manual on the Development and Implementation of Local Discharge Limitations under the Pretreatment Program (1987 and 1991). For these toxic pollutants, applicants would be required to assure EPA on an annual basis that these particular toxic pollutants do not result in levels that warrant development of local limits. If such monitoring and technical review of data indicate that a local limit is needed, the POTW shall establish and implement a local limit.

The basic philosophy of instituting industrial management practice plans (IMPs) is to minimize the discharge of toxic or hazardous pollutants to the sewer, or reduce the impact of toxic/hazardous pollutant discharges by avoiding short-term, high concentration discharges. IMPs can be applied to all classes of industrial users, e.g., major and minor industrial users. Examples of appropriate uses of IMPs include control of chemical spills and sludge discharges to the POTW through formal chemical or waste management plans (including BMPs), solvent management plans, batch discharge policies, waste recycling and waste minimization. It would also be appropriate to consider IMPs in cases where the POTW does not include biological treatment processes, or provides less treatment, e.g., primary treatment.

In these cases, IMPs can be tailored for industrial sources of toxic pollutants that might otherwise interfere with biological treatment or would be degraded or removed through additional treatment.

EPA has added this information to the regulations in response to comments. The intent of these steps is to set forth a process that is not overly burdensome for applicants but that assures that applicable pretreatment requirements are in effect for each toxic pollutant.

Secondary Removal Equivalency

Under section 301(h)(6) and § 125.65, where there is no applicable pretreatment requirement as described above for a toxic pollutant known or suspected to be introduced by an industrial discharger, the applicant must demonstrate that it has in effect a pretreatment program which, in combination with the POTW's own treatment of discharges, removes the same amount of the pollutant as would be removed if the POTW were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to the pollutant.

EPA has termed this the "secondary removal equivalency" requirement and the proposed rule added this term to the definitions in § 125.58(w). To meet the "secondary removal equivalency" requirement, the applicant must demonstrate that the combination of its own treatment plus pretreatment by industrial dischargers achieves "secondary removal equivalency."

Under today's final rule, to demonstrate secondary removal equivalency, an applicant would need to use a secondary treatment pilot plant. By diverting part of its waste stream to the pilot plant after primary treatment, the applicant would empirically determine the amount of a toxic pollutant that would be removed from the waste stream if the applicant were to apply full-scale secondary treatment. The applicant would then need to demonstrate to EPA that it has a pretreatment program in effect which, in combination with its own treatment processes, removes at least that total amount of toxic pollutant from the POTW's discharge, achieved through concentration- and mass emissions-based effluent limits. If at least that amount is not removed, then further reductions of the pollutant would be required. The NPDES permit will include concentration and/or mass emissions effluent limits based on the data from the secondary equivalency demonstration when those values are more stringent than effluent limits based on State water quality standards or water quality criteria, if applicable, and to assure that all of the § 301(h) criteria are met. Once such effluent limits are established in an NPDES permit, the POTW may either establish local limits or perform additional treatment at the POTW, or combine the two to achieve the permit limit.

Some commenters thought that they would be penalized for having an existing pretreatment program if they used pretreated waste to determine secondary equivalency, because of the undetermined removals by current industrial pretreatment. They urged the use of procedures for determining pre-existing (prior to source control) conditions to take into account existing toxic pollutant reductions and commented on the difficulty of obtaining "unpretreated" industrial wastewaters. Other commenters thought that the secondary removal equivalency demonstration should be made with all other pretreatment requirements required by section 301(h)(5) in place, because they reasoned that the section 301(h) program does not provide waivers from the toxics requirements.

EPA agrees that the section 301(h) program does not provide a waiver from toxics control requirements, and the existing section 301(h) program already has toxics control requirements.

including industrial pretreatment, in effect. However, the secondary removal equivalency provision of section 301(h)(6) addresses only those toxic pollutants that do not have applicable pretreatment requirements in effect, and that are being introduced by industrial sources to POTWs serving urban areas.

POTWs will not be penalized for having an applicable pretreatment requirement in effect for a particular toxic pollutant. If the POTW has an applicable pretreatment requirement in effect for a specific toxic pollutant, as described in § 125.65, it will be in compliance with § 125.65 with respect to that pollutant, and the POTW will not need to comply with the "secondary removal equivalency" requirement for that pollutant.

There may, however, be reduced levels of other toxics that are discharged to the POTW owing to incidental removals from applicable pretreatment requirements targeted to remove specific toxic pollutants. Likewise, there may be reduced levels of a specific toxic pollutant discharged to the POTW from categorical pretreatment for that toxic pollutant that may not satisfy the conditions of an applicable pretreatment requirement in effect. Because neither of these two above situations satisfy the requirements of "applicable pretreatment requirement in effect" with respect to these toxic pollutants, the applicant would need to demonstrate secondary removal equivalency for them. It may be true that the cumulative removal will be lower if pretreated influent is used. EPA does not expect this situation to occur often because if an applicable pretreatment requirement exists for a particular toxic pollutant, then a secondary removal equivalency demonstration is not needed for that toxic pollutant. This situation is only likely if some pretreatment occurs for other pollutants.

One commenter asserted that secondary treatment removal equivalency is highly impractical and appears to resurrect EPA's discredited "removal credit" system. In response, the statute focuses on the levels of toxic pollutants that are removed through a combination of pretreatment and POTW treatment processes, regardless of where the removal occurs.

Some commenters felt that the term "removals" should not include removals obtained by air volatilization and through sludge because this is simply a transfer of a pollution problem between media. EPA notes that removals obtained by a secondary pilot plant are used simply to determine the amount of additional pretreatment and/or POTW treatment if any, that would be needed to meet secondary removal equivalency. For purposes of achieving removals through a combination of a POTW's treatment and pretreatment, EPA will not consider pollutants that remain in sludge or are volatilized as removed, except those removals that are consistent with sludge and pretreatment regulations. As noted in the discussion on "applicable pretreatment requirements," EPA's pretreatment and sludge regulations do apply in any case to any POTW treatment processes and sludge produced from the POTW.

Some commenters suggested that EPA identify technology-based limits for demonstrating secondary removal equivalency, citing EPA's Fate of Priority Pollutants in Publicly Owned Treatment Works, Vol. I (Sept. 1982) and Vol. II (Sept. 1982) as a basis for establishing such limits. In response, in EPA's judgement, the above cited studies demonstrate that each POTW's influent is unique based on a variety of factors. Secondary treatment removes toxics incidental to the technology for reducing BOD and SS, and results in great variability in the levels of toxic and non-conventional pollutants in effluent and sludge. The Act clearly puts the burden on the applicant to demonstrate and not on EPA to develop uniform technology-based standards. In any event, developing uniform technology-based standards would be very difficult because of the variability of influents, pretreatment levels, and other site-specific conditions. Therefore, EPA has not developed technology-based limits representing characteristic removal of toxic pollutants from secondary treatment.

Commenters also asked EPA to address the costs of the pilot plant approach. These costs are addressed in the Economic Impact Analysis.

In summary, for those toxic pollutants for which there is no applicable pretreatment requirement in effect, the POTW must either (1) develop and implement an applicable pretreatment requirement or (2) demonstrate, through a combination of pretreatment by industry and the POTW's own treatment processes, that it removes at least as much of the toxic pollutant as would be removed by a POTW that applies secondary treatment and that has no pretreatment program for the pollutant. Guidance is provided in the TSD.

Compliance Determination

Several commenters stated that EPA needs to address how a POTW will demonstrate that all of its industrial dischargers are in compliance with the pretreatment requirements and that EPA would allow less than 100 percent compliance. Some suggested that EPA should allow POTWs to demonstrate compliance with all applicable pretreatment requirements by taking all appropriate legal and administrative enforcement actions to enforce pretreatment requirements. Others thought that accommodating less than 100 percent compliance would introduce considerable uncertainty concerning the level of compliance EPA will deem to be adequate and the regulations should identify a definite standard by which to gauge compliance with this new standard. In addition, commenters have provided examples of when less than full compliance will be considered acceptable, such as instances of trivial or isolated violations

For urban area POTWs with significant numbers of industrial users, at any given time, it is reasonable to expect that at least one or more of those users might be out of compliance. EPA intends to determine a POTW's continuing eligibility for a 301(h) waiver under section 301(h)(6) by measuring industrial user compliance and POTW enforcement activities against existing criteria in the Agency's National Pretreatment Program. In the proposed rule, EPA explained that it would consider the issue of compliance with the pretreatment requirements on a case-by-case basis, taking into account the number and nature of non-compliances. In 1989, EPA established criteria for determining POTW compliance with pretreatment implementation obligations. One element of these criteria is the level of significant noncompliance of the POTW's industrial users. The General Pretreatment Regulations (part 403) identify the circumstances when industrial user noncompliance is significant. The industrial user significant noncompliance (SNC) criteria are set out in 40 CFR 403.8(f)(2)(vii) and address both effluent and reporting violations. This policy is consistent with the approach in the proposed rule. The General Pretreatment Regulations, however, are more explicit. In response to public comments, EPA has changed the approach in today's final rule to be consistent with Agency enforcement policy and to remove uncertainty.

For pretreatment purposes, a POTW's enforcement program is considered adequate if no more than 15 percent of its industrial users meet the SNC criteria in a single year. A similar level of industrial user SNC rate will generally be applicable to POTWs with 301(h) waivers, but will be subject to facility-specific conditions. In addition, a POTW is also considered in SNC if it

fails to take formal appropriate and timely enforcement action against any industrial user, the wastewater from which passes through the POTW or interferes with the POTW operations.

In enforcing the pretreatment programs, POTWs are expected to respond to industrial user noncompliance using local enforcement authorities in accordance with an approved enforcement response plan (ERP) which is required of all approved pretreatment programs (*see* 40 CFR 403.5). POTWs, including 301(h) POTWs, with greater than 15 percent of their users in SNC, or which fail to enforce appropriately against any single industrial user causing pass through or interference, are deemed to be failing to enforce their pretreatment program.

EPA will base its determination on data collected during site visits to the POTW and from the POTW's pretreatment program performance report required by 40 CFR 403.12(i). These reports include compliance information on industrial users gathered by the POTW as well as a description of the enforcement activities of the POTW. EPA believes that the combination of industrial user compliance and POTW enforcement provides an appropriate measurement of the POTW's eligibility for the 301(h) waiver under section 301(h)(6).

This interpretation is consistent with the directives in a Senate Report on an earlier version of the bill (*see* S. Rep. No. 1128, 99th Cong., 1st Sess. 14 (1985)) as discussed in the proposal (56 FR 2817). EPA notes that approval of the 301(h) waiver, which requires that the POTW applicant demonstrate that its industrial users are in compliance with their applicable pretreatment requirements, provides a substantial incentive to the POTW to assure that its industrial users are in compliance with all applicable pretreatment requirements. EPA believes that an approach relying on a determination of SNC is preferable to focusing on trivial or isolated violations, or other suggested methods, because it gives clear guidelines and is consistent with the enforcement approach in the pretreatment program.

Section 125.66: This section includes provisions for industrial pretreatment and control of toxic pollutants from nonindustrial sources. To update compliance deadlines, the proposal made a minor change in § 125.66 (c)(1)) regarding deadlines by which applicants were required to develop approved pretreatment programs. No comments were received on this section and it is being promulgated as proposed.

Section 125.67: This section discusses the criteria related to increased discharges and implements section 301(h)(8) of the CWA. No changes were proposed for this section, and no comments were received. It remains unchanged.

Section 125.68: This section sets forth special permit conditions to be included in section 301(h) modified NPDES permits. No changes were proposed for this section, and no comments were received. It remains unchanged.

Application questionnaires: Under the section 301(h) regulations promulgated in 1982, there are two application questionnaires (questionnaire is defined in § 125.58), one for use by small applicants and one for use by large applicants. The proposal merged these into a single questionnaire and added questions as necessary to respond to the new requirements of the WQA. No comments were received on the proposed changes, and they are promulgated today as proposed.

Other Issues and Comments

EPA received several technical and minor comments on the draft amended TSD guidance document and some comments that addressed the regulations or 301(h) program in general. EPA responded to *many* comments by making changes to the TSD as appropriate. The changes are not discussed here. Below are responses to comments for which no change was made in the TSD, and responses to the general comments.

One commenter suggested that it is important that significant flexibility be provided in making determinations regarding the impacts of other sources on water quality until more definitive information is available for nonpoint and other source categories. The commenter also states that this section appears to be in conflict with § 125.63(b) which limits the monitoring program to only those scientific investigations necessary to study the effects of the proposed discharge. In response, the regulations already address the cumulative impacts of a discharge as an integral piece of information necessary to analyze the balanced indigenous population requirements of 301(h). It is not in conflict with § 125.63(b). The effects of the proposed discharge are evaluated in the context of the receiving water environment, alone and in combination with other sources of pollutants.

Another comment recommended that the guidance document be changed to require that a date and approval sequence between the State and EPA Region be mutually agreed-upon, rather than requiring compliance with § 125.59(f)(4), which requires State determinations to be due to the regions no later than 90 days after an application is submitted to EPA. In response, the TSD simply reflects the regulatory language, which was not proposed for change and is not a subject of this rulemaking.

Another commenter asked that the guidance better define what is meant by "significant ecological change." This comment is beyond the scope of this rulemaking. The approach to defining a balanced indigenous population (BIP) was not proposed for change and EPA is not considering redefining the BIP.

A commenter suggested that the approach to 301(h) waivers should be based on water quality effects and not on any "equivalencies." Another commenter suggested that if high BOD levels are allowed for industrial dischargers under effluent guidelines for certain industries, why do we require the 30% removal of BOD and SS for municipal effluents? In response to both these comments, the statute does not provide us leeway on these issues. The statute is clear on its face in requiring equivalency testing and the removal of 30% of BOD and SS.

One commenter requested that strong consideration be given to centralizing the evaluation of waiver requests. While this comment is beyond the scope of this rulemaking, we recognize the consistency and efficiency this might suggest. However, 301(h) waiver applications are handled case by case, based on site-specific circumstances. Although there is national oversight on the implementation of the program, regional evaluation provides the ability to apply regional expertise on regional and local circumstances surrounding 301(h) applications.

EPA also received requests from commenters for additional time to comment. EPA accommodated these requests and considered all comments received in developing this final rule. Others requested that EPA notify industrial users of the proposal. In response, EPA gave a 60 day public comment period, which EPA believes to be adequate notice for all affected parties.

III. Supporting Documentation

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), federal agencies must, when developing regulations, consider the impact of the regulations on small entities (small businesses, small government jurisdictions, and small organizations).

To evaluate whether this rule will have a significant economic impact on a substantial number of small entities, the Agency has prepared an Economic Impact Analysis (EIA). The Agency has concluded, based on the EIA, that this rule does not unduly impact on small communities in terms of overall cost of compliance. Specifically, none of the small communities will end up spending more than 1 percent of median household income on wastewater treatment. Moreover, although current treatment costs may increase, small communities will still realize an overall cost savings if less than secondary treatment is approved through the section 301(h) process.

There were 51 applicants or permittees in the section 301(h) permit program at the time of the economic analysis. Out of these 51 applicants or permittees, only six are both expected to incur additional costs due to the primary or equivalent treatment requirements and meet the Small Business Administration (SBA) definition of a small entity (a service area with a population of less than 50,000). All those applicants or permittees subject to and expected to incur additional costs due to the urban area pretreatment requirements and one of the permittees expected to incur additional costs due to the primary or equivalent treatment requirements have service area populations of greater than 50,000, and thus are not small entities. On a national level, the total estimated capital cost of meeting the primary or equivalent treatment requirements for the six small entities amounts to less than $7.2 million, with an associated operations and maintenance cost of $465,000 per year. Assuming a 20-year repayment schedule, the total annualized cost, for the six small entities, equals approximately $675,000 a year. After compliance with the primary or equivalent treatment requirements, the total annual sewer fee charged by these ten small entities is less than 1 percent of the community's median household income. Consequently, none of the small entities affected by this rule are expected to incur significant economic impacts, especially in light of the overall savings garnered by these communities from not having to comply with secondary treatment requirements.

In summary, I certify that this rule will not have a significant economic impact on a substantial number of entities.

B. Executive Order 12866

Under Executive Order 12866, [58 Federal Register 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

The information collection requirements of this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2040–0088.

The estimated average annual burden hours for the collection of information is approximately 1,006 hours per POTW respondent, and 120 hours per State respondent. Of that, the incremental burden from these regulatory changes is approximately 192 hours per small facility, 256 hours per large facility, and 40 hours per State respondent. These estimates include the time for reviewing instructions, for POTWs to collect information to comply with this final rule, including conducting monitoring and toxics control activities, and completing and submitting the applicant questionnaire, as well as time for States to prepare the State determinations and certifications. No comments were received on the information collection requirements.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, S.W., (Mail Code 2136), Washington, D.C. 20460; and to the Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 125

Environmental protection, Marine point source discharges, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control.

Dated: July 14, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 125 of Title 40 of the Code of Federal Regulations is amended as set forth below. *Note*: For clarity, EPA has set forth below part 125, subpart G in its entirety. However, the Agency is amending only portions of these regulations in today's notice. Although the existing portions of subpart G that EPA is not amending are also set forth below, EPA did not reconsider those portions and they are not subject to challenge as part of this final rulemaking.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for 40 CFR part 125, subpart G is revised to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. 40 CFR part 125, subpart G is revised to read as follows:

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.

125.56 Scope and purpose.
125.57 Law governing issuance of a section 301(h) modified permit.
125.58 Definitions.
125.59 General.
125.60 Primary or equivalent treatment requirements.
125.61 Existence of and compliance with applicable water quality standards.
125.62 Attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife; and allows recreational activities.
125.63 Establishment of a monitoring program.
125.64 Effect of the discharge on other point and nonpoint sources.
125.65 Urban area pretreatment program.
125.66 Toxics control program.
125.67 Increase in effluent volume or amount of pollutants discharged.

125.68 Special conditions for section 301(h) modified permits.

Appendix to Subpart G—Applicant Questionnaire for Modification of Secondary Treatment Requirements

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

§ 125.56 Scope and purpose.

This subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment requirements ("section 301(h) modified permit").

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of paragraph (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) The discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) The applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) In the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) The applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this section, the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this section, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of paragraph (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish, and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(b) Section 301(j)(1) of the Clean Water Act provides that:

Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1987.

(c) Section 22(e) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Public Law 97–117, provides that:

The amendments made by this section shall take effect on the date of enactment of this Act except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act shall receive such permit during the one-year period which begins on the date of enactment of this Act.

(d) Section 303(b)(2) of the Water Quality Act, Public Law 100–4, provides that:

Section 301(h)(3) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(e) Section 303(g) of the Water Quality Act provides that:

The amendments made to sections 301(h) and (h)(2), as well as provisions of (h)(6) and (h)(9), shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

§ 125.58 Definitions.

For the purpose of this subpart:

(a) *Administrator* means the EPA Administrator or a person designated by the EPA Administrator.

(b) *Altered discharge* means any discharge other than a current discharge or improved discharge, as defined in this regulation.

(c) *Applicant* means an applicant for a new or renewed section 301(h) modified permit. Large applicants have populations contributing to their POTWs equal to or more than 50,000 people or average dry weather flows of 5.0 million gallons per day (mgd) or more; small applicants have contributing populations of less than 50,000 people and average dry weather flows of less than 5.0 mgd. For the purposes of this definition the contributing population and flows shall be based on projections for the end of the five-year permit term. Average dry weather flows shall be the average daily total discharge flows for the maximum month of the dry weather season.

(d) *Application* means a final application previously submitted in accordance with the June 15, 1979, section 301(h) regulations (44 FR 34784); an application submitted between December 29, 1981, and December 29, 1982; or a section 301(h) renewal application submitted in accordance with these regulations. It does not include a preliminary application submitted in accordance with the June 15, 1979, section 301(h) regulations.

(e) *Application questionnaire* means EPA's "Applicant Questionnaire for Modification of Secondary Treatment Requirements," published as an appendix to this subpart.

(f) *Balanced indigenous population* means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(g) *Categorical pretreatment standard* means a standard promulgated by EPA under 40 CFR Chapter I, Subchapter N.

(h) *Current discharge* means the volume, composition, and location of an applicant's discharge at the time of permit application.

(i) *Improved discharge* means the volume, composition, and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements to treatment levels or discharge characteristics; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works.

(j) *Industrial discharger* or *industrial source* means any source of nondomestic pollutants regulated under section 307(b) or (c) of the Clean Water Act which discharges into a POTW.

(k) *Modified discharge* means the volume, composition, and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested. A modified discharge may be a current discharge, improved discharge, or altered discharge.

(l) *New York Bight Apex* means the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(m) *Nonindustrial source* means any source of pollutants which is not an industrial source.

(n) *Ocean waters* means those coastal waters landward of the baseline of the territorial seas, the deep waters of the territorial seas, or the waters of the contiguous zone. The term "ocean waters" excludes saline estuarine waters.

(o) *Permittee* means an NPDES permittee with an effective section 301(h) modified permit.

(p) *Pesticides* means demeton, guthion, malathion, mirex, methoxychlor, and parathion.

(q) *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited by 40 CFR part 403.

(r) *Primary or equivalent treatment* for the purposes of this subpart means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.

(s) *Public water supplies* means water distributed from a public water system.

(t) *Public water system* means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. This term includes: (1) Any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) Any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(u) *Publicly owned treatment works* or *POTW* means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality, or intermunicipal or interstate agency.

(v) *Saline estuarine waters* means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(w) *Secondary removal equivalency* means that the amount of a toxic pollutant removed by the combination of the applicant's own treatment of its influent and pretreatment by its industrial users is equal to or greater than the amount of the toxic pollutant that would be removed if the applicant were to apply secondary treatment to its discharge where the discharge has not undergone pretreatment by the applicant's industrial users.

(x) *Secondary treatment* means the term as defined in 40 CFR part 133.

(y) *Shellfish, fish, and wildlife* means any biological population or community that might be adversely affected by the applicant's modified discharge.

(z) *Stressed waters* means those ocean waters for which an applicant can demonstrate to the satisfaction of the Administrator, that the absence of a balanced indigenous population is caused solely by human perturbations other than the applicant's modified discharge.

(aa) *Toxic pollutants* means those substances listed in 40 CFR 401.15.

(bb) *Water quality criteria* means scientific data and guidance developed and periodically updated by EPA under section 304(a)(1) of the Clean Water Act, which are applicable to marine waters.

(cc) *Water quality standards* means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(dd) *Zone of initial dilution* (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

§ 125.59 General.

(a) *Basis for application.* An application under this subpart shall be based on a current, improved, or altered discharge into ocean waters or saline estuarine waters.

(b) *Prohibitions.* No section 301(h) modified permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this subpart and part 122;

(2) For the discharge of sewage sludge;

(3) Where such issuance would conflict with applicable provisions of State, local, or other Federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*;

(4) Where the discharge of any pollutant enters into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish, and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge; or

(5) Where the discharge of any pollutant is into the New York Bight Apex.

(c) *Applications.* Each applicant for a modified permit under this subpart shall submit an application to EPA signed in compliance with 40 CFR part 122, subpart B, which shall contain:

(1) A signed, completed NPDES Application Standard form A, parts I, II, III;

(2) A completed Application Questionnaire;

(3) The certification in accordance with 40 CFR 122.22(d);

(4) In addition to the requirements of § 125.59(c) (1) through (3), applicants for permit renewal shall support continuation of the modification by supplying to EPA the results of studies and monitoring performed in accordance with § 125.63 during the life of the permit. Upon a demonstration meeting the statutory criteria and requirements of this subpart, the permit may be renewed under the applicable procedures of 40 CFR part 124.

(d) *Revisions to applications.* (1) POTWs which submitted applications in accordance with the June 15, 1979, regulations (44 FR 34784) may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i); and

(2) Other applicants may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i). Revisions by such applicants which propose downgrading treatment levels and/or outfall and diffuser location and design must be justified on the basis of substantial changes in circumstances beyond the applicant's control since the time of application submission.

(3) Applicants authorized or requested to submit additional information under § 125.59(g) may submit a revised application in accordance with § 125.59(f)(2)(ii) where such additional information supports changes in proposed treatment levels and/or outfall location and diffuser design. The opportunity for such revision shall be in addition to the one-time revision allowed under § 125.59(d) (1) and (2).

(4) POTWs which revise their applications must:

(i) Modify their NPDES form and Application Questionnaire as needed to ensure that the information filed with their application is correct and complete;

(ii) Provide additional analysis and data as needed to demonstrate compliance with this subpart;

(iii) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(iv) Provide the certification described in paragraph (c)(3) of this section.

(5) Applications for permit renewal may not be revised.

(e) *Submittal of additional information to demonstrate compliance with §§ 125.60 and 125.65.* (1) On or before the deadline established in paragraph (f)(3) of this section, applicants shall submit a letter of intent to demonstrate compliance with §§ 125.60 and 125.65. The letter of intent is subject to approval by the Administrator based on the requirements of this paragraph and paragraph (f)(3) of this section. The letter of intent shall consist of the following:

(i) For compliance with § 125.60: (A) A description of the proposed treatment system which upgrades treatment to satisfy the requirements of § 125.60.

(B) A project plan, including a schedule for data collection and for achieving compliance with § 125.60. The project plan shall include dates for design and construction of necessary facilities, submittal of influent/effluent data, and submittal of any other information necessary to demonstrate compliance with § 125.60. The Administrator will review the project plan and may require revisions prior to authorizing submission of the additional information.

(ii) For compliance with § 125.65: (A) A determination of what approach will be used to achieve compliance with § 125.65.

(B) A project plan for achieving compliance. The project plan shall include any necessary data collection activities, submittal of additional information, and/or development of appropriate pretreatment limits to demonstrate compliance with § 125.65. The Administrator will review the project plan and may require revisions prior to submission of the additional information.

(iii) POTWs which submit additional information must:

(A) Modify their NPDES form and Application Questionnaire as needed to ensure that the information filed with their application is correct and complete;

(B) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(C) Provide the certification described in paragraph (c)(3) of this section.

(2) The information required under this paragraph must be submitted in accordance with the schedules in § 125.59(f)(3)(ii). If the applicant does not meet these schedules for compliance, EPA may deny the application on that basis.

(f) *Deadlines and distribution*—(1) *Applications.*—(i) The application for an original 301(h) permit for POTWs which directly discharges effluent into saline waters shall be submitted to the appropriate EPA Regional Administrator no later than December 29, 1982.

(ii) The application for renewal of a 301(h) modified permit shall be submitted no less than 180 days prior to

the expiration of the existing permit, unless permission for a later date has been granted by the Administrator. (The Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(iii) A copy of the application shall be provided to the State and interstate agency(s) authorized to provide certification/concurrence under §§ 124.53 through 124.55 on or before the date the application is submitted to EPA.

(2) *Revisions to Applications.* (i) Applicants desiring to revise their applications under § 125.59 (d)(1) or (d)(2) must:

(A) Submit to the appropriate Regional Administrator a letter of intent to revise their application either within 45 days of the date of EPA's tentative decision on their original application or within 45 days of November 26, 1982, whichever is later. Following receipt by EPA of a letter of intent, further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(B) Submit the revised application as described for new applications in § 125.59(f)(1) either within one year of the date of EPA's tentative decision on their original application or within one year of November 26, 1982, if a tentative decision has already been made, whichever is later.

(ii) Applicants desiring to revise their applications under § 125.59(d)(3) must submit the revised application as described for new applications in § 125.59(f)(1) concurrent with submission of the additional information under § 125.59(g).

(3) Deadline for additional information to demonstrate compliance with §§ 125.60 and 125.65.

(i) A letter of intent required under § 125.59(e)(1) must be submitted by the following dates: for permittees with 301(h) modifications or for applicants to which a tentative or final decision has been issued, November 7, 1994; for all others, within 90 days after the Administrator issues a tentative decision on an application. Following receipt by EPA of a letter of intent containing the information required in § 125.59(e)(1), further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(ii) The project plan submitted under § 125.59(e)(1) shall ensure that the applicant meets all the requirements of §§ 125.60 and 125.65 by the following deadlines:

(A) By August 9, 1996 for applicants that are not grandfathered under § 125.59(j).

(B) At the time of permit renewal or by August 9, 1996, whichever is later, for applicants that are grandfathered under § 125.59(j).

(4) *State determination deadline.* State determinations, as required by §§ 125.61(b)(2) and 125.64(b) shall be filed by the applicant with the appropriate Regional Administrator no later than 90 days after submission of the revision to the application or additional information to EPA. Extensions to this deadline may be provided by EPA upon request. However, EPA will not begin review of the revision to the application or additional information until a favorable State determination is received by EPA. Failure to provide the State determination within the timeframe required by this paragraph (f)(4) is a basis for denial of the application.

(g)(1) The Administrator may authorize or request an applicant to submit additional information by a specified date not to exceed one year from the date of authorization or request.

(2) Applicants seeking authorization to submit additional information on current/modified discharge characteristics, water quality, biological conditions or oceanographic characteristics must:

(i) Demonstrate that they made a diligent effort to provide such information with their application and were unable to do so, and

(ii) Submit a plan of study, including a schedule, for data collection and submittal of the additional information. EPA will review the plan of study and may require revisions prior to authorizing submission of the additional information.

(h) *Tentative decisions on section 301(h) modifications.* The Administrator shall grant a tentative approval or a tentative denial of a section 301(h) modified permit application. To qualify for a tentative approval, the applicant shall demonstrate to the satisfaction of the Administrator that it is using good faith means to come into compliance with all the requirements of this subpart and that it will meet all such requirements based on a schedule approved by the Administrator. For compliance with §§ 125.60 and 125.65, such schedule shall be in accordance with § 125.59(f)(3)(ii).

(i) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of §§ 125.59 through 125.68.

(2) No section 301(h) modified permit shall be issued until the appropriate State certification/concurrence is granted or waived pursuant to § 124.54 or if the State denies certification/concurrence pursuant to § 124.54.

(3) In the case of a modification issued to an applicant in a State administering an approved permit program under 40 CFR part 123, the State Director may:

(i) Revoke an existing permit as of the effective date of the EPA issued section 301(h) modified permit; and

(ii) Cosign the section 301(h) modified permit if the Director has indicated an intent to do so in the written concurrence.

(4) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in 40 CFR part 124, except that, because section 301(h) permits may be issued only by EPA, the terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Director" as appropriate; and

(ii) Contain all applicable terms and conditions set forth in 40 CFR part 122 and § 125.68.

(5) Appeals of section 301(h) determinations shall be governed by the procedures in 40 CFR part 124.

(j) *Grandfathering provision.* Applicants that received tentative or final approval for a section 301(h) modified permit prior to February 4, 1987, are not subject to § 125.60, the water quality criteria provisions of § 125.62(a)(1), or § 125.65 until the time of permit renewal. In addition, if permit renewal will occur prior to August 9, 1996, applicants may have additional time to come into compliance with §§ 125.60 and 125.65, as determined appropriate by EPA on a case-by-case basis. Such additional time, however, shall not extend beyond August 9, 1996. This paragraph does not apply to any application that was initially tentatively approved, but as to which EPA withdrew its tentative approval or issued a tentative denial prior to February 4, 1987.

§ 125.60 Primary or equivalent treatment requirements.

(a) The applicant shall demonstrate that, at the time its modification becomes effective, it will be discharging effluent that has received at least primary or equivalent treatment.

(b) The applicant shall perform monitoring to ensure, based on the monthly average results of the monitoring, that the effluent it discharges has received primary or equivalent treatment.

(c)(1) An applicant may request that the demonstration of compliance with the requirement under § 125.60(b) to provide 30 percent removal of BOD be allowed on an averaging basis different from monthly (e.g., quarterly), subject to the demonstrations provided in paragraph (c)(2) of this section. If, however, the applicant has demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, the applicant shall not be eligible for an averaging basis longer than monthly.

(2) If the Administrator is satisfied that the applicant has met the eligibility requirement of paragraph (c)(1) of this section, the Administrator may approve such requests if the applicant demonstrates to the Administrator's satisfaction that:

(i) The applicant's POTW is adequately designed and well operated;

(ii) The applicant will be able to meet all requirements under section 301(h) of the CWA and these subpart G regulations with the averaging basis selected; and

(iii) The applicant cannot achieve 30 percent removal on a monthly average basis because of circumstances beyond the applicant's control. Circumstances beyond the applicant's control may include seasonally dilute influent BOD concentrations due to relatively high (although nonexcessive) inflow and infiltration; relatively high soluble to insoluble BOD ratios on a fluctuating basis; or cold climates resulting in cold influent. Circumstances beyond the applicant's control shall not include less concentrated wastewater due to excessive inflow and infiltration (I&I). The determination of whether the less concentrated wastewater is the result of excessive I&I will be based on the definition of excessive I&I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

(3) In no event shall averaging on a less frequent basis than annually be allowed.

§ 125.61 Existence of and compliance with applicable water quality standards.

(a) There must exist a water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) Water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) Water quality standards for suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone; and

(3) Water quality standards for pH.

(b) The applicant must: (1) Demonstrate that the modified discharge will comply with the above water quality standard(s); and

(2) Provide a determination signed by the State or interstate agency(s) authorized to provide certification under §§ 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State law including water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

§ 125.62 Attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife; and allows recreational activities.

(a) *Physical characteristics of discharge.* (1) At the time the 301(h) modification becomes effective, the applicant's outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed at and beyond the zone of initial dilution:

(i) All applicable water quality standards; and

(ii) All applicable EPA water quality criteria for pollutants for which there is no applicable EPA-approved water quality standard that directly corresponds to the EPA water quality criterion for the pollutant.

(iii) For purposes of paragraph (a)(1)(ii) of this section, a State water quality standard "directly corresponds" to an EPA water quality criterion only if:

(A) The State water quality standard addresses the same pollutant as the EPA water quality criterion and

(B) The State water quality standard specifies a numeric criterion for that pollutant or State objective methodology for deriving such a numeric criterion.

(iv) The evaluation of compliance with paragraphs (a)(1) (i) and (ii) of this section shall be based upon conditions reflecting periods of maximum stratification and during other periods when discharge characteristics, water quality, biological seasons, or oceanographic conditions indicate more critical situations may exist.

(2) The evaluation under paragraph (a)(1)(ii) of this section as to compliance with applicable section 304(a)(1) water quality criteria shall be based on the following:

(i) *For aquatic life criteria:* The pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as the concentrations at which acute and chronic toxicity to aquatic life occurs or that are otherwise identified as the criteria to protect aquatic life.

(ii) *For human health criteria for carcinogens:* (A) For a known or suspected carcinogen, the Administrator shall determine the pollutant concentration that shall not be exceeded. To make this determination, the Administrator shall first determine a level of risk associated with the pollutant that is acceptable for purposes of this section. The Administrator shall then use the information in the section 304(a)(1) water quality criterion document, supplemented by all other relevant information, to determine the specific pollutant concentration that corresponds to the identified risk level.

(B) For purposes of paragraph (a)(2)(ii)(A) of this section, an acceptable risk level will be a single level that has been consistently used, as determined by the Administrator, as the basis of the State's EPA-approved water quality standards for carcinogenic pollutants. Alternatively, the Administrator may consider a State's recommendation to use a risk level that has been otherwise adopted or formally proposed by the State. The State recommendation must demonstrate, to the satisfaction of the Administrator, that the recommended level is sufficiently protective of human health in light of the exposure and uncertainty factors associated with the estimate of the actual risk posed by the applicant's discharge. The State must include with its demonstration a showing that the risk level selected is based on the best information available and that the State has held a public hearing to review the selection of the risk level, in accordance with provisions of State law and public participation requirements of 40 CFR part 25. If the Administrator neither determines that there is a consistently used single risk level nor accepts a risk level recommended by the State, then the Administrator shall otherwise determine an acceptable risk level based on all relevant information.

(iii) *For human health criteria for noncarcinogens:* For noncarcinogenic pollutants, the pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as protective against the potential toxicity of the contaminant through ingestion of contaminated aquatic organisms.

(3) The requirements of paragraphs (a)(1) and (a)(2) of this section apply in addition to, and do not waive or substitute for, the requirements of § 125.61.

(b) *Impact of discharge on public water supplies.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(2) The applicant's modified discharge must not:

(i) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or

(ii) Have the effect of requiring treatment over and above that which would be necessary in the absence of such discharge in order to comply with local and EPA drinking water standards.

(c) *Biological impact of discharge.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(2) A balanced indigenous population of shellfish, fish, and wildlife must exist:

(i) Immediately beyond the zone of initial dilution of the applicant's modified discharge; and

(ii) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(3) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenter, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, and picnicking, and sports activities along shorelines and beaches.

(2) There must be no Federal, State, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) *Additional requirements for applications based on improved or altered discharges.* An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge; and

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) *Stressed waters.* An applicant must demonstrate compliance with paragraphs (a) through (e) of this section not only on the basis of the applicant's own modified discharge, but also taking into account the applicant's modified discharge in combination with pollutants from other sources. However, if an applicant which discharges into ocean waters believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is entirely attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff, and the applicant's previous discharges), the applicant need not demonstrate compliance with those requirements if it demonstrates, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.63 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program that is:

(A) Designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards or water quality criteria, as applicable, and measure toxic substances in the discharge, and

(B) Limited to include only those scientific investigations necessary to study the effects of the proposed discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress, or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and pesticides; and

(iv) Where the discharge would affect commercial or recreational fisheries, periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraph (b)(1) (ii) through (iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.62(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.62(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide the basis for demonstrating that requirements of § 125.62(c) will be met.

(c) *Water quality monitoring program.* The water quality monitoring program shall to the extent practicable:

(1) Provide adequate data for evaluating compliance with water quality standards or water quality criteria, as applicable under § 125.62(a)(1);

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) *Effluent monitoring program.* (1) In addition to the requirements of 40 CFR part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxic control program.

(2) The permit shall require the collection of data on a frequency specified in the permit to provide adequate data for evaluating compliance with the percent removal efficiency requirements under § 125.60.

§ 125.64 Effect of the discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

§ 125.65 Urban area pretreatment program.

(a) *Scope and applicability.* (1) The requirements of this section apply to each POTW serving a population of 50,000 or more that has one or more toxic pollutants introduced into the POTW by one or more industrial dischargers and that seeks a section 301(h) modification.

(2) The requirements of this section apply in addition to any applicable requirements of 40 CFR part 403, and do not waive or substitute for the part 403 requirements in any way.

(b) *Toxic pollutant control.* (1) As to each toxic pollutant introduced by an industrial discharger, each POTW subject to the requirements of this section shall demonstrate that it either:

(i) Has an applicable pretreatment requirement in effect in accordance with paragraph (c) of this section; or

(ii) Has in effect a program that achieves secondary removal equivalency in accordance with paragraph (d) of this section.

(2) Each applicant shall demonstrate that industrial sources introducing waste into the applicant's treatment works are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits, and that it will enforce those requirements.

(c) *Applicable pretreatment requirement.* (1) An applicable pretreatment requirement under paragraph (b)(1)(i) of this section with respect to a toxic pollutant shall consist of the following:

(i) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant as necessary to satisfy the requirements of 40 CFR part 403; and

(ii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard and a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403;

(iii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, and the 40 CFR part 403 analysis on the toxic pollutant shows that no local limit is necessary, the applicant shall demonstrate to EPA on an annual basis during the term of the permit through continued monitoring and appropriate technical review that a local limit is not necessary, and, where appropriate, require industrial management practices plans and other pollution prevention activities to reduce or control the discharge of each such pollutant by industrial dischargers to the POTW. If such monitoring and technical review of data indicate that a local limit is needed, the POTW shall establish and implement a local limit.

(2) Any local limits developed to meet the requirements of paragraphs (b)(1)(i) and (c)(1) of this section shall be:

(i) Consistent with all applicable requirements of 40 CFR part 403 and

(ii) Subject to approval by the Administrator as part of the 301(h) application review. The Administrator may require such local limits to be revised as necessary to meet the requirements of this section or 40 CFR part 403.

(d) *Secondary removal equivalency.* An applicant shall demonstrate that it achieves secondary removal equivalency through the use of a secondary treatment pilot (demonstration) plant at the applicant's facility which provides an empirical determination of the amount of a toxic pollutant removed by the application of secondary treatment to the applicant's influent where the applicant's influent has not been pretreated. Alternatively, an applicant may make this determination using influent that has received industrial pretreatment, notwithstanding the definition of secondary removal equivalency in § 125.58(w). The NPDES permit shall include effluent limits based on the data from the secondary equivalency demonstration when those limits are more stringent than effluent limits based on State water quality standards or water quality criteria, if applicable, or are otherwise required to assure that all

applicable environmental protection criteria are met. Once such effluent limits are established in the NPDES permit, the POTW may either establish local limits or perform additional treatment at the POTW or a combination of the two to achieve the permit limit.

§ 125.66 Toxics control program.

(a) *Chemical analysis.* (1) The applicant shall submit at the time of application a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58(aa) and (p). The analysis shall be performed on two 24-hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if composition of the supplemental or substitute samples typifies that which occurs during dry and wet weather conditions.

(2) Unless required by the State, this requirement shall not apply to any small section 301(h) applicant which certifies that there are no known or suspected sources of toxic pollutants or pesticides and documents the certification with an industrial user survey as described by 40 CFR 403.8(f)(2).

(b) *Identification of sources.* The applicant shall submit at the time of application an analysis of the known or suspected sources of toxic pollutants or pesticides identified in § 125.66(a). The applicant shall to the extent practicable categorize the sources according to industrial and nonindustrial types.

(c) *Industrial pretreatment requirements.* (1) An applicant that has known or suspected industrial sources of toxic pollutants shall have an approved pretreatment program in accordance with 40 CFR part 403.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants or pesticides and so certifies to the Administrator.

(3) The pretreatment program submitted by the applicant under this section shall be subject to revision as required by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

(4) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(d) *Nonindustrial source control program.* (1) The applicant shall submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and pesticides into its POTW(s) which shall be implemented no later than 18 months after issuance of a 301(h) modified permit.

(2) The applicant shall also develop and implement additional nonindustrial source control programs on the earliest possible schedule. This requirement shall not apply to a small applicant which certifies that there are no known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides in its discharge.

(3) The applicant's nonindustrial source control programs under paragraph (d)(2) of this section shall include the following schedules which are to be implemented no later than 18 months after issuance of a section 301(h) modified permit:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants and pesticides; and

(ii) A schedule for the development and implementation of control programs, to the extent practicable, for nonindustrial sources of toxic pollutants and pesticides.

(4) Each proposed nonindustrial source control program and/or schedule submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

§ 125.67 Increase in effluent volume or amount of pollutants discharged.

(a) No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit.

(b) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(c) The applicant shall provide projections of effluent volume and mass loadings for any pollutants to which the modification applies in 5-year increments for the design life of its facility.

§ 125.68 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR part 122, the following:

(a) Effluent limitations and mass loadings which will assure compliance with the requirements of this subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.66(c);

(2) Nonindustrial toxics control program required by § 125.66(d); and

(3) Control of combined sewer overflows required by § 125.67.

(c) Monitoring program requirements that include:

(1) Biomonitoring requirements of § 125.63(b);

(2) Water quality requirements of § 125.63(c);

(3) Effluent monitoring requirements of §§ 125.60(b), 125.62(c) and (d), and 125.63(d).

(d) Reporting requirements that include the results of the monitoring programs required by paragraph (c) of this section at such frequency as prescribed in the approved monitoring program.

Appendix to Subpart G—Applicant Questionnaire for Modification of Secondary Treatment Requirements

OMB Control Number 2040–0088 Expires on 2/28/96 Public reporting burden for this collection of information is estimated to average 1,295 - 19,552 hours per response, for small and large applicants, respectively. The reporting burden includes time for reviewing instructions, gathering data, including monitoring and toxics control activities, and completing and reviewing the questionnaire. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to Chief, Information Policy Branch, U.S. Environmental Protection Agency, 401 M St., SW (2136), Washington, DC 20460 and Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for EPA, Washington, DC 20503.

I. Introduction

1. This questionnaire is to be submitted by both small and large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant is defined as a POTW that has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. A large applicant is defined as a POTW that has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. The questionnaire is in two sections, a general information and basic requirements section (part II) and a technical evaluation section (part III). Satisfactory completion by small and large dischargers of the appropriate questions of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h)

and EPA regulations (40 CFR part 125, subpart G).

2. Most small applicants should be able to complete the questionnaire using available information. However, small POTWs with low initial dilution discharging into shallow waters or waters with poor dispersion and transport characteristics, discharging near distinctive and susceptible biological habitats, or discharging substantial quantities of toxics should anticipate the need to collect additional information and/or conduct additional analyses to demonstrate compliance with section 301(h) criteria. If there are questions in this regard, applicants should contact the appropriate EPA Regional Office for guidance.

3. Guidance for responding to this questionnaire is provided by the newly amended section 301(h) technical support document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application or a letter of intent, EPA encourages the applicant to consult with EPA prior to data collection and submission. Such consultation, particularly if the applicant provides a project plan, will help ensure that the proper data are gathered in the most efficient matter.

4. The notation (L) means large applicants must respond to the question, and (S) means small applicants must respond.

II. General Information and Basic Data Requirements

A. Treatment System Description

1. (L,S) On which of the following are you basing your application: a current discharge, improved discharge, or altered discharge, as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. (L,S) Description of the Treatment/Outfall System [40 CFR 125.62(a) and 125.62(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR part 125, subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude, if different from the proposed outfall.

3. (L,S) Primary or equivalent treatment requirements [40 CFR 125.60]

a. Provide data to demonstrate that your effluent meets at least primary or equivalent treatment requirements as defined in 40 CFR 125.58(r) [40 CFR 125.60]

b. If your effluent does not meet the primary or equivalent treatment requirements, when do you plan to meet them? Provide a detailed schedule, including design, construction, start-up and full operation, with your application. This requirement must be met by the effective date of the new section 301(h) modified permit.

4. (L,S) Effluent Limitations and Characteristics [40 CFR 125.61(b) and 125.62(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD_5), suspended solids, and pH upon which your application for a modification is based:

—BOD_5 _____ mg/L
—Suspended solids _____ mg/L
—pH _____ (range)

b. Provide data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

Flow (m^3/sec):
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

BOD_5 (mg/L) for the following plant flows:
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

Suspended solids (mg/L) for the following plant flows:
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

Toxic pollutants and pesticides (ug/L):
—list each toxic pollutant and pesticide
—list each 304(a)(1) criteria and toxic pollutant and pesticide

pH:
—minimum
—maximum

Dissolved oxygen (mg/L, prior to chlorination) for the following plant flows:
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

Immediate dissolved oxygen demand (mg/L).

5. (L,S) Effluent Volume and Mass Emissions [40 CFR 125.62(e)(2) and 125.67]

a. Provide detailed analyses showing projections of effluent volume (annual average, m^3/sec) and mass loadings (mt/yr) of BOD_5 and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five-year permit term for 1) the treatment facility contributing population and 2) the average daily total discharge flow for the maximum month of the dry weather season.

6. (L,S) Average Daily Industrial Flow (m^3/sec). Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II.A.5 above. [40 CFR 125.66]

7. (L,S) Combined Sewer Overflows [40 CFR 125.67(b)]

a. Does (will) your treatment and collection system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

8. (L,S) Outfall/Diffuser Design. Provide the following data for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.62(a)(1)]

—Diameter and length of the outfall(s) (meters)
—Diameter and length of the diffuser(s) (meters)
—Angle(s) of port orientation(s) from horizontal (degrees)
—Port diameter(s) (meters)
—Orifice contraction coefficient(s), if known
—Vertical distance from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)
—Number of ports
—Port spacing (meters)
—Design flow rate for each port, if multiple ports are used (m^3/sec)

B. Receiving Water Description

1. (L,S) Are you applying for a modification based on a discharge to the ocean [40 CFR 125.58(n)] or to a saline estuary [40 CFR 125.58(v)]? [40 CFR 125.59(a)].

2. (L,S) Is your current discharge or modified discharge to stressed waters as defined in 40 CFR 125.58(z)? If yes, what are the pollution sources contributing to the stress? [40 CFR 125.59(b)(4) and 125.62(f)].

3. (L,S) Provide a description and data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.62(a)].

4. (L) Oceanographic conditions in the vicinity of the current and proposed modified discharge(s). Provide data on the following: [40 CFR 125.62(a)].

—Lowest ten percentile current speed (m/sec)
—Predominant current speed (m/sec) and direction (true) during the four seasons
—Period(s) of maximum stratification (months)
—Period(s) of natural upwelling events (duration and frequency, months)
—Density profiles during period(s) of maximum stratification

5. (L,S) Do the receiving waters for your discharge contain significant amounts of effluent previously discharged from the treatment works for which you are applying for a section 301(h) modified permit? [40 CFR 125.57(a)(9)]

6. Ambient water quality conditions during the period(s) of maximum stratification: at the zone of initial dilution (ZID) boundary, at other areas of potential impact, and at control stations. [40 CFR 125.62(a)]

a. (L) Provide profiles (with depth) on the following for the current discharge location and for the modified discharge location, if different from the current discharge:

—BOD_5 (mg/L)
—Dissolved oxygen (mg/L)
—Suspended solids (mg/L)
—pH
—Temperature (°C)

—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant variables (e.g., nutrients, 304(a)(1) criteria and toxic pollutants and pesticides, fecal coliform bacteria)

b. (S) Provide available data on the following in the vicinity of the current discharge location and for the modified discharge location, if different from the current discharge: [40 CFR 125.61(b)(1)]

—Dissolved oxygen (mg/L)
—Suspended solids (mg/L)
—pH
—Temperature (°C)
—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant variables (e.g., nutrients, 304(a)(1) criteria and toxic pollutants and pesticides, fecal coliform bacteria)

c. (L,S)Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these and other critical periods and data requested in 6.a. for the other critical period(s). [40 CFR 125.62(a)(1)].

7. (L) Provide data on steady state sediment dissolved oxygen demand and dissolved oxygen demand due to resuspension of sediments in the vicinity of your current and modified discharge(s) (mg/L/day).

C. Biological Conditions

1. (L) Provide a detailed description of representative biological communities (e.g., plankton, macrobenthos, demersal fish, etc.) in the vicinity of your current and modified discharge(s): within the ZID, at the ZID boundary, at other areas of potential discharge-related impact, and at reference (control) sites. Community characteristics to be described shall include (but not be limited to) species composition; abundance; dominance and diversity; spatial/temporal distribution; growth and reproduction; disease frequency; trophic structure and productivity patterns; presence of opportunistic species; bioaccumulation of toxic materials; and the occurrence of mass mortalities.

2. (L,S)a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.62(c)]

b. If yes, provide information on type, extent, and location of habitats.

3. (L,S)a. Are commercial or recreational fisheries located in areas potentially affected by the discharge? [40 CFR 125.62 (c) and (d)]

b. If yes, provide information on types, location, and value of fisheries.

D. State and Federal Laws [40 CFR 125.61 and 125.62(a)(1)]

1. (L,S) Are there water quality standards applicable to the following pollutants for which a modification is requested:

—Biochemical oxygen demand or dissolved oxygen?
—Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?
—pH of the receiving water?

2. (L,S) If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. (L,S) Will the modified discharge: [40 CFR 125.59(b)(3)].

—Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 et seq.? [See 16 U.S.C. 1456(c)(3)(A)]
—Be located in a marine sanctuary designated under Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 et seq., or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under Title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary. [See 16 U.S.C. 1432(f)(2)]
—Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 et seq.? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat. [See 16 U.S.C. 1536(a)(2)].

4. (L,S) Are you aware of any State or Federal laws or regulations (other than the Clean Water Act or the three statutes identified in item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulation(s), or order(s). [40 CFR 125.59 (b)(3)].

III. Technical Evaluation

A. Physical Characteristics of Discharge [40 CFR 125.62(a)]

1. (L,S) What is the critical initial dilution for your current and modified discharge(s) during (1) the period(s) of maximum stratification? and (2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L,S) What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. (L) What are the effects of ambient currents and stratification on dispersion and transport of the discharge plume/wastefield?

4. (S) Will there be significant sedimentation of suspended solids in the vicinity of the modified discharge?

5. (L) Sedimentation of suspended solids

a. What fraction of the modified discharge's suspended solids will accumulate within the vicinity of the modified discharge?

b. What are the calculated area(s) and rate(s) of sediment accumulation within the vicinity of the modified discharge(s) (g/m²/yr)?

c. What is the fate of settleable solids transported beyond the calculated sediment accumulation area?

B. Compliance with Applicable Water Quality Standards and CWA § 304(a)(1) water quality criteria [40 CFR 125.61(b) and 125.62(a)]

1. (L,S) What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L,S) What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. (L) What are the dissolved oxygen depressions and resulting concentrations near the bottom due to steady sediment demand and resuspension of sediments?

4. (L,S) What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

5. (L) What is the change in receiving water pH immediately following initial dilution of the modified discharge(s)?

6. (L,S) Does (will) the modified discharge comply with applicable water quality standards for:

—Dissolved oxygen?
—Suspended solids or surrogate standards?
—pH?

7. (L,S) Provide data to demonstrate that all applicable State water quality standards, and all applicable water quality criteria established under Section 304(a)(1) of the Clean Water Act for which there are no directly corresponding numerical applicable water quality standards approved by EPA, are met at and beyond the boundary of the ZID under critical environmental and treatment plant conditions in the waters surrounding or adjacent to the point at which your effluent is discharged. [40 CFR 125.62(a)(1)]

8. (L,S) Provide the determination required by 40 CFR 125.61(b)(2) for compliance with all applicable provisions of State law, including water quality standards or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. Impact on Public Water Supplies [40 CFR 125.62(b)]

1. (L,S) Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. (L,S) If yes:

a. What is the location of the intake(s) (latitude and longitude)?

b. Will the modified discharge(s) prevent the use of intake(s) for public water supply?

c. Will the modified discharge(s) cause increased treatment requirements for public water supply(s) to meet local, State, and EPA drinking water standards?

D. Biological Impact of Discharge [40 CFR 125.62(c)]

1. (L,S) Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

—Immediately beyond the ZID of the current and modified discharge(s)?

—In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. (L,S) Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. (L,S) Have commercial or recreational fisheries been impacted adversely by the current discharge (e.g., warnings, restrictions, closures, or mass mortalities) or will they be impacted adversely by the modified discharge?

4. (L,S*) Does the current or modified discharge cause the following within or beyond the ZID: [40 CFR 125.62(c)(3)]

—Mass mortality of fishes or invertebrates due to oxygen depletion, high concentrations of toxics, or other conditions?

—An increased incidence of disease in marine organisms?

—An abnormal body burden of any toxic material in marine organisms?

—Any other extreme, adverse biological impacts?

5. (L,S) For discharges into saline estuarine waters: [40 CFR 125.62 (c)(4)]

—Does or will the current or modified discharge cause substantial differences in the benthic population within the ZID and beyond the ZID?

—Does or will the current or modified discharge interfere with migratory pathways within the ZID?

—Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

No section (h) modified permit shall be issued where the discharge enters into stressed saline estuarine waters as stated in 40 CFR 125.59(b)(4).

6. (L,S) For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? [40 CFR 125.62(e)]

7 (L,S) For altered discharge(s), will the ltered discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? [40 CFR 125.62(e)]

8. (L,S) If your current discharge is to stressed ocean waters, does or will your current or modified discharge: [40 CFR 125.62(f)]

—Contribute to, increase, or perpetuate such stressed condition?

—Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?

—Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. Impacts of Discharge on Recreational Activities [40 CFR 125.62(d)]

1. (L,S) Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. (L,S) What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliform bacteria.

3. (L,S) Are there any Federal, State, or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. (L,S) If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. Establishment of a Monitoring Program [40 CFR 125.63]

1. (L,S) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.63. Only those scientific investigations that are necessary to study the effects of the proposed discharge should be included in the scope of the 301(h) monitoring program [40 CFR 125.63(a)(1)(i)(B)].

2. (L,S) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. (L,S) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. Effect of Discharge on Other Point and Nonpoint Sources [40 CFR 125.64]

1. (L,S) Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. (L,S) Provide the determination required by 40 CFR 125.64(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. Toxics Control Program and Urban Area Pretreatment Program [40 CFR 125.65 and 125.66]

1. a. (L,S) Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b. (L,S) If no, provide the certification required by 40 CFR 125.66(a)(2) for small dischargers, and required by 40 CFR 125.66(c)(2) for large dischargers.

c. (L,S*) Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.66(a)(1). (* to the extent practicable)

d. (L,S*) Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above as required by 40 CFR 125.66(b). (* to the extent practicable)

2. (S)a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s)?

(S)b. If no, provide the certification required by 40 CFR 125.66(d)(2) together with available supporting data.

(S)c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 126.66(d)(3).

(L)d. Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.66(d)(3).

3. (L,S) Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system. [40 CFR 125.66(d)(1)]

4. (L,S) Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR part 403.

5. Urban area pretreatment requirement [40 CFR 125.65] Dischargers serving a population of 50,000 or more must respond.

a. Provide data on all toxic pollutants introduced into the treatment works from industrial sources (categorical and noncategorical).

b. Note whether applicable pretreatment requirements are in effect for each toxic pollutant. Are the industrial sources introducing such toxic pollutants in compliance with all of their pretreatment requirements? Are these pretreatment requirements being enforced? [40 CFR 125.65(b)(2)]

c. If applicable pretreatment requirements do not exist for each toxic pollutant in the POTW effluent introduced by industrial sources,

—provide a description and a schedule for your development and implementation of applicable pretreatment requirements [40 CFR 125.65(c)], or

—describe how you propose to demonstrate secondary removal equivalency for each of those toxic pollutants, including a schedule for compliance, by using a secondary treatment pilot plant. [40 CFR 125.65(d)]

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Safety Standards for Fall Protection in the Construction Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

RIN 1218–AA66

[Docket No. S–206]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises the construction industry safety standards which regulate fall protection systems and procedures. These systems and procedures are intended to prevent employees from falling off, onto or through working levels and to protect employees from falling objects.

The final rule corrects problems which have arisen during enforcement of the existing standards. In this final rule, OSHA either maintains or increases the requirements for protection from those hazards, but does so using more performance-oriented criteria where possible, rather than specification-oriented language. The final rule also consolidates and simplifies many of the existing provisions. This rulemaking is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without imposing unnecessary burdens.

In addition, the final rule makes one change to a provision in the Occupational Safety and Health Standards for General Industry. In particular, § 1910.269—Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment which contains a requirement in paragraph (f)(2) that personal fall arrest equipment meet the requirements of subpart E of Part 1926. That provision has been revised to require the equipment to meet the requirements of revised subpart M of Part 1926.

EFFECTIVE DATE: This final rule becomes effective February 6, 1995.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Barbara J. Bielaski, project officer, Office of Construction and Civil Engineering Safety Standards; Jens Svenson, Office of Regulatory Analysis; Stephen Jones, Office of the Solicitor.

I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 *et seq.*) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) [P.L. 91–54; August 9, 1969], significantly strengthened employee protection by requiring the promulgation of occupational safety and health standards for employees of the building trades and construction industry working on Federally-financed or Federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (OSH Act) (84 Stat. 1590; 29 U.S.C. 651 *et seq.*), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted those Construction Standards, which had been issued under the Construction Safety Act in 29 CFR Part 1518, as OSHA standards in accordance with section 6(a) of the OSH Act (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971).

OSHA adopted several regulations related to fall protection under section 6(a) of the OSH Act. In particular, the Agency adopted the standards which currently appear in subpart E, Personal Protective Equipment, (including § 1926.104—Safety Belts, Lifelines, and Lanyards and § 1926.105—Safety Nets) and in subpart M, Floor and Wall Openings and Stairways. Subpart M has been amended several times under section 6(b) of the OSH Act.

As part of OSHA's continuing standards evaluation program, and in response to public comments, a complete review of subpart M was begun in 1977. Since then, the Advisory Committee on Construction Safety and Health (ACCSH) has reviewed draft revisions of subpart M a number of times and has made many suggestions regarding the draft regulatory language. The transcripts of the ACCSH meetings where draft revisions to subpart M were discussed are part of the public record (Exhibit 1). The ACCSH recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the revised standard reflect the suggestions of the ACCSH and other interested persons. Specific ACCSH recommendations are discussed in the appropriate sections of the Summary and Explanation, below. Committee discussions that either were inconclusive or did not produce a specific recommendation have also been considered, but are not discussed in this preamble.

On November 25, 1986, OSHA proposed to revise virtually all of the fall protection provisions of the construction industry standards and to consolidate those requirements, except where specifically provided otherwise, in subpart M [51 FR 42718]. The proposal set a period, ending February 23, 1987, during which interested parties could submit written comments and request a hearing. The Agency twice granted commenters' requests for more time to submit comments and hearing requests. OSHA first extended the comment and hearing request period to June 1, 1987 [52 FR 5790, February 26, 1987] and then extended that period to August 14, 1987 [52 FR 20616, June 2, 1987]. The Agency received 162 comments on the proposal and several requests for a hearing.

On January 26, 1988, OSHA announced that it would convene an informal public hearing beginning on March 22, 1988, to elicit additional information on specific issues related to fall protection, scaffolds and stairways and ladders [53 FR 2048]. The hearing notice also reopened the comment period regarding proposed subpart M until March 8, 1988, for the limited purpose of obtaining additional information on appropriate fall protection coverage for employees engaged in steel erection activities. The Agency noted that the information obtained would be used in development

of a separate proposed rule covering steel erection. OSHA received 22 comments in response to the limited reopening of the comment period.

The informal public hearings were conducted on March 22–23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearings, Judge Williams set a period, ending May 9, 1988, for hearing participants to submit additional comments and information. OSHA received 15 submissions, including testimony and documentary evidence, at the hearing. On August 11, 1989, Judge Williams certified the rulemaking record, including the hearing transcript and all written submissions to the docket, thereby closing the record for this proceeding.

On August 5, 1992, OSHA reopened the rulemaking record (57 FR 34656) to consider new information submitted by the Precast/Prestressed Concrete Institute (PCI) regarding the fall protection needs of employees engaged in precast concrete construction. The PCI submissions (Exs. 25–4 and 25–6) described some characteristic precast concrete construction situations and alternative measures PCI believed employers could take to provide fall protection for their employees in those situations. The Agency solicited input on whether OSHA should allow precast concrete construction employers to protect employees from fall hazards by means other than guardrail systems, personal fall arrest systems or safety net systems. The Agency also sought comments regarding what criteria OSHA should set to determine the appropriateness of using alternative measures and to determine if the alternative measures are effectively minimizing fall hazards. The comment period, which ended November 3, 1992, elicited 14 comments.

On March 29, 1993, the Agency again reopened the rulemaking record (58 FR 16515) to provide additional time for the precast concrete construction industry to comment on the issues raised in the August 5, 1992, notice. The March 29 notice also discussed the fall protection needs of employees involved in residential construction, focusing on the feasibility of protecting employees erecting roof trusses and exterior wall panels with guardrails, personal fall arrest systems or safety net systems. OSHA requested information regarding alternative measures, or safe work practices, residential construction employers can use to minimize fall hazards. The limited comment period, which ended on May 28, 1993, elicited 28 comments.

A wide range of employees, businesses, trade associations, state governments, and other interested parties contributed to the development of this record. The Agency appreciates these efforts to help OSHA develop a rulemaking record that provides a sound basis for the promulgation of this final rule.

The Agency believes that, while the means of providing fall protection are continually improving, there may be circumstances where employers can demonstrate that compliance with certain fall protection requirements would be infeasible; i.e., it would be impossible to accomplish the work using conventional fall protection systems or it is technologically impossible to use conventional fall protection systems, or that those systems would create a greater hazard to employees. OSHA has determined that revised subpart M is needed to address those circumstances, encourage greater compliance by employers and employees, and maximize employee protection from fall hazards. OSHA believes that the clarified and revised language of the final rule will help employers to understand and implement the requirements of subpart M, resulting in improved employee protection. In addition, much of the final rule has been written in more performance-oriented language. This will make it easier for employers to provide the necessary protection for their employees, since they will be able to select fall protection measures which are compatible with the type of work being performed.

This project has been coordinated with other ongoing projects for the revision of related general industry standards in 29 CFR Part 1910, subpart D—Walking/Working Surfaces, [proposed rule published at 55 FR 13360, April 10, 1990] and 29 CFR Part 1910 subpart I—Personal Protective Equipment (Fall Protection Systems), [proposed rule published at 55 FR 13423, April 10, 1990] and with the proposed rulemaking for the Shipyard Industry in 29 CFR 1915 subpart M—Fall Protection [proposed rule published at 53 FR 48168, November 29, 1988]. Where appropriate, the 1910, 1915, and 1926 requirements will use the same language to address similar hazards so employers will have clear and consistent direction as to what is necessary to protect employees from fall hazards.

In developing this final rule, OSHA has focused on requiring employers to provide construction employees with a positive method of protection against fall hazards wherever possible. At the same time, the Agency has taken steps to allow alternatives to traditional, conventional fall protection methods in situations where conventional methods can be shown to be inappropriate or unreasonable. Some of the alternative methods prescribed in revised subpart M represent innovations which are necessary to deal with unique workplace conditions. The record of this rulemaking indicates that these methods have not been used long enough or widely enough to enable the Agency to determine just how effective they will be throughout the construction industry.

In this regard, OSHA intends to monitor the effectiveness of these provisions carefully for the next several years, to make sure that they are providing the necessary protection for construction workers. The Agency will carefully review and examine its enforcement data, together with any investigative reports and other information on accidents which involve fall hazards. In addition, OSHA intends to work closely with NIOSH in performing such data collection and analysis. Should the available data indicate that the alternative methods are not providing adequate fall protection to employees, the Agency will reevaluate the standards and determine what changes, if any, are warranted.

II. Hazards Involved

Fall accidents resulting in injuries and fatalities continue to occur at construction sites despite the promulgation of the OSHA Construction Standards in 1971. OSHA's initial review of accident data indicated that compliance with existing OSHA standards would have, in general, prevented the mishaps. After a more complete review of information derived from enforcement experience and public comments, OSHA decided that certain existing provisions needed to be updated and clarified, in order to improve employee protection. In addition, OSHA decided to reorganize the existing fall protection requirements so that employers could more readily determine what requirements they must follow.

Precise fall hazard accident data for the entire construction industry are not available. Falls are generally recorded by OSHA according to the nature of the injury and the surface involved, but the two categories have not been uniformly cross-referenced. However, based upon the data which have been compiled, OSHA estimates that there are at least 68,000 injuries due to falls from elevations covered under subpart M occur every year, and 95 fatalities

(Regulatory Impact and Regulatory Flexibility Analysis, Section III).

The U.S. Department of Labor, based on data from the Bureau of Labor Statistics, has listed falls as one of the leading causes of traumatic occupational death, accounting for 8% of all occupational fatalities in 1986. Data from NIOSH showed that from 1980–1985, falls represented about 10% of all traumatic occupational deaths for which a cause was identified, and that falls were shown to be one of the major causes of injuries to construction workers. A NIOSH analysis of death certificates from work related injuries over a 10-year period has made it clear that falls are the leading cause of work related injury death among construction workers (E. Lynn Jenkins, S.M. Kisner, D.E. Fosbroke, et al. *Fatal Injuries to Workers in the United States, 1980–89; A Decade of Surveillance—National Profile,* DHHS, NIOSH, 93–108, August 1993).

An OSHA study involving 99 fall-related fatalities (Ex. 3–3) suggests that virtually all of those deaths could have been prevented by the use of guardrails, body belts, body harnesses, safety nets, covers, or other means which would reduce employee exposure to the fall hazard.

OSHA recognizes that such accidents are, generally, complex events, involving a combination of factors. Accordingly, the Agency notes that a number of human and equipment-related issues must be addressed to protect employees from fall hazards. Among those issues are the following:

The need to know where protection is required;

The selection of fall protection systems which are appropriate for given situations;

The proper construction and installation of safety systems;

The proper supervision of employees;

The implementation of safe work procedures; and

The proper training in the selection, use, and maintenance of fall protection systems.

Each of these topics is covered in revised subpart M. The final rule requires employers to identify and evaluate fall hazards, and it includes specific training requirements that clarify the existing general training provisions of § 1926.21 as they apply to fall protection. The final rule also makes it clear what an employer must do to provide fall protection for employees. Finally, the final rule relocates fall protection requirements from other subparts in the construction regulations, and places them in subpart M. For example, fall protection for workers on steep roofs was addressed by provisions in existing subpart L, but now will be addressed in revised subpart M.

Based on its review of the incident data, OSHA has concluded that fall hazards pose a significant risk of death or serious injury for construction employees and that compliance with the requirements of revised subpart M is reasonably necessary to protect employees from those hazards. For a further discussion of accident rates and the significance of fall hazards in construction employment, see Section IV. *Summary of the Regulatory Impact Analysis* and Section V. *Statutory Considerations.*

Certain proposed provisions have been reorganized in the final rule. The reorganized provisions are as follows:

REORGANIZATION TABLE

New § no. and/or paragraph	Proposed § no. and/or paragraph
§ 1926.501	
(b)(11)	(c)
(b)(12)	
(b)(13)	
(b)(14)	(d)
(b)(15)	
(c)	(e)
§ 1926.502	
(b)(10)	(b)(11)
(b)(11)	(b)(12)
(b)(12)	(b)(13)
(b)(13)	(b)(14)
(b)(14)	(b)(15)
(b)(15)	
(d)(1)	(d)(9)
(d)(2)	(d)(10)
(d)(3)	(d)(16)
(d)(4)	
(d)(5)	
(d)(6)	(d)(17), (18) and (19)
(d)(7)	
(d)(8)	(d)(14)
(d)(9)	(d)(13) and (15)
(d)(10)	(d)(11)
(d)(11)	(d)(3)
(d)(12)	(d)(13) partial
(d)(13)	(d)(13) partial
(d)(14)	
(d)(15)	(d)(12)
(d)(16)	(d)(4), (5), and (6)
(d)(17)	(d)(7)
(d)(18)	(d)(1)
(d)(19)	(d)(2)
(d)(20)	
(d)(21)	(d)(20)
(d)(22)	(d)(8)
(d)(23)	(d)(21)
(d)(24)	(d)(22)
(e)(2)	(e)(3)
(e)(3)	
(e)(4)	(e)(2)
(e)(5)	(e)(4)
(e)(6)	
(e)(7)	
(e)(8)	
(e)(9)	(e)(5)
(e)(10)	
(g)(1)	(g)(1) and (g)(5)
(g)(2)	(g)(2) and (g)(5)

REORGANIZATION TABLE—Continued

New § no. and/or paragraph	Proposed § no. and/or paragraph
(h)(4)	
(i)(4)	
(j)(8)	
(k)(1)–(10)	
§ 1926.503	
(b)	
(c)	(a)(2)
Appendix D	
Appendix E	

III. Summary and Explanation of the Final Rule

The following discussion explains how the final rule corresponds to or differs from the proposed and the existing standards, and how the comments and testimony presented on each provision influenced the drafting of the final rule. Except where otherwise indicated, proposed provisions which did not elicit comment have been promulgated as proposed, for the reasons stated in the preamble to the proposed rule.

Subpart M—Fall Protection

OSHA has changed the title of subpart M from "Floor and Wall Openings, and Stairways" to "Fall Protection." The revised title reflects both the relocation of the provisions for stairways to subpart X, which was published as a final rule on November 14, 1990 (55 FR 47660), and the Agency's decision to consolidate most requirements for fall protection in construction in revised subpart M. OSHA has made subpart M the comprehensive reference for construction fall protection standards by revising and relocating the general requirements in existing § 1926.104—Safety belts, lifelines, and lanyards; existing § 1926.105—Safety nets; and the pertinent definitions in existing § 1926.107 to subpart M.

OSHA is also deleting § 1926.651(l)(2), which requires fall protection at "remotely located excavations," and § 1926.701(f)(2), which requires fall protection for employees installing reinforcing steel more than 6 feet (1.8m) above adjacent working surfaces, because the pertinent hazards are covered by §§ 1926.501(b)(7) and (b)(5), respectively. Another excavation provision, § 1926.651(l)(1), is being revised to be consistent with § 1926.501(b)(6) of the final rule. All three of the provisions noted above pertain to fall protection. In addition, the provision of existing § 1926.105(a), has been relocated to § 1926.753 of subpart R (steel erection) to maintain existing coverage pending rulemaking to revise the fall protection requirements

for steel erection work. A more complete discussion of the revised and relocated provisions is provided later in this document.

§ 1926.500 Scope, Application, and definitions Applicable to This Subpart

Paragraph (a) of § 1926.500 states the scope and application of subpart M. Paragraph (a)(1) states that the fall protection requirements of subpart M apply to all construction workplaces, except where another subpart of part 1926 specifies what fall protection systems must be used and sets the criteria for those fall protection systems. OSHA notes there are some activities that will be classified as either general industry or construction depending on other activities occurring at the same time or same site. For example, when surface preparation work and sandblasting work are being performed in connection with painting activities or other construction activities, then these two activities are considered construction work and employers engaged in these activities must follow the requirements of subpart M as it pertains to fall hazards associated with surface preparation and sandblasting. On the other hand, when these activities are conducted as part of general maintenance work, the fall protection requirements of the general industry standards (part 1910) would apply.

Paragraph (a)(1), which is essentially the same as proposed § 1926.500(a)(1), also states that the provisions of subpart M do not apply when the employer establishes that employees are only inspecting, investigating, or assessing workplace conditions prior to the actual start of the work or after work has been completed. OSHA has set this exception because employees engaged in inspecting, investigating and assessing workplace conditions before the actual work begins or after work has been completed are exposed to fall hazards for very short durations, if at all, since they most likely would be able to accomplish their work without going near the danger zone. Also, the Agency's experience is that such individuals who are not continually or routinely exposed to fall hazards tend to be very focused on their footing, ever alert and aware of the hazards associated with falling. These practical considerations would make it unreasonable, the Agency believes, to require the installation of fall protection systems either prior to the start of construction work or after such work has been completed. Such requirements would impose an unreasonable burden on employers without demonstrable benefits.

OSHA notes that the operations covered by paragraph (a)(1) are normally conducted in good weather, that the nature of such work normally exposes the employee to the fall hazard only for a short time, if at all, and that requiring the installation of fall protection systems under such circumstances would expose the employee who installs those systems to falling hazards for a longer time than the person performing an inspection or similar work. In addition, OSHA anticipates that employees who inspect, investigate or assess workplace conditions will be more aware of their proximity to an unprotected edge than, for example, a roofer who is moving backwards while operating a felt laying machine, or a plumber whose attention is on overhead pipe and not on the floor edge.

Some commenters (Exs. 2–15, 2–31, and 2–56) expressed concern regarding the proposed exception. In particular, one commenter (Ex. 2–31) said "the exception . . . will create havoc for enforcement agencies." The commenter further stated that "superintendents, foremen, and other company officials will never have to be protected during the entire job, because they will say that they are only inspecting." Another commenter (Ex. 2–15) suggested that OSHA grant only a conditional exception. It would then allow the exception only where exposures to falling are minimal at most or nonexistent. In addition, only experienced, responsible persons trained in the hazards associated with inspections, investigations, etc., would be allowed to work without fall protection. One commenter (Ex. 2–56) disagreed with the proposed exclusion, saying:

> These employees are exposed to unique hazards since their functions are to determine if protection systems are adequate, deteriorated, etc. To allow such employees to work unprotected will promote the not wearing or using such protection by others.

Based on the comments received, OSHA recognizes that proposed § 1926.500(a)(1) requires clarification. Therefore, OSHA has decided to reword the provision to make it clear that the exclusion only applies when the employer establishes that employees are inspecting, investigating, or assessing workplace conditions *prior to the actual start of work or after the work has been completed*. It was OSHA's intent when it proposed this provision that the exclusion would only apply at the two times stated above, not during the period when construction work is being performed. As explained in the preamble to the proposed rule, the exception would apply where an employee goes onto a roof in need of repair to inspect the roof and to estimate what work is needed. During such an inspection, guardrails, body belts, body harnesses, safety nets, or other safety systems would not be required. However, if inspections are made while construction operations are underway, all employees who are exposed to fall hazards while performing these inspections must be protected as required by subpart M. The intent of the provision is also to recognize that after all work has been completed, and workers have left the area, there may be a need for building inspectors, owners, etc. to inspect the work. OSHA recognizes that in these situations, all fall protection equipment, such as perimeter guardrail systems, may have been removed. OSHA is not requiring the installation of the systems for a second time for inspectors, because the Agency recognizes it would be unreasonably burdensome to require the reinstallation of fall protection equipment after all the work has been completed.

Paragraph (a)(2), like the proposal, notes that some subparts within part 1926 aside from subpart M contain fall protection requirements. Those other provisions, however, are not comprehensive. Therefore, when an employee is exposed to a falling hazard, such as that of falling more than 6 feet to a lower level, which is not specifically addressed in another subpart, OSHA intends that the general provisions of subpart M apply. For example, while subpart N contains requirements for fall protection when certain cranes are used, it does not address other equipment or workplace conditions otherwise covered by subpart N which may also expose employees to a fall hazard. Also, paragraph (a)(3) provides that if another subpart requires the use of specified fall protection systems but does not set criteria which those systems must meet, the criteria set in subpart M apply. For example, subpart L—Scaffolds, requires that employers provide guardrails and safety belts (body belts) when employees are working on scaffolds. Subpart L sets criteria for the use of guardrail systems on scaffolds, but does not set criteria for the use of body belts. Under those circumstances, body belts used by employees working on scaffolds must satisfy the criteria in subpart M, while guardrails would be required to meet the criteria in subpart L.

Aside from subpart L, the subparts in part 1926 that address the subject of fall protection are subparts N, R, S, V and X.

A brief summary of the fall protection topics covered for each of the above-mentioned subparts is listed below.

• *Subpart N—Cranes and Derricks.* Requirements to have fall protection for employees working on certain cranes and derricks are contained in subpart N.

• *Subpart R—Steel Erection.* Requirements to have fall protection for employees engaged in the construction of skeleton steel buildings are contained in subpart R.

• *Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air.* Requirements to have fall protection on specified pieces of equipment used in under-ground construction operations are contained in subpart S.

• *Subpart V—Power Transmission and Distribution.* Requirements to have fall protection for employees engaged in the construction of electric transmission and distribution lines and equipment are contained in subpart V.

• *Subpart X—Stairways and Ladders.* Requirements to have fall protection for employees working on stairways and fixed ladders are contained in subpart X. Subpart X already references the current fall protection criteria set out in subpart M, and that reference will now incorporate the revised criteria in § 1926.502 of this final rule.

OSHA notes that the proposed rule also identified subpart O as containing requirements for fall protection for employees on pile driving equipment. OSHA has not included this exclusion in the final rule because subpart O does not actually contain a requirement to have fall protection equipment; rather, it only contains a requirement that attachment points be provided to facilitate attachment of personal fall arrest equipment.

OSHA received several comments related to proposed paragraph (a)(2). Two commenters (Exs. 2–19 and 2–56) indicated some confusion regarding the extent to which employees engaged in steel erection activities would be covered by the requirements of proposed subpart M. Based on the apparent confusion and the Agency's recognition that a complete revision of subpart R—Steel Erection, was needed, OSHA decided to defer consideration of changing current fall protection requirements as they apply to steel erection of buildings to the subpart R rulemaking. However, as noted in the hearing notice (53 FR 2048) information gathered through the subpart M rulemaking on fall protection for steel erection will be used to help the Agency develop proposed revisions to subpart R. Therefore, pending completion of the subpart R rulemaking, OSHA will continue to apply the existing fall protection requirements of part 1926 to steel erection operations. To this end, as noted above, OSHA is relocating existing § 1926.105(a) to subpart R as § 1926.753. This provision will remain in subpart R until a final rule for revised subpart R becomes effective. In this way, OSHA ensures that employers engaged in steel erection activities currently covered by the existing, unrevised fall protection requirements remain covered until the rulemaking on subpart R is completed.

Section 1926.500(b) lists and defines all major terms used in the final rule. Many of the proposed terms and definitions have been promulgated unchanged or with only editorial revisions. These terms include "dangerous equipment," "equivalent," "failure," "guardrail system," "hole," "low-slope roofs," "mechanical equipment," "opening," "overhand bricklaying and related work," "positioning device system," "roof," "safety monitoring system," "steep roof," "work area." The proposed terms and definitions which did not elicit comment and which are being promulgated without change or with only editorial changes are not discussed below. However, all other terms and definitions, including any revisions, additions, and deletions, are discussed below.

Also, OSHA notes that several commenters indicated that they had already provided comments on terms used in relation to personal fall arrest systems and positioning device systems covered by OSHA's proposed rule for powered platforms (Docket S–700A), and requested that OSHA consider their comments in regard to the proposed terms and fall protection requirements of subpart M. Those commenters included the Industrial Safety Equipment Association (ISEA), Research and Trading Corporation (RTC), and the ANSI Z359 Committee Chairman (testifying on behalf of the U.S. Technical Advisory Group, an advisory group representing Government and private interests on personal equipment for protection against falling, ISO/TC94/SC4 (USTAG) in the powered platform rulemaking) (Exs. 2–23, 2–36, 2–50, and 3–13).

OSHA has considered those comments and has reviewed the powered platforms rulemaking record (final rule, § 1910.66, published July 28, 1989; 54 FR 31408), in general, for information relating to fall protection. Based on that review, OSHA has decided that those terms defined in the powered platforms rule which relate to personal fall arrest systems will also be defined in subpart M, where such terms are used in the final rule. Consequently, definitions for the following terms have been added to subpart M: "anchorage," "buckle," "connector," "free fall," "rope grab," "self-retracting lifeline/lanyard," and "snap-hook." These terms were used in the proposed rule and had the same meaning as provided in the definitions used in this final rule. OSHA believes this action will promote consistency throughout OSHA standards with regard to fall protection and OSHA intends to use the same terminology and definitions in its rules covering the same type of equipment. The newly defined terms and proposed terms that elicited comment are discussed below.

"Anchorage." This term is defined to be a secure point of attachment for lifelines, lanyards, or deceleration devices.

"Body belt/harness system." The term "body belt/harness system" has been changed to "personal fall arrest system" for the sake of uniformity with the general industry standard for powered platforms. The term "personal fall arrest system" is discussed in detail below.

"Body harness." Although there were no comments on the proposed definition of this term, OSHA has reworded the definition so that it is identical to the definition of "body harness" in the final rule on powered platforms.

Again, the purpose of this rewording is to promote consistency in the OSHA regulations. The rewording does not alter the meaning of the term as proposed.

"Buckle." This term is defined to mean any device for holding the body belt or body harness closed around the employee's body. The ISEA (Ex. 2–23) suggested that a definition for the term buckle was needed. OSHA agrees and has defined the term in this final rule, using the language from the final rule on powered platforms. In the final rule on powered platforms, OSHA stated the following, which OSHA believes is also applicable to this rulemaking (See 54 FR 31446):

> One comment was received on the definition of "buckle" [citation omitted] which suggested that the term was superfluous and should be addressed in a separate national consensus standard for body support systems. OSHA disagrees since the term is used in the OSHA standard and there is not yet a national consensus standard for body support systems which includes this term.

"Built-up roofing." OSHA proposed to define the term "built-up roofing" to mean a weatherproofing cover, applied over roof decks, consisting of a liquid-

applied system, a single-ply system, or a multiple-ply system. Liquid-applied systems generally consist of silicone rubber, plastics, or similar material applied by spray or roller equipment. Single-ply systems generally consist of a single layer of synthetic rubber, plastic or similar materials, and often, but not always, a layer of adhesive. Multiple-ply systems generally consist of layers of felt and bitumen. Any of the systems may be covered with a layer of mineral aggregate.

OSHA has removed this term from the definition paragraph because the Agency has determined, as discussed below in relation to § 1926.501(b)(10), that there is no need to provide for different fall protection requirements for low-slope roofs based on the type of work (e.g., built-up roofing) being performed.

"Connector." This term is used in the final rule in place of the term "hardware" which was used in the proposed rule. It is defined to mean a device which is used to couple (connect) parts of the personal fall arrest system or positioning device system together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or dee-ring sewn into a body belt or body harness, or a snap-hook spliced or sewn to a lanyard or self-retracting lanyard). The term and definition in the final rule are the same as those in the powered platforms final rule [54 FR 31470], in which OSHA stated the following, which OSHA believes is applicable to this rulemaking (See 54 FR 31446):

> OSHA is replacing the proposed term "hardware" with the term "connector." Two commenters stated that "hardware" was too broad and one suggested that the term "connector" be used instead [citations omitted]. OSHA agrees with these suggestions, notes that "connector" connotes the specific function at issue, has deleted the term "hardware," replaced it with the term "connector" and has expanded the definition.

"Controlled access zone" (CAZ). This term is used to describe a work area designated and clearly marked in which certain types of work (such as overhand bricklaying work) may take place without the use of conventional fall protection systems—guardrail systems, personal fall arrest systems, or safety net systems—to protect the employees working in the zone. Access to the zone must be controlled to limit the number of workers exposed to fall hazards. OSHA observes that safety monitoring systems may be required where a CAZ is used as part of a fall protection plan (see § 1926.502(k)). The proposed term "control zone" was essentially identical.

One commenter (Ex. 2–157) stated "the definition of control zone in [proposed] § 1926.502(g) does not appear to be applicable to scaffolds. OSHA acknowledges that a controlled access zone would not be used on a scaffold, although scaffolds might be used within a controlled access zone. Requirements to have fall protection on scaffolds both within and outside of controlled access zones are found in subpart L—Scaffolds.

Another commenter, the Mason Contractors Association of America (Ex. 2–95), suggested that the term "control zone system" used in the proposal should be changed to "controlled access zone" (CAZ) to more effectively and correctly describe the function of a control zone. OSHA agrees with the commenter and has changed the term. There were no other substantive comments on the definition.

OSHA notes that the use of a controlled access zone is permitted only in *Overhand bricklaying and related work*, (§ 1926.501(b)(9)) and as part of a Fall Protection Plan (see § 1926.502(k) for *Leading edge work* (§ 1926.502(b)(2)(i)); *Precast concrete work* (§ 1926.501(b)(12)); or *residential construction work* (§ 1926.501(b)(13)).

"Deceleration device." This term describes a piece of equipment used to bring a falling employee to a stop without injury. The proposed definition of "deceleration device" has been revised to be consistent with the definition used in OSHA's final rule on powered platforms [54 FR 31470]. There were several comments received on the proposed definition and in response to Issue #21. In this issue, OSHA discussed the use of the term "deceleration device" in the proposals for both the construction fall protection requirements of subpart M and the fall protection requirements for the general industry standard on powered platforms, subpart F. Bristol Steel and the NEA (Exs. 2–12 and 2–43) commented that the term is sufficiently descriptive. The ISEA, the Mine Safety Appliance Company (MSA), and the SSFI (Exs. 2–23, 2–35, and 2–89) suggested rewording the definition because they viewed it as misleading and confusing. Other commenters, including the National Constructors Association and the BCMALU (Exs. 2–45 and 2–46), suggested replacing the term with "shock absorber" or "fall arrester," respectively. RTC (Ex. 2–36) and the ANSI Z359 Committee/USTAG representative (Ex. 2–50) referred OSHA to their comments on the proposal for powered platforms. The following discussion from the final rule on powered platforms [54 FR 31446] covers those comments:

> Comments were received on the definition of "deceleration device" [citations omitted]. It was suggested that this term be eliminated and replaced with three terms, "fall arrester," "energy absorber," and "self-retracting lifeline/lanyard" because the examples listed by OSHA in its proposed definition of deceleration device serve varying combinations of the function of these three suggested components. In particular, it was pointed out that a rope grab may or may not serve to dissipate a substantial amount of energy in and of itself. The distinction that the commenter was making was that some components of the system were "fall arresters" (purpose to stop a fall), others were "energy absorbers" (purpose to brake a fall more comfortably), and others were "self-retracting lifeline/lanyards" (purpose to take slack out of the lifeline or lanyard to minimize free fall). OSHA notes, however, that it is difficult to clearly separate all components into these three suggested categories since fall arrest (stopping) and energy absorption (braking) are closely related. In addition, many self-retracting lifeline/lanyards serve all three functions very well (a condition which the commenter labels as a "subsystem" or "hybrid component"). OSHA believes that the only practical way to accomplish what is suggested would be to have test methods and criteria for each of the three component functions. However, at this time, there are no national consensus standards or other accepted criteria for any of the three which OSHA could propose to adopt.
>
> In addition, OSHA's approach in the final standard is to address personal fall arrest equipment on a system basis. Therefore, OSHA does not have separate requirements for "fall arrestors," "energy absorbers" and "self-retracting lifeline/lanyards" because it is the performance of the complete system, as assembled, which is regulated by the OSHA standard. OSHA's final standard does not preclude the voluntary standards writing bodies from developing design standards for all of the various components and is supportive of this undertaking * * *.
>
> OSHA has, however, used the commenters' suggestions to clarify the definition of "deceleration device," as well as further clarify the test methods applicable to the various assembled systems * * *.

After a careful review of the comments received and for the reasons above, OSHA has determined that the term "deceleration device" is appropriate, but the definition has been revised to clarify that deceleration devices serve to dissipate a substantial amount of the energy imposed on an employee during fall arrest or otherwise limit the energy imposed on an employee during fall arrest. The definition mentions several examples of mechanisms which accomplish this function.

"Deceleration distance." This term is used to describe the distance a falling

employee travels (excluding lifeline elongation and free fall distance). Aside from some editorial revision, the definition in the final rule is identical to the proposed definition. The ISEA and the MSA (Exs. 2–23 and 2–35) commented that the proposed definition, just as the proposed definition in powered platforms, could cause confusion, such as the mistaken belief that deceleration distance was the total fall distance. OSHA agrees with the commenters and has reworded the definition of deceleration distance to remove the point of confusion. In particular, OSHA has eliminated the words "excluding lifeline elongation between those two points" that appeared in the subpart M proposed rule. The definition in the final rule is consistent with the definition in § 1910.66, powered platforms. OSHA has also considered the comments which were provided to the powered platform rulemaking record (Ex. 3–13). OSHA's discussion of those comments in the final rule on powered platforms [54 FR 31447] is applicable here and appears below:

Several comments were received on the proposed definition for "deceleration distance" [citations omitted]. Concern was expressed by all commenters that it was only possible to evaluate the stopping distance for the device itself once it was activated. OSHA agrees with these comments and has revised the definition of deceleration distance to exclude lifeline elongation and any free fall distance which occurs before the device is activated. In addition, suggestions for clarification of the definition were accepted.

"Failure." This term describes load refusal, breakage, or separation of component parts where the ultimate strength has been exceeded. Four commenters (Exs. 2–16, 2–23, 2–45, and 2–56) expressed concern regarding the definition of the term "failure." Two of these commenters, (Exs. 2–16 and 2–23), noted that the term "failed" as used in proposed paragraph (c) of the proposed non-mandatory Appendix C, was inconsistent with the proposed definition of "failure." OSHA agrees, and has both deleted the term from the Appendix and reworded the Appendix to remove the potential for confusion. Additionally, a commenter (Ex. 2–56) asked, "what is load *Refusal?*" which is a phrase used as part of the definition of the term "failure." OSHA uses the phrase in a situation where whatever is supposed to support the load is refusing to do so—it is not performing its intended purpose. Hence, it has failed its purpose and is not supporting the load.

OSHA has determined that as clarified above, the proposed definition of "failure" is appropriate for the final rule.

"Force factor." The term force factor was defined in the proposed rule. The term has been deleted in the final rule because, as explained in the final rule on powered platforms [54 FR 31447], the comments and testimony suggested that the term "force factor" was confusing, even to systems experts. The Agency also noted that the term would not be needed if the factor was incorporated into the test methods. OSHA agreed with those commenters and deleted the term "force factor" from the final rule on powered platforms, while incorporating the concept in the test methods section. OSHA has taken the same action in this final rule.

"Free fall" means the act of falling before the personal fall arrest system begins to apply force to arrest the fall. OSHA did not propose a definition for this term. The term and definition in the final rule are identical to the ones used in the final rule on powered platforms [54 FR 31470]. OSHA has determined that the inclusion of this definition is appropriate for purposes of clarity and to provide guidance consistent with that set in the powered platforms standard. OSHA believes that the following language which appeared in the final rule on powered platforms (54 FR 31447) is applicable to this rulemaking:

One comment was received on the proposed definition of free fall [citation omitted] suggesting that the phrase "personal fall arrest system" should be used as well as the definition being further clarified to define when the free fall period ends. OSHA agrees with this suggestion and has revised the definition of free fall accordingly.

"Free fall distance." This term is used to describe the vertical distance an employee moves during a fall before a deceleration device is activated. Although there were no comments on the proposed definition, OSHA has reworded the definition to be consistent with the definition used in the final rule for powered platforms [54 FR 31447 and 31470]. The rewording does not substantively alter the meaning of the term, as proposed.

"Hole." This term is used to describe a void or gap 2 inches (5.1 cm) or more in its least dimension in a floor, roof, or other walking/working surface. The definition of this term is consistent with the proposed definition, with only minor editorial revision (the words void or gap are used instead of the words hole or opening). The existing standard defines holes and openings as separate topics; however, the treatment of each is essentially the same. The existing rule defines a floor *hole* as an opening less than 12 inches but more than 1 inch or more in its least dimension through which materials may fall; and defines a floor *opening* as a hole 12 inches or more in its least dimension through which persons may fall. To eliminate confusion, OSHA proposed to use the word "hole" to describe all voids and gaps (holes and openings) in floors, roofs, and other walking/working surfaces. The word "opening" is used later to describe voids and gaps in vertical surfaces such as walls and partitions.

There were several comments on the proposed definition of "holes." One commenter (Ex. 2–140) thought the proposed definition of the term "hole" was too restrictive, assuming that the "purpose is to prevent workers from falling through to lower areas." Other commenters (Exs. 2–16, 2–47, and 2–92) requested that OSHA clarify the definition of holes because it was unclear whether OSHA's intent was to regulate holes through which material or persons could fall. OSHA observes that its intent is to address all hazards associated with holes, including employees falling through and stepping into holes, as well the hazards of objects falling through holes onto employees. As noted in the proposal, OSHA chose the 2-inch least dimension for a "hole," instead of the 1-inch least dimension set in the definition of the existing term "floor hole," because the Agency believes that focusing on holes which are at least 2-inches wide addresses the problems caused by small holes more reasonably.

"Infeasible" is a new term and as used in this subpart, it means that it is impossible to perform the construction work while using a conventional fall protection system, or that it is technologically impossible to use a conventional system. The conventional systems are guardrail systems, safety net systems, and personal fall arrest systems. This term is being added to provide guidance to employers who believe it is infeasible to use conventional fall protection systems and wish to raise a defense of infeasibility as the reason for not using conventional fall protection systems. The definition has evolved from litigation involving contested citations where employers have asserted that compliance with an OSHA requirement was "infeasible" or "impossible." The discussion of the criteria for implementation of a fall protection plan (§ 1926.501(b)(2) of the final rule), below, provides further information about how OSHA is applying the new term.

"Lanyard" means a flexible line of rope, wire rope, or strap which generally has a connector at each end

for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage. This definition reflects editorial revision of the proposed language. Two commenters, the AGC of Florida and the ISEA (Exs. 2–16 and 2–23), pointed out that the inclusion of "strap webbing" in the proposed definition was redundant because it is a type of flexible line already in the definition. OSHA has revised the definition, removing the redundancy. The revised language of the definition is consistent with the definition used in the final rule on powered platforms [54 FR 31470].

"Lifeline." The term "lifeline" has been revised in the final rule so that it is consistent with the definition used in the final rule for powered platforms [54 FR 31470]. The terms "drop lines" and "trolley lines" have been deleted. The revised definition more clearly expresses the function of a lifeline and its use for connecting other components of a personal fall arrest system. OSHA received two comments (Exs. 2–12 and 2–35) on the proposed definition. Both commenters pointed out that the proposed definition was in conflict with the definition of a lanyard. OSHA agrees with the commenters and has revised the definition to eliminate the conflict.

"Low-slope roof." OSHA is using the term "low-slope roof" in the final rule instead of the proposed term "low-pitched roof." This change in terminology is merely an editorial correction that uses the proper expression to make it clear that we are describing the slope of the roof, not the pitch.

"Personal fall arrest system." This term replaces the term "body belt/harness systems" and means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body belt or body harness, and may include a lanyard, deceleration device, lifeline, or suitable combination of these. OSHA has decided to replace the term "body belt/harness system" in an effort to keep all terms and definitions related to fall protection consistent throughout the standards. The final rule on powered platforms also contained a definition for personal fall arrest systems [54 FR 31470] which is identical to the definition in this final rule. The meaning is essentially the same as that proposed for body belt/harness systems, and the phrase "personal fall arrest systems" appears in the final rule wherever the phrase "body belt/harness systems" was used in the proposed rule. There were two comments related to the proposed definition "body belt/harness systems." The commenters, ISEA and MSA (Exs. 2–23 and 2–35), both suggested rewording the definition to indicate that lifelines and deceleration devices are not always included as a part of a body belt/harness system as the proposed definition implied. OSHA agrees and has revised the proposed definition accordingly.

"Positioning device system." This term means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning backwards. The proposed definition was identical. Two commenters (Exs. 2–15 and 2–23) suggested changing the definition of the term "positioning device system" to permit such devices to be used on surfaces such as small horizontal ledges and steep roofs. OSHA observes that changing the definition would have no effect on the requirements to have fall protection at unprotected sides and edges of walking/working surfaces (e.g., ledges) or of steep roofs. The use of positioning device systems was not proposed for use in either of these situations. OSHA has no evidence that would lead it to believe that positioning device systems offer appropriate protection to workers on ledges and steep roofs, nor has the commenter provided any substantive information to that effect. After consideration of the record, OSHA has determined that the term "positioning device systems" is appropriately defined and that no further revision is necessary.

"Roofing work." This is a new term in the final rule. The term is defined to mean the hoisting, storage, application and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck. OSHA proposed to use this definition to define the term "built-up" roofing work. However, many commenters pointed out that OSHA's definition in the proposal was incorrect as it applied to the term "built-up." The commenters said the definition described all kinds of roofing work, and it was not just a definition of "built-up" roofing work. Many of the commenters represented roofing contractors (Exs. 2–54, 2–57, 2–68, 2–74, 2–83, 2–85, 2–88, 2–94, 2–109, 2–124, 2–126, 2–128, 2–130, as well as others) and they wrote to support the position of the National Roofing Contractors Association (NRCA) (Ex. 2–162) who pointed out the incorrect terminology.

Other commenters (Exs. 2–91, 2–110, and 2–124) stated that the term "built-up roofing" should be replaced with the term "low-slope roofing," because "this change will reflect a truer meaning to the definition to which the standard will apply." They also stated that the term defined in the proposal describes all types of roofing, not just built-up roofing. The commenters suggested that OSHA define "low-slope roofing" to mean "the application, installation, and/or removal of any roofing material or system over a roof deck or existing roof." OSHA believes that this term should apply to roof work performed on any roof, regardless of the slope. Accordingly, OSHA has not made the suggested change.

OSHA agrees with the commenters who suggest the term "built-up roofing" needs to be deleted from the proposed rule. OSHA also agrees with the commenters that the proposed definition accurately defines roofing work in general and is defining the term roofing work as suggested.

"Rope grab" means a deceleration device that travels on a lifeline and automatically engages the lifelines and locks by friction so as to arrest the fall of an employee. A rope grab usually employs the principle of inertial locking, cam/level locking, or both. This term was not defined in the proposed rule. It has been added to this final rule as in the powered platforms final rule [54 FR 31470], to state clearly what the Agency means when it uses "rope grab" as an example of a "deceleration device."

"Self-retracting lifeline/lanyard" means a deceleration device containing a drum-wound line that may be slowly extracted from or retracted onto the drum under slight tension during normal employee movement, and that, after onset of a fall, automatically locks the drum and arrests the fall. This term, like rope grab, was not defined in proposed Part 1926, subpart M. OSHA, however, has determined that it is appropriate to define self-retracting lifeline/lanyard so that the term which is used in the definition of "deceleration device" is clearly understood. OSHA made the same determination in the final rule on powered platforms [54 FR 31470].

"Snaphook" means a connector comprised of a hook-shaped member with a keeper, which is normally closed or similar arrangement. The "keeper" opens to permit insertion of other hardware or of a like object and then, when released, automatically closes to retain the object. Snaphooks are generally, either locking or non-locking. Both types are covered in the definition of snaphook. That term was defined in the proposed rule for powered platforms but not in the proposal for subpart M.

Note: Effective January 1, 1998, the use of non-locking snaphooks is prohibited for use as part of personal fall arrest systems and positioning device systems.

OSHA received one comment (Ex. 2–23) on the subpart M proposal suggesting that the term "snaphook" should be defined. OSHA agrees with that comment because the Agency believes that the standard should clearly express what OSHA means when its sets requirements for personal fall arrest system components. In addition, OSHA notes that some of the comments (Ex. 3–13) and testimony addressed in the final rule on powered platforms suggested that the proposed definition of "snaphook" should distinguish between locking and non-locking snaphooks [54 FR 31447]. OSHA agreed with that suggestion in the powered platform final rule [54 FR 31470] and revised the proposed definition of "snaphook" accordingly. That definition is identical to the definition used in this final rule.

"Work area." The definition is identical to the one proposed. OSHA notes that this definition applies to all areas where employees are present.

§ 1926.501—Duty To Have Fall Protection

This section specifies the areas and operations where fall protection systems are required. The criteria to be met by fall protection systems, and the training necessary to use the systems properly, are covered in succeeding §§ 1926.502 and 1926.503, respectively.

Paragraph (a)(1). This paragraph states that section 1926.501 sets forth the type of fall protection systems employers must use in various areas and operations. In addition, it mandates that all fall protection systems required to be used by § 1926.501 conform to the criteria and work practices set forth in § 1926.502. OSHA notes that most of the provisions provide several choices for providing fall protection, but some provisions limit the choices. For example, only guardrail systems are permitted to be used to protect employees on ramps and runways and other walkways. In these situations, OSHA believes guardrail systems offer the appropriate level of fall protection and the record supports this conclusion.

There were no comments specific to this paragraph. OSHA has made a minor editorial change for the sake of clarity. However, OSHA provides the following discussion to clarify further its intent under this general provision.

OSHA has consistently maintained that all construction employers are responsible for obtaining information about the workplace hazards to which their employees may be exposed and for taking appropriate action to protect affected employees from any such hazards. "The [Occupational Safety and Health Review] Commission has held that an employer must make a reasonable effort to anticipate the particular hazards to which its employees may be exposed in the course of their scheduled work. Specifically, an employer must inspect the area to determine what hazards exist or may arise during the work before permitting employees to work in that area, and the employer must then give specific and appropriate instructions to prevent exposure to unsafe conditions." Automatic Sprinkler Corp. of America, 8 BNA OSHC 1384, 1387, 1980 CCH OSHD ¶ 24,495 (No. 76–5089, 1980), cited with approval in several cases, including Conagra Flour Milling Co., 15 BNA OSHC 1817, 1823, 1992 CCH OSHD ¶ 29,808 (No. 88–2572, 1992).

In addition, it is well established that general contractors must "apprise themselves of which safety efforts their specialty subcontractors have chosen to make in completing their assignments." Blount Intern. Ltd., 15 BNA 1897, 1900 n. 3, 1992 CCH OSHD ¶ 29,854 (No. 89–1394, 1992).

OSHA considers subcontractors to have a reciprocal responsibility to determine what protective measures the general contractors have identified as necessary and have implemented. Furthermore, the same considerations arise at a multi-employer worksite, because each contractor needs to know about any hazards that other contractors may confront or create so that contractors can take the appropriate precautions for employee protection.

OSHA requires employers to protect employees performing construction work from fall hazards, and sets criteria for the proper implementation of fall protection through the requirements in subpart M and the specific standards referenced in § 1926.500(a)(2) and (a)(3). However, there is much more to workplace safety than an employer arriving at a work site with a copy of the pertinent standards in hand. Employers have a duty to anticipate the need to work at heights and to plan their work activities accordingly. Careful planning and preparation (e.g., project design that incorporates fall protection and employee training) lay the necessary groundwork for an accident-free workplace.

OSHA is aware that many falls have occurred because employers have not taken fall protection into account when they plan and undertake construction even when it is known that the work involves employee exposure to fall hazards. In some cases, an employer has recognized the hazard and established appropriate fall protection procedures, but has failed to ensure that employees followed those procedures. In other cases, employers either misidentified the hazard, selected inappropriate measures or completely failed to address fall hazards. The foreseeable consequence is that, as discussed above in the Background section, falls from elevations account for a large percentage of construction-related injuries and is the leading cause of death on construction jobs.

Employers need information about the work they are to perform so that they can make fall protection an integral part of their projects. An employer's communication and coordination with customers, other contractors (particularly at multi-employer worksites) and suppliers are critical elements of that employer's ability to protect its employees and to avoid creating hazards for other employees. Initially, the employer needs to develop or obtain information regarding the work to be performed, so that all anticipated fall hazards are identified. The employer would then determine how to protect its employees from those hazards. For example, many employers are minimizing exposure to fall hazards by having anchorage points for personal fall arrest systems fabricated or designed into structural members and by installing perimeter lines on structural members before those members are lifted into position.

OSHA anticipates that the trend towards providing "100 percent fall protection" will spur even more effective efforts, from the design stage through to project completion, to increase employee protection. To this end, employers will need to reexamine their "traditional methods" and, when possible, update them by incorporating available fall protection technology and design concepts. OSHA believes that while there may initially be some increased costs and disruption associated with these efforts, subsequent productivity gains and reductions in the cost of workers' compensation will clearly make it highly cost effective in the long run to provide effective fall protection. (See Regulatory Impact and Regulatory Flexibility Analysis, Section V).

An employer who controls its own construction projects will generally find it adequate to make its design and equipment decisions part of the project blueprints and workplan. Where employers are bidding a contract to perform specified construction work, making fall protection a bid item gives potential customers a clear idea of how

prospective contractors plan to comply with subpart M. This is a point at which effective communication between a contractor and a customer is critical. Prospective contractors must obtain sufficient information from the customer to enable them to develop responsive bids, incorporating fall protection that complies with subpart M. By doing so, the bidding contractor reassures the customer that it has taken into account the full cost of performing the work in question. Both parties need to recognize that employee protection is an integral part of every construction project. Employers will not be permitted to gain a competitive advantage by exposing their workers to fall hazards.

Paragraph (a)(2) is a new requirement added as a result of comments on Issue #6. In Issue #6, OSHA requested comment on whether it should promulgate rules requiring the inspection of work surfaces to determine their structural integrity prior to employees being required to work on such surfaces. OSHA explained that there are currently no specific requirements that address this concern. OSHA notes, however, there are general requirements in existing § 1926.20(b)(2) which address inspections of job sites, materials and equipment by a designated competent person. Issue #6 asked whether or not a specific requirement should be added to the fall protection section that would require employers to take some specific action, in addition to complying with § 1926.20(b)(2), to determine whether or not the work surfaces would support the weight of workers, equipment and materials, thereby preventing a collapse that would result in employees falling.

Issue #6 also explained that the inspections would insure that work surfaces have the requisite strength to prevent collapse under the weight of employees, tools, and materials. The issue further stated that OSHA has obtained information (Ex. 3–3) which indicated that it was appropriate to require such inspection. That study showed that of 8 fatalities of employees falling through ceilings, 4 of the accidents occurred because the work surface was not capable of supporting the employee's weight. The study also showed that of 55 fatalities resulting from falls from roof levels, 8 occurred because the employees were working on surfaces with insufficient structural strength to support their weight. OSHA asked for comments on the necessary criteria for inspection of surfaces, the inspection methods to be used, and the qualifications of the inspectors.

In response, ACCSH recommended that a competent person certify the structural integrity of a working surface before employees are allowed to work on it. (Tr. 6/10/87; p. 109).

The Tennessee Valley Authority (TVA) (Ex. 2–20) stated, "Work surfaces should be inspected for their structural integrity prior to allowing employees on that surface," and that a qualified civil or structural engineer should conduct the inspection.

The Scaffolding, Shoring, & Forming Institute, Inc. (SSFI) (Ex. 2–89) also commented in support of an inspection provision and recommended that the inspection by made by a "qualified" individual.

Four other commenters agreed that inspection for structural integrity should be required by OSHA (Exs. 2–6, 2–9, 2–36, 2–50 and 2–99). The Egan Companies (Ex. 2–9) also recommended that periodic inspections be conducted in addition to initial inspection.

Other commenters were opposed to OSHA requiring an inspection to determine structural integrity. For example, the Great Lakes Fabricators & Erectors Association (GLFEA) (Ex. 2–19) said that such a requirement was more properly the responsibility of building codes and building inspectors rather than OSHA. Bristol Steel and the National Erectors Association (NEA) (Exs. 2–12 and 2–43) commented that the requirement would be ineffective at reducing the kinds of accidents regulated by subpart M and that costs would far outweigh the benefits. The commenters further stated, "The problem is that persons do not recognize hazards and respond sensibly to the situation at hand," adding that education and training would help. Miller and Long (Ex. 2–41) stated "* * * the working surfaces are designed by an engineer and erected to his specifications." The National Constructors Association (NCA) (Ex. 2–45) commented that inspections should be a part of the employer's quality assurance/quality control program.

The Boston Cement Masons and Asphalt Layers Union, (BCMALU) Local No. 545 (Ex. 2–46) noted that work surfaces such as metal decking should be heavy enough to withstand the workers and equipment. They also commented that most metal decking jobs around Boston have to be shored up when concrete is placed.

OSHA observes that the existing regulations in subpart Q (Concrete and Masonry Construction) and subpart R (Steel Erection) contain provisions requiring employers to take specific action to eliminate the hazards identified by the BCMALU. Section 1926.701(a) of subpart Q prohibits imposing loads on structures until it has been determined that the structure can support the load, and subpart R requires decking to be of sufficient strength to carry the working load (§ 1926.752(f)). Those existing provisions directly address the situations identified by the BCMALU.

After considering all of the comments received on this issue, OSHA has determined that the record supports adding a new inspection requirement, more specific than that in § 1926.20(b)(2). As discussed above, existing § 1926.20(b)(2) requires, in part, that employers "* * * provide for frequent and regular inspections of job sites, materials, and equipment to be made by competent persons designated by the employer." Revised paragraph (a)(2) will require employers to ensure the structural integrity of walking/working surfaces before employees are permitted to be on those surfaces.

Paragraph 1926.501(b). Paragraph (b) contains 15 requirements that set forth the options from which employers may choose to protect employees exposed to fall hazards when on "walking/working surfaces," as defined in § 1926.500(b). Under paragraph (b), employers are required to choose and use a fall protection system (or combination of systems) as provided by paragraphs (b)(1) through (b)(15) which address the fall protection needs of particular walking and working surfaces.

OSHA has used the term "walking and working surfaces" instead of the existing term "floor" to indicate clearly that subpart M addresses *all* surfaces where employees perform construction work. The Agency has always maintained that the OSHA construction fall protection standards cover all walking and working surfaces. The revised rule reaffirms the existing Agency interpretation and practice and clarifies the language of the standards in that regard. Also, OSHA has consistently held that subpart M addresses the hazards of falling from a walking/working surface to any kind of lower level (e.g., solid, liquid or colloid). In addition, the Agency has determined that compliance with revised subpart M will not conflict with § 1926.106, *Working over or near water.*

OSHA received three comments on the introductory language of proposed paragraph (b), including two which were in response to Issue #2. In Issue #2, OSHA asked if it had been overly restrictive in its fall protection provisions by limiting options for certain areas or operations. The Milwaukee Construction Industry Safety Council (MCISC) (Ex. 2–140) expressed the opinion that warning lines provide appropriate protection for workers who

are not required to go near unprotected edges. OSHA agrees and observes that the use of warning lines is permitted as an appropriate method of protecting workers on low-slope roofs and where no workers are required to go near the unprotected edges. In particular, OSHA recognizes that there may be circumstances where the use of a warning line system is appropriate, in conjunction with a Fall Protection Plan, to protect workers who are not required to go near unprotected edges.

The Eastern Contractors Association, Inc. (ECA) (Ex. 2–3) commented that "The fall protection requirements 6 feet on open sided floors and 10 feet on scaffolds should remain as is," and explained that the situations were different and each presented unique problems. In the proposed revision to subpart L, Scaffolds, the Agency proposed (§ 1926.451(e)) that employees working on scaffolds more than 10 feet above lower levels be protected from fall hazards (51 FR 42707, November 25, 1986). The appropriate height threshold for fall protection on scaffolds will be set in the final rule for subpart L. The ECA also stated the height at which fall protection is required should be the same for all trades. OSHA agrees and this final rule reflects that concern.

On the other hand, the SSFI (Ex. 2–89) recommended that the proposed and existing height thresholds for fall protection at unprotected sides and edges, low-pitched floors, roof, etc. be changed from 6 feet (1.8 m) to 10 feet (3.05 m). Based on the BLS injury and fatality data, discussed above (Ex. 3–6), OSHA believes that employees performing construction work on walking and working surfaces 6 feet (1.8 m) or more above lower levels are exposed to a significant risk of injury and death. Accordingly, more workers would be injured or killed if the height threshold for fall protection were raised to 10 feet (3.05 m). Therefore, OSHA is not making the suggested change.

Paragraph (b)(1) sets forth the requirements for fall protection from unprotected sides and edges of walking and working surfaces. It provides that employees must be protected when they are exposed to falls from unprotected sides and edges of walking/working surfaces which are 6 feet (1.8 m) or more above lower levels. The options from which an employer can choose to provide this protection are guardrail systems, safety net systems, and personal fall arrest systems. OSHA considers these three types of systems to be "conventional fall protection systems."

Paragraph (b)(1), as promulgated, differs from proposed paragraph (b)(1) in several respects. In proposed paragraph (b)(1), OSHA distinguished between unprotected sides and edges that were at least 18 inches (.5 m) in width, and those that were less than 18 inches (.5 m) in width. In particular, the proposed rule required employers to protect employees by the use of guardrails when the floor, roof or other walking and working surface was at least 18 inches (.5 m) in width. Where the unprotected sides and edges were less than 18 inches (.5 m) wide, OSHA proposed to provide more flexibility as to the method of fall protection by allowing employers to use personal fall arrest systems (body belt/harness systems) or safety net systems instead of guardrail systems. OSHA proposed these options because it recognized the feasibility problems associated with erecting guardrails on a surface that was less than 18 inches (.5 m) wide and, therefore, proposed alternative methods of protecting workers from falls. The proposed 18-inch (.5 m) threshold was consistent with existing § 1926.500(d)(3) which addresses ramps and runways. In addition, the Agency notes that the proposed requirement that walking and working surfaces over 18 inches (.5 m) wide be protected at the edge with guardrail systems was also consistent with existing § 1926.500(d)(1) which requires a guardrail system to be erected at every open-sided floor or platform, which would include the floor perimeter. Thus, the proposed rule and the existing rule contained essentially the same requirement.

Three commenters (Exs. 2–1, 2–15, and 2–140) contended that proposed paragraph (b)(1) was either inappropriate or too restrictive. Two of the commenters cited situations where, they believed, guardrail systems would not be the most appropriate form of protection, and stated that using a personal fall arrest system is sometimes more appropriate. For example, the Alaska Department of Labor (Ex. 2–1) commented, "In many cases workers are exposed to hazards erecting a guardrail system that could be avoided if they were allowed to use a safety line system." Also, as mentioned above, ISEA (Ex. 2–23) requested that OSHA permit the use of positioning device systems on surfaces such as small horizontal ledges and steep roofs. OSHA has determined that positioning device systems do not provide adequate fall protection in these situations.

OSHA agrees with the commenters that there are work operations and areas with walking and working surfaces that are 18 inches (.5 m) or more wide (e.g., ledges and balconies) where personal fall protection systems or safety net systems are at least as protective as guardrails. Accordingly, OSHA has revised proposed paragraph (b)(1) to allow any of the conventional fall protection systems.

In Issue #4, OSHA asked whether there was a distance from the unprotected side or edge where a worker would be safe from fall hazards and not need any fall protection. As an example, OSHA inquired if fall protection would be necessary at the perimeter of a floor if employees were only required to work in the center of a floor and that center would be as far as 10, 20, or 30 feet from an unprotected side or edge.

The GLFEA (Ex. 2–19) recommended that employers provide fall protection to employees who are within 8 feet of the edge. Another commenter, the MCISC (Ex. 2–140), suggested that employees who work 6 to 10 (1.8 to 3.05 m) feet from the edge would not need fall protection. The SSFI (Ex. 2–89) agreed with the proposed OSHA approach, requiring fall protection regardless of employee distance from exposed edge, because "it is nearly impossible to develop a policy for most every situation that may or may not require guarding."

Miller & Long Co., Inc. (Ex. 2–41) commented, "I feel that all open sided floors should have adequate fall protection because once it is there, the potential hazard for employees to 'wander' into an unsafe area is negated." In addition, the BCMALU (Ex. 2–46) commented, "Who knows when the wind will change while you are carrying something that could make you like a kite or when you will or others will have to work near the edge."

The ACCSH, in its meeting on June 10, 1987, (Tr. 6/10/87; pp. 67–88) had considerable discussion on the areas of concern addressed in Issue #4. The discussion began with the following statement from a member:

> I believe that this entire question is based on a false assumption. The assumption that seems to be included in it is that if a worker is working near the middle of a floor, he's never going to approach the edge of the floor. And if we know of any way to convince employees that that's the way they will work, I'd like to know what it is. Workers on any construction site are very mobile, and there's no effective system to keep employees from venturing into an unprotected danger zone * * *.
>
> I can't think of any job that I have ever seen where there's a floor or roof that will not require some work near the edge of it at some time during the process. The guardrail must be, the protection must be placed at that time and certainly there's no added cost to leaving that in place until the work is completed on that floor and some permanent protection is in existence.

The Committee voted to recommend that guardrail systems or other means of fall protection be provided on any elevated work surface where employees were present, subject only to the exemptions that OSHA has now included in the final rule on subpart M.

The Precast/Prestressed Concrete Institute (PCI) (Ex. 2–44) also addressed the issue of perimeter protection, stating that "Perimeter protection is not really the responsibility of the * * * subcontractor; it is the responsibility of the general contractor to coordinate safety and make the workplace safe for all trades * * *."

OSHA has carefully evaluated the concerns expressed and has determined that employers should have the option to use personal fall arrest systems or safety net systems where those systems would be feasible and would protect employees from fall hazards. Whatever conventional system is adopted, OSHA expects the employer to implement it early in the construction process and to maintain that system in place until all work has been completed or until the permanent elements of the structure which will eliminate the exposure to falling hazards are in place. It is not OSHA's intent that individual contractors or subcontractors each separately provide and remove fall protection systems on the same floor. The general contractor in charge of the overall project can, and should, evaluate those situations where fall protection may be needed. OSHA believes, based on its knowledge of good industry practices, that the general contractor will contract for fall protection for all employees until employees are no longer exposed to the fall hazard. In the event that the fall protection system has been dismantled and workers are then required to work on the floor in an area away from the fall hazard, OSHA compliance staff will consider the extent to which individual contractors acted to prevent workers from leaving the work area and travelling to the unprotected edge. For example, a contractor could erect a guardrail system around the perimeter of the work area, thus providing protection from the unprotected sides and edges. OSHA would consider this an acceptable form of protection under the circumstances, provided workers remain in the protected area at all times.

In conclusion, after careful and complete consideration of the entire record, OSHA has determined that there is no "safe" distance from an unprotected side or edge that would render fall protection unnecessary.

Paragraph (b)(2) sets requirements for the protection of employees who are exposed to fall hazards while constructing leading edges and employees who are working on the same level as a leading edge, but are not actually engaged in constructing the leading edge. As defined in the final rule, a leading edge is the edge of a floor, roof, or formwork that changes location as additional floor, roof, or formwork sections are placed, formed, or constructed. Leading edges not actively and continuously under construction are considered to be "unprotected sides and edges," and are covered by paragraph (b)(1).

Paragraph (b)(2)(i) of the final rule requires that employers protect employees actively engaged in constructing leading edges from fall hazards through the use of guardrail systems, safety net systems, or personal fall arrest systems. In addition, paragraph (b)(2)(i) provides that if the employer can demonstrate that it is infeasible or would create a greater hazard to use any of these systems, the employers must develop and implement a fall protection plan which meets the requirements of paragraph (k) of § 1926.502. The fall protection plan, in turn, requires, among other criteria and conditions for use, that the employer designate all areas where conventional fall protection systems cannot be used as controlled access zones. Employers must also implement a safety monitoring system in those zones if no other alternative measure has been implemented. Criteria for controlled zone systems and safety monitoring systems are found in § 1926.502 (g) and (h), respectively.

Paragraph (b)(2)(ii) requires that employees on walking/working surfaces where leading edges are under construction, but who are not constructing the leading edge, shall be protected from fall hazards by guardrail systems, safety net systems or personal fall arrest system.

The leading edge provisions of the final rule differ from the proposed rule. In the proposal, OSHA explained its belief that a requirement to erect safety net systems would not always be feasible because of insufficient room to rig a safety net and because the net would have to be constantly moved, exposing workers repeatedly to fall hazards while erecting the net.

OSHA also noted that because the time lapse between placement of successive floor, roof, or floor formwork sections would often be only a few minutes, guardrail systems erected along a leading edge would have to be removed almost as soon as they were erected to allow placement of the next section. In addition, OSHA noted, the continued erection and removal of guardrail systems could pose a "greater hazard" to the employees than having the employees work without the guardrails. Because of this, OSHA was concerned that guardrail systems, as required in the existing rule, often would not allow the accomplishment of work along leading edges.

Finally, OSHA expressed its view that personal fall arrest systems (body belt and harness systems) might limit an employee's freedom of movement, hindering job performance as well as impairing an employee's ability to avoid hazardous situations (such as a misdirected incoming piece of concrete or other structural member used on the leading edge). Also, during the erection of some structural members, employees are required to walk along a leading edge during placement of the member. A personal fall arrest system (body belt or harness system) might impede this effort if the employee's movement was restricted by the length of the lanyard, causing constant reattachment of the systems to different anchor points.

In recognition of these potentially infeasible (impossible to perform the work) or greater hazard situations, OSHA proposed to allow the use of a fourth option—safety monitoring systems on leading edges and the use of control zone systems to limit the number of employees exposed to the hazard at leading edges.

There were several varied comments on the proposed leading edge provision. NIOSH (Ex. 2–33 and 27–6) questioned the adequacy of the safety monitoring system, noting that it relied on visual inspection only, and recommended that it be deleted as a fall protection option. NIOSH also stated that using a monitor would require active involvement of both the monitor and the worker to ensure safety.

Miller & Long (Ex. 2–41) noted that, "The only employees at the leading edge are the ones who are working on the leading edge. Therefore, the warning lines and monitor systems are not needed."

The Daniel Marr & Son Co. (Ex. 2–40), specifically addressing the concerns of ironworkers installing decking, also commented on the safety monitoring system for leading edge work, noting that, "By requiring a worker to act as a monitor, the Department of Labor will be forcing steel erection companies to duplicate safety efforts and, at the same time, be placing a large financial burden on the construction industry." OSHA notes that at this time, the final rule for subpart M does not apply to steel erection activities in buildings. The Agency has begun work with the Steel

Erection Negotiated Rulemaking Advisory Committee to develop a proposed revision for subpart R which will address fall protection for employees performing steel erection activities in buildings [see meeting notice at 59 FR 25848 and 59 FR 26153].

Finally, WMACSA (Ex. 2–56) wanted to know how the leading edge provision applied to workers setting precast stone walls on the leading edge. In response, OSHA observes that the leading edge provision would not be applicable in the situation described. That is, if a wall is being set at the edge, the leading edge of the floor or roof or formwork is no longer under construction. Therefore, the work location (the edge) would be considered an unprotected side and edge and covered by paragraph (b)(1), above.

The final rule differs from the proposed rule in that it requires the use of one of the three conventional fall protection systems, but does not permit an employer to use a safety monitoring system instead of one of the conventional systems as was proposed. However, as noted above, when the employer demonstrates that all conventional fall protection systems are infeasible (i.e., it is impossible to perform the construction work or technologically impossible to use) or create a greater hazard, the final rule requires the employer to develop and implement a fall protection plan. A fall protection plan, in turn, requires the employer to establish a controlled access zone and to implement a safety monitoring system if no other alternative measure has been implemented in the zone where conventional fall protection is not being used.

A controlled access zone, discussed in detail in § 1926.502(g) below, is defined with control lines to form a visual and physical barrier which, in this case, prevents an employee from inadvertently entering the area immediately adjacent to the leading edge. OSHA notes, again, that any unprotected side or edge of the floor or roof which is not part of the controlled access zone must be guarded as required by the pertinent provisions of § 1926.502(b) or other protection provided to employees who may be exposed to falls from those other unprotected sides or edges. Criteria for safety monitoring systems can be found in § 1926.502(h).

A safety monitoring system does not provide a physical means of preventing falls or arresting a fall, and therefore, will not provide protection equivalent to that provided through the use of the other fall protection measures proposed.

Accordingly, OSHA has removed these systems as a direct alternative to conventional fall protection systems under the general rule for leading edge work. However, as discussed above, the final rule requires the use of a fall protection plan that complies with § 1926.502(k) where the employer can demonstrate that the use of conventional fall protection would be infeasible or would create a greater hazard. The following information is provided to assist employers in determining if the use of conventional fall protection would be infeasible or pose a greater hazard at a particular work area or for a particular operation.

OSHA considers a fall protection measure to be infeasible when the employer establishes that application of that measure is either functionally unworkable or would prevent the performance of required work. The Agency recognizes that there are situations where one or another measure cannot be implemented, because of the configuration of the worksite (for example, where structures are built so close together that nets cannot be installed) or due to circumstances during a particular phase of the construction process (for example, where work at the leading edge precludes the use of guardrails).

OSHA has consistently maintained, however, that, in general, at least one of the three conventional fall protection measures mandated by subpart M can be used to protect employees at a particular worksite from fall hazards. In particular, the Agency has frequently found that the use of personal fall arrest systems is feasible even where a guardrail system or safety net system is infeasible. Further, equipment is generally available to provide safe anchorage points for personal fall arrest systems. It is in this area that preplanning of the construction project is most critical. Focusing on fall protection at the design and planning stages of a construction project will enable an employer to develop measures that protect affected employees from fall hazards.

OSHA recognizes that the applicability of alternative measures will depend on the circumstances of particular employers and work sites and that those circumstances vary widely. Therefore, paragraph (b)(2), like the provisions at §§ 1926.501 (b)(12) and (b)(13), sets general, rather than specific, criteria for an employer who seeks to determine if it is appropriate to implement a fall protection plan that complies with 29 CFR 1926.502(k).

OSHA has consistently maintained that employers must consider the safety of workers as well as the technical aspects of their construction projects. In a case involving existing § 1926.105(a), the 5th Circuit of the U.S. Court of Appeals has stated "[t]he regulation in question . . . specifically dictates the employer's duty to supply fall protection. The duty to consider alternative methods of construction which permits compliance with the regulation is merely a corollary of the duty to comply. The petitioner has attempted to characterize this duty as a burden requiring changes in methods of construction; however, that characterization ignores the employer's initial responsibility to comply with OSHA regulations. If an employer were permitted to choose any method of construction, and subsequently argue that compliance with OSHA regulations was impossible because of the method of construction chosen, then the regulations could be undermined in many instances." Cleveland Consol. v. OSHRC, 649 F.2d 1160, 1166 (5th Cir. 1981). In addition, regarding an employer's duty to anticipate and determine the need for fall protection, the Occupational Safety and Health Review Commission has held that the employer "could have easily foreseen the lack of open steel, given the problem some foresight, and installed a static line in advance." A.C. Dellovade, Inc., 13 BNA OSHC 1017, 1020 (No. 83–1189, 1987).

OSHA has long acknowledged that there may be circumstances at a particular workplace which would make it unreasonable for the Agency to pursue a citation. In the enforcement context, OSHA has consistently placed the burden on the employer in question to establish any such circumstances as "affirmative defenses" to OSHA citations. The Agency has had considerable experience in evaluating employers' efforts to establish affirmative defenses (e.g., "impossibility" (sometimes also known as "infeasibility") and "greater hazard" defenses) to citations. Based on that experience, OSHA developed Section V.E of the Field Operations Manual (FOM) to guide OSHA personnel in assessing those defenses.

Under Section V.E.3.b of the FOM, an employer has established "impossibility" when "Compliance with the requirements of a standard is: (1) Functionally impossible or would prevent performance of required work; and (2) There are no alternative means of employee protection." Under Section V.E.3.c, an employer has established "greater hazard" when "Compliance with a standard would result in greater hazards to employees than non-compliance and: (1) There are no

alternative means of employee protection; and (2) An application [for] a variance would be inappropriate. Under Section V.E.3.d, an OSHA compliance officer who becomes aware that an employer is raising an affirmative defense is directed to gather pertinent information and to bring any possible defenses to the attention of his or her supervisor. That section further provides that a citation is not issued when OSHA determines that each and every element of an affirmative defense is present.

Paragraph (b)(2), as well as §§ 1926.501 (b)(12) and (b)(13), discussed below, reflect the Agency's longstanding position, as presented in the FOM, regarding the criteria for an employer to successfully establish the pertinent affirmative defenses.

OSHA considers compliance with a measure to be "infeasible" when it is technologically impossible to do what a standard requires or when following the standard would prevent performance of the work in question. A contractor attempting to establish infeasibility will be required to establish the worksite-specific circumstances that preclude reliance on conventional fall protection to protect employees from fall hazards. For example, the employer will be required to establish that the available personal fall arrest systems cannot be used in a particular work area due to design or equipment constraints. The employer will need to indicate the particular problem (such as inability to provide safe anchorage; danger of lifeline entanglement; likelihood that lifelines, especially self-retracting lifelines, will be mired in grout; likelihood that completion of work would be prevented by fall protection; and inability of personal fall arrest systems to function due to the configuration of the work area for OSHA to determine that the employer has made the necessary showing for use of a fall protection plan. It will not be sufficient for the employer to merely assert that it is impossible to use fall protection equipment. Non-mandatory Appendix E provides guidance regarding the kind of considerations employers would take into account in attempting to comply with § 1926.501(b)(2), (b)(12) or (b)(13).

The Agency does not consider "economic infeasibility" to be a basis for failing to provide conventional fall protection for employees constructing leading edges, erecting precast concrete members, or performing residential construction work. The Agency has consistently maintained, and the record for this rulemaking shows, that the industry can either absorb the costs of compliance with revised subpart M or pass those costs along to its customers. It is well established that all employers must comply with OSHA's standards whether or not they are inspected or cited by the Agency. *A.E. Burgess Leather Co.*, 5 O.S.H. Cas. (BNA) 1096, 1097 n. 2 (Review Commission 1977), *aff'd* 576 F.2d 948 (1st Cir. 1978).

OSHA has also consistently maintained that "impracticality" does not excuse a contractor from compliance with the requirements for fall protection. However, based on OSHA's statutory mandate to protect employee safety and health and to address the significant risks posed by fall hazards, it is reasonably necessary and appropriate to require the protective measures set forth in this standard. As the RIA clearly shows, the requirements of revised subpart M are both technologically and economically feasible for the construction industry and they allow for those limited situations in which feasibility may be an issue.

As noted above, OSHA has acknowledged that there are situations where the implementation of a particular fall arrest system would create a "greater hazard" for employees than they would otherwise encounter. Under current Agency practice, an employer establishes the "greater hazard" defense to a citation by demonstrating that the hazards created by compliance with a standard are greater than those created by non-compliance. The Agency is aware that there are workplace situations where the installation of guardrails or safety nets could involve more risk, due to the nature or duration of the exposure, than the work for which protection is required. On the other hand, OSHA has found that, as with the "infeasibility" defense, the "greater hazard" defense does not generally excuse an employer from protecting its affected employees with personal fall arrest systems. In particular, the Agency has found that careful planning of a construction project enables the employer to erect buildings/structures into which the necessary anchorage points for personal fall arrest systems have already been engineered. For example, in the case of precast concrete erection, preplanning may allow for lifting inserts to be designed so that they function as both anchorage points for personal fall arrest systems and as lifting inserts.

OSHA further acknowledges that, regardless of an employer's ability to preplan for fall protection, there may be cases where the installation or use of personal fall arrest systems poses a greater hazard than that to which employees performing the construction work would otherwise be exposed. The Agency will expect an employer who seeks to make that case to indicate specifically how compliance with the requirement for personal fall arrest systems would pose a greater hazard. OSHA will assess each such case on its particular merits.

Paragraph (b)(3) sets fall protection requirements for employees in hoist areas of walking and working surfaces that are 6 feet (1.8 m) or more above lower levels. Employees shall be protected through the use of guardrail systems or personal fall arrest systems. If guardrails (or chains or gates if they are being used in lieu of guardrails at the hoist area) are removed to facilitate hoisting operations, then employees who lean through the access opening or out over the edge of the access opening to perform their duties shall be protected by the use of personal fall arrest systems.

This provision, essentially identical to the proposed provision, is based on existing § 1926.500(g)(5), which addresses the same hazard but applies only to material hoisting operations on low-pitched roofs during built-up roofing operations. The proposal extended the existing requirement to all situations where equipment and material hoisting operations are being carried out on floors and other walking/working surfaces. The wording of the proposed provision has been revised for the sake of clarity.

There were two comments on this provision. The WMACSA (Ex. 2–56) commented that the term "hoist areas" needed to be defined for the sake of clarity. In addition, the SSFI (Ex. 2–89) requested that OSHA interpret the "exception" in proposed paragraph (b)(3), because "the paragraph seems ambiguous." OSHA believes that it has responded to the concerns of both commenters by rewording the provision to state more clearly which type of fall protection may be used at hoist areas. The revised provision clearly differentiates between working in the area where hoisting activities will take place (e.g., the area where materials are to be landed) and taking part in the actual hoisting operation (e.g., receiving materials hoisted by a crane). The exception language used in the proposal has been incorporated into the text of final rule paragraph (b)(3) so it is clear that during hoisting operations employees must be protected by personal fall arrest systems if they lean through the access opening or out over the edge to receive or guide materials. Otherwise, the employer would use either guardrail systems or personal fall

arrest systems to protect workers at hoist areas.

Paragraph (b)(4) of the final rule requires that employees be protected from hazards associated with holes. In particular, employees may be injured or killed if they step into holes, trip over holes, fall through holes or are hit by objects falling through holes. Some workplaces may present all of these hazards while others may have only one of them. The proposed rule has been revised to indicate clearly which protective measures are applicable to a particular hole situation. OSHA notes that covers which comply with the criteria of § 1926.502(i) will protect employees from all of the above-described hazards.

Paragraph (b)(4)(i) requires that employees be protected from falling into or through holes (including skylight openings) 6 feet (1.8 m) or more above lower levels by covers over the hole, erecting a guardrail system around the hole, or by the use of a personal fall arrest system. The Agency has revised the proposed rule to include personal fall arrest systems as an acceptable fall protection option because OSHA believes that a properly rigged system can protect an employee from falling though a hole. Paragraph (b)(4)(ii) requires that employees be protected from tripping in or stepping into holes by covers; and paragraph (b)(4)(iii) requires that employees be protected from objects falling through holes by covers.

The final rule differs from the proposed rule, which was based on requirements in the existing standards in § 1926.500(b). The existing standard contains separate specific rules for guarding floor openings and floor holes in various walking/working surfaces. In the proposed rule, OSHA treated most holes as presenting the same type of hazard and did not address each individual type of hole separately. The proposed rule also set very specific requirements for the use of covers.

In addition, the proposed rule was apparently unclear with regard to requirements for protecting workers from stepping and tripping into holes and for protecting workers from objects falling through holes. While it appeared the regulatory language of the proposed rule limited protection from holes to just those situations where employees could fall to 6 feet or more to lower levels, the explanatory discussion of the provision in the preamble to the proposed rule indicated it was the Agency's intent "that all holes . . . be guarded. . . ." (51 FR 42722). The inconsistency was brought to OSHA's attention by a comment from AGC representatives (Exs. 2–16, 2–47, and 2–92), who pointed out that there was a need to clarify the definition or the requirement. Their concern was whether the Agency intended to cover holes into which employees could fall or holes through which materials could fall.

The California Department of Industrial Relations (CAL/OSHA) (Ex. 2–15) suggested that OSHA allow a standby employee safety monitoring system in lieu of guardrails when covers were being removed for short duration work. The commenter stated that it was unrealistic to require a guardrail where a cover is removed for passage of equipment and material for a short duration, where a standby employee could guard the hole. As discussed above at "leading edges," the use of safety monitoring systems is thought to be the least protective of all the systems permitted by the final rule. For this reason, OSHA has limited the situations where the use of safety monitoring systems is acceptable to roofing operations on low-sloped roofs and to situations where the employer can demonstrate that it is infeasible or creates a greater hazard to use conventional fall protection systems and that employer has developed a fall protection plan. OSHA does not recognize a safety monitoring system as an acceptable means of protecting workers exposed to falling into or through holes. There are other, more protective measures that can be taken to address falls at holes, including covers, guardrail systems and personal fall arrest systems, therefore, OSHA is not permitting the use of the less protective safety monitoring system at holes. Additionally, the final rule reflects the current industry practice with regard to protecting workers exposed to holes and OSHA does not have any basis for reducing the level of protection.

For clarification, OSHA does not intend that a guardrail be erected around holes while employees are working at the hole, passing materials, etc. Therefore, if the cover is removed while work is in progress, guardrails are not required because they would interfere with the performance of work. When the work has been completed, the employer will be required to either replace the cover or erect guardrails around the hole.

Other comments (Exs. 2–31 and 2–56) concerned securing holes and these are discussed later in this preamble along with other comments on the criteria for covers which is addressed in paragraph § 1926.502(i). These comments prompt OSHA to remind employers and employees that this paragraph (like other paragraphs in § 1926.501) only specifies the "duty" requirement to have fall protection. Once an employer has chosen from among the options provided to meet this duty, he or she must then meet the requirements in § 1926.502, which sets the criteria and conditions for use for each of the various fall protection systems required to be used in § 1926.501.

Many commenters responded to Issues #2 and #7, which raised questions and concerns related to guarding holes and the criteria for covers used to guard holes. For example, the Associated Builders and Contractors, Inc. (ABC) (Ex. 2–51) commented that they found the provision limiting protection to covers or guardrails was unnecessarily restrictive because a guardrail system around a 3-inch hole would require a 3-foot diagonal guardrail. OSHA observes that the proposed provision was framed in performance-oriented language so that employers would have had the flexibility to choose between guardrails and covers, based on the circumstances at the workplace. OSHA believes that compliance with paragraph (b)(4) of the final rule, whichever method is chosen, will protect employees appropriately. OSHA anticipates that employers will use guardrails only in those cases where the size and configuration of the hole indicate that the use of a guardrail would be appropriate. The ABC also suggested that the final rule allow the same protection for holes as OSHA proposed for leading edges. As discussed above, OSHA has revised the proposed rule to allow the use of personal fall arrest systems where an employee may fall through a hole, but OSHA has not allowed the use of safety monitoring systems to protect employees from falling through holes.

Bristol Steel & the NEA (Exs. 2–12 and 2–43) stated that "Covers can be more hazardous than no protection at all because workers can see an uncovered hole but they can unintentionally remove a cover and step into a hidden hole." In addition, they stated that ". . . guardrails provide a false sense of security" because "Maintenance of guardrails is a serious problem when various workers are constantly altering, damaging, or temporarily removing them." OSHA observes that it has revised proposed § 1926.502(i) to require that covers be "secured" when installed to prevent their being easily removed or accidentally displaced. This change should eliminate the commenters' concerns with regard to unintentional removal of covers.

Both commenters suggested control zones to keep workers at a safe distance from holes, advocating (like the ABC,

(Ex. 2–51)) that paragraph (b)(4) address holes the same as the proposed paragraph (b)(2) treated leading edges, allowing the use of guardrail systems and safety monitoring systems, among other options. Finally, both Bristol Steel and the NEA stated that the use of "attending persons" at unguarded holes was "impractical and dangerous . . . because it is so difficult to enforce and so easy to let lapse during a critical moment" that "Safety monitors for workers performing the work and control zone systems for other workers in the area should be considered minimum safety precautions." As noted above, the Agency shares the commenters' concerns about the adequacy of the protection provided by safety monitoring systems.

Based on review of the comments, OSHA has concluded that the feasibility concerns that led the Agency to allow use of controlled access zones and safety monitoring systems are not present with regard to holes. Further, OSHA does not believe that the use of controlled access zones and safety monitoring systems would adequately protect employees working in proximity to holes.

Paragraph (b)(5) requires employees working on formwork and reinforcing steel 6 feet or more above lower levels to be protected by a personal fall arrest system, safety net system or positioning device system. This provision is identical to proposed § 1926.501(b)(5). In addition, OSHA notes that with one exception (discussed below), paragraph (b)(5) presents the same requirement currently found in § 1926.701(f)(2) of the concrete and masonry standard. The requirement in § 1926.701(f)(2) is being relocated to subpart M because, as explained earlier, OSHA is consolidating virtually all construction fall protection requirements in subpart M, Fall Protection.

As OSHA explained in the proposal, positioning devices are essentially body belts or body harnesses that are attached by short lanyards to the work surface, allowing a worker to perform a job with both hands free. While existing § 1926.701(f)(2) does not provide for the use of positioning devices, OSHA has determined that such devices, used in compliance with § 1926.502(e) of the final rule, will provide appropriate protection for affected employees. As stated in the proposal, because of the short length of the lanyard (approximately 9 to 18 inches, depending on how it is rigged), the use of positioning devices does not pose a significant fall hazard. The criteria for positioning devices systems as provided by § 1926.502(e) are discussed below.

Paragraph (b)(6) requires ramps, runways, and other walkways to be equipped with guardrails. As discussed below, the final rule is essentially the same as the proposed rule and is very similar to existing §§ 1926.500(d)(2) and 1926.651(l)(1), which address fall protection for runways and excavations, respectively.

OSHA proposed to revise existing § 1926.500(d)(2) by changing the 4-foot threshold for fall protection to a 6-foot threshold, so that this provision limit conforms with the other fall protection provisions. In addition to ramps and runways, the proposal was expanded to include all walkways and bridges where a fall hazard exists, not just those over excavations addressed in the existing rules. OSHA notes that existing § 1926.651(l)(1) of the excavation standards is also being revised to make it clear that guardrails on walkways built over excavations must meet the requirements of revised subpart M.

OSHA has revised proposed paragraph (b)(6) by removing the word "bridges" from the list of surfaces covered by the provision. The removal of the word "bridges" was prompted by a comment from the Wisconsin Road Builders Association (WRBA) (Ex. 2–154) which pointed out that they had been engaged in bridge building for over 40 years and that their company uses body belts 90 percent of the time and harnesses 10 percent of the time when working on bridges over water. OSHA was unsure whether this commenter was objecting to the requirement of the proposal which specifically required "guardrails" on bridges used as walkways, or if the commenter was suggesting that body belts be allowed to protect workers crossing over bridges. In any event, the comment alerted OSHA that the term "bridges" as used here could be understood to mean bridges other than those used as walkways. The Agency notes that paragraph (b)(6) does not apply to the use of personal fall arrest systems or safety net systems to protect workers from falling while bridges are being constructed. Rather, § 1926.501(b)(1) covers bridges under construction, and it requires employers to protect employees from falls off unprotected sides and edges of bridges with guardrail systems, safety net systems, or personal fall arrest systems. OSHA believes that only guardrails can provide appropriate fall protection for workers as they cross over ramps, runways and other walkways.

Another commenter (Ex. 2–56) suggested that OSHA define "ramps, walkways and bridges," pointing out that "walkways" is defined as a part of a scaffold in the proposed scaffold standard. As the commenter pointed out, a definition for "walkways" has been provided in the scaffold regulations because the term has a unique meaning as it applies to scaffolds. The Agency notes that a definition in subpart L does not apply to terms used in subpart M. OSHA has determined that there is no need to define the terms based on the Agency's belief that the use of the terms—ramps, runways, and walkways—in this subpart is consistent with the definitions provided by any standard dictionary.

Paragraph (b)(7) requires that the edges of excavations which are not readily seen (i. e., concealed from view by plant growth, etc.) be protected with guardrail systems, fences, or barricades to prevent employees from falling into them if the excavation depth is 6 feet or more. In addition, walls, pits, shafts, and similar excavations with depths of 6 feet or more shall be guarded to prevent employees from falling into them. The only difference between the proposed requirements and the final rule is that the option to use signs as an alternative means of protection has been removed. The final rule is also essentially the same as the existing requirement in § 1926.651(l)(2), which is being removed from subpart P and incorporated into subpart M because it addresses fall protection. As OSHA explained in the proposal, although employers are not generally required to provide guardrail systems at excavations, the Agency believes that barricades are necessary for excavations that are obscured from view, because of plant growth or other barriers, when the fall distance is at least 6 feet.

In response to the proposal and to Issue #12, regarding the use of signs as an alternative to barricades at obscured excavations, CAL/OSHA and the State of Maryland (MOSH) (Exs. 2–15 and 2–31) objected to the use of signs as a means of protecting employees from falling into excavations. MOSH (Ex. 2–31) contended that excavations and trenches should be guarded whether they can be seen or not. That view was echoed by commenters (Exs. 2–19, 2–46, and 2–99) who stated, in addition, that signs alone were not effective.

Another commenter, the Tennessee Valley Authority (TVA) (Ex. 2–20), commented that "Signs can be useful as an indicator of a hazard but should only be used in conjunction with other measures to provide employee protection." Yet another commenter, the National Constructors Association (NCA) (Ex. 2–45), commented that "the use of physical barriers to prevent access to high exposure areas has been

sufficient and [we] do not see any need for new requirements."

On the other hand, some commenters (Exs. 2–16, 2–47, and 2–92) supported the use of signs, noting they had "* * * been used successfully for this purpose in the past, depending upon the type exposure or particular situation." Some other commenters (Exs. 2–12 and 2–43) recommended that OSHA promulgate the standard as proposed. In addition, some commenters (Exs. 2–16, 2–47, 2–92, and 2–140) suggested that the requirement belonged in the excavation subpart. (OSHA's reasons for placing most fall protection provisions in subpart M have been discussed earlier in this preamble).

The SSFI (Ex. 2–89) supported the use of signs when no other fall prevention measures could be utilized. They also supported signs in conjunction with other measures. The ACCSH recommended that obscure excavations be protected not only by barricades and warning signs, but with lights if needed for nighttime operation. (Tr. 6/10/87; pp. 134–135).

Based on its review of the record, OSHA agrees with those commenters who have stated that signs, alone, would not adequately protect employees and has revised proposed paragraph (b)(7) accordingly.

Paragraph (b)(8) requires employers to protect employees from falling onto dangerous equipment. Paragraph (b)(8)(i) provides that where a floor, roof, or other walking or working surface is less than 6 feet above such hazards, employees shall be protected by guardrails or equipment guards that shield the hazard. Paragraph (b)(8)(ii) requires that employers protect employees on floors, roofs, and other walking or working surfaces 6 feet or more above dangerous equipment with guardrail systems, personal fall arrest systems, or safety net systems. "Dangerous equipment" is defined in § 1926.500(b) as equipment such as pickling or galvanizing tanks, degreasing units, machinery, electrical equipment and other units which, as a result of form or function, may be hazardous to employees who fall onto or into such equipment. These requirements are identical to the proposed provisions, which were based on existing provisions in § 1926.500(d)(4) and (5).

There was one comment on this provision. The SSFI (Ex. 2–89), directing its comment to paragraph (b)(8)(ii), stated "It is recommended that all employees above dangerous equipment be protected by a guardrail system or by body belt/harness system or safety net system. There should be no limitations regarding the height in which the employee should be protected."

The SSFI did not further elaborate on their comment. OSHA observes that the two requirements of this paragraph differ in the options from which employers must choose to protect employees based on the distance between the employee and the dangerous equipment with which the potential for contact exists. OSHA proposed only two options—the use of guardrail systems or the use of equipment guards—where the fall distance is less than 6 feet (1.8 m) because the use of safety net systems or personal fall arrest systems would not be appropriate. Specifically, the Agency believes that if a personal fall arrest system or a safety net system conforming to the criteria in § 1926.502 were used where the fall distance is less than 6 feet, the employee's fall may not be arrested before contact was made with the equipment. On the other hand, where ample distance exists, i.e., more than 6 feet (1.8 m), the conventional fall protection systems would all be protective. By contrast, equipment guards would not be an appropriate option because they would not protect employees from such falls. For the reasons stated above, OSHA proposed options that it considered most appropriate to protect employees taking into consideration the fall distances and hazards involved. OSHA believes that paragraph (b)(8), as proposed, appropriately addresses the pertinent hazard. Therefore, OSHA promulgates paragraph (b)(8) unchanged.

Paragraph (b)(9) addresses the fall protection requirements for employees engaged in overhand bricklaying operations and related work, except as set in § 1926.451(g)(1)(vii). These employees are involved in the construction of masonry walls and must lean over the wall to complete the joint work. Related work, as used in this paragraph, means mason tending as well as electrical work that must be incorporated into the brick wall during the bricklaying process.

Paragraph (b)(9)(i) requires that employees performing overhand bricklaying and related work 6 feet (1.8 m) or more above lower levels to be protected by guardrail systems, safety net systems, personal fall arrest systems, or they must work in a controlled access zone. However, when these employees are reaching more than 10 inches (25 cm) below the level of the walking/working surfaces, only guardrail systems, safety net systems or personal fall arrest systems are permitted to be used under paragraph (b)(9)(ii). controlled access zones are not acceptable in this situation.

OSHA has repeatedly stressed that employees exposed to the risk of falling should, in general, be protected by one of the three conventional systems—guardrail systems, safety net systems and personal fall arrest systems. However, OSHA also recognizes that the use of such systems sometimes is not feasible when overhand bricklaying and related operations are taking place. In particular, guardrails may interfere with the performance of work; safety net systems often cannot be safely attached to or supported by the structure; and personal fall arrest systems often become tangled or pose serious trip and fall hazards. After extensive consultation with the Mason Contractors of America, the International Union of Bricklayers and Allied Craftsmen, the Laborer's International Union of North America, and the ACCSH, OSHA proposed to allow the use of a control zone (now referred to as a controlled access zone), as an additional option that could be used in those situations where conventional fall protection systems were not feasible and the employees were not reaching more than 10 inches (25 cm) below the walking/working level.

The criteria for controlled access zones are set in § 1926.502(g). In brief, a control zone line prevents non-overhand-bricklaying employees from inadvertently entering the area immediately adjacent to the fall hazard and the controlled access zone designates the area where overhand bricklaying may be performed without the use of guardrails, safety nets, or personal fall arrest systems as fall protection. However, paragraph (b)(9)(ii) provides that whenever an overhand bricklayer reaches more than 10 inches (25 cm) below the walking or working surface, the bricklayer must be protected by one of the "conventional" systems listed in paragraph (b)(9)(i)—guardrail systems, safety net systems or personal fall arrest systems. When OSHA proposed this requirement, it explained it was doing so because it believed that the additional leaning presents a sufficient additional fall hazard to warrant such protection. OSHA anticipates that employers will comply with paragraph (b)(9)(ii) by having employees use personal fall arrest systems that will restrain employees from falling to lower levels.

It is important to note that controlled access zones are not permitted to be used as protection for employees performing overhand bricklaying and related work who are exposed to fall

hazards associated with hoist areas; holes; ramps, runways, and other walkways, and dangerous equipment. In these situations, fall protection must be provided by compliance with the paragraphs addressing the specific hazard, (i.e., paragraphs (b)(3), (4), (6), and (8)), as appropriate. For example, a worker performing overhand bricklaying work near a floor hole would have to be protected as required by paragraph (b)(4) even when the hole is located within the area marked by a control zone line. Another example is a worker performing overhand bricklaying work above dangerous equipment. The provisions of paragraph (b)(8) would apply; a controlled access zone would not be an acceptable method of fall protection. The final rule is identical to the proposed rule, except that, as explained below, OSHA has added a note referencing subpart L for regulation of bricklaying work performed from scaffolds.

The Mason Contractors Association of America (MCAA), International Union of Bricklayers and Allied Craftsmen; and the Laborers International Union of North America, (Ex. 2–95) commented in support of the proposed provision. The MCAA referred to the proposed provision as "* * * the most reasonable, practical and economical and, above all, the safest method that can be devised for installing masonry products with the overhand method." OSHA concurs with the assessment of the MCAA with regard to this provision. In addition, the WMACSA (Ex. 2–56) stated that overhand bricklaying should be prohibited as a practice, particularly when the work can be done from a scaffold. The MCISC (Ex. 2–140) commented that "Guardrail systems for scaffolds should be spelled out in scaffold standards." OSHA agrees that it is appropriate for bricklaying performed from scaffolds to be regulated under subpart L, Scaffolds, rather than under subpart M and, accordingly, the Agency is adding a note to subpart L which so indicates. The MCISC also commented in support of the proposed provision, stating its belief that no fall protection was needed when bricklaying operations were conducted from inside a building, except when reaching more than 10 inches below the working surface. In response, it should be pointed out that one of the options in paragraph (b)(9)(i) is to allow overhand bricklaying workers reaching less than 10 inches below the walking/working surface, to work in a controlled access zone which essentially allows the work to be done without fall protection, just as the MCISC is recommending for work conducted inside a building. This option is not a fall protection system per se, but rather a method which limits the exposure to the fall hazard to those workers actually involved in the bricklaying operation.

Paragraph (b)(10) applies to employees performing roofing operations on low-slope roofs with unprotected sides and edges 6 feet (1.8 m) or more above lower levels. It requires that employers protect employees from fall hazards by either a guardrail system, safety net system, or personal fall arrest system. Or, employers must use a combination of warning line systems and guardrail systems, warning line systems and safety net systems, warning line systems and personal fall arrest system, or warning line systems and safety monitoring system. If, however, the roof is 50 feet (15.25 m) or less in width, the employer may protect employees by the use of a safety monitoring system alone.

As with paragraph (b)(9), discussed above, the provisions of paragraph (b) which cover hoisting areas, holes, ramps and runways, and dangerous equipment apply notwithstanding the provisions of paragraph (b)(10). The rationale for these exceptions is the same as that provided in the discussion of paragraph (b)(9), above.

The final provision differs substantially from the proposal. Under the proposed rule, employees performing "built-up roofing operations (meaning the application of hot tar or bitumen) on low-pitched roofs" were to be protected as required in existing § 1926.500(g). Employees performing other roofing operations on low-slope roofs and exposed to falling 6 feet (1.8 m) or more to lower levels would have been covered by paragraph (b)(1) which applies, in general, to any walking/working surface with unprotected sides and edges 6 feet (1.8 m) above lower levels. The proposed paragraph was effectively identical with the provisions of existing § 1926.500(g) for "built-up" roofing operations.

OSHA promulgated existing § 1926.500(g) because it recognized that the use of guardrail systems, safety net systems, and personal fall arrest systems could pose feasibility problems or greater hazard. OSHA discussed the reasons for this belief when it published the final rule for the built-up roofing standard (45 FR 75619). In particular, in the preamble to that final rule, OSHA stated the following:

> Guardrails are often used to provide fall protection and are required for open-sided floors and platforms by 1926.500(d)(1). However, although guardrails can be used during construction of a roof deck, they must be removed prior to the application of roof waterproofing membranes and related sheet metal work at the roof edge. According to a report by the engineering firm of Simpson, Gumpertz and Heger [Citation omitted], the reason guardrails must be removed is that, unless mounted on a parapet wall, guardrails are normally mounted on the roof deck and impede the application of the roof membrane. The use of freestanding guardrail systems as an alternative is limited since such guardrails must also be moved out of the way when the membrane is applied near roof edges and thus they are not a solution to the problem of providing fall protection. Other potential concerns include the increase in cost and time required to erect guardrails and the question of whether guardrails are needed when the work to be performed is not near the roof edge. These problems exist whether the work being done is a reroofing operation on an existing building or the application of a new roof on new construction. [45 FR 75619]

In the 1980 final rule, OSHA also acknowledged that this same report, prepared for the National Roofing Contractors Association (NRCA), concluded that guardrails make orderly built-up roofing work impossible and do not offer the desired protection, since they must be removed prior to the completion of roof side and edge finishing work. The report also discussed the reasons other conventional guarding systems were not appropriate. A full discussion is contained 1980 Federal Register notice. At that time, OSHA concluded as follows:

> OSHA believes that the difficulties with conventional guarding systems (referred to in the standard as "motion-stopping-safety (MSS) systems") during the performance of built-up roofing work, will be avoided by allowing the use of a warning line and/or safety monitoring system. OSHA explained that a warning line "serves to warn and remind employees that they are approaching or working near a fall hazard by providing a direct physical contact with the employee. The contact attracts the employee's attention, enabling the employee to stop in time to avoid falling off the roof. The safety monitoring systems is a verbal warning system. OSHA describes the warning line systems with safety monitoring systems as an "alternative system of fall protection" which are "not intended to serve as positive fall restraints, but only as warning systems."

At the time of the proposed rule, OSHA relied on the information available from the 1980 rulemaking for built-up roofing work. Being unaware of any fall protection system that could be used in all cases and thus could eliminate the need for alternative systems such as the warning line system with safety monitoring system, OSHA proposed to continue its existing requirements but to seek public comment on other methods of

protecting workers from fall hazards at the edge of low-sloped roofs (flat roofs) during roofing work. In this regard, OSHA raised concerns about the height at which fall protection should be required for work on low-sloped roofs. Comments on this issue and other concerns regarding paragraph (b)(10) are discussed below.

In addition, the existing provisions used the terms "ground" and "eaves," respectively, as the points between which the height criteria is to be measured. OSHA proposed, instead, to use the terms "lower levels" and "unprotected sides and edges." OSHA believed the proposed language change would eliminate confusion, since some roofs do not have eaves, and other roofs are greater distances above the ground than above the nearest lower level (penthouse roofs, for example).

OSHA also proposed to permit built-up roofing work on low-pitched roofs with a fall distance less than 16 feet without the use of any of the fall protection systems required for other roofing work or required for higher work involving "built-up" roofing work. This, too, was consistent with the existing requirements in § 1926.500(g), discussed above (see 45 FR 75618).

Issue #11 requested comment, including cost and injury data, on lowering the fall protection threshold for built-up roofing from 16 feet to 6 feet. OSHA stated that the 16-foot exemption for built-up roofing work was not appropriate and that a 6-foot threshold was both more appropriate and more consistent with the other provisions of subpart M. OSHA maintained that the contemplated change would not affect many built-up roofing employers because the option to use a safety monitoring system on low-pitched roofs with widths of less than 50 feet would encompass nearly all roofs less than 16 feet above lower levels.

OSHA received over 70 written comments in response to this issue, mostly from roofing contractors supporting views expressed by the National Roofing Contractors Association (NRCA). Virtually all of the commenters stated that roofs with widths of 50 feet or less were not necessarily also less than 16 feet above lower levels. Thus, the commenters felt that their compliance burdens would be greatly increased if the threshold height for providing fall protection was reduced to 6 feet. The commenters supported the existing language (16-foot threshold) as the standard industry practice and as an appropriate response to fall hazards (Exs. 2–52, 2–58, 2–59, 2–61, 2–72, 2–90, 2–91, 2–93, 2–111, 2–119, 2–122, 2–141, 2–143, 2–144, and 2–161).

Also, the NRCA commenters favored continuation of the existing rules with regard to built-up roofing. These commenters stated that there was no need to protect workers from falling off unprotected sides and edges of low-slope roofs until the fall distance exceeded 16 feet. They also stated few injuries have resulted from such falls and that the cost of providing protection would exceed the benefits.

For example, the American Roofing and Sheet Metal Co. (Ex. 2–86) commented that "We have experienced no injuries from falls at roof perimeters and do not recognize this hazard to be significant compared to other hazards of roofing work."

One statistic frequently cited by NRCA commenters indicated that only one percent of losses were due to falls and most falls were experienced when workers fell through holes. However, the commenters did not explain what was meant by "one percent of *losses*."

The H.B. Fishman & Co. (Ex. 2–70) commented, "Again of the utmost importance is that holes in the deck, penetrations and other openings be properly protected. This is where the majority of injuries occur."

The Roofing Association of Long Island (Ex. 2–144) commented that "The experience gathered from other contractors as well as our own employees indicates that incidents of accidents as a result of falls from the perimeter of the roof are less frequent than the accidents resulting from falls through roof openings within the perimeter."

The Florida Service Roofing and Sheet Metal Company (Ex. 2–147) commented that "Our experience, spanning 65 years, reveals that falls from the perimeter of roofs have been so minimal that they can be considered to have been virtually non-existent." OSHA notes that from the period of 1985–1989, 297 fatalities involving falls from roofs were investigated by OSHA (Ex. 30). While OSHA cannot state specifically if all of those falls occurred from the perimeter of roofs, it is reasonable to assume that the number of fatalities from the roof perimeter is high.

Other commenters suggested that OSHA revise part of the proposed provision. Specifically, two commenters (Exs. 2–108 and 2–111) noted that the proposal implied that on roofs with widths of 50 feet or less, the use of a safety monitoring system was the only permitted system, rather than stating that it was an acceptable system. OSHA acknowledges that proposed paragraph (b)(10) could be misunderstood to allow only safety monitoring systems when a roof is 50 feet wide or less. The Agency has revised the proposed language to indicate clearly that on a roof 50 feet or less in width, the use of a safety monitoring system, without the warning line, is one of the measures allowed. OSHA allows the use of a safety monitoring system without the warning line on these narrow-width roofs because if warning lines were erected as prescribed in the standard, there would be little roof area remaining in which work could be performed.

The ACCSH (Tr. 6/10/87; pp. 133–134) recommended that OSHA change the 16-foot threshold to 6 feet and that safety monitors be allowed only where employees are working on built-up roofs. Three other commenters also supported the 6-foot rule (Exs. 2–33, 2–46, and 2–99). NIOSH (Ex. 2–33) commented that allowing the 16 foot exemption was "inadequate" and recommended that a maximum fall distance of 6 feet be set as appropriate for both low-slope roofs and steep roofs. They further suggested that the use of safety monitoring systems for flat and low-slope roofs might be an appropriate way of addressing the difference in hazards.

While the Roofers Union (Ex. 2–99) supported the 16-foot threshold in the 1980 rulemaking for existing § 1926.500(g), they opposed the continuation of that provision in proposed subpart M. Instead, they urged OSHA to "promulgate a standard that will effectively protect roofers against the dangers from fall hazards which they face almost daily." They also questioned whether OSHA should continue to allow the use of warning line and safety monitoring systems to protect roofers working on low-slope roofs. The Roofers Union stated the following:

> In 1979 we endorsed OSHA's proposed rule to provide for a warning line on low-pitched roofs primarily because there were no standards covering the guarding of low-pitched roofs and something had to be done immediately * * *. We also stated that we would press for total perimeter protection if the warning line approach did not prevent injuries or deaths from falls off the roof edge.
>
> The standard (1926.500g) has been in effect now for over 6 years yet the industry continues to be plagued by the same safety problems—roof falls. Although there is no statistical evidence to demonstrate the effectiveness of the standard one way or the other, workmen's compensation rates for the roofing industry have risen significantly over the past 6 years. That indicates among other things that little is being done in the roofing industry to reduce the incidence of injuries and deaths.

The Roofers Union also cited BLS data from a study on falls which showed that of 110 falls from roofs, half of these involved workers falling distances of less than 15 feet. Of these workers, over half suffered fractures to one or more parts of their body, over 40 percent suffered muscle sprains, strains or torn ligaments and 9 percent suffered a concussion.

In conclusion, the Roofers Union stated, "The data demonstrate that a significant number of serious injuries occur from falls of less than 16 feet. So it makes no sense to exclude a significant percentage of hazardous work from the OSHA standard. And, OSHA has indicated that these requirements would not place a significant economic burden on the roofing industry." The final recommendation was that total perimeter protection should be required because the warning line system was not effective.

OSHA agrees with the Roofers Union that falls of less than 16 feet pose a significant hazard. OSHA also believes the injuries are related to the fall distance and the failure of contractors to take any fall protection measures, rather than the use of warning line systems. For this reason, OSHA will no longer permit workers exposed to falls between 6 feet and 16 feet to go unprotected from the fall hazard. OSHA believes the revised rule appropriately addresses the fall hazards on low-slope roofs and sets forth appropriate choices of fall protection, allowing roofing contractors some flexibility without sacrificing the safety of workers.

OSHA agrees with the commenters who suggested that all employees engaged in roofing operations who are exposed to the hazard of falling 6 feet (1.8 m) or more to lower levels should be protected in the same manner from fall hazards. OSHA also agrees with commenters who stated there is no need to distinguish between the application of hot and cold materials to determine the appropriate fall protection measures, hence the final provision will apply to all roofing operations on low-slope roofs and not just "built-up" roofing activities. OSHA notes that the criteria for warning line systems and safety monitoring systems are found in paragraphs (f) and (h) of § 1926.502. Employers who use these systems must comply with all of the criteria and conditions for use that are specified.

Paragraph (b)(11) (proposed as paragraph (c)) requires employees on roofs with slopes greater than 4 in 12 (i.e., 4 inches vertical to 12 inches horizontal run) to be protected from falling when the roof has unprotected sides or edges more than 6 feet (1.8 m) above lower levels by the use of guardrail systems with toeboards, personal fall arrest systems, or safety net systems.

The final provision differs from the proposal. The proposed provision addressed both falls through holes and falls from unprotected sides and edges of steep roofs. In the final rule, all falls through and into holes are covered by paragraph (b)(4). Therefore, there is no need for a separate provision dealing with holes on steep roofs. OSHA notes that the protective measures required for holes in paragraph (b)(4) are essentially the same as proposed for holes under the steep roof provision. Another change in the final rule is that OSHA is requiring toeboards to be used when guardrail systems are used to provide fall protection on steep roofs.

The existing rules in subpart M do not specifically address fall protection requirements for steep roofs. Because of the lack of specific requirements, provisions outside subpart M have been utilized as the basis for citations for inadequate fall protection on steep roofs, including the following provisions: § 1926.28(a) Personal protective equipment; § 1926.104 Safety belts, lifelines, and lanyards; § 1926.105 Safety nets; § 1926.451(u)(3) Catch platforms; as well as the "General Duty Clause" (section 5(a)(1)) of the OSH Act). The final rule explicitly sets out the required fall protection systems for steep roofs.

NIOSH (Ex. 2–33) supported the requirement to have fall protection on steep roofs when the fall distance to lower levels exceeds 6 feet (1.8 m). CAL/OSHA (Ex. 2–15) stated, "The obvious hazard of the steepness of the roof, regardless of the eave height, should be addressed." They also suggested that "On steep roofs of 8 in 12 or steeper slopes, where the fall down the roof slope itself exceeds 6 feet (1.8 m)," the use of roof jacks and body belt systems, safety net systems or positioning device systems would be appropriate. Paragraph (b)(11) of the final rule will permit employees to work on roof jacks provided the employee is protected from fall hazards by the use of guardrail systems with toeboards, safety net systems, or personal fall arrest systems. While roof jacks provide a foothold, which may reduce the possibility of falling, they cannot be used as a substitute for fall protection. The final rule will not permit employers to protect employees on roof jacks from fall hazards through the use of positioning devices systems because such systems will not protect affected employees from fall hazards.

On the other hand OSHA observes, that because falls on steep roofs can result in workers and materials sliding down the slope, it would be appropriate to require the use of a toeboard as a standard practice when guardrail systems were chosen to provide fall protection. OSHA believes that omitting the toeboard would contribute to worker injuries since workers will not have any protective device to stop their sliding descent on the steep roof. OSHA notes that they could, then, slide right under the midrail and top rail of a conventional guardrail system.

Paragraph (b)(12) is a new paragraph OSHA is promulgating paragraph (b)(12), which was not part of the proposed rule, to set requirements for employers whose employees are exposed to fall hazards while erecting precast concrete members and related operations. Under paragraph (b)(12), employees erecting precast concrete members 6 feet (1.8 m) or more above a lower level must be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems, unless the employer can demonstrate that such systems would be infeasible or would create a greater hazard at the site where the affected employees are working. In such a situation, an employer would be required to develop and implement a fall protection plan which conforms to § 1926.502(k), discussed below.

An exception is also allowed if another provision in paragraph (b) allows an alternative fall protection measure, such as covers over holes. Those alternative measures are also acceptable and do not need to be documented in a fall protection plan in order to be used.

In the NPRM discussion of proposed paragraph (b)(2), *Leading edges*, (51 FR at 42721), OSHA indicated its recognition that it may be infeasible to protect workers performing precast concrete erection at the leading edge with guardrail systems, safety net systems, or personal fall arrest systems. Paragraph (b)(2) of the final rule provides that employers engaged in leading edge work (which can include precast concrete erection work) who demonstrate that it would be infeasible or would create a greater hazard to use conventional fall protection must develop and implement a fall protection plan which documents why they believe they cannot provide conventional fall protection and sets out the alternative fall protection measures that will be taken. In particular, the employer must establish a controlled access zone (29 CFR 1926.502(g)) and, at a minimum, implement a safety monitoring system

(29 CFR 1926.502(h)) if no other alternative fall protection measure has been taken to protect leading edge workers. The provisions of paragraph (b)(12) are essentially the same as those of paragraph (b)(2), but extend beyond leading edge work and allow employers engaged in any work involving the erection of precast concrete to develop and implement a fall protection plan where they can demonstrate infeasibility or greater hazard with conventional fall protection systems. A full discussion of the meaning of "infeasibility" and "greater hazard" was provided above along with the discussion of paragraph (b)(2) and applies here also.

Paragraph (b)(12) has been added in response to comments regarding fall protection for precast concrete construction. Issue #2 of proposed subpart M asked:

> Are there areas or operations in addition to those already identified in proposed § 1926.501, which have unique fall protection requirements not addressed by the proposed standards? Examples of such areas and operations might include carpenters erecting roof trusses during house construction; steel erectors working on other than tiered buildings . . . or connectors erecting wood, precast concrete, and structural members made of other materials. 51 FR at 42729.

The Agency received several comments from the Precast/Prestressed Concrete Institute (PCI) (Exs. 2–44, 2–106 and 2–107) regarding the need for separate fall protection standards for workers engaged in precast concrete erection.

Based on those comments, OSHA raised Issue M–2 in the January 26, 1988, Notice of Hearing on subparts L, M, and X [53 FR 2048] to solicit testimony and other information on the concerns raised by PCI. Specifically, OSHA stated (53 FR 2054):

> The [Precast/]Prestressed Concrete Institute (PCI) (Ex. 2–44) has commented that fall protection for employees erecting precast concrete components is "not appropriately covered by the proposed regulations" in Subpart M, because, according to the PCI, concrete erectors, like steel erectors, need more freedom of movement than proposed Subpart M would permit. Therefore, the PCI suggested that OSHA revise proposed Subpart M so that precast concrete erection would be regulated under Subpart R, Steel Erection. At the August 4, 1987, ACCSH meeting, a PCI representative reiterated the view that connectors of precast concrete members should be provided the same considerations as connectors of steel members saying [Tr. 212]: "We feel that the erection procedures and exemptions for steel are basically the same as those for precast concrete * * * Basically, the fall protection of the steel connector, again, would be the same as that for the precast connector." The PCI subsequently submitted comments (Ex. 2–106 and 2–107) which requested that OSHA exempt concrete erectors from proposed leading edge protection requirements in Subpart M and that OSHA exempt hollow core slab erectors from perimeter protection provisions, except for those in proposed § 1926.502(h), Safety monitoring systems.

In response, PCI testified at the public hearing (Exs. 6A–9 and 9, and Tr. 53–82, March 22, 1988) and submitted post-hearing comments (Exs. 17 and 19), which reiterated the points made in its comments. OSHA subsequently received additional correspondence from PCI (Exs. 25–1 and 25–2). In that correspondence, PCI (Ex. 25–1) stated that OSHA's "* * * lack of understanding of our unique erection problems will result in the promulgation of rules that will result in endless litigation and not serve the safety needs of the workers." In October 1989, OSHA informed PCI (Ex. 25–3) that the rulemaking record had closed and that, in any event, the late comments simply repeated submissions that had already been included in the record.

On February 12, 1990, PCI again wrote to OSHA (Ex. 25–4) reasserting that compliance with proposed subpart M was not appropriate to protect employees engaged in precast concrete erection. PCI again suggested that OSHA either regulate precast concrete under its own industry specific standard or under subpart R—Steel Erection, because either alternative would be more applicable than the generic subpart M standard. That submission also contained a more detailed discussion of precast concrete erection procedures, including fall protection procedures. OSHA responded (Ex. 25–5) that it would review the information presented in the letter and would reopen the record if significant issues were raised that had not previously been included in the record.

On May 30, 1990, PCI again wrote to OSHA (Ex. 25–6) and expressed concern "* * * relative to OSHA's work to revise the construction industry safety standards addressing fall protection in both 29 CFR 1926 subparts M and R (Steel Erection)."

On June 15, 1990, OSHA informed PCI that the information presented in their letters was under review and a decision on further action would be made at the completion of that review. OSHA determined that the supplemental submissions from PCI did provide new information which was relevant to a full consideration of the issues raised by subpart M. Accordingly, the Agency reopened the rulemaking record (57 FR 34656, August 5, 1992) for the limited purpose of entering the new information and to receive comments on it. The comment period ended on November 3, 1992. The Agency reopened the record again (58 FR 16515, March 29, 1993) to allow additional time for PCI and other interested parties to submit comments. That comment period ended on May 28, 1993. The comments supported the inclusion of a fall protection plan as an alternative where employers engaged in precast concrete construction work were able to demonstrate infeasibility or greater hazard with the use of conventional fall protection systems. A more thorough discussion of the comments can be found at § 1926.502(k)—fall protection plans.

Based on a careful review of the information submitted by PCI and other rulemaking participants, OSHA has determined that precast concrete construction entails unique work conditions which should be specifically addressed by subpart M. The new provision requires employers who can demonstrate that the use of conventional fall protection systems would be infeasible or would create a greater hazard to implement a fall protection plan that complies with § 1926.502(k) of the final rule. OSHA is providing specific guidance in this notice regarding what constitutes "infeasibility" or a "greater hazard" (See § 1926.501(b)(2)). OSHA encourages employers who believe that the use of a written fall protection plan is appropriate for their precast concrete construction operations to discuss the basis for their belief with local OSHA compliance staff. Additional information regarding the criteria for use of a fall protection plan is provided in the discussion of § 1926.501(b)(2) of this section and in the discussion of the criteria for fall protection plans, § 1926.502(k), as well as in Appendix E to subpart M—Model Fall Protection Plans. The Agency considers the implementation of a fall protection plan, outlining alternative fall protection measures, to be a "last resort," allowed only where the other options for fall protection have been exhausted.

Paragraph (b)(13), which also was not part of the proposed rule, requires that employers engaged in residential construction work protect employees from falls of 6 feet (1.8 m) or more to lower levels by the use of one of the three conventional fall protection systems unless such systems are infeasible or would create a greater hazard for affected employees. In those situations, OSHA requires the employer

to develop and implement a Fall Protection Plan which meets the criteria of § 1926.502(k), discussed in detail below.

As with paragraph (b)(12) discussed above, if another provision in paragraph (b) allows an alternative fall protection measure, such as covers over holes, those alternatives measures are also acceptable and do not need to be documented in a fall protection plan in order to be used.

OSHA is adding this new paragraph in response to comments received on the issues raised in the limited reopening of the rulemaking record [March 29, 1993; 58 FR 16515], regarding the ability of the residential construction industry to provide fall protection for certain employees. In that Notice, OSHA pointed out that Issue #2 of proposed subpart M (51 FR 42729) had asked if there were areas or operations which had unique fall protection needs not addressed by the proposed rule. OSHA specifically mentioned carpenters erecting roof trusses during house construction as a possible example. OSHA raised these issues in a reopening notice because the Agency had received a late comment in December 1992 from Ryland (Ex. 27–15) requesting that OSHA reopen the record for subpart M to allow input regarding the residential construction industry's ability to provide fall protection for employees erecting roof trusses and installing exterior wall panels. Ryland stated that there were no feasible means of fall protection for employees erecting roof trusses and installing exterior wall panels. The Ryland letter also explained the reasons they believed the proposed and existing fall protection requirements were infeasible or that compliance would create a greater hazard that non-compliance.

In the reopening notice, OSHA raised the possibility of allowing employers to develop and implement a fall protection plan in those situations where employers were able to demonstrate that it was infeasible or would create a greater hazard to use conventional fall protection systems. OSHA also requested information on the use of controlled access zones, warning line systems and safety monitoring systems as part of a fall protection plan. OSHA also asked what methods of providing fall protection were being used by builders to protect employees who are installing walls and erecting roof trusses; what contractors were using for anchorage points on roofs; and to what extent it was feasible to protect employees with conventional fall protection systems while erecting trusses and installing wall panels.

A number of home builders responded that they were pleased that OSHA had recognized the need to take the residential construction industry (Ex. 27–23, 27–24, 27–26, 27–27, 27–33, and 27–34) into account when revising subpart M. These commenters noted that the failure of various OSHA standards to distinguish between the residential/light commercial sector of the industry and the heavy commercial/industrial sectors had forced the residential sector into noncompliance. Ryland and the National Association of Home Builders (Exs. 27–23, 27–27, 27–33, 27–34) commented that they:

> * * * would like to urge OSHA to establish in Subpart M a separate section applying to the residential/light commercial sector, even if [it] means repeating requirements from other sections of Subpart M that apply to all construction. We believe this action is imperative if OSHA is intent on improving safety in the residential/light commercial sector of the industry.

The Home Builders Association of Maryland (HBAM) and Hallmark Builders (Exs. 27–24 and 27–26) supported the above position. Both commenters stated the following:

> Currently, the standards for enforcement of these industries are the very same used by OSHA to safeguard the heavy commercial and industrial sectors of the construction industry. Unfortunately, many practices that may be feasible within these heavier industries become impractical and sometime impossible within residential and light commercial construction.

Finally, they noted that a larger number of employees would benefit from increased protection through safer workplaces if separate standards were issued because they would be easily implemented and enforced and more widely accepted. This they noted, "* * * would further the goals of both OSHA and the employer.

The Home Builders Association of Denver (Ex. 27–39) also commented that the existing standards are written for general construction work, and that a new section is needed for residential construction only. They also noted that a majority of residential builders also perform some amount of light commercial work and the two types of construction should be categorized as "light construction."

The Home Builders Association of Denver also provided some information regarding the measures it believes an employer can take when the employer determines that conventional fall protection cannot be used. OSHA notes that the comment provides information which could be useful once an employer established that a fall protection plan, tailored specifically for the home being built, was appropriate. However, the comment does not address the more important issue: How does the employer establish, in the first place why none of the three conventional systems can be used?

While the Agency encourages creative solutions to fall protection problems, OSHA does not expect employers (home builders) to pursue measures which would make their work unprofitable. For example, OSHA expects that there will be circumstances where a home builder will find it to be cost-effective to rent a crane for the purpose of hoisting roof trusses, particularly when several roofs can be set in a single day. Also, OSHA is aware, as documented in this final rule, that there are a number of devices readily available for use as attachment points for fall arrest equipment and that employers must be able to document why the use of such equipment is infeasible or creates a greater hazard to meet the criteria for using a fall protection plan.

On the other hand, the Agency believes it would be unreasonable to expect the home builder to rent a crane when the home site is difficult to access (terrain or remote location, such as in the mountains) or when the home builder has only a single roof to raise. In addition, OSHA does not expect home builders to erect scaffolds around the entire perimeter of a house, or to take other extremely burdensome measures such as erecting separate structures (telephone poles, e.g.) and stringing a lifeline to use as an attachment point for personal fall arrest equipment. These measures are infeasible.

In the course of this rulemaking, only two specific tasks have been identified by OSHA as potentially creating an infeasible or greater hazard situation. One is bracing roof trusses and the other is erecting panelized walls. OSHA believes that, in general, it is feasible to set trusses from ladders, scaffolds, or other elevated work platforms provided there is sufficient space to set up ladders, scaffolds or elevated platforms. When space makes it impossible to use such measures, the employer will have to develop and implement a fall protection plan meeting the criteria of paragraph (k) of § 1926.502.

The South Eastern Wyoming Home Builders Association (SEWHBA) (Ex. 27–35) stated "The feasibility of added protection for workers installing roof trusses and/or above grade wall panels is ineffective and possibly more hazardous than the current systems used..." The best protection of these workers would be in training for recognition of such hazards and proper

caution. They also stated that "[a] 'Fall Protection Plan' is the most effective way to provide protection. Warning lines would at least advise other crews of activity above, allowing proper caution in approaching the site." The commenter indicated that it didn't believe control zones were feasible. The SEWHBA also noted that fall protection plans for residential construction should be comparable to those in commercial construction noting that "Residential construction is essentially the same in most cases, except possibly "high rise" type activities.

David Welty of Welty Construction Co. Inc. (Ex. 27–31) stated that it was "too dangerous" to set rafters and trusses while walking on the top of 2 x 4 walls and described how he installed rafters and roof trusses working off ladders from inside the upper floors. Welty also commented there was an added risk to erecting guardrail systems, scaffolding, etc. and that "for erecting roof trusses, we believe it is sufficient to require workers to work from ladders inside the walls" citing feasibility problems with conventional fall protection systems. Finally, Welty noted that "fall protection plans, warning lines, and monitoring systems are probably not effective in enhancing safety."

Another builder, Schuck & Sons Construction Company (Ex. 27–37) stated "[p]rotecting employees from falls has been a real dilemma in the residential framing industry." He believes that a greater hazard occurs while employees are installing fall protection systems and the lack of solid anchorage points presents compliance problems.

Arguing against any separate treatment for residential construction was the United Brotherhood of Carpenters, (Ex. 27–25) who commented that there was little fall protection being provided to workers in the residential industry and that "[C]onventional fall protection measures are feasible." They also commented that when erecting roof trusses or installing exterior wall panels, "It would be safer to work from a scaffold rather than a ladder because of the larger area of work surface. Working from a scaffold would be feasible" and that "Present technology and fall arrest equipment is available which would make it possible to protect employees installing exterior wall panels." Finally, the Carpenters Union noted:

> The fall protection safety requirements for residential construction should be the same as those for commercial construction. The fact that residential construction has gone unregulated and unenforced for so long is no reason to create a "double safety standard." The hazards in residential construction are every bit as real as those in commercial construction.

OSHA encourages employers to require their employees to work from ladders, scaffolds and other platforms rather than for example, walking the top plate when setting or bracing trusses. Employees who are required to be on the top plate to work must be protected from fall hazards (falls of 6 feet or more to the lower level) by one of the three conventional fall protection systems unless they are covered by a fall protection plan which specifies other alternative measures. OSHA reminds employers that subpart M does not require fall protection for employees working on ladders and scaffolds. (See subpart L for specific requirements for fall protection on scaffolds and subpart X for specific requirements for fall protection on fixed ladders).

NIOSH (Ex. 27–20) commented that they had performed several analyses and compared the proportion of workers' compensation claims in the residential building construction industry that involve falls from elevations to those in other sectors of the construction industry. The findings were that

> * * * injured residential construction workers had at least as high a proportion of their injuries due to falls from elevations as all other construction workers. They also found that injured residential construction workers had at least as high a proportion of their injuries due to falls from elevations as nonresidential construction workers.

Therefore, based on these analysis, NIOSH stated that fall protection requirements for employees in residential construction "should not be less stringent than fall protection requirements for employees in other construction categories."

OSHA also received comments from fall protection equipment manufacturers and consultants. For example, Sinco (Ex. 27–30) commented that they have developed many new products, notably fall protection for roofers, that are readily available now for use in residential construction. They also noted that many forward thinking contractors are developing fall prevention programs, purchasing fall protection systems, and when appropriate, altering means and methods for accommodating use of fall protection equipment. Sinco also commented on the existing anchorage requirement of 5,400 pounds, noting that it does present unique problems in compliance on wood frame buildings. However, engineered systems using OSHA fall arrest requirements in the powered platform rule, § 1910.66, Appendix C, incorporating retracting lifelines, etc. would enable contractors to provide fall protection with secure anchor points. Sinco also made the following statements pertinent to this rulemaking:

> Most residential builders have no plan for fall protection, subsequently they have no fall protection equipment, and most remain unenlightened about the fall protection systems that are readily available. Today, safety systems are available that will enable residential builders to substantially reduce their employee exposure to fall hazards during framing and roofing operations.
>
> * * * manufacturers have developed engineered fall protection systems that can be secured to anchorages capable of supporting twice the potential impact load of an employee's fall. Anchor points can vary, some examples are ridge beams, rafters, trusses, and floor joints. With proper planning, a minimum of bracing and sheathing can develop the structural integrity necessary to support these types of anchorages. Scaffolding can be erected with the building interior and serve as a work platform during truss bracing operations. New products, such as the UNITRAC Truss Walk, provide an interior work platform as well as meeting a contractor's fall protection needs during truss installation and bracing.

In addition, Sinco presented information about other products they have available now for use during wall installation, truss installation, sheathing, and the application of roofing materials. Sinco also commented that the use of control zones, warning lines, and safety monitors should be an option extended through OSHA as a SITE SPECIFIC exemption only and that contractors should have to demonstrate by individual tasks that conventional fall protection measures are not appropriate at specific project sites. While Sinco stated "[t]he agency should require employers to provide fall protection for all facets of residential construction where fall hazards exist," it also stated that if the employer can demonstrate infeasibility or greater hazard, the Agency should grant an exemption on a case by case basis.

Griphoist (Ex. 27–40) suggested that OSHA require anchorages used with personal fall arrest systems in residential construction be required to withstand a load of 3,600 pounds, with employees wearing body harnesses, rather than 5,400 pounds. The commenter noted that the suggested figure is twice the potential impact load allowed by the ANSI standard, ANSI Z359.1–1992, of 1,800 pounds.

Dynamic Scientific Controls (Ex. 27–42) stated that "It is my opinion that conventional fall protection can be applied to residential roof construction,

including truss erection, sheeting and roofing."

OSHA also received comment from Gary Sipe, President of Peakrider (Ex. 27–29), who commented on a new product currently being introduced to the market called "Peakrider." The product was designed to provide a measure of safety for employees setting prefabricated wood trusses for residential and small professional office construction. Mr. Sipe also noted that the product is new and not many construction firms know of its existence. Mr. Sipe also provided information on other products designed for use in residential construction to reduce the exposure of employees to fall hazards.

Finally, OSHA received comment from Douglas Browning (Ex. 27–32) who provided information on a scaffold system that has been field-tested for use in residential construction to reduce the exposure of employees to fall hazards during roof truss installation.

OSHA recognizes that some employers engaged in erecting and bracing roof trusses, because of their building methods, may find that it is infeasible or would create a greater hazard to provide and use conventional fall protection systems to protect employees performing these tasks. In these situations, OSHA suggests that employers review their building methods to determine if a change in work procedures could eliminate or reduce fall hazards. If the employer can demonstrate either infeasibility or greater hazard, applying the criteria discussed above and in relation to paragraph (b)(2) of this section, the employer must implement alternative safe work practices, such as requiring work to be performed from ladders, scaffolds or other types of work platforms and prohibiting the practice of standing on the top plate of the walls to set (secure) roof trusses to the walls. OSHA is also aware that some builders assemble the roof system on the ground, either partially or entirely, and then lift it into place. OSHA would expect any fall protection plans developed under this paragraph to explain why such measures could not be implemented when other builders find them to be feasible alternatives. The evidence indicates that many home builders have yet to focus their attention on alternative safe work practices that can be implemented in those areas where concerns have been raised.

OSHA believes, based on the rulemaking record, that employers can protect their employees from fall hazards with conventional fall protection systems in virtually all situations involving residential construction work. OSHA is being responsive to the concerns raised by home builders, in particular, with support from some fall protection equipment manufacturers, that there may be some limited situations where the use of conventional fall protection systems is infeasible or would create a greater hazard than would exist if such systems were not used. It is for this reason that OSHA has established a regulatory mechanism (fall protection plan) through which an employer who satisfies the pertinent criteria must implement a fall protection plan instead of providing conventional fall protection.

OSHA encourages home builders in their efforts to improve the safety and health of their workers. While many of the home builders' comments urged OSHA to recognize the "inherent differences," between "light" construction and "heavy" construction, the evidence submitted was insufficient to convince OSHA that the methods of protecting workers from fall hazards associated with light construction and heavy commercial construction differed sufficiently to require different rules. OSHA is intent on improving safety in the residential sector of the construction industry and views the promulgation of § 1925.501(b)(13) as a concrete step towards increased safety for workers in this part of the construction industry.

Based on a careful review of the information submitted by home builders and other rulemaking participants, OSHA has determined that residential construction work entails unique work conditions which should be specifically addressed by subpart M. Therefore, OSHA is promulgating a new § 1926.501(b)(13), which specifically addresses this type of construction work. The new provision requires employers to use conventional fall protection systems unless they can demonstrate that the use of conventional fall protection systems would be infeasible (impossible to get the work done or technologically impossible) or would create a greater hazard and then they must implement a fall protection plan that complies with § 1926.502(k) of the final rule.

Additionally, § 1926.502(k)(5) requires that the fall protection plan document the basis for the determination that fall protection cannot be used. The Agency considers the implementation of a fall protection plan, outlining alternative fall protection measures, to be a "last resort," allowed only where the other options for fall protection have been exhausted. As noted above, OSHA is providing specific guidance in this notice regarding what constitutes "infeasibility" or a "greater hazard" (See discussion at § 1926.501(b)(2)).

OSHA has included a sample fall protection plan for residential construction in non-mandatory Appendix E—Model Fall Protection Plans to provide guidance to home builders.

Paragraph (b)(14) of the final rule (proposed § 19265.501(d)) requires protection for employees who are exposed to the hazard of falling out or through wall openings. The final rule consolidates and clarifies requirements in existing § 1926.500(c) (1) and (3). Under the final rule, wall openings (defined as openings 30 inches or more high and 18 inches or more wide, which have a bottom edge to lower level fall distance of 6 feet or more on the side away from the employees, and a bottom edge to walking/working surface height of less than 39 inches on the side facing the employees), must be equipped with a guardrail system, safety net system, or personal fall arrest system. OSHA believes the most practical method of compliance is the guardrail system because it provides protection at all times and for all employees who may have exposure at the wall opening. However, OSHA recognizes that there may be cases where employers may desire to use safety net systems or personal fall arrest systems, which also will provide an appropriate level of protection. For that reason, the provision has been revised to permit the use of these other systems.

The final rule is similar to the proposed rule, except for the change discussed above and the existing rule in § 1926.500(c)(1) requires such protection to be provided when the fall distance exceeds 4 feet, and when the near side height is less than 36 inches. OSHA proposed to change the existing rule to make it compatible with the 6-foot rule of other provisions in § 1926.501, the minimum height requirements for guardrail systems of § 1926.502(b)(1), and the definition of "unprotected sides and edges."

The SSFI (Ex. 2–89) recommended that employees on elevated work platforms adjacent to a floor or wall opening should be protected by a fall protection system regardless of the height of the platform. OSHA observes that proposed subpart L sets forth requirements for employees working on scaffolds [elevated work platforms] and that the final rule for subpart L will address this issue.

New paragraph (b)(15) is a "catch all" provision intended to clarify the overall thrust of paragraph (b). It sets forth clearly that *all* employees exposed to

falls of 6 feet (1.8 m) or more to lower levels must be protected by a guardrail system, safety net system, or personal fall arrest system except where otherwise provided by § 1926.501(b) or by fall protection standards in other subparts of part 1926. The Agency has determined that this provision will facilitate compliance for employers who do not fit any of the specific categories set by § 1926.501(b).

Paragraph (c)—Protection from falling objects. This provision, proposed as § 1926.501(e), requires employers to protect employees from falling objects by either:

(1) Using toeboards, screens, or guardrail systems;

(2) Erecting a canopy structure and placing potential fall objects away from edges; or,

(3) Barricading the area to which objects could fall, prohibiting employees from entering that area, and placing potential fall objects away from the edges.

This requirement differs from the proposed requirement and the existing requirements. The existing requirements in § 1926.500(b) (1), (2), (3)(ii), and (8) and § 1926.500(d)(2) require toeboards to be erected around floor, roof, ramps, and platform holes and openings regardless of whether or not employees are working below. OSHA proposed to revise the existing requirement to require that, in addition to wearing hard hats (§ 1926.100), employees would have had to be protected from falling objects by one of a series of measures, which included the following:

—installing toeboards, screens or guardrail systems to keep objects from falling from above;
—erecting canopy structures;
—marking the area with signs; or barricading the area to prohibit employees from entering the area; or,
—placing objects away from edges from which they might fall.

In the proposal, OSHA stated that it believed the alternatives listed for providing falling object protection were more feasible than the existing requirements, which only specified the use of toeboards or screens. OSHA also noted that it did not specify a distance away from the edge that objects should be kept, as the distance varies according to the shape of the object. For example, the preamble to the proposal stated that round objects such as rolls of roofing felt would require more distance than a stack of flat shingles, and that the distance also depends on the height of the object or pile of objects. Both in the discussion of proposed § 1926.501(e) and in Issue #12, OSHA requested public input regarding the proposed use of signs as a means of keeping employees out of areas where they might be exposed to falling objects. In addition, OSHA requested input on the criteria for falling object protection in Issue #8, discussed below.

In response, the States of California (CAL/OSHA) and Maryland (MOSH) (Exs. 2–15 and 2–31) remarked that signs were not acceptable substitutes for barricades to prevent employee exposure to the falling object hazards. Additionally, the ACCSH (Tr. 6/10/87; pp. 113–128) recommended to OSHA that *all* of the listed alternatives should be required with no option, except that employers could choose between a canopy structure and a barricaded area as part of their protective measures. In short, their recommendation was that toeboards, screens *and* guardrails be erected; *and* that objects be kept back from the edge; *and* that employers either erect a canopy and signs or barricades.

OSHA has not incorporated the suggestion of the ACCSH because the record does not support requiring employers to take all of the recommended precautions. OSHA believes employees will be afforded an appropriate level of safety if the employer prevents objects from falling from above, or protects employees from objects that have fallen in spite of efforts to keep them from falling.

Many other commenters (Exs. 2–19, 2–20, 2–45, 2–46, and 2–99) also objected to the use of signs as an option for protecting employees. Other commenters (Exs. 2–20, 2–46 and 2–89) thought that signs could be useful in conjunction with more positive protection like barricades. The AGC (Ex. 2–16, 2–47 and 2–92) supported the proposed provision, noting that alternative methods provide for employer flexibility. The AGC also noted that signs had been used in the past successfully, depending on the type of exposure and the particular situation. The SSFI (Ex. 2–89) recommended that the use of signs be acceptable where no other fall protection measures could be used.

OSHA has determined, based on the record, that signs are not an appropriate alternative to barricades in the situations discussed in Issue #12. OSHA recognizes that signs can be useful when used in conjunction with other measures, such as barricades, to warn employees of the hazard, but believes that signs, alone, provide inadequate protection from falling objects. Accordingly, the Agency has deleted the option of using signs as a means of complying with § 1926.501(c).

§ 1926.502—Fall Protection Systems Criteria and Practices

This section specifies the criteria for measures required by § 1926.501 and by other subparts in part 1926 where specific fall protection systems criteria and practice are not provided. The following discussion highlights changes from or additions to the proposed and existing standards. Provisions that are essentially unchanged from the proposal, especially where they did not elicit comments, are not discussed.

OSHA received one comment directed at § 1926.502 in its entirety. The SSFI (Ex. 2–89) stated "language appearing within this section seems to be inconsistent with comparable paragraphs of subpart L." The commenter recommended that OSHA revise subpart M to be compatible with subpart L. Rather than comment on the general statement made by SSFI, OSHA will respond to their concerns in its discussion of the individual provisions where SSFI has stated that an inconsistency exists.

Paragraph (a)—General. This paragraph requires that all fall protection conform to the criteria set in paragraph (b) for the particular system being used and that all fall protection equipment be provided and installed before employees begin any other work on or from the surface on which they will be protected. To be fully effective, fall protection must be in place at the earliest possible time.

There were two comments on paragraph (a). PCI (Ex. 2–44) commented on the need for employees to create the surface before protection systems can be provided and installed. NIOSH (Ex. 2–33) commented that "OSHA should clearly state that the first worker allowed upon a roof or leading edge is designated as the competent person under the requirements of the safety monitoring systems if that is, in fact, OSHA's intent."

OSHA's intent is that fall protection systems be in place at the earliest possible time when there is potential exposure to fall hazards. OSHA recognizes that there will be situations where it is infeasible to install and use fall protection because the working surface has not yet been created and there is no surface upon which to place guardrail systems, install safety nets, or anchor personal fall arrest systems. OSHA has discussed under §§ 1926.501 (b)(2), (b)(12), and (b)(13), for example, the alternative measures (fall protection plan) that would be required in a situation where such infeasibility or greater hazard situations arise. With regard to the concern expressed by

NIOSH, OSHA has determined that, while it would not be appropriate to mandate that the first person allowed on a roof or leading edge necessarily be designated as the competent person for a safety monitoring system, it is appropriate to provide that no employee may begin any *work* until the fall protection systems are provided and installed that this would include having the competent person in position at the assigned work area and assuming the duties of the safety monitor when such monitoring systems are required as part of a fall protection measure.

Paragraph (b)—Guardrail systems. This paragraph sets the criteria for guardrail systems. Paragraph (b)(1) specifies that the top edge of guardrail systems shall be 42 inches, plus or minus 3 inches, above the walking/working surface except when conditions warrant, the height of the top edge of the top rail may exceed the 45-inch limit. Paragraph (b)(1) also contains a note to remind employers that where employees are using stilts the height of the top rail must be increased a height equal to the height of the stilts which in effect serve as the walking/working surface. This note has been added in response to comments received on Issue L–4 of the hearing notice published on January 26, 1988, in which OSHA asked questions about fall protection for workers on elevated platforms such as stilts. More detailed discussion of the issue will be found in the final rule on scaffolds to be published later.

The final rule is slightly different from the proposed rule in that OSHA is allowing the employer additional flexibility with regard to the height of the top edge of the top rail of the guardrail system. This change has been made because OSHA is aware that there will be situations where work conditions necessitate erecting the guardrail so that the top edge height is greater than 45 inches. The requirement is also consistent with the existing rule in § 1926.500(f)(l), which requires that the guardrail system be "approximately 42 inches from upper surface of top rail to floor, platform, runway, or ramp level." OSHA proposed to revise the existing rule by deleting the term "approximately" and by having the height requirement of 42 inches, plus or minus 3 inches, apply to all walking/working surfaces.

The general, introductory text of paragraph (b)(2) requires midrails, screens, mesh, intermediate vertical members (i.e., balusters), solid panels, or equivalent structural members to be installed between the top edge of the system and the walking/working surface when there is no wall or parapet wall at least 21 inches high. This is identical to the proposed requirement and is essentially the same as the existing requirement § 1926.500(f)(l)(vi)(*c*).

Paragraphs (b)(2) (i) through (iv) set requirements which apply specifically to midrails; screens and mesh; intermediate members; and other structural members respectively.

Paragraph (b)(2)(i) specifies that when midrails are used to comply with paragraph (b)(2), they must be installed midway between the top edge of the guardrail system and the walking/working level. This requirement is the same as the requirements in both the proposed rule and in the existing rule at 1926.500(f)(l).

Paragraphs (b)(2) (ii), (iii) and (iv) address the proper placement of screens, mesh, intermediate vertical members, and other structural members when they are used in lieu of midrails in the guardrail system. These provisions are essentially the same as the proposed provisions. The existing rule does not contain any requirements addressing the placement of structural members used in lieu of midrails.

NIOSH (Ex. 2–33) commented that the criteria in proposed § 1926.502(b)(1) [promulgated as § 1926.501(b)(14)] for the placement of a top rail of a guardrail system (42 inches) and the criteria in proposed § 1926.502(b)(2)(iii) for placement of intermediate members (no more than 19 inches apart) were inconsistent with the dimensions of a wall opening which OSHA defined in proposed § 1926.501(d) as an opening in a wall or partition that was 30 inches or more high and 18 inches or more wide.

OSHA notes that under § 1926.501(b)(14) employees exposed to falling 6 feet (1.8 m) or more through wall openings (where the inside bottom edge of the wall opening is less than 39 inches above the walking/working surface) must be protected by a guardrail system. NIOSH stated its belief that the dimensions in the wall opening provision should be made consistent with the dimensions of openings in guardrails. OSHA believes that §§ 1926.501(b)(14) of the final rule and 1926.502 (b)(1) and (b)(2) (iii) and (iv) address different situations and, therefore, need not be reconciled. In particular, falling through window and door openings in walls presents a different hazard than falling through the openings in guardrail systems. Accordingly, OSHA has not made the suggested change.

SSFI (Ex. 2–89) recommended that proposed paragraph (b)(2)(i) be changed to require the installation of midrails "approximately" midway between the top edge of the guardrail systems and the walking/working level." The Agency notes that the use of terms such as "approximately" have caused uncertainty among employer who have expressed their desire for OSHA to be clear in its rules. OSHA has determined that employers need clear direction when attempting to comply with paragraph (b)(2). Therefore, the Agency has not made the suggested revision.

Paragraph (b)(3) requires guardrail systems to be capable of withstanding a 200-pound force applied within 2 inches of the top edge in an outward or downward direction. Paragraph (b)(4) requires that when the 200 pound load is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than 39 inches above the walking/working level. These are the same as the proposed requirements and essentially the same as the existing requirement in § 1926.500(f)(1)(vi)(*b*), except that in paragraph (b)(4) the existing language, "with a minimum deflection," has been changed to read "when the 200 pound test load is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than 39 inches above the walking/working surface." Deflection is specified for the top edge because that is the point an employee is most likely to fall against and it must be high enough, at all times, to prevent the employee from falling over the top rail.

There were four comments on the proposed provisions. Seedorf Masonry (Ex. 2–153) commented, "Paragraph 3 says that the guardrail must withstand at least 200 lbs. with apparently no more deflection than 2 inches." OSHA notes that the 2-inch figure in paragraph (b)(3) specifies *where* the force should be applied above the top rail to test the strength of the guardrail system. Paragraph (b)(4) sets the limit on top rail deflection—the top rail cannot deflect below 39 inches, which would be 3 inches if the top rail was at the 42 inch height when the load was applied or 5 inches if the top rail were at 45 inches.

Regarding proposed paragraph (b)(3), the SSFI (Ex. 2–89) commented that proposed subpart L did not require force to be applied "within 2-inches" and expressed concern with regard to the perceived inconsistency with subpart L. SSFI also commented that in paragraph (b)(4) there is a difference for the height of the top rails of guardrail systems between subparts L and M. OSHA, in turn, observes that the criteria for guardrails on scaffolds are explicitly excluded from the scope of subpart M (See § 1926.500(a)(3)(i)), because OSHA recognizes that the performance requirements for guardrails on scaffolds

will differ from those for employees on other walking/working surfaces.

Two commenters (Ex. 2–104 and 2–151) stated that proposed paragraph (b)(4) was unworkable because a guardrail system capable of sustaining a 200-pound load with a maximum 3-inch deflection would require enormous strength. The commenters suggested that OSHA specify a 50-pound load and 5-inches of deflection, but did not indicate any reason other than the inability to comply. The Agency believes that it is both necessary and feasible to engineer a guardrail system so that the top edge of the top rail does not deflect below 39 inches to protect employees from going over the rail and that a 200-pound test load is appropriate. Therefore, the Agency has not made the suggested change.

As noted above, subpart M does not set the performance requirements for guardrails on scaffolds because the Agency has recognized that the two subparts address different concerns. Therefore, the provisions do not need to be consistent.

Paragraph (b)(5), which is identical to the proposed paragraph, provides that midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force of at least 150 pounds, applied in any downward or outward direction at any point along the midrail or other member. OSHA chose the 150-pound test strength because the Agency has determined that such members need not satisfy the 200-pound strength test set for top rails to provide the necessary protection. OSHA also determined that a limit on deflection was not needed for midrails and other members to protect employees appropriately. OSHA received no comments on this provision.

Paragraph (b)(6) requires that guardrail systems be smooth surfaced to prevent employee injury due to lacerations or tripping caused by snagged clothing. The provision is based on the existing rule in 1926.500(f)(1)(vi)(*a*). The proposed revision was effectively identical to the final rule, except that the proposed paragraph ended with the phrase, "which could cause an employee to fall."

OSHA received two comments on this provision. CAL/OSHA (Ex. 2–15) suggested that OSHA remove the words "which could cause employees to fall." OSHA had used those words to explain why guardrail systems should be surfaced to prevent snagging of clothing. However, California interpreted the phrase to be a "qualifier," meaning that if the snagging of clothing would not result in a fall, employers did not have to take any action to eliminate the potential for snagging.

OSHA agrees that the phrase should be removed in the final rule. It was not OSHA's intent to limit protection to those situations where such snagging would actually result in a fall. OSHA realizes that other hazards, such as exposure to falling objects, could arise if an employee's clothing snagged on a guardrail surface.

The SSFI (Ex. 2–89) commented that this provision is unrealistic and would prove to be extremely costly. They recommended that the provision be eliminated. OSHA disagrees with the SSFI. As noted above, paragraph (b)(6) is essentially the same as the existing rule, which has not posed such difficulties in practice.

Paragraph (b)(7) requires that top rails and midrails not be so long as to constitute a projection hazard. This provision, which is identical to the proposed provision, is based on existing § 1926.500(f)(1) and (f)(1)(vi)(*d*). No comments were received regarding this provision.

Paragraph (b)(8) prohibits the use of steel banding and plastic banding as top rails or midrails. This provision is identical to the proposed provision. While such banding can often withstand a 200-pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can easily cut a hand if seized.

While OSHA did not receive any comments specifically on proposed paragraph (b)(8), it did receive a recommendation from the ACCSH (Tr. 6–9–87, p. 212) regarding a similar provision in proposed subpart L (§ 1926.451(e)(4)(xiii). In particular, the ACCSH suggested that OSHA ban the use of manila rope and plastic rope as well as steel and plastic banding as top rails for scaffold guardrail systems. This recommendation reflected ACCSH's concern that manila rope and plastic rope lose strength quickly when exposed to water and sun.

In Issue M–3 of the hearing notice (53 FR 2054, January 26, 1988), OSHA discussed the ACCSH recommendation, stating that ACCSH had recommended that OSHA add a ban on the use of manila rope or plastic rope for top rails or midrails of guardrail systems used on scaffolds. OSHA also noted that ACCSH had not made a similar recommendation for change in proposed subpart M. OSHA requested comment on whether or not the ACCSH concern should be addressed in the final rule for subpart M.

At the hearing, the Scaffold Industry Association (SIA) (Tr. 3–22–88 pp. 160–161) testified that it should not be necessary to restrict the type of materials used since OSHA established the strength requirements for guardrail systems. Upon further questioning, the participant suggested (pp. 165–166) that experts in the field should address the recommendation and again stated his belief that as long as the rope met the strength criteria, it should be considered adequate.

OSHA also received comments on Issue M–3 from three other parties. One commenter (Ex. 6–3) stated the following:

> Manila and plastic rope used as guardrails for short periods of time until more permanent rails can be installed should not be banned from use providing they are capable of supporting a 200-pound load applied in any direction with a minimum of deflection.

In addition, the commenter noted that while some lumber is subject to deterioration, no lumber is banned. Finally, the commenter stated that OSHA could insert a note or warning in the standard regarding deterioration hazards and that the Agency could add an inspection requirement such as was proposed for safety nets in § 1926.502(c)(5). The other two commenters (Exs. 6–5 and 6–17) stated that OSHA should ban the use of manila rope or plastic rope from use as midrails or top rails.

Based on an evaluation of the record, OSHA has decided not to ban the use of manila or plastic rope. Instead, OSHA has determined that the concerns of the ACCSH are appropriately addressed by adding a new provision in § 1926.502(b)(15), discussed below, which requires employers to inspect top rails and midrails if manila, plastic or synthetic rope has been used, as frequently as necessary to ensure that the rails have not deteriorated beyond their ability to meet the strength requirements set forth in § 1926.502(b)(3), above.

Paragraph (b)(9) of the final rule, like the proposal, requires that top rails and midrails be at least one-quarter inch (0.6 cm) in nominal diameter or thickness. OSHA believes that the minimum thickness requirement is needed to prevent the use of rope that would cause cuts or lacerations. In addition, final rule paragraph (b)(9) adds a new requirement that top rails constructed of wire rope shall be flagged at not more than 6-foot intervals with high-visibility material. This requirement supplements the strength requirements for guardrails specified in paragraphs (b) (3), (4), and (5) of this section. The purpose of this

requirement is to assure that rails made of high strength materials are not so thin that a worker grabbing a rail is injured, such as by cuts or lacerations, because of the small size of the rail.

CAL/OSHA (Ex. 2–15) suggested that OSHA require top rails, such as those made with wire rope, to be made more visible by installing bits of flagging or cloth strips at 10-foot intervals. Roberts Safety Consultants (Ex. 2–18) supported the requirement for ¼ inch minimum diameter wire rope. Maryland Occupational Safety and Health officials (MOSH) (Ex. 2–31) commented that OSHA should specify that the provision is referring to wire rope. The Tennessee Valley Authority (TVA)(Ex. 2–20) suggested that OSHA eliminate the provision since the standard already contains a strength requirement.

OSHA agrees with California that wire rope, especially the ¼ inch diameter rope, could be difficult to see, and has therefore incorporated in the final rule their suggestion that the rope be flagged for visibility. To maintain consistency with other requirements in the final rule, such as those for flagging of warning lines in § 1926.502(f)(2)(i) and flagging of control zone lines in § 1926.502(g)(3)(i), OSHA is requiring flagging at 6-foot intervals rather than at 10-foot intervals. OSHA also notes that flagging of wire rope is a common industry practice.

In response to TVA's comment, OSHA notes that, as discussed above, this provision addresses the need to protect workers from cuts and lacerations, not the strength of the wire rope.

Paragraphs (b) (10) through (13) address the use of guardrail systems. The requirements in paragraphs (b) (10) through (13) are identical to those found in paragraphs (b)(11) to (b)(14) of the proposed rule. OSHA had also proposed specific requirements pertaining to guardrail systems used at hoisting areas during the performance of roofing operations on low-slope roofs (proposed at paragraph (b)(10)). However, because revised § 1926.501(b)(3) addresses fall protection at all hoist areas, including hoist areas on low-slope roofs where roofing operations are being performed, there is no need to have the additional, redundant requirements proposed at paragraph (b)(10) and they have been deleted in the final rule. Further discussion on the remaining provisions (b)(11) to (b)(13) can be found in the notice of proposed rule for subpart M [51 FR 42724].

Paragraph (b)(14) provides that guardrail systems on ramps and runways be erected along each unprotected side or edge. The proposed requirement contained essentially the same requirements as existing § 1926.500(d) (2) and (3). The proposed rule contained an exception for installing guardrails on ramps and runways where the guardrails would interfere with the operation of work as long as the ramp or runway was 18 inches wide. Existing § 1926.500(d)(3) also allowed this exception. However, based on OSHA's enforcement experience, OSHA has decided that the exception is no longer valid.

It is OSHA's contention that the purpose of installing guardrails on ramps and runways is solely to keep employees from falling off the unprotected sides or edges of such ramps and runways when employees are exposed to falls of 6 feet or (1.8 m) or more to a lower level. OSHA recognizes that there may be circumstances where the movement of materials or equipment across ramps or runways would be impeded by guardrails and situations where that interference is such that compliance with this provision would be infeasible (i.e., the work cannot be done) or would create a greater hazard. OSHA believes, in general, that preplanning of work will ensure that compliance with paragraph (b)(14) is feasible and does not create a greater hazard.

CAL/OSHA (Ex. 2–15), noted that the proposed provision would be the subject of considerable interpretation and stated that OSHA should provide examples of operating conditions that would permit employers to follow the guardrail configuration described. The commenter also stated that ramps should be 2 feet wide and railed on both sides.

OSHA notes that the existing rule was based on ANSI A12.1–1967, Safety Requirements for Floor and Wall Openings, Railings, and Toe Boards, which provides examples of special purposes where operating conditions may preclude the use of guardrails on one side of the runway. Such purposes were identified as oiling, shafting or filling tank cars. OSHA also notes that the ANSI A1264.1–1989, Safety Requirements for Workplace Floor and Wall Openings, Stairs, and Railing Systems, which replaced the ANSI A12.1–1967, also contains the same provision, but does not provide examples of special purposes which necessitate omitting guardrails on one side. In any event, the example provided covered non-construction work, raising further questions about the appropriateness of the exception. Upon further consideration and evaluation of the proposed provision, OSHA has determined that since it cannot readily identify situations where operating conditions would preclude the use of guardrails on one side it should not write an exception into the rule and, therefore, the agency has no reason to specify a platform width. OSHA agrees with CAL/OSHA that the provision would be subject to wide interpretation. As a consequence, OSHA has decided to delete this provision from the final rule.

Paragraph (b)(15), which was not part of the proposed rule, requires that manila, plastic and synthetic rope used in guardrail systems be inspected as frequently as necessary to detect deterioration. This new requirement has been added in response to the comment received on Issue M–3, discussed above, in which OSHA solicited information on the need to prohibit the use of manila and plastic rope. As discussed earlier in this preamble, OSHA has determined that paragraph (b)(15) appropriately responds to ACCSH's concern that such ropes may deteriorate and lose their strength.

OSHA observes that Non-mandatory Appendix B contains detailed specifications for minimum sizes of guardrail system components. These specifications are based on existing § 1926.500(f)(1) (i), (ii), and (iii) and should provide useful information to help employers to design guardrail systems. The transfer of this guidance from existing regulatory text to a non-mandatory appendix does not reduce the level of safety achieved through compliance with the existing standard. The existing specific provisions are consistent with the performance-oriented requirements in the final rule. The promulgation of non-mandatory Appendix B removes redundant provisions from the standard.

Paragraph (c)—Safety net systems. This paragraph replaces the criteria in existing § 1926.105—Safety nets. OSHA has relocated the regulation of safety nets to subpart M as part of the Agency's effort to consolidate the standards that generally cover protection of construction employees from fall hazards.

OSHA received one general comment on this paragraph. The ISEA (Ex. 2–23) suggested that OSHA refer to safety nets as personnel nets, so as to differentiate personnel nets and debris nets. This commenter also suggested that debris nets should be addressed separately. OSHA has not taken any action with respect to the suggestion because the criteria set forth apply to nets used to protect employees from the hazards of falling. If an employer selects and uses a net labeled as a "debris net" to provide fall protection for employees, then such net must meet all of the criteria and conditions for use set forth

in the safety net section. On the other hand, just because a net is labeled a "personnel net" does not mean that it is acceptable to OSHA for use as a safety net.

Paragraph (c)(1) requires the installation of safety nets as close as practicable under the walking/working surface where employees need to be protected, but in no case more than 30 feet below such level. Both proposed paragraph (c)(1) and existing § 1926.105(a) require that nets be installed no greater than 25 feet below the working level. However, the recently revised ANSI A10.11–1989 standard for nets allows net installation 30 feet below the working level. In addition, OSHA notes that the National Bureau of Standards study of nets included test data of 30-foot falls. The data indicate there is no significant difference between a 25 and a 30-foot fall into a net (Reference 14). OSHA also notes that both the existing rule and the proposed rule were based on earlier versions of the ANSI consensus standard which prescribed that nets be positioned not more than 25 feet below the working level.

Therefore, based on the record developed in the course of this rulemaking, OSHA has determined that a safety net installed as much as 30 feet below a walking or working level will provide adequate fall protection and has revised proposed paragraph (c)(1) accordingly.

Paragraph (c)(1) also requires that when nets are used on bridges, there must be an unobstructed fall to the net. In other words, nets must not be used when a falling employee could hit an obstruction before reaching the net. This is a new provision added in response to comments received on Issue #13 discussed below.

In proposed paragraph (c)(1), OSHA provided an exception to the proposed 25-foot limitation in the case of nets used in bridge construction. However, that portion of the proposed rule has not been finalized. The proposed paragraph required only one level of nets during bridge construction regardless of the distance between the walking/working surface and the net. However, the record developed on that proposed provision supported limited the fall distance to 30 feet.

OSHA solicited input regarding the appropriateness of the proposed exception in Issue #13. In particular, the Agency requested comment on whether personal fall arrest systems should be required for employees performing bridge construction work when employees do not have an unobstructed fall to a safety net. In response, the ACCSH recommended that OSHA allow one level of nets during bridge construction, provided the fall was unobstructed and the fall distance did not exceed 25 feet. Otherwise, the Advisory Committee recommended that affected employees also use personal fall arrest systems. One ACCSH member noted that the wording of the proposed provision could allow falls from 75 or 80 feet, and that even if the fall were unobstructed, injuries would occur. That ACCSH member also spoke of two such cases where employees were paralyzed from the waist down after falling into a net. (Tr. 6/10/87; pp. 137–141).

The ACCSH recommendation was echoed by other commenters. Bristol Steel and the NEA (Exs. 2–12 and 2–43) commented that during erection or painting of tall steel bridges, such as trusses and arches, one level of netting would not be adequate. They also stated the following:

> Not only is there the problem of falling employees striking bridge structural members before they fall into the safety net, but also the fall distance from upper bridge levels of the safety nets will frequently exceed 50 feet or even 100 feet or more. Safety nets on the upper levels of such bridges are not a desirable or feasible alternative * * *.

These commenters suggested that OSHA require "safety railings in accordance with subpart R (Steel Erection), body belt/harness systems, or safety monitoring systems where the fall distance into the safety net exceeds 25 feet." They also identified types of bridge construction where "the risk of harm from striking bridge members during a fall is significantly reduced. Most falling employees will be deflected by bridge members with forces not so great as to cause serious harm * * *." They did not feel that these situations warranted both safety nets and body belt systems, but they did believe body belt systems, in addition to safety nets, were warranted when the fall distance exceeded 25 feet.

MOSH (Ex. 2–31) commented that they could not understand why safety nets were not being required for second levels of bridges, noting that they had experienced severe accidents involving employees falling from the top chords of bridges.

The AGC (Exs. 2–16, 2–47 and 2–92) commented that many site work situations do not allow for systems such as body belts and that "The standard should reflect existing conditions and permit flexibility."

Many commenters (Exs. 2–19, 2–20, 2–23, 2–36, 2–46, and 2–50) indicated that a single level of safety nets may not provide adequate fall protection on bridges, particularly where an employee could strike a bridge structural member before hitting the net. These commenters also indicated that personal fall protection should be required in addition to nets or that additional netting systems should be required.

OSHA has determined that a one-level net system does not provide adequate protection if there are intervening members between the working surface and the net which an employee might strike. In addition, OSHA notes that even when the fall area is unobstructed, one level of nets will not provide adequate protection if the fall distance exceeds 30 feet. In such situations, the record demonstrates that severe injuries are likely to occur (Exs. 2–12, 2–31, and 2–43). Therefore, the final rule does not permit a one-level net system when the fall distance exceeds 30 feet. When the distance exceeds 30 feet, additional netting will have to be provided or employees will have to be protected by another fall protection system such as a personal fall arrest system.

Paragraph (c)(2) sets minimum horizontal projection requirements for safety net systems, based on the vertical distance between the working level and the net. Existing § 1926.105(c)(1) requires that nets extend 8 feet. Proposed paragraph (c)(2) would have required that nets extend 15 feet. In the proposal, OSHA explained that the National Bureau of Standards (NBS) had conducted tests to evaluate the proposed requirement. Their findings indicated that at least 13 to 15 feet would be required to fully contain a body falling 25 feet (Ex. 14:50). Based on their findings, OSHA proposed the 15-foot requirement. Since that time, however, the ANSI A10.11 Committee issued a revision to the consensus standard on Personnel and Debris Nets, in which it varied the horizontal distance of the net according to the vertical distance between the working level and the net. The ACCSH, in turn, recommended that OSHA replace the 15-foot requirement of proposed paragraph (c)(2) with the language of the then-draft ANSI A10.11 provision (subsequently adopted by ANSI in 1989) [Tr. 6–10–87, pp. 197–199].

There were few comments on proposed paragraph (c)(2). The TVA (Ex. 2–20) commented that OSHA should include criteria on rigging supports to extend safety nets the required distance. OSHA observes that the rigging supports are considered part of the total safety net system for which OSHA has specified criteria. The Builders Association of Missouri (Ex. 2–42) commented that the cost would be increased to extend the nets the

proposed distance of 15 feet and the danger to workers would increase. (The commenter did not explain how workers would be at increased risk.)

In addition, the Building Trades Employee Association of Boston and Eastern Massachusetts, Inc. (Ex. 2–26) stated that in many cases an employer will not have 15 feet of horizontal space at the perimeter of a building in which to construct a safety net system, due to the proximity of other structures. OSHA agrees that there may be circumstances where it is not possible to have a safety net system extend far enough to satisfy the extension requirements of the proposal or the final rule. Under those circumstances, employers would have to select another fall protection system.

OSHA points out that employers have the choice of two other fall protection systems—guardrail systems or personal fall arrest systems—when safety net systems cannot be installed in a way that will comply with § 1926.502(c). The purpose of this section is merely to set out the criteria that must be followed when safety nets are chosen by the employer to meet the duty to provide fall protection set in § 1926.501.

OSHA raised Issue M–4 in the hearing notice [53 FR 2048], asking for input regarding the ACCSH safety net recommendation. In the Issue, OSHA discussed the concerns of ACCSH regarding the above-mentioned study performed by the National Bureau of Standards which indicated that nets which extended only 8 feet from a structure would not catch someone who had fallen 25 feet [Tr. 6/10/87; pp. 198–199]. Issue M–4 also discussed the draft document of the ANSI A10.11 Committee (Personnel and Debris Nets) which would replace the current ANSI Standard on Safety Nets in which ANSI varies the horizontal distance of the net, depending on the vertical distance from the walking/working surface to the net. There was no testimony or other information submitted in relation to Issue M–4.

Paragraph (c)(3) requires nets to be rigged with sufficient clearance under them to prevent contact with the lower level when the net is subjected to the impact forces specified in paragraph (c)(4). This is basically the same requirement as in existing § 1926.105(c)(l), and the proposed rule. There were no comments on the proposed provision.

Paragraph (c)(4) specifies the capacity requirements for safety nets and safety net installations. The paragraph requires employers either to show that nets and net installations meet the capacity requirements by conducting drop tests meeting designated criteria or, when an employer can demonstrate that drop testing is not feasible or practicable, certify, based on information received from a qualified person, that the net and net installation meet all specified criteria. One example of where a drop test may not be feasible or practicable is when the net is strung over a public thoroughfare and the test could endanger people below. Another example is where the test weight cannot be readily retrieved from the net once it has been dropped.

For the purposes of paragraph (c)(4), OSHA considers two or more net panels joined together to be one net. Safety net installations which do not share the same net are considered to be separate systems. In addition, each time a safety net system is erected, it is considered to be a separate installation which must be tested or certified. This is a clarification of existing § 1926.105(b), which requires all net installations to be drop-tested. Paragraph (c)(4)(i) sets forth the criteria for performing drop tests on net installations. In most respects, these criteria are the same as the requirements in section 8 of ANSI A10.11–1979, proposed paragraph (c)(4)(i), and section 8 of ANSI A10.11–1989, except that the final rule requires the test to be conducted from a level at least 42 inches (1.1 m) above the highest walking/working surface on which employees are to be protected as opposed to the 25-foot height required by ANSI, so that the test more closely resembles the type of fall from which the worker is to be protected. OSHA believes the use of a 400-pound weight to test the system will ensure that a proper margin of safety is obtained. OSHA also notes that in the proposal the drop test would have been conducted by dropping the weight from the highest walking/working level on which employees were to have been protected. The final rule adds 42 inches to this height to take into consideration the center of gravity of the 95th percentile man and also to take into consideration those situations where the net is installed at the same level from which the employee is to be protected.

There were several comments on proposed paragraph (c)(4), particularly with regard to the exception proposed in paragraph (c)(4)(ii). The ISEA (Ex. 2–23) objected to the proposed certification in lieu of drop test provision, stating that nets will probably rarely undergo an actual drop test. As indicated above, OSHA will allow certification only when the employer can demonstrate that it is not feasible or practicable to conduct a drop test. The ISEA also stated that prototype tests should be required, stating that on-the-job drop test could weaken the nets. However, OSHA is concerned with the total system (i.e., the net and the net installation) and prototype tests do not address the Agency's concern.

NIOSH (Ex. 2–33) suggested that OSHA clarify whether testing will be required each time the safety net is moved to a different location at the job site. It was OSHA's intent that a net be tested or certified whenever it is newly installed at a location before it is allowed to be used for fall protection system. OSHA has rewritten the provision to make it clear that nets must be drop-tested at the jobsite following initial installation; whenever nets are relocated; whenever a major repair to the net has been made; and at 6 month intervals when the net has been left in the same location.

The Building Association of Missouri (Ex. 2–42) commented that "Drop tests should not be required nor even allowed on nets." They stated their belief that drop tests make nets unsafe, citing the requirement in existing § 1926.104(a) that employers remove a lanyard from service if it has been subjected to in-service loading. Based on its experience with fall protection systems, the Agency has come to the conclusion that safety nets, unlike lanyards, can remain in use after loading if the pertinent criteria can still be satisfied.

CAL/OSHA (Ex. 2–15) commented that the certification requirements were unclear. OSHA has revised proposed paragraph (c)(4)(ii) to be specific in how and who must certify the net and net installation.

In addition, the MSA (Ex. 2–35) recommended that after the net installation test, the net section should be examined by a qualified person and replaced if needed. OSHA notes that paragraph (c)(5), either as proposed, or as revised in the final rule (see below), effectively requires the inspection of nets and replacement of defective components necessary to ensure that nets are always in safe condition.

Paragraph (c)(5) prohibits the use of defective nets and requires safety net systems to be inspected at least once a week for wear, damage, or other deterioration. The provision also requires inspection after any occurrence which could affect the integrity of the safety net system. Defective components must be removed from service. This provision was proposed as a new requirement. Issue #9 of the proposal asked if the proposed frequency of inspection was appropriate. The Issue noted that similar requirements had been proposed for body belt/harness systems and positioning device systems.

There were several comments relating to the appropriate frequency of net inspection. The ACCSH recommended that nets be inspected weekly or whenever any object has been dropped into the net that is of such weight that it might damage the net. (Tr. 6/10/87, pp. 130–131.) The National Constructors Association (NCA) and the ANSI Z359 Committee (Exs. 2–45 and 2–50) commented that the frequency of inspection was appropriate as proposed. The NCA, however, noted its opposition to added paperwork.

WMACSA, (Ex. 2–56), stated that record should be maintained of the results of the weekly inspection. Other comments, including Bristol Steel, AGC, and NEA, stated that weekly inspection, itself, was not necessary; that nets should be maintained in a satisfactory condition; and that weekly inspection would impose recordkeeping burdens without enhancing employee safety. (Exs. 2–12, 2–16, 2–43, 2–46, 2–47, 2–51 and 2–92).

OSHA has determined that while keeping records of inspections may assist employers in meeting their obligations under this paragraph, maintaining records of net inspections will not directly enhance employee safety. It is the routine performance of the inspection and the removal of any defective components that leads to employee safety. Thus, OSHA has revised the language of the final rule to prohibit the use of defective nets and to require that nets be inspected at least once a week to determine their condition. If any defects are discovered at the time of inspection, the defective components must be removed and replaced. OSHA is making the slight language modification because it realizes that although once a week inspections should ordinarily be sufficient to detect any net defects, there are some circumstances that may require employers to conduct more frequent inspection. For example, as ACCSH mentioned, when large weights have fallen into the net, the net must be inspected. Or, as Dr. Nigel Ellis stated in his comment (Ex. 2–36): "Inspection should be regular and at frequent intervals depending on the use and environment."

The BCMALU (Ex. 2–46) noted that, "where high winds or storms or hazardous chemicals have been used in the area, it becomes a necessity to inspect the safety nets as often as may be needed." Consequently, the revised language requires inspection at least weekly and as often as necessary to ensure that defective nets are not used.

Paragraph (c)(6) requires debris and tools to be removed as soon as possible from the net, but not later than the start of the next work shift. Such materials pose safety hazards to anyone who falls into the net. This provision was also proposed as a new requirement. The one commenter on the proposed provision, (Ex. 2–26), stated that the proposed requirement created a serious safety hazard and suggested that OSHA reconsider the proposed language. OSHA considers clearing the net of debris necessary to prevent injury to workers who may fall into the net and believes this task can be performed without undue risk to employees. Therefore, OSHA promulgates paragraph (c)(6) as proposed.

Paragraph (c)(7) specifies the maximum allowable mesh opening, limiting the size of the opening to a maximum of 36 square inches. This requirement is the same as the proposed requirement. Existing § 1926.105(d) also provides for a maximum of 6 inches (15 cm) on any side of an opening, but did not explicitly limit the size of the opening. OSHA proposed the limit because mesh openings can be manufactured with more than four 6-inch sides; and a limit of 36 square inches is necessary to ensure that an employee's head cannot go into it during a fall, possibly breaking the employee's neck. This requirement is essentially identical with that in paragraph 6.3 of ANSI A10.11–1989, Personnel and Debris Nets. There were no comments on the proposed provision.

Paragraph (c)(8) specifies a minimum breaking strength of 5,000 pounds for border ropes used for net webbing. This requirement is essentially the same as in the proposal and in existing § 1926.105(d). There were no comments on the proposed provision.

Paragraph (c)(9) requires connections between net panels to be as strong as integral components and to be spaced not more than 6 inches apart. This provision is identical to the proposed provision. Existing § 1926.105(f), in effect, sets the same strength requirement as paragraph (c)(9), but does not contain a 6-inch spacing requirement. OSHA proposed this as a new requirement, basing it on paragraph 9.3 of the ANSI A10.11–1979. OSHA notes that this requirement is also consistent with paragraph 10.4 of the ANSI A10.11–1989.

The NEA (Ex. 2–43) commented that the new ANSI A10.11 safety net standard required a 1-foot spacing between connectors (rather than 6 inches as OSHA proposed) when two nets were joined together, and that the OSHA requirement should be consistent with the ANSI requirement which has the support of contractors and net manufacturers. OSHA notes that, as discussed above, ANSI specifies 6-inch (15 cm) spacing, thus OSHA's requirement is consistent with the ANSI A10.11 standard.

The requirement in existing § 1926.105(d) that all new nets must meet accepted performance standards of 17,500 foot-pounds minimum impact resistance, as determined and certified by the manufacturer, was proposed to be deleted as it applied only to the net itself, and not to the complete net installation. OSHA believes the important consideration is the safety net system as a whole, and that the provisions of paragraph (c)(4) of this section are sufficient to assure proper safety for employees. The best net can be rendered useless by an improper installation. For these same reasons, the existing § 1926.105(d) requirement for a label of proof test was also proposed to be deleted. In addition, existing § 1926.105(e) requiring forged steel safety hooks or shackles to fasten nets to supports was proposed to be deleted. The existing rule is unduly specific as there are other acceptable methods such as wire rope to fasten nets to supports. OSHA received no comments on those proposed deletions and has proceeded to make those deletions in the final rule.

Paragraph (d)—Personal fall arrest systems. This paragraph replaces all of the existing provisions in § 1926.104—Safety Belts, Lifelines, and Lanyards and relocates coverage of personal fall arrest systems to revised subpart M. This is being done as part of the consolidation of fall protection requirements for construction.

There have been a number of revisions to the proposed requirements for body belt/harness systems. First, the title of the paragraph has been changed to "personal fall arrest systems." The reason for this change was explained in the definitions section, where OSHA discussed its substitution of the term "personal fall arrest systems" for "body belt/harness systems." Many provisions have been revised, relocated or added as discussed below.

Second, OSHA is phasing out, and then prohibiting, the use of body belts as a component of personal fall arrest systems. After December 31, 1997, body belts will no longer be permitted for use in a personal fall arrest system. They will, however, continue to be acceptable for use as part of a positioning device system [See paragraph (e)] or as a part of a ladder safety device system required in subpart X of part 1926 since positioning device systems and ladder safety device systems are not used to arrest a fall. The Agency recognizes that

an immediate ban on the use of body belts in personal fall arrest systems would impose unreasonable burdens on employers. OSHA believes this phase out period will allow all body belts currently in use to be used through their life expectancy, eliminating any economic burdens to employers and permitting manufacturers to prepare to meet the demand for body harnesses.

In Issue #14 of the proposal, OSHA discussed various reports and studies which recommended restricting or banning the use of body belts. Also in Issue #14, OSHA solicited information on whether it should restrict the use of body belts as personal fall arrest systems and also asked for additional information on the effects of prolonged suspension in a body belt among other questions. OSHA referenced a number of studies in the proposal (Exs. 3–7, 3–9, and 3–10) which indicated that persons suspended in body belts suffer internal injuries and cannot tolerate suspension long enough to allow for retrieval. The rulemaking record for Powered Platforms also contained studies (Docket S–700, Exs. 11–3, 11–4, 11–5, 11–6, 2/21–42) which indicated that the initial fall impact and pressure exerted during suspension made body belts inappropriate for use in a personal fall arrest system. OSHA notes that all comments received on the proposed rule for powered platforms were referenced in the proposal for subpart M (Ex. 3–13).

In response, OSHA received a number of comments including several that requested their comments from the Powered Platforms rule be considered (Exs. 2–23, 2–36, and 2–50). A number of commenters indicated their belief that the biggest problem with a ban on the use of body belts would be worker acceptance (Exs. 2–6, 2–9, 2–19, and 2–41). Typical of such comments were "It is hard enough to get the typical construction worker to wear a safety belt let alone a full harness * * * a harness, which is more uncomfortable than the belt * * * would have more resistance from workers to wear them * * *" (Ex. 2–9). Other commenters (Exs. 2–16, 2–27, and 2–51) noted that they currently use body belts and have not had any problems. The AGC (Exs. 2–16, 2–47, 2–92, and 2–103) stated that body belts have been used with "only positive results" and that it would be appropriate to let employers choose between body belt and body harness. The commenter did note specific circumstances (manholes and small diameter tanks) where it agreed that employees would be better protected through the use of body harnesses. Also, commenters (Exs. 2–19, and 2–140) indicated that compliance with the proposed rule (§ 1926.502(d)) would provide adequate protection for employees using body belts in personal fall arrest systems. OSHA also points out that these comments were made before 1988 and since that time, many changes have taken place in the construction industry. Another commenter (Ex. 2–154) stated that OSHA should allow continued use of body belts for fall protection except where "a person is working alone or could not be readily rescued."

USTAG (Ex. 9–33 in the powered platform rulemaking record), stated the following, among other comments:

> The restriction on forces for body belt and chest-waist harness systems is based on our serious concern about the suitability of body supports other than the full body harness with a sub-pelvic (buttocks) support as well as other design considerations. There is a growing body of evidence which points to hazards related to the use of body supports other than an appropriate fully body harness. Studies performed in Europe and by the U.S. Air Force indicate high risks associated with the body belt in both fall arrest and suspension modes. Further, the possibility of falling out of a body belt and chest-waist harness is significant and has appeared in accident reports.
>
> For these reasons we recommend that use of body belts and chest-waist harnesses be restricted to a free fall distance of two feet and an actual loading of 900 pounds.

USTAG also noted that British standards impose restrictions on the body belt; French standards prohibit the use of body belts; German standards essentially prohibit the use of body belts, except in certain applications, and that the draft ISO standards put conditions on the use of body belts.

OSHA received a number of comments (Exs. 2–3, 2–20, 2–36, 2–46, 2–50, 2–89, and 2–135) which supported a prohibition on the use of body belts for fall arrest. For example, one commenter (Ex. 2–3) stated "The use of body belt systems should be prohibited in favor of body harness systems. There is a possibility of back injuries associated with the use of safety belts." Another commenter (Ex. 2–89) stated, "Members of the SSFI would recommend the following: a) Body Belts be used as a work positioning device; and, b) Body Harnesses should be referred to as a fall arrest device."

OSHA believes that U.S. workers should be afforded the same level of protection as workers of other nations, and that the evidence in the record clearly demonstrates that employees who fall while wearing a body belt are not afforded the level of protection they would be if the fall occurred while the employee was wearing a full body harness. In addition, RTC (Ex. 2–36) presented evidence of injuries resulting from the use of body belts. The best available evidence the Agency has at this time requires it to ban the use of body belts as part of a personal fall arrest system after a reasonable period to allow existing belts to be worn out. While the ban of body belts begins January 1, 1998, OSHA encourages employers to phase out the use of body belts in personal fall arrest systems as soon as possible so that employees may be spared exposure to the injuries which have resulted from body belt use.

In addition, OSHA points out that paragraph (d)(16) requires that personal fall arrest systems, when stopping a fall, to limit maximum arresting forces on the employee to 900 pounds (4 kN) when using a body belt. Thus, employers who continue to use body belts until the ban, must rig the system to ensure that fall arrest forces are at or below 900 pounds. Essentially this will require limiting the free fall distance, the use of shock absorbing lanyards and other measures to meet the criteria for using body belts as part of a personal fall arrest system.

Today, many employers permit only the use of body harnesses, having recognized the limits of body belts. While OSHA has no direct record evidence to support this claim, it has received much informal communication from employers and from manufacturers which indicate that there is already a movement toward the use of body harness instead of body belts for fall arrest situations. In addition, worker acceptance of body harnesses has grown in the years since OSHA first proposed its fall protection rules in November 1986. As more and more prudent employers have, on their own, prohibited the use of body belts, compliance with and acceptance of the use of body harnesses has become increasingly routine. OSHA is also aware of efforts by segments of the fall protection equipment manufacturing community to develop a personal fall arrest system that is lighter and hence will increase worker comfort and proportionately increase worker acceptance and use of body harnesses.

In addition, CAL/OSHA (Ex. 2–15) suggested that OSHA require permanent marking of all personal fall arrest system components with information that assures compliance with the pertinent standards, so that persons responsible for providing this equipment are spared the "substantial financial burden" of verifying compliance. OSHA notes that such a requirement would not add to the inherent safety of the personal fall arrest system components. In addition,

based on the response to Issue #18, discussed below in relation to § 1926.502(d)(4) of the final rule, OSHA believes that equipment manufacturers are already voluntarily marking their products. Accordingly, any benefit resulting from addition of such a requirement would be minimal. Therefore, OSHA has not added the suggested language.

Paragraph (d)(1) (proposed as paragraph (d)(9)) requires connectors to be drop forged, pressed or formed steel, or made of equivalent materials. This provision is essentially the same as the proposed requirement except that the term "hardware" was used in the proposed rule and the term "connectors" is used in the final rule. The reason for the change in the term was discussed above under the Definitions section. There were no comments on the substantive portion of the proposed provision.

Paragraph (d)(2) (proposed as paragraph (d)(10)) requires connectors to have a corrosion-resistant finish, and all surfaces and edges to be smooth to prevent damage to interfacing parts of the system. This provision is essentially the same as the proposed provision except that, as explained above, the term connector is being used instead of the term hardware.

In response to a comment in the powered platform rulemaking (Ex. 3–13), the proposal raised Issue #22 to solicit comments, with supporting information, regarding the need to quantify the corrosion resistance requirements applying the ASTM Salt Spray Testing Standard.

Some commenters (Exs. 2–12, 2–43 and 2–89) stated that the proposed requirement for corrosion resistance was sufficient. One commenter recommended "* * * that hardware be tested to ASTM B–117–73, a nationally recognized test method to determine corrosion resistance." Another commenter (Ex. 2–36) stated "[s]alt spray preconditioning of hardware is reasonable prior to static tensile strength tests." Also, a commenter (Ex. 2–50) stated "[c]orrosion-resistance requirements should be quantified. Reference to the appropriate part of the ASTM Salt Spray Testing standard should be considered."

OSHA has determined that the proposed language provides adequate guidance to employers regarding the selection of corrosion-resistant hardware and that a requirement for salt spray testing would be unnecessary. Accordingly, the Agency has not adopted the recommended language from Issue #22.

Paragraph (d)(3) requires that dee-rings and snaphooks have a minimum breaking strength of 5,000 pounds (22.2 kN). This provision corresponds to the final rule for Powered Platforms and is based on proposed paragraph (d)(16) which required that all components of body belt/harness systems whose strength was not otherwise specified (i.e. "hardware") to be capable of supporting a minimum fall impact load of 5,000 pounds (22.2kN). As noted above, the term hardware was used in the proposal to describe dee-rings and snaphooks, etc. This provision is consistent with the related provisions and replaces existing § 1926.104(f), which requires that all hardware be capable of withstanding a tensile load of 4,000 pounds, but which does not specify where the 4,000 pound load is to be applied. There were no comments relating to this provision.

Paragraph (d)(4), which was not part of the proposed rule, requires that dee-rings and snaphooks be 100 percent proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation. Issues 18, 20, and 24 of the proposed rule requested information on proper testing of personal fall arrest system components. Issue 18 solicited comments regarding the level of testing, in general, needed for personal fall arrest systems and system components and information regarding current industry practice. Issue 20 discussed suggestions from participants in the powered platform rulemaking that OSHA require dynamic and static strength testing of dee-rings and snaphooks and solicited input regarding the need for such testing and the availability of recognized test methods. Issue 24 specifically requested comments regarding the need for 100 percent proof-testing and suggestions for possible implementation.

Some commenters on Issue 18 (Exs. 2–12, 2–43 and 2–45) stated that OSHA should set mandatory testing and labeling of prototypes to ensure that individual components comply. Two of those commenters, Bristol Steel and the NEA, (Exs. 2–12 and 2–43) also stated that testing of complete systems should be non-mandatory, left to the discretion of the manufacturer. The ISEA and MSA (Exs. 2–23 and 2–35) stated that most manufacturers of fall protection equipment test and label their products according to the ANSI A10.14–1975, "Requirements for Safety Belts, Harnesses, Lanyards, Lifelines and Drop Lines for Construction and Industrial Use." In particular, the ISEA (Ex. 2–23) stated that "qualification testing should be mandatory and * * * should be monitored by an independent third-party organization. * * *" Also, the R&TC a commenter (Ex. 2–36) stated that it "tests equipment according to the subpart M requirements and labels according to draft 1910.129 at present." In addition, NIOSH (Ex. 2–33) stated that "[m]anufacturers * * * are * * * testing to existing *and* proposed standards and regulations. The need exists for a single standard for testing of equipment whether it is employed in construction *or* general industry."

Two commenters (Exs. 2–36 and 2–50) who addressed Issue 20 supported a requirement for testing. In particular, the ANSI Z359 Committee (Ex. 2–50) recommended that OSHA require 100 percent proof-testing at 3,600 pounds to ensure that the strength requirement was met. The commenter stated that heat treating and other manufacturing processes used did not always produce dee-rings and snap-hooks with the necessary strength.

In response to Issue 24, several commenters (Exs. 2–12, 2–23, 2–41, 2–43, and 2–45) stated that manufacturers should have the responsibility for testing their products. Another commenter (Ex. 2–35) stated that testing should focus on finished systems, not on components. Also, a commenter (Ex. 2–36) stated that 100 percent testing at 5,000 pounds would impose an unreasonable cost burden because hardware might break on its second proof loading. That commenter also noted that there is evidence that snaphooks in fall protection systems have broken due to low strength.

The Agency has determined that proof-testing 100 percent at 3600 pounds will provide appropriate reassurance that the hardware has the necessary strength for use in a personal fall arrest system. OSHA has revised the proposed rule accordingly. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory and has proposed to adopt it in proposed § 1910.128(c)(7), as well (55 FR 13436, April 10, 1990).

Paragraph (d)(5), which is a new provision, requires that employers either use snaphooks that are sized to be compatible with the members to which they are connected, or use locking type snaphooks which have been designed to prevent disengagement. The Agency considers a hook to be compatible in size where the diameter of the dee-ring to which the snaphook is attached is greater than the inside length of the snaphook measured from the bottom (hinged end) of the snaphook keeper to the inside curve of the top of the snaphook, so that no matter how the dee-ring is positioned or moved (rolls)

with the snaphook attached, the dee-ring cannot touch the outside of the keeper so as to depress it open. The intent of this requirement is to prevent unintentional disengagement (roll out) of the snaphook. This provision also prohibits the use of nonlocking snaphooks after December 31, 1997.

Issue 16 of the proposed rule addressed the design criteria for snaphooks, particularly with regard to the prevention of "roll out" (where snaphooks become accidentally disengaged during use). The Agency discussed information it had received regarding the need to mandate the use of locking snaphooks. Some input indicated that such a mandate was appropriate, while other informants suggested that properly designed and properly applied single action (nonlocking) snaphooks should be acceptable. OSHA requested suggestions, information and supporting rationale as to the type of snaphook that should be allowed.

A number of commenters (Exs. 2–12, 2–16, 2–19, 2–23, 2–35, 2–43, 2–45, 2–47 and 2–92) responded that there was no reason to bar the use of single-action snaphooks. Some (Exs. 2–23 and 2–45) contended that such a ban would be unreasonably expensive. Others (Exs. 2–12 and 2–43) stated that the increased hardware cost was "an insignificant consideration," but that properly designed and applied single-action snaphooks have not posed problems. Another commenter (Ex. 2–35), stated "When used with a correctly matched dee ring, the assembly is as safe as any locking snaphook assembly * * * The possibility of misuse exists, as some detractors have noted, but locking snaphooks are just as subject to misuse." Testimony favoring the continued use of single-action snaphooks was presented at the rulemaking hearings (Tr. 144–146, 3–22–88). That testimony, however, also acknowledges that the use of locking snaphooks facilitated the interchangeability of system components.

Several commenters (Exs. 2–36, 2–41, 2–50 and 2–89) recommended that OSHA mandate the use of locking snaphooks, citing the roll-out problems experienced with single-action snaphooks. Two commenters (Exs. 2–36 and 2–50) provided information which indicated that locking snaphooks were superior to single-action snaphooks in minimizing roll-out accidents. In addition, the State of Maryland (Ex. 2–31) stated, in response to proposed paragraph (d)(19), "Roll out is usually caused by an oversized hook. If the hook is matched to the dee ring, then roll out should not occur."

OSHA has determined, based on the rulemaking record, that in general, locking snaphooks provide a higher level of protection to employees than the single-action (nonlocking) type of snaphooks. Based on the above discussion, the Agency has determined that it is reasonably necessary to require the use of locking snaphooks, designed to prevent roll-out in personal fall arrest systems or in positioning device systems (See § 1926.502(e)(7) of the final rule). In order to avoid imposing undue hardship on employers who already have non-locking snaphooks, the Agency will permit the continued use a non-locking snaphooks until December 31, 1997. OSHA believes, based on informal communication with manufacturers of snaphooks, that all of the nonlocking snaphooks currently in use will be worn out within the 3 years and recommends that those worn out prior to that time be replaced with the locking type snaphooks. The more than 3 year phaseout allowed by this standard will eliminate any cost burdens on employers and is well within the life expectancy of equipment currently in use. OSHA notes this phaseout corresponds with the phase out period for the use of body belts as part of a personal fall arrest system. Therefore, the Agency has added paragraph (d)(5) to the final rule, requiring one or the other condition (locking snaphook or compatibly sized as described above) be met. Aside from the phaseout of nonlocking snaphooks, OSHA has already adopted a similar approach in § 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.128(c)(8) (55 FR 13436, April 10, 1990).

Paragraph (d)(6) limits the use of snaphooks for certain connections unless the snaphook is a locking type, designed for those connections. Only locking snaphooks designed to be connected directly to webbing, rope or wire rope; to other snaphooks; to a dee-ring that already has another snaphook, or other connector attached; to a horizontal lifeline; or to any object that could depress the snaphook keeper because it is incompatibly sized or dimensioned in relation to the snaphook can be used for these connections. This provision reflects OSHA's determination that certain connections increase the likelihood of rollout and that only locking snaphooks specifically designed for such connections are needed to provide adequate assurance of employee safety. Accordingly, even before outright prohibiting the use of nonlocking snaphooks, OSHA is limited the circumstances in which they can be used.

Proposed paragraphs (d)(17), (18) and (19) prohibited snaphook engagement to webbing, to other snaphooks and to a dee-ring with another snaphook attached, respectively, based on the Agency's concern about roll-out.

One commenter (Ex. 2–31) stated, regarding proposed paragraph (d)(19), "[i] n many instances to hook back to the dee ring is the only way to shorten the lanyard. OSHA should take this into consideration; weigh the hazard of rollout and how often it occurs to the hazard of falling a full six feet and being stopped by a lanyard." As discussed above in relation to paragraph (d)(5) of the final rule, the same commenter noted that rollout is usually caused by an oversized hook so rollout would not occur when the hook and dee-ring were compatibly sized and other commenters (Exs. 2–36 and 2–50) stated that only locking snaphooks should be permitted, because the locking mechanism prevents roll-out or inadvertent disengagement. In particular, one commenter (Ex. 2–50) suggested that OSHA prohibit the engagement of single action snaphooks to horizontal lifelines and to incompatibly sized or dimensioned objects because of roll-out and disengagement concerns.

OSHA agrees that locking snaphooks provide the most adequate assurance against roll-out or inadvertent disengagement for the specified uses and that efforts to match the size of a single-action snaphook to its connection will not provide adequate assurance that the hook will remain attached to that connection under foreseeable conditions in use. OSHA has revised the proposed provisions accordingly. The Agency acknowledges that this provision will have no application after January 1, 1998, because after that time, non-locking snaphooks will not be used for any purposes. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.128(c)(1) (55 FR 13436, April 10, 1990).

Paragraph (d)(7) requires a device used to connect to a horizontal lifeline which may become a vertical lifeline to be capable of locking in both directions on the lifeline. This provision applies only when horizontal lifelines are used on suspended scaffolds or similar work platforms, and the horizontal lifeline would become a vertical lifeline if the scaffold or platform were to fall. This provision, which was not proposed, has been added in response to comments (Ex. 2–36 and 3–13) which pointed out

that employees attached to a horizontal lifeline would face a fall hazard if either end of the horizontal lifeline support failed and the line became a vertical lifeline. In particular, OSHA notes that, potentially, a rope grab which did not lock in both directions on the lifeline would fail to hold, allowing the employee to fall to a lower level. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.128(c)(2) (55 FR 13436, April 10, 1990).

Paragraph (d)(8) requires that horizontal lifelines be designed, installed and used, under the supervision of a qualified person, as part of a complete personal fall arrest system which maintains a safety factor of at least two. Proposed paragraph (d)(14) would have required horizontal lifelines to have the tensile strength to support a fall impact load of 5,000 pounds, per employee using the lifeline, applied anywhere along the lifeline. Issue 25 of the NPRM solicited comments and information regarding the need to require that horizontal lifeline subsystems be designed by "qualified persons" and to provide more specific guidance for employers using horizontal lifelines.

Two commenters on proposed paragraph (d)(14) (Exs. 2–23 and 2–35) asserted that the proposed rule did not adequately take into account the differences between vertical and horizontal lifelines. In particular, one commenter (Ex. 2–23) stated:

> The physics of the horizontal lifeline system are such that a line suitable for a vertical lifeline could be rigged so as to be completely inadequate for a horizontal lifeline. Since this is not necessarily obvious, earlier OSHA drafts included a chart specifying tensile strength versus angle of sag. Inclusion of this chart could avoid tragic mistakes and should be included in this section.

Another commenter (Ex. 2–89) stated:

> The 5000# tensile strength is not applicable to all situations and had been developed from the ANSI A10.14 Committee which is now withdrawn from being an ANSI standard. It would be the recommendation of the SSFI that lifelines be capable of an anchorage equal to 2 (two) times the maximum arrest force.

Some commenters on Issue 25 (Exs. 2–12, 2–43, and 2–45) stated that OSHA should not add more detail to the proposed paragraph or require "qualified" persons. In addition, two commenters (Exs. 2–12 and 2–43) asserted that the proposed 5,000 pound tensile strength requirement was too restrictive and was infeasible, adding that a system able to support twice the impact load, as provided in proposed paragraph (d)(12), should be allowed.

Other commenters who responded to Issue 25 (Exs. 2–23, 2–36, and 2–50) stated that more detailed guidance was needed for proper use of horizontal lifelines. Also, two commenters (Exs. 2–35 and 2–89) asserted that the person designated to supervise work performed under proposed paragraph (d)(14) should be a "competent person." OSHA notes that a "competent person" as defined in § 1926.32(f) has the ability to recognize hazards and the authority to have them corrected, but does not necessarily have the technical capability to resolve the safety issue. Such capability is included in the definition of a "qualified" person as defined in § 1926.32(l). The Agency believes that this provision warrants the services of a person who is both qualified to design, install and use horizontal lifelines and authorized to have the problem corrected. OSHA believes, therefore, that the language in the final rule that requires a "qualified person" with supervisory authority will address the concerns of the commenters.

Paragraph (d)(9) (proposed as paragraphs (d)(13) and (d)(15)) requires lanyards and vertical lifelines to have a minimum breaking strength of 5,000 pounds (22.2kN). This provision is essentially the same as the two separate proposed provisions except that the final provisions uses the term "breaking strength" instead of the term "tensile strength" used in the proposed provisions. OSHA has made this editorial change to clearly indicate the intent of the provision. Proposed paragraph (d)(13) also provided that self-retracting lifelines and lanyards that limited free-fall to 2 feet or less were required to have a tensile strength of 3,000 pounds. That language has been relocated to paragraph (d)(12) of the final rule. The SSFI (Ex. 2–89) commented that the 5000 lb. tensile strength for vertical lifelines "* * * is not applicable to all situations * * *" and recommended that OSHA require "* * * lifelines be capable of an anchorage equal to 2 (two) times the maximum arrest force." The SSFI did not specify which situations the 5,000 pound requirement was not applicable. OSHA notes that the anchorage requirement is discussed under paragraph (d)(15) below. Another commenter (Ex. 2–50) recommended that compliance with the proposed 5000 pound tensile strength requirement be evaluated using Federal Standard 191 Test Method 6015 or 6016. The Agency is not aware of any reason to specify the use of the above mentioned test methods, nor did the commenter provide any such reasons. Therefore, OSHA has not made the suggested change.

Paragraph (d)(10) (proposed as paragraph (d)(11) prohibits more than one employee being attached to any one lifeline, except as provided in paragraph (d)(10)(ii). The exception allows two employees to be attached to the same lifeline during construction of elevators, provided the employees are working atop a false car that is equipped with guardrails and the breaking strength of the lifeline has been increased to 10,000 pounds [5,000 pounds per worker attached] and all other criteria of paragraph (d) for personal fall arrest systems has been met. This exception recognizes the potential for a greater hazard (entanglement) in the elevator shaft with the additional lifeline.

There was one comment on this provision. The National Elevator Industry, Inc. (NEII) (Ex. 2–11) stated as follows:

> In the Elevator Industry, work in hoistway is performed by a team of two employees. This is a relatively small area and work is usually performed at the same level from a false car that is equipped with guardrails. The Lifeline/Safety Belt system provides protection in the event of a catastrophic failure of the false car system. Under these circumstances, the Elevator Industry feels that if a lifeline had adequate breaking strength for supporting two employees then one lifeline would be sufficient. The employees working at the same level on a false car that is equipped with guardrails would virtually eliminate the chance of one pulling another off the false car. The small area of an elevator hoistway makes the use of multiple lifelines impractical due to the chances for entanglement, etc.

OSHA has observed the working conditions described above and agrees that NEII's recommended alternative measures will provide appropriate fall protection for the affected employees. OSHA has incorporated these measures into paragraph (d)(10)(ii) of the final rule.

Paragraph (d)(11) (proposed as paragraph (d)(3)) requires lifelines to be protected against being cut or abraded. This provision which is identical to the proposed provision, is based on existing § 1926.104(e). A commenter, (Ex. 2–89), suggested that the proposed provision be reviewed for "* * * consistency and that the term "lifeline" could be used with another term, i.e., "dropline * * *" OSHA has eliminated the terms "dropline" and "trolley line" to avoid confusion. The terms vertical lifeline and horizontal lifeline are used and both are required by this provision to be protected against being cut or abraded. Therefore, OSHA promulgates paragraph (d)(11) as proposed.

Paragraph (d)(12) (proposed as part of paragraph (d)(13)) requires that, when in the fully extended position, self-retracting lifelines and lanyards which automatically limit free fall distance to 2 feet or less be capable of sustaining a minimum tensile load of 3,000 pounds (13.3 kN). This provision is essentially the same as the proposed rule except that it has been editorially revised to make it clear that the 3000 pounds is to be determined by applying the load while the lifeline or lanyard is in the fully extended position. There were no comments on this provision of the proposed rule.

Paragraph (d)(13) of the final rule requires that, when in the fully extended position, self-retracting lifelines and lanyards which do not limit free fall to two feet or less, as well as ripstitch, tearing and deforming lanyards, be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN). Proposed paragraph (d)(13) set a general requirement for vertical lifelines to have 5,000 pounds tensile strength, except where self-retracting lifelines and lanyards automatically limited free fall to two feet or less. The other provisions of the proposed paragraph have been relocated to paragraphs (d)(9) and (d)(12) of the final rule. OSHA is promulgating paragraph (d)(13) to maintain the coverage set by the proposed rule. The Agency has specifically identified some of the types of lanyards covered by this paragraph (i.e. ripstitch, and tearing and deforming lanyards) to facilitate compliance.

Issue #23 of the NPRM solicited comments and suggestions, with supporting information, regarding the regulation of self-retracting lifelines and lanyards in proposed paragraph (d)(13). In particular, in the first part of the issue, OSHA asked if self-retracting lifelines and lanyards should be required to meet the minimum load requirement with the line or lanyard fully extended. In the second part of the issue, OSHA asked whether it should specify the maximum arrest force to be transmitted by those devices given the kind of body belt or harness used. The response to the second element of Issue #23 is addressed in relation to § 1926.502(d) (16) of the final rule, below.

Some commenters (Exs. 2–35 and 2–36) stated that it was appropriate to set 3,000-pound minimum strength for a self- retracting lifeline or lanyard that arrested falls within two feet. Another commenter (Ex. 2–50) supported a requirement for the lines and lanyards to meet minimum strength when fully extended

The SSFI (Ex. 2–89) commented that the proposed 5,000– pound tensile strength requirement is not applicable to all situations and that OSHA should revise the provision to require that lifelines be capable of an anchorage equal to twice the maximum arrest force.

Two other commenters (Exs. 2–12 and 2–43) stated that OSHA should specify maximum arrest force for self-retracting lifelines and lanyards, with an upper limit of 1,125 lbs. The commenters indicated that such an upper limit would be easily attainable using available equipment and would be consistent with the draft ISO international standard.

OSHA believes, based on the evidence in the record, that the 5,000 pound requirement is appropriate. No evidence or convincing arguments have been presented to the Agency, to date, to demonstrate that this requirement should be changed to a lower number, or that there is any specific situation where the 5,000 pound requirement is not appropriate.

Paragraph (d)(14), which was not part of the proposed rule, requires that ropes and straps (webbing) used in lanyards, lifelines and strength components of body belts and body harnesses not be made from natural fibers. A commenter (Ex. 2–50) recommended that OSHA require the use of synthetic fiber rope in personal fall arrest systems because natural fiber rope is not reliable or predictable as it ages during use and because the strength deterioration of natural fiber rope is not obvious or always detectable during inspection. In addition, a National Bureau of Standards (NBS) report (Ex. 3–8) advises against the use of natural fiber rope due to unpredictable deterioration. OSHA agrees that natural fiber rope would not be sufficiently reliable for use in a personal fall arrest system and has revised the proposed rule accordingly. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory, and also has proposed to adopt it in proposed § 1910.128(c)(12) (55 FR 13436, April 10, 1990).

Paragraph (d)(15) (proposed as paragraph (d)(12)) requires that anchorages used for the attachment of personal fall arrest equipment be capable of supporting at least 5,000 pounds (22.2 kN) per employee attached or the anchorage must be designed, installed and used under the supervision of a qualified person and as part of a complete personal fall arrest system which maintains a safety factor of at least two. This provision differs from both the proposed provision, which required that anchorages be able to support at least twice the potential impact load of an employee's fall, and existing § 1926.104(b), which requires anchorages to be capable of supporting a minimum dead weight of 5,400 pounds. OSHA proposed to replace the existing provision, which was based on the rated strength of manila rope, and was not based on the actual load the anchor must support when an employee falls. The proposed provision was more performance-oriented and addressed the actual forces involved.

Issue #26 of the proposed rule requested public comment on the applicability of the fall protection provisions of Appendix D in the proposed rule for powered platforms (50 FR 2890, January 22, 1985) to the construction industry. Some commenters (Exs. 2–12, 2–36, 2–41, 2–43 and 2–45) recommended that OSHA promulgate paragraph (d)(12) as proposed. Other commenters (Ex. 2–23 and 2–35) suggested that OSHA revise proposed paragraph (d)(12) to require that the anchorage sustain twice the potential load or 5,000 pounds, whichever is greater. Those commenters expressed concern that, applying the proposed rule, an inexperienced rigger would simply double the weight of the affected employee and think that the resulting system is safe. They also noted that OSHA could set 3,600 pounds as the minimum, because proposed paragraph (d)(12) limited impact load to 1,800 pounds, but they thought that would make it difficult for OSHA to justify the 5,000 pound load requirements elsewhere in the proposed rule. Another commenter (Ex. 2–50) recommended that the strength of anchorages be either at least twice the potential dynamic loading force if certified by a qualified person, or 5,000 pounds when not so certified. In addition, comments on the proposed rule for powered platforms (Ex. 3–13) indicated a need to set a minimum strength requirement as well as to allow employers the option of designing, installing and using a complete system which maintains a safety factor of two.

OSHA agrees with the commenter who suggested that anchorages be required to sustain a 5,000 pound load when they have not been certified by a qualified person as able to sustain twice the potential load. The Agency believes that only anchorages that are certified by a qualified person can be relied upon to provide adequate protection at the lower strength level. On the other hand, when not so certified OSHA believes it is appropriate for the anchorage to sustain at least 5,000 pounds. OSHA has already adopted this approach in

§ 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.128(c)(10) (55 FR 13436, April 10, 1990).

Paragraph (d)(16) (proposed as paragraphs (d)(4), (d)(5) and (d)(6)) consolidates the performance criteria for personal fall arrest systems. Paragraph (d)(16)(i) limits the maximum arresting forces on an employee to 900 pounds when a body belt is used. Paragraph (d)(16)(ii) limits the maximum arresting forces on an employee to 1,800 pounds when a body harness is used. As discussed in relation to the introductory text of paragraph (d), above, the Agency has decided that body belts must be phased out from use in personal fall arrest systems because employees wearing them have been seriously injured by the impact loads transmitted and by the pressures imposed while suspended after fall arrest. Paragraphs (d)(16)(i) and (d)(16)(ii) reflect the Agency's determination that fall arrest systems which use body belts up to the time the prohibition takes effect must minimize the related hazards by limiting the impact load to half that allowed when body harnesses are worn.

Proposed paragraph (d)(6) required that body belt/harness systems not produce an arresting force on an employee of more than 10 times the employee's weight or 1,800 pounds, whichever was less. Issue 14 of the proposed rule asked if the proposed 1,800-pound limit was appropriate for body belts. The comments on proposed Appendix D of the powered platform rulemaking (Ex. 3–13), discussed in detail at 54 FR 31449–31451, July 28, 1989), which supported an identical requirement in the general industry rule, were considered by the Agency as support for the provisions of subpart M to limit the maximum arrest force for body belts at 900 pounds and to maintain the limit for body harnesses at 1800 pounds. In comments addressing Issue 14 directly, two commenters on proposed subpart M (Exs. 2–36 and 2–50) supported a 900-pound limit. The R&TC (Ex. 2–36) stated "[b]elts should have a nine-hundred pound, or lower, limit because no human can tolerate a live demonstration of an eighteen-hundred pound fall arrest in a belt. That rulemaking participant also testified (Tr. 2–17 to 2–19, 3–23–88) regarding specific incidents which indicated the advantages of using body harnesses instead of body belts. Several commenters (Exs. 2–12, 2–19, 2–23, 2–43 and 2–140) stated that it was inappropriate to distinguish between body belts and body harnesses.

OSHA has determined that the hazards posed by body belts, as discussed earlier, necessitate setting a lower impact load limit for systems which use them, until January 1, 1998, at which time, as discussed above, body belts will be prohibited for use as part of a personal fall arrest system. Therefore, the Agency is promulgating paragraphs (d)(16)(i) and (d)(16)(ii).

Paragraph (d)(16)(iii) requires that personal fall arrest systems be rigged so that an employee can neither free fall more than six feet nor contact a lower level. Paragraph (d)(16)(iv) requires that after the free fall distance, the personal fall arrest system must bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet. These two paragraphs are essentially identical to proposed paragraphs (d)(4) and (d)(5).

Issue 14 of the proposal asked if OSHA should limit the free fall distance to two feet, rather than six feet, where a body belt was being used. Several commenters (Exs. 2–12, 2–19, 2–23, 2–43 and 2–140) supported proposed paragraph (d)(4), stating that it was inappropriate to distinguish between body belts and body harnesses. In particular, a commenter (Ex. 2–23) stated "[T]he maximum 6 foot free fall limitation is acceptable for body belts, and no 2 foot limit should be imposed." Other commenters (Exs. 2–36 and 2–50) stated that OSHA should limit the free fall distance to two feet where body belts are used, citing Australian and New Zealand standards. One commenter (Ex. 2–36) stated "[r]etracting lifelines can be considered for continued belt usage by employers in the U.S.A., since free fall is usually less than two feet and self-recovery likelihood is excellent."

Other commenters on these provisions noted some confusion between the two. For example, one commenter (Ex. 2–20) stated that proposed paragraphs (d)(4) and (d)(5) could be "misinterpreted" and suggested "modification of the wording." Another commenter (Ex. 2–23) stated that OSHA should add a sentence to the proposed paragraph (d)(4) saying "[t]he rigger must consider total fall distance and thus include the lifeline elongation." and "[t]he present wording of this section is very confusing, so we suggest more precise wording to explain that the 42-inch limit is for the deceleration device." In addition, the comments on proposed Appendix D of the powered platform rulemaking (Ex. 3–13), discussed in detail (54 FR 31450, July 28, 1989), indicated concern regarding the distinction between deceleration distance and free fall distance.

The Agency notes that the final rule defines the terms "Deceleration distance" and "Free fall distance" (discussed above in relation to § 1926.500(b)) and believes that the definitions make it clear when free fall begins and ends and how to determine deceleration distance. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.129(b)(1)(iii) (55 FR 13436, April 10, 1990).

Paragraph (d)(16)(v), which was not part of the proposed rule, requires that the personal fall arrest system have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of 6 feet, or the free fall distance permitted by the system, whichever is less. The comments on proposed Appendix D of the powered platform rulemaking (Ex. 3–13), discussed in detail (54 FR 31450, July 28, 1989), supported a requirement for personal fall arrest systems to be designed with a safety factor of at least two. The Agency has specified that the ability of a system to satisfy this requirement must be assessed based on a fall distance of 6 feet or the distance allowed by the system, whichever is less, so that this provision coordinates with paragraph (d)(16)(iii), above. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I-Mandatory, and has proposed to adopt it in proposed § 1910.129(b)(1)(iv) (55 FR 13436, April 10, 1990).

OSHA has added a note to paragraph (d)(16) which references the criteria and protocols in § 1910.66, Non-mandatory Appendix C, as examples of means by which employers can determine if their personal fall arrest systems comply with the standard. The note also indicates that systems used by employees having a combined tool and body weight of 310 pounds or more would need to modify the criteria and protocols to account for the greater weight, in order to apply Appendix C. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I-Mandatory, and has proposed to adopt it in proposed § 1910.129(b)(2) (55 FR 13436, April 10, 1990).

Paragraph (d)(17) (proposed as paragraph (d)(7) requires that personal fall arrest systems be worn so that the attachment point for body belts is located in the center of the wearer's back, and that the attachment point for body harnesses is located either in the center of the wearer's back near shoulder level, or above the wearer's head. The proposed rule was essentially identical. There were no comments on the substance of the provision and

OSHA promulgates paragraph (d)(17) as editorially revised. The AGC (Exs. 2–16, 2–47, 2–92 and 2–103) commented as follows:

> Proper positioning of the lanyard or deceleration device is crucial for the prevention of injuries in a fall situation. Construction employers have emphasized to employees this aspect of body belt usage. However, AGC believes that mandated as such in the proposed rule is inappropriate and unworkable. Subsequent to required training, employers cannot be responsible for each employees positioning of this type device.

In response, OSHA again notes that under the OSH Act, employers bear direct responsibility for compliance with OSHA regulations. Accordingly, the Agency has not revised the proposed rule based on the AGC comment. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.129(c)(4) (55 FR 13436, April 10, 1990).

Paragraph (d)(18) (proposed as paragraph (d)(1)) requires that body belts, harnesses, and components be used only for employee fall protection or positioning. This means that those systems or components may not be used as material or equipment hoist slings, bundle ties, or for other such purposes. This is substantively the same requirement as the proposed provision and as the existing provision in § 1926.104(a). One commenter (Ex. 2–23) stated that OSHA should also indicate in this provision that body belt and harness systems can be used "* * * for work positioning and retrieval as well * * *" Also, a commenter (Ex. 2–35) stated "I believe the purpose of this requirement is to prevent the equipment being used for such things as material handling. But you have never defined a positioning belt/harness system, only a 'personal fall arrest system.' Therefore, this provision prevents the use of belts for positioning or such things as controlled descent."

The SSFI (Ex. 2–89) said they felt clarification was needed for the sentence indicating how body belt/harness systems could be utilized. They recommended that the body belt/harness system could be used for fall and/or work positioning.

OSHA acknowledges that the proposed provision could have been construed to prohibit the use of body belts or body harnesses in positioning device systems. OSHA intended simply to prevent the use of such systems for material hoisting or related purposes. The Agency is concerned that a fall protection system that had been used to hoist material would then be issued to an employee as a fall protection system. OSHA has revised the provision to indicate clearly its intent that components of fall arrest and positioning device systems are only to be used for those purposes. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I—Mandatory, and has proposed to adopt it in proposed § 1910.128(c)(14) (55 FR 13436, April 10, 1990). The Agency has also added the identical language to § 1926.502(e) of the final rule as paragraph (e)(10), to facilitate compliance.

Paragraph (d)(19) (proposed as paragraph (d)(2)) requires that personal fall arrest systems or components of subject to impact loading (as distinguished from static load testing) be immediately removed from service, and prohibits subsequent use unless inspected by a competent person who determines the system or component to be undamaged and suitable for reuse. This is essential the same as the proposed requirement and the existing requirement in § 1926.104(a) except the existing provision prohibits any further use of belts for employee protection. In the proposed rule, OSHA explained that impact loading did not necessarily adversely affect the integrity of a body belt/harness system. OSHA further explained that a relatively short fall of one foot may leave the belt/harness system undamaged; however, a long fall of six feet or greater probably would destroy or seriously damage the belt or harness. There are many factors, such as the employee's weight and the type of deceleration device used, which can affect a system's potential capacity for reuse as fall protection. Therefore, a blanket prohibition of reuse after any impact loading is not appropriate.

There were two comments on the provision. One commenter (Ex. 2–15) stated "[n]of only should the components be removed from service, but they should be marked as "defective" to ensure the equipment won't be inadvertently used again until it is found not to be defective or made to be no longer defective by a competent person."

The other commenter (Ex. 2–23) suggested that OSHA revise the proposed provision to rule out reuse after an impact load.

OSHA believes that it is unnecessary to mandate that equipment be marked or labelled "defective" and that it is sufficient to remove equipment from service so that it cannot be used, at least until its strength has been evaluated. The Agency does not believe it necessary to specify the manner in which employers choose to identify components that need to be evaluated before they can be reused. The Agency is concerned solely that the method chosen effectively prevent the reuse of equipment that has not been cleared for reuse. In addition, OSHA believes that an absolute ban on the reuse of fall arrest system components would be unnecessary because such equipment may still have the strength needed for continued use. The employer, in turn, needs to ensure that procedures for inspection and evaluation of equipment will prevent the reuse of damaged components. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I-Mandatory, and has proposed to adopt it in proposed § 1910.128(c)(15) (55 FR 13436, April 10, 1990).

Several commenters on proposed Appendix D of the powered platform rulemaking (Ex. 3–13), discussed in detail at 54 FR 31452, expressed concern regarding the need for prompt rescue after fall arrest, especially when body belts are being used, because prolonged suspension may be harmful to employees. OSHA agrees with these comments and has added paragraph (d)(20) to the final rule. Under this provision, the employer is required to evaluate the potential for fall arrest and to determine which rescue strategy will be used to rescue a suspended employee safely. When it is not possible to evaluate the self-rescue capacity of employees in advance, prudent employers should assume that employees will need rescue assistance and, accordingly, be prepared to offer it. See paragraph (f) *Rescue considerations of* Appendix C, Part II, for guidance in meeting the requirements of this provision. OSHA has already adopted this approach in § 1910.66, Appendix C, Section I-Mandatory, and has proposed to adopt it in proposed § 1910.129(c)(6) (55 FR 13436, April 10, 1990).

Paragraph (d)(21) (proposed as paragraph (d)(20)) requires that personal fall arrest systems be inspected prior to each use for damage and deterioration, and that defective components be removed from service. This provision is essentially identical to the proposed provision in § 1926.502(d)(20).

OSHA raised Issues #9 and #17 in the proposal to request public comment regarding the frequency of inspection and whether or not more definitive inspection criteria were needed for determining when personal fall arrest systems (or positioning device systems, as regulated in paragraph (e)(5), below) are no longer suitable for use. OSHA also asked commenters what inspection criteria should be specified.

A commenter (Ex. 2–23) suggested that OSHA delete the words "if their

strength or function has been adversely affected." OSHA agrees that deleting those words will make the rule easier to understand, i.e., employers would simply remove components that are defective, in that they do not meet the criteria set in paragraph (d), without having to make a specific determination about strength or function.

The majority of the commenters thought the criteria provided in the standard were sufficient as proposed (Exs. 2–12, 2–19, 2–23, 2–43, and 2–45). However, several commenters suggested that additional information should be conveyed to employees through training programs, by following manufacturer's specifications, or by OSHA in the form of guidelines (Exs. 2–16, 2–23, 2–35, 2–36, 2–41, 2–47 and 2–92). OSHA observes that such training is required under new § 1926.503, discussed below. The ISEA, the ANSI Z359 Committee and the Roofers Union (Exs. 2–23, 2–50 and 2- 99) supported the proposed requirement for inspection prior to each use.

The AGC (Exs. 2–16, 2–47 and 2–92) agreed that inspections were needed and noted, as they have with other provisions (see discussion at paragraph (d)(17) of the final rule above, that employees, rather than employers, should be held responsible for ensuring that fall protection equipment is functioning properly prior to each use. Other commenters (Exs. 2–41, 2–42 and 2–51) supported the AGC position. In that regard, OSHA again observes that under the OSH Act, employers bear direct responsibility for compliance with OSHA regulations.

The GLFEA and the BCMALU (Exs. 2–19 and 2–46) thought inspection should be weekly rather than prior to each use. The GLFEA supported its position with the statement that "A more frequent schedule does not enhance the safety of the employees."

Essentially, there was no objection to the substance of the rule, only disagreement on the frequency of inspection. OSHA believes it is critical to inspect equipment before each use; otherwise, employees may use defective equipment which could result in loss of life in the event of a fall. Therefore, OSHA has not reduced the frequency of inspection and has determined that the provision, as proposed, is appropriate. Further information on inspection criteria has been provided in paragraph (g) *Inspection considerations* in Part II of Appendix C relating to § 1926.502(d)—Personal Fall Arrest Systems. OSHA also notes that this provision is consistent with the inspection requirements for personal fall arrest systems in the powered platforms standard, § 1910.66.

Paragraph (d)(22) requires that body belts be at least one and five-eighths (1⅝) inches (4.1 cm) wide. This provision is identical to the provision in proposed paragraph (d)(8). There were no comments on the proposed provision and OSHA promulgates paragraph (d)(23) as proposed.

Paragraph (d)(23) (proposed as paragraph (d)(21)) prohibits the attachment of personal fall arrest systems to hoists or guardrail systems, except where otherwise provided in part 1926. This requirement is essentially the same as existing § 1926.500(g)(5)(iv), which applies only to built-up roofing operations on low-pitched roofs, and does not include the guardrail restriction. OSHA proposed to extend the rule to prohibit using any hoist or guardrail system as an anchorage attachment point. Additionally, the existing rule in § 1926.104(b) specifies minimum anchorage requirements for body belts.

Neither hoists nor guardrail systems are designed as anchorages for personal fall arrest systems since they are not built to withstand the impact forces generated by a fall. Therefore, in the interest of employee safety, OSHA is prohibiting the use of hoists and guardrails as attachment points.

There were two comments on the proposed provision. The ISEA (Ex. 2–23) noted that the provision "* * * would eliminate the common practice of workers attaching to a 'man basket' while riding in it." OSHA notes that the more specific rule § 1926.550(g)(6)(vii), in the crane safety standards, regulates "man baskets." The SSFI (Ex. 2–89) recommended that the provision be changed to indicate that a body belt/harness system should never be attached to any guardrail system, not just those at hoist areas. OSHA agrees that the reasons workers should not attach to guardrail systems or hoists at hoist areas as for any other hoist or guardrail, regardless of where it is located and therefore, OSHA has revised the language of provision to make that clear.

Paragraph (d)(24) (proposed as paragraph (d)(22)) specifies that personal fall arrest systems used at hoist areas are to be rigged to allow the movement of employees only as far as the edge of the walking/working surface. This is the same requirement proposed at § 1926.502(d)(22). It is essentially the same as existing § 1926.500(g)(5)(v), which applies only to built-up roofing operations on low-pitched roofs. OSHA proposed to extend the requirement to cover all hoist areas. The limitation on movement when wearing a personal fall arrest system is made because of the employees' tendency to lean out over the edge at hoist areas. There were no comments on this provision.

Paragraph (e)—Positioning device systems. This paragraph sets the minimum performance criteria for "positioning devices," which are systems similar to personal fall arrest systems and which can be comprised of many of the same components. The significant difference is that personal fall arrest systems are used to arrest falls, whereas employees use positioning devices so they can maintain a leaning position without using their hands while working on vertical surfaces. For example, these devices may be used during the placement of reinforcing bars in the vertical face of a wall under construction. The employees often stand on bars already in place and must lean backward, similar to a lineman on a telephone pole, to place additional bars. The positioning device allows this to be done without the employees having to use their hands to maintain position.

Several provisions of proposed § 1926.502(d) have been incorporated into final rule paragraph (e). In issuing the proposal, OSHA considered the pertinent paragraph (d) requirements to cover both personal fall arrest systems and positioning device systems. The Agency has subsequently concluded that placing those provisions directly in paragraph (e) will best assure that employers who have employees use positioning device systems have clear direction on safe use of those systems. OSHA has specifically identified the added provisions below.

A general comment relating to proposed § 1926.502(e) came from CAL/OSHA (Ex. 2–15) who commented that components of positioning device systems should be permanently marked to indicate that they meet the applicable standards. CAL/OSHA also recommended that equipment covered by paragraph (d) personal fall arrest systems be permanently marked. As with paragraph (d), OSHA does not believe that requiring the marking of positioning device systems is necessary for employee protection in this standard. The criteria set forth in paragraph (e) must be met, in any event, in order to assure that the equipment protects the employee. In addition, based on the response to Issue #18, discussed above in relation to § 1926.502(d)(4) of the final rule, OSHA believes that equipment manufacturers are already voluntarily marking their products. Accordingly, any benefit resulting from addition of such a

requirement would be minimal. Therefore, OSHA has not added the suggested language.

Paragraph (e)(1) requires that positioning device systems be rigged so that an employee cannot free fall more than 2 feet. The proposed rule was identical. OSHA set this distance less than the 6 foot free fall distance set in paragraph (d)(16) for personal fall arrest systems because lanyards used with positioning devices usually do not stretch under fall impact loading and deceleration devices normally are not used to reduce the forces incurred during a fall. There were no comments on paragraph (e)(1).

Paragraph (e)(2), proposed as paragraph (e)(3), requires that positioning devices be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or 3,000 pounds, whichever is greater. This provision differs from OSHA's proposed provision by the addition of the language "or 3,000 pounds, whichever is greater."

There were several comments on the proposed provision. The ISEA and MSA (Exs. 2–23 and 2–35) suggested that OSHA add language to the provision to make it consistent with the strength requirement proposed in paragraph (d)(13) of this section for self-retracting lifelines and lanyards that limit free fall to 2 feet. OSHA agrees that adding the suggested language will provide employers with useful and consistent guidance, and has revised the provision accordingly.

NIOSH (Ex. 2–33) stated that the proposed provision placed responsibility on the employee to determine the proper anchorage point, and that the provision should be rewritten to specify that a supervisor or site safety officer has the responsibility. In response, OSHA notes that many provisions in OSHA standards require direct employee action in order to achieve compliance. Regardless of who performs the necessary duties under the standard, the employer has direct responsibility to provide a safe workplace by complying with the OSH Act and with the pertinent regulations, and it is the employer who will be cited should a violation occur. Accordingly, the Agency does not believe that specifying the personnel responsible for identifying anchorage points is necessary for employee protection. Therefore, OSHA has not made the suggested change.

Paragraph (e)(3) requires connectors to be dropped forged, pressed or formed steel, or made of equivalent materials. This is a new requirement and has been added to maintain consistency with final rule § 1926.502(d)(1) which addresses connectors used as part of a personal fall arrest system. This provision and its rationale are identical to those for paragraph (d)(1) of this section, above.

Final rule paragraph (e)(4), proposed as paragraph (e)(2), requires that connectors be of a corrosion-resistant finish and that all surfaces and edges be smooth to prevent damage to interfacing parts of the systems. OSHA solicited comments on the need for quantification of corrosion resistance requirements in Issue #22 of the proposal. The response to that issue is discussed in relation to paragraph (d)(2), above. As with paragraph (d)(2), the Agency has decided that additional corrosion resistance testing requirements are also not needed in paragraph (e)(4). OSHA has editorially revised the proposed provision so that it is identical to paragraph (d)(2) of this section which contains the same requirement. Specifically, the words "attached belt or connecting assembly" has been revised to read "interfacing parts of the system." This is the same language that OSHA used in its final rule for Powered Platforms for Building Maintenance [54 FR 31470, July 28, 1989] and in proposed § 1910.128(c)(2) [55 FR 13436, April 10, 1990].

Final rule paragraph (e)(5), proposed as paragraph (e)(4), requires that connecting assemblies (which are dee rings, snaphooks, lanyards and other components of the positioning device system) have a minimum breaking strength of 5,000 pounds. This provision is identical to the proposed rule. There were two comments on the proposed provision.

The MSA (Ex. 2–35) commented that this provision should be changed to require a minimum breaking strength of 3,000 pounds, to be consistent with provision (e)(3) above. The SSFI (Ex. 2–89) objected to OSHA's use of 5,000 pounds because, as they have expressed earlier under paragraph (d), they believe lifelines should be capable of anchorage equal to two times the maximum arrest force and all requirements therefore should be consistent with that capability.

OSHA observes that this provision is consistent with other similar provisions in § 1926.502(d) which prescribe the breaking strength of lanyards, connectors, snaphooks, dee-rings, etc. While a breaking strength of 3000 pounds might be adequate if the fall was limited as it should be when a positioning device system is used, 3000 pounds would not be adequate if the connecting assembly was inadvertently used as part of a fall arrest system. Since there is no way to determine by simple observation whether the connecting assembly has a breaking strength of 3000 pounds or 5000 pounds, users of connecting assemblies could easily interchange components. Therefore, in the interest of worker safety, it is appropriate that OSHA require all connecting assemblies to have the same minimum breaking strength. In this way, if the connecting assembly is used as part of a personal fall arrest system, the strength will be adequate and the connecting assembly will not break.

Final rule paragraph (e)(6), like final rule paragraph (d)(4), requires that dee-rings and snaphooks be proof-tested to a minimum tensile load of 3600 pounds without cracking, breaking, or taking permanent deformation. A complete discussion of this provision can be found at § 1926.502(d)(4) above. This new provision, which was not proposed, has been added to facilitate safe use of positioning devices.

Final rule paragraph (e)(7), like final rule paragraph (d)(5), requires that snaphooks be sized to be compatible with the member to which they are connected or be of a locking type designed to prevent disengagement of the snaphook and, that after December 31, 1997, only locking type snaphooks can be used in positioning device systems. In addition, final rule paragraph (e)(8), like final rule paragraph (d)(6), provides that for certain specified connections, only locking snaphooks designed for those connections can be used.

As discussed above in reference to paragraphs (d)(5) and (d)(6), OSHA solicited information in Issue 16 of the proposal regarding the need to require locking snap-hooks in personal fall arrest systems. The same concerns apply to the use of snap-hooks in positioning device systems. Therefore, the language of paragraph (d)(5) and (d)(6) of the final rule has been adopted as paragraphs (e)(7) and (e)(8) to ensure that only locking snaphooks are used and then only those designed for certain connections be used in the specified circumstances.

The SSFI (Ex. 2–89) noted that proposed § 1926.502(e) had not set forth requirements for snaphooks or diameters of attachments to prevent "roll-out" and suggested that OSHA include them in the final rule, referencing its comments on Issue #16. As stated above, OSHA agrees that employees need the protection afforded by the snaphook requirements for both personal fall arrest systems and positioning device systems. OSHA also notes that compliance with this requirement will not impose increased

burdens on employers, since all snaphooks will be subject to the same criteria whether they are used as part of a personal fall arrest system or part of positioning device system. OSHA also notes that these provisions on snaphooks are consistent with OSHA's final rule for Powered Platforms for Building Maintenance [54 FR 31471, July 28, 1989] and proposed § 1920.129(c)(1) [55 FR 13437, April 10, 1990].

Final rule paragraph (e)(9), proposed as paragraph (e)(5), requires that positioning device systems be inspected prior to each use for damage and deterioration and that defective components be removed from service. This provision differs from the proposed provision, in that the phrase "if the strength or function has been adversely affected" has been deleted. As discussed in reference to final rule § 1926.502(d)(21), Issue #17 raised questions regarding the need for more specific inspection criteria.

The ISEA (Ex. 2–23) suggested that OSHA delete the words "if their strength or function has been adversely affected." The implication was that if these words were deleted, the rule would be easier to understand, i.e., employers would simply remove components that were defective without having to make some determination about strength or function. As with § 1926.502(d)(21) of the final rule, discussed above, OSHA agrees that deleting those words would make the rule easier to understand. Employers will simply remove components that are defective, in that they do not meet the criteria of paragraph (e), without having to make a specific determination about strength or function.

OSHA received several comments in response to Issue #17. As noted in regard to paragraph (d)(21), above, the response to Issue #17 regarding positioning device systems was the same as that regarding personal fall arrest systems.

After evaluation of the pertinent record materials, OSHA has determined that further information on the employer's inspection of positioning device systems should be provided in an appendix. Therefore, OSHA has included a specific paragraph on inspection considerations in the Non-mandatory Appendix D to subpart M to address the inspection requirements in § 1926.502(e).

Final rule paragraph (e)(10), like final rule paragraph (d)(18), requires that body belts, harnesses, and components be used only for employee fall protection or positioning and not to hoist materials. This is a new provision and has been added to maintain consistency and facilitate compliance. Paragraph (e)(10) has been added for the same reasons discussed above in relation to paragraph (d)(18).

Paragraph (f)—Warning line systems. This paragraph, which sets the same requirements as in the proposed rule and in existing §§ 1926.500(g)(3)(i), (ii), and (iii), provides the criteria for use of a warning line system. OSHA notes that this paragraph is also consistent with proposed § 1910.28(d), Designated areas, which would regulate analogous General Industry situations [44 FR 13402, April 10, 1990]. The basis for the existing requirements was discussed in detail in the preamble of the final rule for the Guarding of Low-Pitched-Roof-Perimeters During the Performance of Built-Up Roofing Work [45 FR 75618, November 14, 1980]. In brief, the Agency permitted the use of warning lines, under certain conditions, to warn employees that they were approaching an unprotected edge. The warning line system was permitted when work conditions made it impossible to use conventional fall protection systems.

One commenter, CAL/OSHA (Ex. 2–15), stated that warning line components should be marked to ensure compliance with the standard. As discussed above, CAL/OSHA also advocated marking personal fall arrest system components and positioning device system components. As with the other proposed paragraphs, OSHA has determined that such a requirement is not necessary for employee safety. However, employers are responsible for ensuring that rope, wire, or chains used for warning lines comply with the strength requirements of paragraph (f). OSHA's position is that it is compliance with the substantive provisions of paragraph (f), not the act of marking equipment, that improves employee protection. Therefore, OSHA has not made the suggested change.

In Issue #10 of the NPRM, OSHA noted that the term "mechanical equipment" was used to describe the type of equipment addressed in the provisions of proposed § 1926.502(f) which related to built-up roofing work. The proposed definition of "mechanical equipment" provided that wheelbarrows and mopcarts would not be considered "mechanical equipment," continuing the approach taken by existing § 1926.500(g); that is, that these two types of equipment do not require employees to move backward when using them and, therefore, they should not be considered "mechanical equipment" for the purpose of determining the location of the warning line. Issue #10 asked if mopcarts and wheelbarrows should remain the only equipment not considered "mechanical equipment" for the purpose of the provisions of paragraphs (f)(1)(i) and (ii).

In response to Issue #10, three commenters recommended that the provision stay as proposed (Exs. 2–12, 2–43 and 2–99). The ACCSH recommended that no additional equipment be exempted from the provision. (Tr. 6/10/87; pp. 131–132)

After evaluation of the record on this issue, OSHA has determined that wheelbarrows and mopcarts will remain outside the definition of "mechanical equipment," because no other equipment that merits exclusion from the definition has been identified.

Based on the rulemaking record, OSHA has determined that the provisions of paragraph (f) are appropriate as proposed, except that the term "built-up" which was used in proposed paragraph (f)(3) have been removed because the provision is no longer exclusive to built-up roofing work, but applies to all roofing work on low-sloped roofs. See change made in the definitions section (§ 1926.500) and under § 1926.501(b)(10).

Paragraph (g)—Controlled access zones. This paragraph sets minimum performance criteria for controlled access zones (CAZ). In the introductory text of paragraph (g), OSHA reminds employers that CAZ may only be used where employees are performing overhand bricklaying and related work or work under a fall protection plan, as provided by §§ 1926.501(b)(2), (b)(9), (b)(12), and (b)(13).

OSHA proposed the use of controlled access zones as a way to limit the number of workers that would be exposed to the hazard of falling from unprotected sides or edges at those locations where the use of conventional fall protection systems is infeasible or creates a greater hazard. The only work situation where use of a CAZ is specifically permitted instead of conventional fall protection systems is where overhand bricklaying operations are taking place. However, employers who develop a fall protection plan under § 1926.501(b)(2), (b)(12), or (b)(13), will also be required to establish controlled access zones.

Employers engaged in overhand bricklaying work may use a CAZ as long as the employee does not have to reach more than 10 inches below the walking/working level to do the work. Employers engaged in leading edge work, precast concrete erection work, or residential construction work who demonstrate infeasibility or greater hazard with the use of conventional fall protection

systems will be required to develop and implement a fall protection plan which meets the requirements of paragraph (k). Paragraph (k)(7) requires the employer to establish a CAZ which meets the requirements of this paragraph (g).

In general, a controlled access zone is formed by erecting a line or lines—referred to as control lines—to restrict access to an area or to define the area in which employees will work without conventional fall protection. Sometimes only one line will be needed to define the area. The control line warns the employee that access to the CAZ is limited to authorized personnel. The line also designates the area where conventional fall protection systems are not in use.

As discussed in § 1926.500(b), Definitions, the Mason Contractors Association of America (MCAA) (Ex. 2–95) suggested that OSHA change the name for the zone from "control zone" to "Controlled Access Zone (CAZ)." MCAA also suggested that OSHA provide diagrams of the zone so that the provisions of the control zone section could be more clearly understood. As discussed in the definitions section of this final rule, OSHA agrees with the MCAA that the revised term—Controlled Access Zone—more clearly describes the function of the zone by indicating that access to the zone is being controlled. OSHA has removed portions of the proposed provisions that were confusing and therefore is not providing diagrams.

Paragraph (g)(1) sets the distance from an unprotected side or edge that control zone lines are to be erected when leading edge operations or other activities are being performed and controlled access zones are permitted. When control lines are used, they shall be erected no closer than 6 feet nor farther than 25 feet away from the leading edge or unprotected edge. An exception is provided for the erection of precast concrete members, in which case, the control line must be no closer than 6 feet nor farther than one-half the size of the precast member being erected, to a maximum of 60 feet. This exception is being made for precast concrete erection because it is sometimes necessary to "turn" a precast member which may be as long as 120 feet. If the control lines are too close, they could become entangled or uprooted as the concrete member is being positioned.

As a whole, paragraph (g)(1) is identical to the proposed provision, other than the location of the control line for precast concrete work and the clarification that any effective means to restrict entry to the zone is permitted. For example, if a home builder were operating under a fall protection plan, the home builder may designate the entire upper level of the home as a CAZ and restrict entry to that zone to only those workers needed to set roof trusses. The home builder could restrict entrance to the zone by placing a sign or by using tape or a chain to communicate to workers that access to the upper floor is restricted to only those employees identified in the fall protection plan. If the only way to reach the upper level is by stairway, the sign, tape or chain could be placed at the top or bottom of the stairway.

The same situation could arise on a precast concrete site where the entire upper level is designated as the CAZ and all entrances to the level are marked to indicate that access is restricted. The intent of the provision is to restrict access to the danger zone. As long as the means chosen to restrict access is effective, i.e., workers do not enter the restricted area unless they are authorized by the fall protection plan to enter the CAZ, the intent is accomplished.

The 6-foot limitation was proposed as an adequate distance away from the edge to warn employees that they are approaching an unprotected side or edge. The 25 foot maximum allows a reasonable amount of work to be done before the CAZ needs to be moved.

Paragraph (g)(1) of the final rule also requires that the control line be connected on each side to a guardrail system or to a wall. OSHA proposed this language to ensure that there was no gap between the coverage of the controlled access zone (CAZ) and that of the fall protection required for other areas of the pertinent work zone. OSHA reminds employers that all employees working outside the controlled access zone (CAZ) must be provided fall protection as required by § 1926.501(b)(1) if they may be exposed to fall hazards. As the CAZ changes [moves forward as the work progresses at the leading edge], it exposes unprotected sides and edges perpendicular to the leading edge. The employer must ensure that any employees who may be exposed to falls of 6 feet (1.8 m) or more at those perimeters are provided with fall protection that complies with § 1926.501(b)(1). Again, OSHA notes that this situation only occurs when two groups of workers are working on the same level and one group of workers is working in a CAZ and the other is being protected by conventional fall protection systems.

For example, precast concrete workers may be connecting floor or roof members at the leading edge while other workers are engaged in "grouting" activities outside the CAZ. As each precast member is added, the CAZ moves forward and the control line moves forward, creating sections of unprotected sides and edges outside the CAZ from which workers engaged in grouting or other activities could fall. Those employees must be afforded protection from falls of 6 feet or more from the unprotected sides and edges of the floor, roof, or other walking/working surface as required by § 1926.501(b)(1); or as required under fall protection plans where such plans are permitted.

Seedorf Masonry (Ex. 2–153) commented that the proposed provision caused confusion and asked if its system of using special stanchions which bolt onto floor edges to support guardrail systems would be eliminated by proposed paragraph (g)(1). OSHA observes that nothing in this final rule prohibits the use of the special stanchions described by Seedorf Masonry.

The Precast/Prestressed Concrete Institute (PCI) (Exs. 2–44, 2–107, 25–4, 27–7, and 27–10) recommended that the control zone lines for precast concrete erection be kept as much as 60 feet away from the leading edge and reinstalled from time to time as the leading edge changes location. They explained that "* * * a member may be as long as 120 feet and, if it is necessary to rotate the member, at least half its length—60 feet—would be required to avoid entanglement in the control zone lines". As noted above, OSHA agrees that additional distance may be necessary when performing precast concrete erection work for the reasons stated, and has revised paragraph (g)(1) accordingly.

Paragraph (g)(2) requires control zones used during overhand bricklaying operations to be not less than 10 feet nor more than 15 feet from the working edge where the overhand bricklaying operations are underway. These limits were developed after extensive consultation with industry and union representatives and review by the ACCSH. The enclosed zone is intended to provide overhand bricklayers with an area free of interference from other employees not performing related work. Paragraph (g)(2) prohibits employees, other than those performing overhand bricklaying and related operations, from being in CAZs that have been set up for the bricklaying operations.

This provision is essentially the same as the proposed provision. One commenter (Ex. 2–21) suggested that the line designating the control zone be erected not less than 6 feet from the edge instead of the proposed 10 feet, while another commenter, Seedorf

Masonry (Ex. 2–153) stated its total agreement with the proposed 10-foot requirement. OSHA agrees that at least 10 feet of space is necessary to provide overhand bricklayers with adequate working space. Another commenter (Ex. 2–56), apparently confused by the requirement, noted that the provision needed clarification "as it will relate to bricklayers working on the leading edge * * *." OSHA observes that overhand bricklaying operations are not considered leading edge operations. While the use of a controlled access zone is permitted for both operations, the criteria for the zone vary depending on whether the employee is laying bricks (or related work), constructing a leading edge, or performing some other activity in the controlled area.

Paragraph (g)(3) requires the control lines to be made of ropes, wires, tapes, or other equivalent materials (i.e., material that can meet the requirements of paragraph (g)(3)), and supported on stanchions. Paragraph (g)(3)(i) requires the system to be flagged or otherwise clearly marked at 6-foot intervals. Paragraphs (g)(3)(ii) regulates the height of the control zone lines. Overhand bricklaying control zone height limits are higher than those for other work to allow the ready passage of materials underneath the line. Paragraph (g)(3)(iii) requires the line to have a minimum breaking strength of 200 pounds. This minimum strength is required to assure that the lines will not break if an inattentive worker walks into the line.

The proposed paragraph was identical, except as discussed below. There was only one comment on this provision. Seedorf Masonry (Ex. 2–153) noted its total agreement with all of paragraph (g)(3).

OSHA notes that it has revised proposed paragraph (g)(3) by removing the reference to "access path." In the proposed rule, access path lines would have been used to identify paths from the controlled access zone to other areas on the floor or roof that bricklayers might need to gain access. OSHA has decided that these provisions could cause considerable confusion and, accordingly, has deleted the mention of access paths. Instead, OSHA has simply stated that a controlled access zone must be enlarged as necessary to permit overhand bricklaying and related work to take place.

Paragraph (g)(4) sets forth criteria for setting up a controlled access zone on a floor or roof where guardrail systems are not in place prior to the beginning of overhand bricklaying operations. Paragraph (g)(5) sets forth criteria for setting up a controlled access zone on a floor or roof where guardrail systems are in place prior to the beginning of overhand bricklaying operations. These two paragraphs are essentially the same as proposed paragraphs (g)(4), (g)(5) and (g)(6).

If a guardrail system has not already been set on the pertinent floor or roof where the bricklaying work is to be done, the controlled access zone must be large enough to enclose all points of access, materials handling areas and storage areas. Final rule paragraph (g)(5), which is essentially identical to proposed paragraph (g)(6) provides that where guardrail systems are already in place (because other trades are using them), and bricklaying work is to be done, those guardrail systems may be removed to the extent necessary to accomplish that day's work.

One commenter stated that the proposed paragraphs (4) and (5) were quite confusing (Ex. 2–153). OSHA agrees that the language of the proposed paragraph (g)(4) was confusing because it included provisions for forming access paths which were two lines similar to control zone lines. As OSHA did in paragraph (g)(3) above, it has removed references to access path lines in paragraph (g)(4). The provision is now clear that if there are no guardrail in place already, the CAZ must be large enough to enclose all areas where the masons and mason tenders are exposed to fall hazards from unprotected edges. Seedorf (Ex. 2–104) also noted that the proposed provision appeared to prohibit employees from leaving the control zone unless there were guardrails on the open floor. OSHA observes that this perception is basically correct. The concept of a controlled access zone is to establish an area of limited size in which only certain employees can enter and work without fall protection because conventional fall protection systems cannot be used. Employees must be protected at all times from fall hazards at unprotected sides and edges when they leave the controlled access zone. For example, if a bricklayer is working on one side of the floor, a controlled access zone will be established for that area. When the bricklayer leaves the control zone and is exposed to fall hazards elsewhere on the floor or roof, fall protection is required.

Proposed paragraph (g)(7) has been deleted because paragraph (g)(2) of the final rule already makes it clear that only those employees engaged in overhand bricklaying (including related work (§ 1926.501(b)(9)) are permitted in the controlled access zone. The only other employees that are permitted to work in CAZs are those employees so designated in a fall protection plan. In such cases, § 1926.502(k)(9) requires the employer to identify those employees and does not permit other employees to enter the zone.

Paragraph (h)—Safety monitoring systems. This paragraph contains the criteria which must be followed when safety monitoring systems are being used. Safety monitoring systems may be used to protect employees engaged in roofing operations on low-slope roofs (See § 1926.501(b)(10)) and employees engaged in leading edge operations, precast concrete or residential construction work through the use of safety monitoring systems as part of a fall protection plan (See § 1926.502(k)). Existing rule § 1926.500(g) provides for the use of safety monitoring systems on low-slope roof perimeters during built-up roofing work and the existing definition in existing § 1926.502(p)(7) provides criteria for safety monitoring systems.

Paragraph (h)(1) requires the employer to designate a competent person as the safety monitor and to ensure that the monitor meets certain requirements including being able to recognize fall hazards. The safety monitor is required to warn an employee who appears to be unaware of a fall hazard or is acting in an unsafe manner. The monitor must also be on the same surface and within visual sighting distance of the monitored employee and close enough to communicate orally with the monitored employee. The monitor may have additional supervisory or non-supervisory responsibilities, provided that the monitor's other responsibilities do not interfere with the monitoring function. This provision effectively restates existing § 1926.502(p)(7).

Paragraph (h)(2) prohibits the use of mechanical equipment where safety monitoring systems are being used to protect employees from falling off low-slope roofs. This is essentially the same requirement as in existing § 1926.500(g)(4).

Paragraph (h)(3) prohibits employees not engaged in roofing work on low-sloped roofs or employees covered by a fall protection plan from being in an area where other employees are protected by a safety monitoring system. As explained in the preamble to the proposal, OSHA believes that the presence of extraneous employees in these areas can interfere with work procedures necessary for the effective use of the safety monitoring system. OSHA notes that this provision is consistent with the provisions of paragraph (k) which also prohibits employees from entering a CAZ because a safety monitoring system or other non-

conventional fall protection system is in use in the CAZ.

Paragraph (h)(4), which has been added to the final rule, requires that each employee performing work in safety monitoring systems areas comply with directions from safety monitors to avoid fall hazards. Both the existing rule (§ 1926.502(p)(7)) and the proposed rule (§ 1926.502(h)(1)) clearly indicate that the safety monitor must be a "competent person," which means that the monitor must be capable of identifying workplace hazards and have the authority to take prompt corrective measures. Within the context of the safety monitoring system, the "corrective measures" are to have the affected employees move away from the unprotected side or edge or use other work procedures to avoid fall hazards. OSHA has added this requirement to indicate clearly that employers must direct their affected employees to comply with the warnings of the safety monitor.

There were several comments on the criteria for the use of safety monitoring systems. MOSH (Ex. 2–31) recommended that OSHA delete requirements relating to the safety monitoring systems which it felt would be difficult to enforce. In the final rule, OSHA allows the use of safety monitoring systems only where the employer can demonstrate that it is infeasible or creates a greater hazard to use other conventional systems, except on low-slope roofs, where employers may generally use a combination safety monitoring system and warning line system. OSHA believes that the use of safety monitoring systems are appropriate in situations where conventional fall protection systems cannot be implemented. It is, however, necessary for employers to recognize that merely designating an employee as the safety monitor will not meet the criteria of this paragraph. Persons who do not satisfy all of the criteria specified in this paragraph and whose other duties compromise their ability to monitor employees exposed to fall hazards do not meet the requirements for being safety monitors. Hence, the employer who uses such a person as a safety monitor will not be in compliance with the duty requirements of §§ 1926.501 or 1926.502. In other words, having a designated safety monitor "in name only" is the same as not having a monitor at all. OSHA emphasizes that safety monitoring systems are a last resort when other conventional systems are infeasible—meaning that is it is impossible to accomplish the work using the conventional systems—or the conventional systems create a greater hazard. Hence, when employers encounter the infrequent situation which permits the use of safety monitoring systems as an alternative fall protection measure, employers must comply with each and every provision of this paragraph, because otherwise the safety monitoring system is invalid.

NIOSH (Exs. 2–33 and 27–6), which expressed its opposition to the use of safety monitoring systems on leading edges (see discussion under § 1926.501(b)(2) above), recommended that if such systems were permitted, OSHA should modify paragraph (h) to specify both the number of workers that can be monitored by one person, specify the area over which these workers may be distributed, and to set a maximum noise level to ensure effective communication. However, they offered no specific suggestions as to what those criteria should be. While OSHA is not specifying the number of employees that can be monitored by any one safety monitor, OSHA will expect such information to be included in fall protection plans when they are developed and the number of monitors will depend on the different functions the employees are performing while being monitored, the closeness of workers to monitors, and other such considerations. In other words, if one safety monitor is assigned to monitor employees who are not all in the same area, OSHA will deem the monitor unable to meet the requirements of (h)(1) and, therefore, conclude that there is no monitoring system in effect. OSHA expects there will be situations where one monitor is designated to monitor only 2 employees and other situations where a few more could be monitored. If a monitor is assigned to monitor 5 employees and 3 of those employees are working in front of the monitor, and the other 2 are working behind the monitor, OSHA will determine that there is no monitor for the 2 employees who obviously cannot be under supervision if the monitor is monitoring the other three. Likewise, weather conditions can limit the use of safety monitors. OSHA will expect such information to be discussed in fall protection plans. For example, OSHA would not expect safety monitoring systems to be implemented in weather conditions that interfere with visibility.

The Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc. (Ex. 2–26) commented that, while it did "not find fault with the concept [safety monitoring systems]," it opposed the requirement in proposed paragraph (h)(1)(vi)—that monitors must not be so busy with other responsibilities that their monitoring function is encumbered—because that provision would, in effect, cause the hiring of additional personnel to act exclusively as monitors.

OSHA observes that proposed paragraph (h) is intended to guide employers who must follow what OSHA itself considers to be the least acceptable option for protecting employees from falls.

Another commenter, the Precast/Prestressed Concrete Institute (Ex. 2–107) stated "1926.502(h), Safety Monitoring Systems, is a practical and reasonable method to perform the work of the concrete hollow core industry * * *."

In addition, Seedorf Masonry (Ex. 2–153) stated its agreement with the requirements in paragraph (h)(1), but stressed that it would not want them to apply in control zones where overhand bricklaying operations are taking place. OSHA observes that safety monitoring systems are not listed as an option for fall protection in overhand bricklaying operations, so paragraph (h) would not be applicable. Again, OSHA points out that the use of safety monitoring systems is allowed *only* to protect employees engaged in roofing operations on low-slope roofs or employees constructing leading edges, or engaged in precast concrete or residential construction work, who are operating under a fall protection plan meeting the requirements of § 1926.502(k).

Paragraph (i)—Covers. This paragraph sets the performance criteria for covers when they are used to protect employees from falling into or through holes in floors, roofs, and other walking/working surfaces. The proposed requirements, based on existing § 1926.500(f)(5), were identical to the final rule, except as discussed below.

Paragraph (i)(1) requires that covers in roadways and vehicular aisles be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the cover. There were no comments on this provision.

Paragraph (i)(2) requires that all other covers (those not addressed by paragraph (i)(1)) be capable of supporting, without failure, at least twice the weight of any employee (including any equipment or material the employee may be carrying) who may be on the cover. This provision differs from both the proposed and the existing rules. Existing § 1926.500(f)(5)(ii) requires floor opening covers not located in roadways or vehicular aisles to be capable of supporting the maximum intended load. The proposed

rule kept the maximum intended load requirement and added a requirement that a cover be able to support 250 pounds, based on what OSHA considered to be the average maximum weight of an employee with tools. One commenter (Ex. 2–46) was apparently concerned with OSHA's determination that 250 pounds represented the average employee with tools. The ACCSH recommended that no weight at all be placed on the covers addressed in proposed paragraph (i)(2) (Tr. 6/10/87; pp. 109–113). However, OSHA feels that it is reasonable to anticipate that employees will walk on covers. OSHA is also concerned that employees could fall onto the covers, going through them if they were not sufficiently strong and secured. As one ACCSH member put it, (Tr. p. 110) "Sometimes a material used for covers is not sufficient to handle weights on them."

Based on the comments and recommendations received, OSHA has determined that it is inappropriate to prohibit employees from being on covers and that employees will be adequately protected by a requirement for each cover to be strong enough to prevent them from falling into holes. Therefore, OSHA is revising proposed paragraph (i)(2) to require covers to support twice the weight of the employees, equipment and materials that may be put on the cover. As noted above, paragraph (i)(1) has set "twice the weight" as the strength requirement for covers over which vehicles will pass. OSHA believes twice the weight of the employee, equipment and materials would be appropriate here also.

Paragraph (i)(3) requires covers to be secured when installed so as to prevent accidental displacement by wind, equipment, and employees. Proposed paragraph (i)(3), which was based on existing § 1926.500(f)(5)(ii), required covers to be installed so as to prevent accidental displacement. OSHA has revised the proposed paragraph to state more clearly OSHA's intent that covers be secured when installed so that employees cannot easily remove them, and so that wind and equipment will not accidentally cause covers to be displaced.

Paragraph (i)(4) requires all covers to be color coded or the word "HOLE" or "COVER" must appear on the cover to serve as a warning to employees of the hazard. A note in paragraph (4) indicates that OSHA does not intend for employers to color code or mark the permanent cast iron manhole covers or steel grates which cover street or roadways openings or similar kinds of covers that may be encountered on a construction worksite.

Paragraph (i)(4) is a new requirement in the final rule. The change in paragraph (i)(3) and the new provision in (i)(4) have been made after consideration of recommendations presented to OSHA by ACCSH (Tr. 6/10/87; pp. 109–113) and as a result of the evaluation of the comments received in response to Issue #7 of the proposed rule, in which OSHA specifically asked whether or not covers should be marked or color coded.

Many commenters, in response to Issue #7, supported adding a requirement that employers mark or color code covers to prevent accidental displacement (Exs. 2–12, 2–20, 2–36, 2–41, 2–43, 2–45, 2–46, 2–50, 2–89, and 2–99). For example, the BCMALU (Ex. 2–46) commented that covers should be marked and color-coded so the worker does not pick up a cover and walk into the hole. They explained that the marking on the cover would alert the worker that it is something other than a plain piece of lumber. Other commenters supported both marking and color coding. One commenter (Ex. 2–99) approved of marking covers, but stressed the importance of covers being sufficiently strong and secured. Another commenter (Ex. 2–153) supported the provisions in paragraph (i) as they were proposed.

Bristol Steel and the NEA (Exs. 2–12 and 2–43) commented, "Lifting covers unintentionally and then stepping through the uncovered hole is a significant hazard which could be reduced if covers were marked or fastened down." They listed three accidents caused by unintentional removal of covers. The accidents resulted in one fatality and two permanent disabilities. They also pointed out "it is not always feasible to fasten covers to permanent building materials without causing unacceptable damage; consequently the alternative for marking covers is proposed." Bristol Steel and NEA suggested that § 1926.502(i)(3) be changed to read "All covers shall be installed so as to prevent accidental displacement. Covers shall be marked to indicate their function as a cover or shall be securely fastened down to prevent unintentional removal."

The United Union of Roofers, Waterproofers and Allied Workers (Ex. 2–99) commented that covers should be strong enough to withstand the weight of men and materials, and that they should be securely fastened to prevent their being displaced. In addition, while stating that they had no objection to marking covers to indicate their function, they stated that marking covers "must not be allowed in lieu of securely fastening such a cover to prevent accidental displacement."

The ACCSH recommended that covers be painted a distinctive color and be fastened in place and that no weight should be permitted on them. (Tr. 6/10/87; pp. 109–113).

A few commenters responded that covers should neither be marked nor painted because of maintenance problems, i.e., the markings would wear off. (Exs. 2–16, 2–19, 2–47, 2–92 and 2–140). As discussed above, OSHA agrees that painting or labeling covers is necessary for the enhanced safety afforded affected employees.

Paragraph (j)—Protection from falling objects. This paragraph sets forth the performance criteria for providing protection from falling objects. All of the provisions are identical to the proposed provisions, except as provided below.

Paragraph (j)(1) requires toeboards, when used, to be erected along the edge of overhead walking/working surfaces for a distance sufficient to protect employees working below. This is a change from existing rules in §§ 1926.500(b)(1), (2), (3)(ii), and (8), which require toeboards around floor, roof, and platform holes and openings regardless of whether or not employees are working below. However, paragraph (j)(1) is consistent with the intent of the existing rule in § 1926.500(d)(1) and § 1926.501(e) of the final rule which require protection only where employees below are exposed to the hazard of falling objects.

Paragraph (j)(2) is a new requirement and it specifies toeboards shall be capable of withstanding, without failure, a force of at least 50 pounds. This requirement was proposed to set a minimum strength for toeboards to ensure the ability of the toeboard to restrain falling objects.

Paragraph (j)(3) specifies how toeboards are to be installed and is essentially the same as the existing requirement in § 1926.500(f)(3)(i), except the minimum height of the toeboard has been reduced from 4 inches to 3½ inches. In the NPRM, OSHA proposed to change not only the maximum vertical height of the toeboard, but the size of the opening or gap between the toeboard and the walking/working surface. The existing rule set the maximum size of that opening at ¼-inch and OSHA proposed to allow a ½-inch clearance. OSHA received one comment on the proposed provision. The TVA (Ex. 2–20) noted that "many small tools can pass through a one-half inch opening * * *." OSHA also notes that the ANSI A1264.1–1989 standard sets ¼ inch as the maximum

clearance. Based on this information, OSHA has determined that the existing rule more adequately addresses the hazard and has revised the proposed provision accordingly.

Paragraph (j)(4) provides that additional protection, such as paneling or screening erected from the working level or toeboard to the top of the top rail or midrail, must be used where tools, equipment, or materials are higher than the top of a toeboard. This requirement is substantively the same as the existing requirement in § 1926.500(f)(3)(ii).

Seedorf Masonry (Ex. 2–153) questioned whether employers would have to install a screening system on floors or scaffolds since they typically pile brick and block units on floors and scaffolds and the pile is higher than the height of a toeboard. OSHA notes that the use of toeboards, screens or guardrail systems is one of the options allowed in § 1926.501(c) of the final rule. Paragraph (j)(4) simply requires that employers who choose to use toeboards as the method of preventing objects from falling onto employees working below, take the necessary precautions to ensure that objects do not fall over the toeboard. Employers can choose from among other options listed in § 1926.501(c) to provide the necessary protection. However, if an employer chooses to use toeboards, the employer would be required to install panels or screens that are high enough to keep bricks from falling to lower levels if the height of the bricks exceeds the height of the toeboard, so that appropriate protection is afforded employees working below.

Paragraph (j)(5) requires that when guardrails are used to prevent objects from falling, the openings in the guardrail must be small enough to retain the potential falling objects. This is essentially the same as the existing requirement in §§ 1926.500(c)(1)(ii) and (f)(7)(ii) except the specific limitations on hole size have been deleted.

Paragraph (j)(6) contains housekeeping provisions for overhand bricklaying operations which are intended to prevent tripping and to prevent displacement of materials and equipment to areas below the walking/working surface.

Paragraph (j)(7) sets forth provisions for storing materials and equipment during roofing operations. These are essentially the same requirements as those set in existing 1926.500(g)(5) (vi) and (vii).

Paragraph (j)(8), which did not appear in the proposal, requires that when canopy structures are erected, they shall be strong enough to prevent collapse or penetration of falling objects.

In Issue #8, OSHA noted that proposed § 1926.501(e) [final rule § 1926.501(c)] allowed the use of protective canopies for falling object protection and requested comments on what criteria should be specified in § 1926.502(j) to ensure proper protection. SSFI (Ex. 2–89) commented that "Historically canopies have been designed for 150 to 300 pound design loads or 'light debris'. It is recommended that use of this type of canopy be continued." The National Constructors Association (Ex. 2–45) commented that a performance standard would be more appropriate, stating "It is not practical to attempt to write regulations on protective canopies * * *." ACCSH (Tr. 6/10/87; p. 113) recommended that canopy structures be strong enough to avoid collapse or penetration when falling objects strike them. Bristol Steel and the NEA (Exs. 2–12 and 2–43) stated, "No additional criteria for protective canopies are needed." Miller and Long (Ex. 2–41) commented that many methods of protection against falling objects are available and that, given the changeability of the work environment, "a variety of methods should be included. Another commenter, Ex. 2–46, stated "Canopies or catch alls should be used when chipping of concrete with electric or pneumatic chipping guns are used."

In view of the comments received, OSHA has determined that the record does not contain sufficient information to formulate detailed criteria for the many types of canopy structures. However, the record does support OSHA action to set a minimum level of performance for canopies suited to their function which is to prevent falling objects from reaching employees. OSHA agrees that the canopy must be strong enough to perform its intended function if the employer provides canopy structures as the method to protect employees from falling objects.

Paragraph (k)—Fall protection plan. OSHA is promulgating paragraph (k), which was not part of the proposed rule, to address the measures that employers who are constructing leading edges, or are engaged in precast concrete construction or residential construction work must take when they establish, pursuant to final rule §§ 1926.501(b)(2), (b)(12) or (b)(13), that it is either infeasible or would create a greater hazard to protect employees from fall hazards using guardrail systems, safety net systems, or personal fall arrest systems for employee fall protection. OSHA has explained under §§ 1926.501(b)(2), (b)(12) and (b)(13) what conditions could enable a contractor to meet the criteria to use a fall protection plan.

Final rule §§ 1926.501(b)(2),(b)(12) and (b)(13) contain notes which indicate clearly that OSHA approaches the pertinent work activities with the presumption that it is feasible and will not create a greater hazard to implement at least one of the three specified conventional fall protection systems. The notes also underscore that the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with § 1926.502(k) for a particular workplace situation. OSHA believes that the inclusion of these notes will facilitate understanding of and compliance with paragraph (k) of the final rule.

Paragraph (k) had its origin in comments received in response to Issue #2 of the notice of hearing in which OSHA asked if there were areas or operations, in addition to those already identified in proposed § 1926.501, which had unique fall protection requirements not addressed by the proposed standards and in a Notice of Record Reopening in (57 FR 34659; August 5, 1992) discussed above in relation to § 1926.501(b)(12). OSHA requested commenters to describe such areas and operations in detail and to discuss the fall protection measures which would be appropriate for those situations.

In response, the Precast/Prestressed Concrete Institute (PCI), in addition to their written comments (Ex. 2–44, 2–106, and 2–107), presented testimony at the public hearing noting that, "* * * our field erection is work not appropriately covered by the proposed regulations; rather, precast concrete erection should be listed as a separate subpart (or preferably included along with steel erection in Subpart R)." A full discussion of PCI's comments, along with OSHA's decisions, are provided along with the discussion of § 1926.501(b)(12) above.

A number of commenters (Exs. 27–5, 27–7, 27–10, 27–21, 27–22, and 27–28) responded to the reopening of the record and suggested that OSHA promulgate the criteria from the Notice of Record Reopening as the alternative "fall protection plan" for the precast concrete construction industry.

Several commenters (Exs. 27–1, 27–2, 27–6, 27–9, 27–25, 27–36, and 27–42) opposed allowing precast concrete construction employers to protect their employees by any means other than conventional fall protection (guardrail systems, personal fall arrest systems and safety net systems). Some of these

commenters (Exs. 27–6, 27–9 and 27–25) were especially skeptical of safety monitoring systems as an alternative to conventional measures. In particular, one commenter (Ex. 27–25) stated:

There are no conditions where OSHA should allow precast concrete construction employers to institute anything other than a conventional fall protection system to protect workers.

Safety monitoring, controlled access zones systems and a fall protection plan are examples of additional controls which should be considered in addition to conventional fall protection systems.

Regulations must be developed which will require design and installation of anchor points during the construction process so that workers will have attachments available for fall arrest protection. Exposure time should not be a considering factor when evaluating whether to protect a worker. The protection of any worker who needs to come within two feet of a floor or roof edge for a few seconds should not rely on an observer when it could be accomplished by an area limiting tethering device, or other fall arrest system. the use of a "safety monitor" should not be allowed in place of personal fall protection equipment.

This commenter invoked a comment by NIOSH (Ex. 27–6) which stated as follows:

Reliance on passive measures, such as safety harnesses, is generally recognized as more effective than reliance on active measures that require worker involvement and attention in order to function. Using a monitor to keep another worker from the edge would require the active involvement of both the monitor and the worker to ensure safety.

As discussed above in relation to § 1926.501(b)(2) of the final rule, OSHA believes that construction employers, including those who erect precast concrete structures, can, in general, protect their employees from fall hazards with conventional fall protection, and is requiring that they do so as a general rule. The Agency agrees with the commenters who have stated that including fall protection in the planning and designing of construction work (such as by including anchor points for personal fall arrest systems in the construction design specifications) can enable construction employers to implement appropriate protection. OSHA acknowledges, however, that there may be circumstances where, despite their best efforts, construction employers cannot provide conventional fall protection, such as when grouting operations are underway, and when home builders are setting or bracing roof trusses. When an employer establishes, through compliance with § 1926.501(b)(12), that such circumstances exist, the Agency believes that it is appropriate to require the implementation of alternative measures through which the employer minimizes the fall hazards for affected employees.

OSHA has already recognized that circumstances may arise in the course of overhand bricklaying and roofing operations which would preclude the use of conventional fall protection. In such cases the Agency requires that employers take specific alternative measures to minimize fall hazards for affected employees. The Agency believes that requiring those alternative measures, when conventional fall protection cannot be used, will provide the best opportunity to avert employee injury and death. OSHA has determined that it is also appropriate to set alternative measures for leading edge construction, precast concrete construction, and residential construction work so employers have clear direction as to what they must do if the use of conventional fall protection is infeasible or would cause a greater hazard in a particular work area.

As discussed above, the Agency has set criteria in § 1926.501(b)(2), (b)(12), and (b)(13) for employers who seek to establish that the use of fall protection is infeasible or would create a greater hazard for employees when constructing leading edges or performing precast concrete or residential construction work. Employers who satisfy those criteria must implement a written "fall protection plan" which complies with § 1926.502(k). OSHA is adding Non-mandatory Appendix E to provide a sample fall protection plans which contains the elements and the detail necessary for the Agency to consider the plan to be in compliance with paragraph (k). This non-mandatory appendix is provided for the benefit of employers who need guidance in developing their fall protection plans.

Paragraph (k)(1) provides that a written fall protection plan must be prepared by a "qualified" person (as defined by 29 CFR 1926.32(m), that the plan be developed specifically for the site where the work is being done, and that the plan be maintained up to date. The definition in § 1926.32(m) describes "qualified" as a person who "has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project." The inclusion of these requirements was suggested by PCI (Ex. 25–4) and addressed in the August 5, 1992, record reopening notice (57 FR 34656).

Employers whose workplace situations satisfy the criteria of 29 CFR 1926.501(b)(2), (b)(12) or (b)(13) still must develop and implement alternative measures that protect affected employees from fall hazards. It is clear that the abilities of the personnel who develop those measures will strongly influence their effectiveness. The Agency has determined that the abilities of a qualified person are needed to ensure that the fall protection plan minimizes fall hazards. OSHA notes that an employer may use the services of more than one qualified person to comply with these requirements, as long as (1) those persons, collectively, are qualified to prepare the fall protection plan and approve any changes; and (2) the resulting plan complies with the applicable requirements of the standards.

Paragraph (k)(1) also provides that the fall protection plan must be developed for the specific site where the work is being done. OSHA notes that the designs, erection plans and circumstances for one site will, in many cases, differ significantly from those for another site. Accordingly, the fall protection plan for the one site may well be inapplicable to the other or may require substantial modification before it can be used. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of record reopening (57 FR 34659). The Agency anticipates that compliance with this requirement will enable an employer to take measures which minimize the fall hazards at each site.

Paragraph (k)(1) also requires that the fall protection plan be maintained up to date. The employer must review the fall protection plan as necessary to determine if it still fits the workplace situation and must modify the plan as necessary to maintain its effectiveness, such as when elements of the plan have become inapplicable due to changes in the design, erection plan or other circumstances of a site. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of reopening (57 FR 34659). It provides clear notice to employers that they have an ongoing responsibility to monitor their projects and to revise their fall protection plans to address changed conditions.

Paragraph (k)(2) provides that any changes in a fall protection plan must be approved by a qualified person. The qualified person may either sign or initial and date the changed portion of the fall protection plan to indicate approval of the plan as modified. This provision, like paragraph (k)(1), reflects the Agency's belief that the characteristics set out in 29 CFR 1926.32(m) are needed to assure that the person who sets the terms of the fall protection plan has the requisite ability

and judgment. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of record reopening (57 FR 34659). The decision regarding the acceptability of any potential plan changes may be made by any person or persons "qualified" to do so. OSHA believes that compliance with this paragraph will ensure that changes to fall protection plans receive the same careful scrutiny as the original plans.

Paragraph (k)(3) requires that a copy of the fall protection plan, with all approved changes, be maintained at the job site, available for inspection by employees and their authorized representatives. In many cases, the opportunity to review the plan will provide the necessary reassurance to employees that the employer has taken appropriate measures to minimize exposure to fall hazards. In other cases, review of the plan will alert employees to deficiencies that need to be brought to the employer's attention for correction. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of record reopening (57 FR 34659). The Agency believes that compliance with this paragraph will both facilitate operations and help ensure that the fall protection plan fits the actual workplace conditions.

Paragraph (k)(4) provides that the implementation of the fall protection plan must be supervised by a "competent person". That term is defined in 29 CFR 1926.32(f) to mean "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." The proper implementation of a fall protection plan will require unflagging vigilance and decisive action. Without the "built-in" protection of a guardrail, safety net or personal fall arrest system, employees must rely on safety monitors and other measures to warn them away from fall hazards. This provision indicates clearly that employers must assign supervisors who can promptly identify and correct any problems arising under the plan. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of record reopening (57 FR 34659).

OSHA notes that a "competent person" who also has the abilities of a "qualified person" will be particularly well-positioned to develop and implement solutions to fall protection problems. The Agency has not required that the supervisor be both "competent" and "qualified", because OSHA believes that such consolidation of function is not essential for employee protection. Also, the Agency recognizes that more than one person can be a "competent person" for the purposes of paragraph (k)(6), as long as those persons, collectively, exercise the requisite oversight and authority.

Paragraph (k)(5) provides that an employer who determines that conventional fall protection cannot be used at a particular worksite must document the reason why the use of conventional fall protection systems (guardrail systems, safety net systems, or personal fall arrest systems) are infeasible or why their use creates a greater hazard. OSHA has provided guidance in its discussion of § 1926.501(b)(2), (b)(12) and (b)(13) to assist employers in identifying what constitutes infeasibility and greater hazard. Employers must explain in writing, before work begins, for each of the three conventional systems, why those systems cannot be used at the specific location where the fall hazard is present. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of reopening (57 FR 34659).

The process of developing the rationale will help the employer to understand the real limits, if any, on the use of fall protection. An employer who at first assumes that conventional fall protection cannot be used may well discover upon closer examination that employees in all or part of those operations can use conventional fall protection. In addition, the documentation required by paragraph (k)(5) will enable OSHA to determine if there is an objective basis for the employer's finding that its operations meet the criteria of § 1926.501(b)(2), (b)(12), or (b)(13). The purpose of paragraph (k)(5) is to limit the use of fall protection plans to those situations where such use is justified.

Paragraph (k)(6) requires the employer, after complying with paragraph (k)(5) above, to document in the written fall protection plan the measures that the employer will take to reduce or eliminate the fall hazard in work areas where conventional fall protection systems cannot be used. For example, if safety monitoring systems and control zone systems are going to be used, the written plan must so state. The employer must comply with all of the provisions described in the fall protection plan as alternative measures. It will not be acceptable for employers, under paragraph (k)(6) to list "nothing" or "no measures to be taken" as the alternative measure. At the very minimum, the safety monitoring system (see paragraph (k)(8) must be employed and all of the criteria in paragraph (h) of this section followed. OSHA notes, at this point, that if a safety monitoring system is to be used, the designated monitor must fulfill all of the criteria in paragraph (h). If monitors are given other work assignments, such as those discussed under paragraph (h) of this section, which render them unable to monitor other employees effectively, OSHA will view that situation as "not in compliance." Therefore, employers may need to designate more than one monitor so that a monitor is always available to fulfill the criteria of § 1926.502(h).

In situations where conventional systems are not used, OSHA does not encourage employers to elect the safety monitoring system as a first choice. Rather, the Agency will permit it to be used in those circumstances when no other alternative, more protective measures can be implemented. Examples of such more protective measures include having employees work from scaffolds, ladders, or vehicle mounted work platforms to provide a safer working surface and thereby reduce the hazard of falling. The written plan must include a discussion of these other measures and the extent to which they can be used. The employer should also note where the use of those measures would not reduce exposure, would be unreasonable, infeasible or would create a greater hazard. The employer's failure to perform this evaluation as part of the plan will support an OSHA determination that the employer does not have a fall protection plan and OSHA will consider the employer to be in violation of § 1926.501(b)(2), (b)(12), or (b)(13). OSHA will also expect safe work practices to be elements of the alternative measures. For example, employees engaged in grouting operations would be expected to position themselves so their backs are not to the fall hazard. Employees on ladders would use a leg lock to position themselves more securely than they would otherwise be. In brief, employers need to preplan the work and plan the use of safe work practices that eliminate or reduce the possibility of a fall.

The choice of alternative fall protection systems will be particularly important when, pursuant to 29 CFR 1926.501(b)(2), (b)(12), or (b)(13), an employer establishes that it must use alternatives to conventional fall protection. Accordingly, OSHA has determined that the employer must do what it can to minimize exposure to fall

hazards, before turning to the use of safety monitoring systems (29 CFR 1926.502(h) under a fall protection plan. The inclusion of this requirement is based on submission from the PCI (Ex. 25–4) and was addressed in the August 5, 1992, record reopening notice (57 FR 34657).

Paragraph (k)(7) requires the employer to identify in the plan, each location where conventional fall protection cannot be used and to classify those locations as controlled access zones. Controlled access zones must conform to the criteria in paragraph (g). Compliance with this provision will provide a reference point to enable the employer to distinguish between those work areas where the fall protection plan applies and those where it does not. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of record reopening (57 FR 34657). It was also recommended by Ryland, the Home Builders Association of Maryland, and Hallmark Builders (Ex. 27–23, 27–24, 27–26).

OSHA has determined that, when it is impossible to perform the work with conventional fall protection, the work must be performed in a controlled access zone (CAZ). The CAZ prevents employees who are not engaged in the activities covered by the fall protection plan from being exposed to fall hazards in the areas where those activities are being conducted.

Paragraph (k)(8) requires that a safety monitoring system must be implemented where no other alternative measures have been implemented. Safety monitoring systems must comply with the criteria in § 1926.502(h). There has been considerable discussion above in relation to §§ 1926.501(b)(2) and 1926.502(h) regarding the role of safety monitoring systems in minimizing exposure to fall hazards. OSHA has added this requirement because it believes that employers must, at a minimum, have a competent person assigned to monitor those employees who have not been provided conventional fall protection to warn the employees when they are acting in an unsafe manner or approaching an unprotected side or edge, among other activities when other, more protective measures, are not used.

PCI (Ex. 27–7) as discussed above, supported the use of safety monitoring systems and also commented that some contractors use safety monitoring systems now as part of their fall protection efforts, stating that "* * * safety monitoring or controlled access zones systems in conjunction with a fall protection plan is more safe * * *." Rocky Mountain Prestress (Ex. 27–8) also supported the use of safety monitors as part of a fall protection plan.

Paragraph (k)(9) provides that the fall protection plan must identify, by name or other method, those employees who are authorized to work in CAZs. The paragraph further requires that only employees identified in the fall protection plan be allowed to enter CAZs. This provision was suggested by PCI (Ex. 25–4) and was addressed in the August 5, 1992, notice of record reopening (57 FR 34657).

OSHA anticipates that compliance with this paragraph will enable an employer to maintain control over access to a CAZ, minimizing the number of employees exposed to fall hazards. This provision, like the rest of paragraph (k), reflects the Agency's position that although there may be situations where fall protection cannot be used, any deviation from the general requirements for fall protection must be construed as narrowly as possible.

Paragraph (k)(10) provides that, if an employee falls while performing work covered by a fall protection plan or there is other reason to believe that the substance or implementation of the plan is deficient (e.g., a near miss), the employer must review the fall protection plan and make any changes in work practices, training, erection procedures, or construction practices needed to correct any deficiencies in the plan. Given the immediacy of the hazards to which employees covered by a fall protection plan may be exposed, it is essential that contractors promptly revise their plans to incorporate what they learn through experience.

This paragraph underscores the Agency's determination that employers must minimize any fall hazards to which employees might be exposed through the use of fall protection plans. This provision was suggested by PCI (Ex. 27–22), and was endorsed by Rocky Mountain Prestress, Inc. (Ex. 27–28) for the precast/prestress concrete industry. Rocky Mountain further stated that they had implemented a fall protection plan and it "has been very successful on several major precast projects * * *."

Both PCI and Rocky Mountain submitted sample fall protection plans (Exs. 27–22 and 27–28) which have been used by OSHA in the development of non-mandatory appendix E— Sample Fall Protection Plans.

One final comment that is not related to any of the above discussion was heard at the public hearing on the proposed rule, when WACO International (Tr. 03/22/88, p. 45) presented testimony regarding a hydraulic, self-climbing safety screen. They suggested that it was an alternative to safety net systems and other conventional devices used for protecting workers from exterior fall hazards. WACO requested that OSHA revise existing § 1926.105(a) to specifically identify safety screens as a viable option for compliance with perimeter protection safety standards. They also stated that safety screens, unlike safety nets, do not require added hours of perimeter exposure after the installation to maintain them.

OSHA observes that information on the use of such safety screens is limited since the screens have been used in Australia, not in the United States. The WACO representative did testify, however, that no one had fallen off the side of a building in the 10 years that the screen had been used in Australia (Tr. 3/22/88, pg. 47).

Based on the limited information and evidence available to OSHA at this time, OSHA has decided not to incorporate specific provisions for safety screens in the final rule at this time. However, OSHA notes that such screens may be acceptable as a safety net system or guardrail system provided the screen can meet the performance criteria set forth in the various paragraphs in § 1926.502 for such systems. Therefore, nothing in subpart M shall be construed to prohibit the use of safety screens.

§ 1926.503—Training

The introductory text states that this section supplements and clarifies the requirements of § 1926.21 regarding the hazards addressed in subpart M.

The paragraph (a) requires employers to provide a training program for each employee exposed to fall hazards so that each employee can recognize fall hazards and know how to avoid them. This section identifies components of the requisite training, but does not specify the details of the training program.

Employers need not retrain employees who were trained by a previous employer or were trained prior to the effective data of the standard, as long as the employee demonstrates an understanding of the subjects covered by paragraph (a) of this section.

Paragraph (a) also states the subject areas to be addressed in the required training programs. The list of subjects reflects OSHA's determination that fall protection equipment and systems are only effective when they are properly designed, built, located, maintained, and used. Employers are required to ensure that each employee is trained, as necessary, by a competent person qualified in the following areas: The

nature of the fall hazards in the work area; the correct procedures for erecting, maintaining, disassembling, using and inspecting the fall protection systems to be used; the role of employees in the safety monitoring systems when used; the role of employees in fall protection plans; and the standards contained in subpart M.

Employees covered by a fall protection plan will, for example, need training to understand and to work effectively within the constraints of a CAZ. Affected employees will also need training on how to work with a safety monitor if a monitor is in use, to ensure that they respond appropriately when they hear a warning. OSHA recognizes that much of the information covered by training will be site-specific, so the Agency is framing this provision in performance-oriented terms.

This approach to training provides flexibility for the employer in designing the training program. The proposed paragraph has been amended to require that the training be provided by a "competent person." This provision was added at the recommendation of the ACCSH (Tr. 6/9/87; P. 266). OSHA agrees that the involvement of a competent person who is qualified in the subject areas provides appropriate assurance that employees will be adequately trained. OSHA has also deleted the words "and instructed" from the introductory text of proposed paragraph (a)(1) for the sake of clarity.

In Issue #5, OSHA requested public comment on whether or not a more specific requirement for training would be appropriate. OSHA also asked for data on the costs and effectiveness of training requirements in reducing the risk of injuries or fatalities, and whether more or less specific requirements were appropriate. In addition, commenters were asked to respond with information about currently available safety programs and their adequacy; the safety records of employees who have been trained; the scope and necessary elements of training programs; the relationship of the additional specific provisions in § 1926.503(a)(2) with the more general § 1926.21 requirements; costs and benefits related to this issue; and any recordkeeping burdens these provisions might impose.

Many commenters responded to this issue by commenting on the need and value of employee training, (Exs. 2–6, 2–9, 2–12, 2–19, 2–23, 2–43, 2–46, and 2–50). Most of these commenters also stated their belief that the proposed requirements for training and retraining were adequate, with some commenters noting that further requirements were unnecessary (Exs. 2–12, 2–19, 2–23, 2–43). Bristol Steel and the NEA (Exs. 2–12 and 2–43) commented as follows: "Suitable training is an essential element of accident prevention. The specific training requirements proposed in Section 1926.503 are appropriate and necessary to inform employees of accident prevention measures* * *."

The AGC (Exs. 2–16, 2–47, and 2–92) indicated that specific training requirements did not provide the flexibility needed to cover all construction situations, observing that foremen and supervisors provided the more specific type of training. Also, a commenter (Ex. 2–51) noted the mobility of the workforce and other factors and recommended that OSHA refrain from being specific in the training requirements. The commenter also stated that the general requirements for training in § 1926.21 are more pertinent to construction. The MCISC (Ex. 2–140) stated, "We believe that training is the key to accident reduction but also that it is already covered in the existing OSHA standard under 1926.20 and 1926.21."

On the other hand, R&TC (Ex. 2–36) commented that more specific requirements were needed for live demonstrations (under controlled conditions). The National Constructors Association (Ex. 2–45) also commented that "Requirements for training should address specifics as to task and hazard involved." The ANSI Z359 Committee (Ex. 2–50) suggested that "Fall protection training should perhaps be the subject of a national standard." ACCSH recommended that the training be given by a competent person. (Tr. 6/10/87; p. 95).

Also, the Roofers Union (Ex. 2–99) in support of more specific requirements, commented that "These requirements must be specific to avoid employers merely handing out material for workers to read." The commenter also stated that competent persons must conduct the training.

Finally, other commenters (Exs. 2–89 and 2–95) offered to develop training programs in support of the OSHA training requirements. The SSFI (Ex. 2–89) commented that its members "are willing to assist OSHA in developing training programs that would be used for these purposes by the employer prior to the employee starting work at a job site." They also commented that on-the-job training should not be a substitute for prior training. The MCAA (Exs. 2–95) also commented that it would endeavor to develop training aid programs for its membership. OSHA encourages these groups and appreciates their efforts to develop training programs.

The Agency is adding a new paragraph (b) to final rule § 1926.503 to require employers to verify that employees have been trained as required by paragraph (a). In particular, final rule paragraph (b)(1) requires employers to prepare a written certification record. Final rule paragraph (b)(1) further specifies that the written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer.

As noted above, OSHA does not require retraining provided the employee can demonstrate the ability to recognize the hazards of falling and the procedures to be followed to minimize fall hazards as required by paragraph (a). OSHA recognizes that in many cases an employer will be unable to identify the date on which the previous training was provided. Accordingly, when employers relying on previous training prepare their certification records, they shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

The certification record can be prepared in any format an employer chooses, including preprinted forms, computer generated lists, or 3×5 cards.

OSHA recognizes that many employers have already been providing affected employees with training that complies with final rule §§ 1926.503(a) and that requiring those employers to repeat the pertinent training would be unreasonably burdensome.

Paragraph (b)(2) requires that the latest certification record be maintained.

These provisions, which were not proposed, have been added because, based on the discussion of the need for training records in Issue #5 and the response to that Issue, OSHA has determined that verification of training through a written certification is reasonably necessary for the protection of employees.

The AGC (Exs. 2–16, 2–47 and 2–92) and the ABC (Ex. 2–51) stated that a requirement for training records would be unreasonably burdensome. Bristol Steel and the NEA (Exs. 2–12 and 2–43) stated "[w]ritten training records should *not* be required, and the proposed standard does not require any. Preparation and maintenance of * * * records could easily require 0.05 to 0.2 manhours per employee per year, at a cost of $2.00 to $10.00 per employee, and would not further the objectives of accident prevention." The NCA (Ex. 2–45) simply stated [c]ompliance with training requirements should *not*

include OSHA recordkeeping requirements.

On the other hand, the State of Maryland (Ex. 2–31) stated "[t]raining program should be documented as to attendance and subjects reviewed." In addition, the BCMALU (Ex. 2–46) stated "[t]raining could be marked on an Individuals payroll sheet or whatever, it should be no big bookkeeping problem and the cost is minor compared to the work produced, when you are confident it is safe and reduced Insurance rates."

OSHA has determined, after careful review of these comments, that some record of training is needed to provide assurance that the required training has, in fact, been provided. Given the performance-oriented focus of this rulemaking, the Agency has determined that the generation and review of extensive documentation would impose unnecessary burdens. Accordingly, OSHA will require verification of training through a certification which contains the above-listed information.

The Agency notes that OSHA has also required certification of training in the personal protective equipment standard for general industry, § 1910.132(f)(4); the permit-required confined space standard, § 1910.146(g)(4); the control of hazardous energy (lockout/tagout) standard, § 1910.147(c)(7)(iv); and in the Telecommunications standard, § 1910.268(c). OSHA also notes that the preparation of a certification will not preclude a citation if the Agency determines that employees have not, in fact, been trained. The Agency believes that this provision will impose a minimal burden, while enabling the employer and OSHA to verify the status of training efforts.

As stated in § 1926.503(c), fall protection training must be repeated when changes in workplace conditions or changes in the types of fall protection systems or equipment to be used render previous training obsolete, and when inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the understanding or skill required by paragraph (a). This provision is similar to the proposed provision but has been revised to indicate clearly that employers have an ongoing responsibility to maintain employee proficiency in the use and care of fall protection equipment.

Appendices A to E

The final rule adds five appendices (discussed below), to revised subpart M. The proposed rule contained only three appendices. Appendices D, and E were not proposed, but have been added to give clarification and examples of how to comply with certain requirements. These Appendices are non-mandatory, and neither impose additional requirements nor detract from the requirements contained in this subpart. They are intended to provide useful, explanatory material and information to employers and employees to assist them in compliance with the standards.

Appendix A to Subpart M—Roof Widths

This appendix is provided to serve as a guide to assist employers in complying with the requirements of § 1926.501(b)(10). This appendix is non-mandatory. The record compiled for the promulgation of existing § 1926.500(g), which requires the guarding of low-pitched roofs during the performance of roofing work, demonstrated that there was confusion as to which dimension of a building should be considered to be the width of a roof. This appendix explains that in all cases buildings are viewed in plan view (i.e., viewed from above, looking down). The width of the roof is then the narrower of the two primary dimensions which define the roof area. Although the Appendix does not show all possible roof configurations, it does give some common arrangements. Final Appendix A is unchanged from the proposed Appendix A. There were no comments on proposed Appendix A.

Appendix B to Subpart M—Guardrail Systems

As explained in the discussion of § 1926.502(b) governing guardrail systems, this appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of § 1926.502(b) (3), (4) and (5). An employer may use these guidelines as a starting point for designing guardrail systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of the standard. Components for which no specific guidelines are given in the appendix (e.g., joints, base connections, components made with other materials, and components with other dimensions) must also be designed and constructed in such a way that the completed system will meet the requirements of § 1926.502(b) (3), (4) and (5). Final Appendix B is unchanged from the proposed Appendix B. There were no comments on proposed Appendix B.

Appendix C to Subpart M—Personal Fall Arrest Systems

Appendix C is provided to serve as a guide to assist employers in complying with the test requirements of paragraph § 1926.502(d) and § 1926.502(e). Personal fall arrest systems and positioning device systems which have been tested in accordance with the criteria of this non-mandatory appendix will be deemed by OSHA to meet the performance criteria of paragraphs § 1926.502(d)(16) and § 1926.502(e) (3) and (4). Appendix C also provides additional non-mandatory guidelines for personal fall arrest systems. Final Appendix C differs from the proposed Appendix C in that it provides additional information consistent with the guidelines provided in the appendix for powered platforms.

Appendix D to Subpart M—Positioning Device Systems

Appendix D is a new appendix which has been added to the final rule to complement Appendix C and provide additional information on testing methods for positioning device systems. Appendix D also contains guidelines for inspecting positioning device systems to assist in complying with the requirements of § 1926.502(e)(5).

Appendix E to Subpart M—Sample Fall Protection Plans

This is a new Appendix to the final rule and has been added to assist employers who are able to demonstrate that the use of conventional fall protection measures are infeasible or create a greater hazard when constructing leading edges, or erecting precast concrete structures, or when engaged in residential construction work. The plans in Appendix E were developed specifically for a precast concrete worksite and a residential construction site, and can be modified and tailored for use in the other areas where OSHA permits employers to develop a Fall Protection Plans (See § 1926.501(b)(2), (b)(12) and (b)(13).

Discussion of Specific Issues Raised in the Proposed Rule

In the proposed rule, OSHA raised 27 specific issues. The comments and testimony received in response to issues that address specific provisions of the final rule are discussed above with those provisions. The other, more general issues are discussed below, along with the Agency's decisions with respect to those issues.

In Issue #1, OSHA asked for public comment on the extent to which current practices would meet the proposed rule; the feasibility and utility of the

proposed rule; and any costs or benefits of the proposed rule not addressed by OSHA. OSHA also asked for any accident reports which indicated that the proposal did not properly address fall hazards.

In response, OSHA received a variety of comments, some which took exception to OSHA's estimate of the number of construction workers who die each year from falls at construction sites. Other comments reflected commenters thoughts and opinions on the practicality and feasibility of the proposed rule. For example, with regard to OSHA's estimate that 45–60 workers are killed on construction jobs each year, one commenter (Ex. 2–36) stated his belief that the actual number killed was higher because, he noted, the National Safety Council's *Accident Facts* and insurance data which indicated that construction and scaffold falls may approach 1,000 per year. The commenter also included a copy of an article in which a representative of one union of construction workers stated that in one year 41 of their members alone were killed due to falls.

Another commenter, Terry Schmidt, Chairman of the ANSI Z359 Committee (Ex. 2–50) stated, "There is evidence to suggest that OSHA's estimate of 45–60 fatal falls per year in construction is perhaps erroneously very low." The point being made by these commenters is that the number of workers killed in falls each year is higher than that which OSHA estimated at the time of proposal and that a fall protection rule would, therefore, achieve additional benefits in that more lives would be saved.

With regard to OSHA question on costs, the Great Lakes Fabricators & Erectors Association (Ex. 2–19) commented that the regulations, as proposed, provided sufficient protection at reasonable cost levels.

With regard to current practices in the industry and on feasibility and utility of the proposed rule, the National Constructors Association (NCA) (Ex. 2–45), commented that the current level of practice which meets the requirements of the proposed changes is minimal to non-existent. They also stated, "The feasibility is questionable especially with the requirements for floor covering and extending perimeter nets to 15 feet," and noted that costs would increase to provide the proposed safety measures.

The United Union of Roofers, Waterproofers, and Allied Workers (Ex. 2–99) said, "The use of fall protection in the roofing industry is at best minimal."

Bristol Steel and NEA (Ex. 2–12 and 2–43) commented that the proposed standards generally reflected current accepted practices.

OSHA concludes, based on the record and as discussed above, that the final rule will have the effect of significantly reducing the risk of death or injury to workers. OSHA also concludes that the final rule will result in greater compliance than currently exist. Therefore, OSHA has decided promulgation of this final rule is necessary.

In Issue #3, OSHA noted that in some of the existing and proposed provisions, it had used specific numerical limits to define and clarify various duties. As an example, OSHA noted that § 1926.502(a) of the existing rule and § 1926.500(b) of the proposed rule defined the term "hole" by giving a physical measurement. This measurement was then used to determine when certain safety systems must be used to protect against fall hazards. These and other limits were based on existing requirements and national consensus standards, and were used in lieu of more performance-oriented language such as "covers shall be used on all holes which are large enough to constitute a fall hazard," or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA believes that the use of specific limits in certain provisions is necessary to provide notice to employers as to how they can comply with a provision and how OSHA intends to enforce the provision. OSHA has attempted to restrict the use of such limits in the final rule to situations where it is necessary to specify a single criterion for employee protection, to promote consistency in hazard abatement, and to minimize legal disputes over the intent of the requirement.

Issue #3 requested comment on the appropriateness of using specification language as opposed to a non-mandatory appendix for guidance of employers. OSHA also requested that if the specification language was not appropriate, that commenters state how the provisions should be written to provide the desired flexibility and the required fair notice. If commenters felt the continued use of such limits to be appropriate, they were asked to comment on whether the proposed limits were sufficient to abate the hazards. Commenters were also requested to include appropriate cost and injury data.

In response to this issue, several commenters agreed that OSHA's use of specification language was appropriate (Exs. 2–12, 2–36, 2–46 2–50, 2–56, 2–89, and 2–99). Other commenters (Exs. 2–16, 2–45, 2–47, 2–51, 2–92, 2–103, and 2–140) noted that performance-oriented language with non-mandatory appendices was preferred, though they did not recommend that any particular specification type language be rewritten. ACCSH (Tr. 6/10/87; p. 67), on the other hand, recommended that specification language be used in Subpart M and that the specifications be included in the body of the standard rather than the appendix.

After careful consideration of the record on this issue, OSHA has determined that there are some instances where OSHA regulations must be specific, such as when defining the dimensions of a hole, and that there are other instances where performance language is more appropriate, such as where OSHA can identify the hazard, state the desired results, and leave it up to the employer to choose the appropriate method for eliminating or reducing the hazard. OSHA believes that the final rule is neither too specific nor so performance-oriented that employers will have difficulty in complying with the final rule. OSHA has not made any revisions based solely on the comments received in response to this issue.

Issue #4—see § 1926.501(b)(1)
Issue #5—see § 1926.503 (a) and (b)
Issue #6—see § 1926.500(a)(1)(ii)
Issue #7—see § 1926.502(i) (3) and (4)
Issue #8—see § 1926.501(e)
Issue #9—see § 1926.502(c)(5) and § 1926.502(e)(5)
Issue #10—see § 1926.502(f)
Issue #11—see § 1926.501(b)(10)
Issue #12—see § 1926.501(b)(7) and (e)
Issue #13—see (c)(1) of § 1926.501.
Issues #14 through #26—see § 1926.502(d)

In Issue #27, OSHA noted that Subpart V—Power Transmission and Distribution provided additional criteria for personal climbing equipment, lineman's body belts, safety straps and lanyards. OSHA also noted that paragraph § 1926.951(b)(4) required lanyards and lifelines to meet the requirements in the existing rule at § 1926.104, Safety belts, lifelines, and lanyards. Public comment was requested on the economic impact, and any other impact, that would result if the reference to § 1926.104 were changed to § 1926.502(d)—Personal fall arrest systems and § 1926.502(e)—Positioning device systems.

All the commenters who responded to the questions raised in this issue indicated that there would be no impact, economic or otherwise, as a result of the OSHA contemplated changes, and they agreed that the

reference should be changed. (Exs. 2–12, 2–27, 2–43 and 2–50). OSHA agrees with the commenters and has revised the provision in § 1926.951(b)(4) to require lifeline and lanyards to be in compliance with § 1926.502.

Discussion of Issues Raised in the Notice of Hearing

On January 26, 1988, OSHA published a Notice of Hearing in the **Federal Register** [53 FR 2048]. In that Notice, OSHA raised four new issues specific to the proposed rule on fall protection. Those issues involved steel erection, precast concrete, guardrail systems and safety net systems. The comments received on these issues have already been discussed except Issue M–1 on Steel Erection in which OSHA raised a number of concerns which related to fall protection measures for the employees engaged in steel erection activities. OSHA received considerable data primarily through testimony and post hearing comments concerning the subjects addressed in Issue M–1 and M–2. Comments related to the construction of buildings are not discussed in this final rule since the information was intended for use at a later date as OSHA stated in the hearing notice. OSHA recently established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) to assist the Agency in developing a proposed revision of subpart R—Steel Erection, which includes fall protection requirements for employees performing steel erection work in buildings (59 FR 24389; May 11, 1994). The comments received in response to Issue #1 and #2 have been made a part of the record of this new rulemaking. Final Subpart M does not set the duty to provide fall protection for workers engaged in steel erection of buildings. The requirements of § 1926.105(a), which is being deleted from part 1926 in this rulemaking, will continue to apply to steel erection of buildings until subpart R is revised. Because the requirements of that section will now apply only to steel erection of buildings, OSHA is redesignating § 1926.105(a) as § 1926.753 of subpart R. This requirement for employees to have fall protection outside (at the perimeter) of buildings, complements the requirements already in subpart R which require fall protection inside the buildings. Together, these requirements will maintain continuity of coverage for these workers until subpart R is revised. Fall protection requirements for activities involving steel erection other than buildings, such as the erection of bridges and tanks are, of course, not currently addressed in subpart R. Therefore, subpart M will set the requirements to have fall protection in these other areas.

In Issue #2 of the notice of hearing, OSHA asked if there were areas or operations, in addition to those already identified in proposed § 1926.501, which had unique fall protection requirements not addressed by the proposed standards. OSHA requested commenters to describe such areas and operations in detail and to discuss the fall protection systems which should be used.

OSHA received many responses to Issue #2. The largest number of commenters mentioned steel erection as an activity that was so unique that it should have separate fall protection requirements. (Exs. 2–16, 2–27, 2–45, 2–47, 2–51, and 2–92). Some commenters suggested that the requirements be placed in a separate subpart of the construction safety and health standards; namely, subpart R—Steel Erection. Others (Exs. 2–12, 2–36, and 2–43) commented that the proposed standards were adequate for all structural erection operations, and pointed out how the leading edge requirements might apply to structural erection work.

In addition, testimony given at the public hearing supported the need to address fall protection for steel erection separately. OSHA's decision that fall protection for workers engaged in steel erection activities will be the subject of a separate rulemaking effort was discussed in the hearing notice for Subpart M issued on January 26, 1988, [53 FR 2052].

IV. Summary of the Regulatory Impact Analysis

Introduction

Executive Order 12866 and the Regulatory Flexibility Act required OSHA to analyze the costs, benefits, and other consequences and impacts associated with this standard. Consistent with these requirements, OSHA has prepared a regulatory impact analysis for revised subpart M. The following is a summary of this analysis, which is available from OSHA's docket office.

The regulatory impact analysis includes a description of the industries affected by the regulation, the evaluation of the risks addressed, the assessment of the benefits attributable to the revised standard, the determination of the technological feasibility of new requirements, the estimation of the costs of compliance with subpart M requirements, the determination of the economic feasibility of compliance with the standard, and the analysis of the economic and other impacts associated with this rulemaking.

Affected Industries

The requirements of revised subpart M apply to all establishments in the construction industry. As classified by the 1987 Standard Industrial Classification (SIC) manual, the industry can be divided into three broad types of activities: building construction general contractors (SIC 15), heavy construction general and special trade contractors (SIC 16) and construction by other special trade contractors (SIC 17).

The total value of construction work is approximately $500 billion annually. About 75 percent of this amount ($370 billion) involves the construction of buildings, including single family houses ($124 billion). The total value of nonbuilding construction work includes $45 billion for the construction of highways, streets, parking areas, bridges, and tunnels, and another $13 billion for the construction of sewers and water mains.

Construction work includes new construction as well as additions, alterations, reconstruction, maintenance, and repairs. Of the total value of construction work of $500 billion, about $328 billion (66 percent) involves new construction.

Evaluation of Risk and Potential Benefits

Of the 115,000 injuries due to falls that occur in the construction industry annually, 68,000 are addressed by the subpart M standard while the remaining 47,000 are attributable to circumstances addressed by standards other than subpart M. Injuries and fatalities due to falls in construction that are not covered by subpart M include falls that are not associated with subpart M criteria for fall protection systems (§ 1926.502) and involve ladders, stairs, scaffolds, vehicles, and skeletal steel erection of buildings. Similarly, of the 158 fatalities due to falls in construction annually, 95 are covered by provisions of the revised subpart M standard.

Revisions to subpart M promulgated through this rulemaking are expected to result in the prevention of 22 fatalities and 15,600 injuries annually in addition to the fatalities and injuries that would be prevented through full compliance with the existing standard. Most of the falls in construction addressed by subpart M could be prevented through compliance with the existing as well as with the revised standards.

In addition to the unquantifiable reductions in pain and suffering, the prevention of injuries will result in estimated savings of over $200 million

annually. This estimate includes savings related to wage and productivity losses, medical costs, administrative expenses, and other costs associated with accidents.

Technological Feasibility

Since the requirements of the revised subpart M can be met with existing equipment and methods that are readily available, the standard is considered to be technologically feasible.

Costs

The total estimated costs associated with new requirements included in the revised subpart M standard amount to about $40 million annually. The majority of these costs ($25 million) involve costs associated with providing increased fall protection for employees working on roofs. Other components of the estimated compliance costs involve inspections and tests of personnel safety nets ($5.4 million), and additional training for employees exposed to fall hazards ($6.6 million).

Economic Impacts

Compliance with the requirements of the revised subpart M standard has been determined to be economically feasible and is not expected to produce any significant adverse economic impacts. The costs that are imposed by the regulation should be a minimal burden on construction establishments. The estimated compliance costs represent less than 0.01 percent of total construction revenues and less than 0.5 percent of revenues for each individual construction sector.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, OSHA has made an assessment of the impact of the revised standard and has concluded that it will not have a significant impact upon a substantial number of small entities. The estimated compliance costs do not involve large capital expenditures, and there is no significant differential effect on small firms relative to that on large firms.

OSHA has included non-mandatory appendices as part of the regulation to help improve compliance with the standard and reduce the potential for misunderstanding. These appendices will also help to minimize impacts on small firms by significantly reducing the effort needed to develop a compliance strategy.

V. Statutory Considerations

A. Introduction

OSHA has described fall hazards, falling object hazards and the measures required to protect affected employees from those hazards in Section I, *Background;* Section II, *Hazards Involved*; and Section III, *Summary and Explanation of the Final Rule*, above. The Agency is providing the following discussion of the statutory mandate for OSHA rulemaking activity to explain the legal basis for its determination that the revised fall protection standard, as promulgated, is reasonably necessary to protect affected employees from significant risks of injury and death.

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory *occupational safety and health standards* applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "[e]ach employer shall comply with *occupational safety and health standards* promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. § 652(8)) provides that "the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

In two recent cases, reviewing courts have expressed concern that OSHA's interpretation of these provisions of the OSH Act, particularly of section 3(8) as it pertains to safety rulemaking, could lead to overly costly or under-protective safety standards. In *International Union, UAW* v. *OSHA*, 938 F.2d 1310 (D.C. Cir. 1991), the District of Columbia Circuit rejected substantive challenges to OSHA's lockout/tagout standard and denied a request that enforcement of that standard be stayed, but it also expressed concern that OSHA's interpretation of the OSH Act could lead to safety standards that are very costly and only minimally protective. In *National Grain & Feed Ass'n* v. *OSHA*, 866 F.2d 717 (5th Cir. 1989), the Fifth Circuit concluded that Congress gave OSHA considerable discretion in structuring the costs and benefits of safety standards but, concerned that the grain dust standard might be under-protective, directed OSHA to consider adding a provision that might further reduce significant risk of fire and explosion.

OSHA rulemakings involve a significant degree of agency expertise and policy-making discretion to which reviewing courts must defer. (See, for example, *Building & Constr. Trades Dep't, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1266 (D.C. Cir. 1988); *Industrial Union Dep't, AFL–CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 655 n. 62 (1980).) At the same time, the Agency's technical expertise and policymaking authority must be exercised within discernable limits. The lockout/tagout and grain handling standard decisions sought clarification of the Agency's view of the scope of its expertise and authority. In light of those decisions, the preamble to this safety standard states OSHA's views regarding the limits of its safety rulemaking authority and explains why the Agency is confident that its interpretive views have in the past avoided regulatory extremes and continue to do so in this rule.

Stated briefly, the OSH Act requires that, before promulgating any occupational safety standard, OSHA demonstrate based on substantial evidence in the record as a whole that: (1) the proposed standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk. Additionally, proposed safety standards must be compatible with prior Agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. These elements limit OSHA's regulatory discretion for safety rulemaking and provide a decision-making framework for developing a rule.

B. Congress Concluded That OSHA Regulations are Necessary To Protect Workers From Occupational Hazards and That Employers Should Be Required To Reduce or Eliminate Significant Workplace Health and Safety Threats

At section 2(a) of the OSH Act (29 U.S.C. 651(a)), Congress announced its determination that occupational injury and illness should be eliminated as much as possible: "The Congress finds that occupational injury and illness arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments." Congress

therefore declared "it to be its purpose and policy * * * to assure so far as possible every working man and woman in the Nation safe * * * working conditions [29 U.S.C. 651(b)]."

To that end, Congress instructed the Secretary of Labor to adopt existing federal and consensus standards during the first two years after the OSH Act became effective and, in the event of conflict among any such standards, to "promulgate the standard which assures the greatest protection of the safety or health of the affected employees [29 U.S.C. 655(a)]." Congress also directed the Secretary to set mandatory occupational safety standards [29 U.S.C. 651(b)(3)], based on a rulemaking record and substantial evidence [29 U.S.C. 655(b)(2)], that are "reasonably necessary or appropriate to provide safe * * * employment and places of employment." When promulgating permanent safety or health standards that differ from existing national consensus standards, the Secretary must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. 655(b)(8)]." Correspondingly, every employer must comply with OSHA standards and, in addition, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees [29 U.S.C. 654(a)]."

"Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business * * *. Indeed, Congress thought that the *financial costs* of health and safety problems in the workplace were as large as or larger than the *financial costs* of eliminating these problems [*American Textile Mfrs. Inst. Inc.* v. *Donovan*, 452 U.S. 490, 519–522 (1981) (*ATMI*); emphasis was supplied in original]." "[T]he fundamental objective of the Act [is] to prevent occupational deaths and serious injuries [*Whirlpool Corp.* v. *Marshall*, 445 U.S. 1, 11 (1980)]." "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America [S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. (1970), *reprinted in* Senate Committee on Labor and Public Welfare, *Legislative History of the Occupational Safety and Health Act of 1970*, (Committee Print 1971) ("Leg. Hist.") at 444 (Senator Yarborough)]." "Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country [*Id.* at 324; see also 510–511, 517]."

> [T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor.
>
> When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses * * *.
>
> Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. [*Id.* at 518–19 (Senator Cranston)]

Congress considered uniform enforcement crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. Moreover, "many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so [Leg. Hist. at 144, 854, 1188, 1201]."

Thus, the statutory text and legislative history make clear that Congress conclusively determined that OSHA regulation is necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

C. As Construed By the Courts and By OSHA, the OSH Act Sets Clear and Reasonable Limits for Agency Rulemaking Action

OSHA has long followed the teaching that section 3(8) of the OSH Act requires that, before it promulgates "*any* permanent health or safety standard, [it must] make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices [*Industrial Union Dep't, AFL–CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (plurality) (*Benzene*); emphasis was supplied in original]." Thus, the national consensus and existing federal standards that Congress instructed OSHA to adopt summarily within two years of the OSH Act's inception provide reference points concerning the least an OSHA standard should achieve (29 U.S.C. §§ 655(a)). As a result, OSHA is precluded from regulating insignificant risks or from issuing standards that do not at least lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the Agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dep't* v. *Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)] ('Congress does not appear to have intended to protect employees by putting their employers out of business.') [*American Textile Mfrs. Inst. Inc.*, 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends 'disaster for some marginal firms,' but it is economically infeasible if it 'threaten[s] massive dislocation to, or imperil[s] the existence of,' the industry)]."

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in *ATMI* that economic infeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27,360 (June 23, 1978). Proposed 200 μg/m³ PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 μg/m³ level was not feasible for weaving and that 750 μg/m³ was all that could reasonably be required). See also 54 FR 29,245–246 (July 11, 1989); *American Iron & Steel Institute*, 939 F.2d at 1003. OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.) All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end (*ATMI*, at 514 n. 32; *Building and Constr. Trades Dep't, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)). OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance, allowing as much as ten years for compliance phase-in. (See *United Steelworkers of Am.* v. *Marshall*, 647

F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Operations Manual provides that, based on an employer's economic situation, OSHA may extend the period within which a violation must be corrected after issuance of a citation (CPL. 2.45B, Chapter III, paragraph E6d(3)(a), Dec. 31, 1990).

To reach the necessary findings and conclusions, OSHA conducts rulemaking in accordance with the requirements of section 6 of the OSH Act. The rulemaking process enables the Agency to determine the qualitative and, if possible, the quantitative nature of the risk with (and without) regulation, the technological feasibility of compliance, the availability of capital to the industry and the extent to which that capital is required for other purposes, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See *ATMI* at 2501–2503; *American Iron & Steel Institute* generally.) Section 6(f) of the OSH Act further provides that, if the validity of a standard is challenged, OSHA must support its conclusions with "substantial evidence in the record considered as a whole," a standard that courts have determined requires fairly close scrutiny of agency action and the explanation of that action. (See *Steelworkers*, 647 F.2d at 1206–1207.)

OSHA's powers are further circumscribed by the independent Occupational Safety and Health Review Commission, which provides a neutral forum for employer contests of citations issued by OSHA for noncompliance with health and safety standards (29 U.S.C. §§ 659–661; noted as an additional constraint in *Benzene* at 652 n. 59). OSHA must also respond rationally to similarities and differences among industries or industry sectors. (See *Building and Constr. Trades Dep't, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1272–73 (D.C. Cir. 1988).)

OSHA rulemaking is thus constrained first by the need to demonstrate that the standard will substantially reduce a significant risk of material harm, and then by the requirement that compliance is technologically capable of being done and not so expensive as to threaten economic instability or dislocation for the industry. Within these bounds, further constraints such as the need to find cost-effective measures and to respond rationally to all meaningful comment militate against regulatory extremes.

D. The Revised Fall Protection Standard Complies With the Statutory Criteria Described Above and is not Subject to the Additional Constraints Applicable to Section 6(b)(5) Standards

Standards which regulate hazards that are frequently undetectable because they are subtle or develop slowly or after long latency periods, are frequently referred to as "health" standards. Standards that regulate hazards, such as falls, explosions or electrocutions, that cause immediately noticeable physical harm, are called "safety" standards. (See *National Grain & Feed Ass'n* v. *OSHA (NGFA II)*, 866 F.2d 717, 731, 733 (5th Cir. 1989). As noted above, section 3(8) provides that *all* OSHA standards must be "reasonably necessary or appropriate." In addition, section 6(b)(5) requires that OSHA set health standards which limit significant risk "to the extent feasible." OSHA has determined that the revised fall protection standard is a safety standard, because the revised standard addresses hazards, such as falls from elevations and falling objects, that are immediately dangerous to life or health, not the longer term, less obvious hazards subject to section 6(b)(5).

The OSH Act and its legislative history clearly indicate that Congress intended for OSHA to distinguish between safety standards and health standards. For example in section 2(b)(6) of the OSH Act, Congress declared that the goal of assuring safe and healthful working conditions and preserving human resources would be achieved, in part:

> * * * by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

The legislative history makes this distinction even clearer:

> [The Secretary] should take into account that anyone working in toxic agents and physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards. [*Leg. Hist.* at 502–503 (Sen. Dominick), quoted in *Benzene* at 648–49]

Additionally, Representative Daniels distinguished between "insidious 'silent killers' such as toxic fumes, bases, acids, and chemicals" and "violent physical injury causing immediate visible physical harm" (*Leg. Hist.* at 1003), and Representative Udall contrasted insidious hazards like carcinogens with "the more visible and well-known question of industrial accidents and on-the-job injury" (*Leg. Hist.* at 1004). (See also, for example, S.Rep. No. 1282, 91st Cong., 2d Sess 2–3 (1970), U.S. Code Cong. & Admin. News 1970, pp. 5177, 5179, reprinted in Leg. Hist. at 142–43, discussing 1967 Surgeon General study that found that 65 percent of employees in industrial plants "were potentially exposed to harmful physical agents, *such as severe noise or vibration*, or to toxic materials"; Leg.Hist at 412; *id.* at 446; *id.* at 516; *id.* at 845; *International Union, UAW* at 1315.)

In reviewing OSHA rulemaking activity, the Supreme Court has held that section 6(b)(5) requires OSHA to set "the most protective standard consistent with feasibility" (*Benzene* at 643 n. 48). As Justice Stevens observed:

> The reason that Congress drafted a special section for these substances * * * was because Congress recognized that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate and obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances. [*Benzene*, at 649 n. 54.]

Challenges to the grain dust and lockout/tagout standards included assertions that grain dust in explosive quantities and uncontrolled energy releases that could expose employees to crushing, cutting, burning or explosion hazards were harmful physical agents so that OSHA was required to apply the criteria of section 6(b)(5) when determining how to protect employees from those hazards. Reviewing courts have uniformly rejected such assertions. For example, the Court in *International Union, UAW* v. *OSHA*, 938 F.2d 1310 (D.C. Cir. 1991) rejected the view that section 6(b)(5) provided the statutory criteria for regulation of uncontrolled energy, holding that such a "reading would obliterate a distinction that Congress drew between 'health' and 'safety' risks." The Court also noted that the language of the OSH Act and the legislative history supported the OSHA position (*International Union, UAW* at 1314). Additionally, the Court stated: "We accord considerable weight to an agency's construction of a statutory scheme it is entrusted to administer, rejecting it only if unreasonable" (*International Union, UAW* at 1313, citing *Chevron U.S.A., Inc.* v. NRDC, 467, U.S. 837, 843 (1984)).

The Court reviewing the grain dust standard also deferred to OSHA's

reasonable view that the Agency was not subject to the feasibility mandate of section 6(b)(5) in regulating explosive quantities of grain dust (*National Grain & Feed Association* v. *OSHA (NGFA II)*, 866 F.2d 717, 733 (5th Cir. 1989)). It therefore applied the criteria of section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect employee safety.

As explained in Section I, *Background*, and Section III, *Summary and Explanation of the Standard*, above, and in Section VI, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, below, OSHA has determined that the failure to protect employees from fall hazards poses significant risks to employees and that the provisions of the final rule are reasonably necessary to protect affected employees from those risks. The Agency estimates that compliance with the revised fall protection standard will cost $70 million annually and will reduce the risk of the identified hazards (preventing 79 fatalities and 56,400 injuries annually). This constitutes a substantial reduction of significant risk of material harm for the exposed population of approximately 4 million construction employees. The Agency believes that compliance is technologically feasible because the rulemaking record indicates that the measures required by the standard are already in general use throughout the construction industry.

Additionally, OSHA believes that compliance is economically feasible as documented in the Regulatory Impact Analysis.

As detailed in Table 1, below, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

TABLE 1

Standard (CFR cite)	Final rule date (FR cite)	No. of deaths prevented annually	No. of injuries prevented annually	Annual cost first five yrs (mill)	Annual cost next five yrs (mill)
Grain handling (1910.272)	12–31–87 (52 FR 49622)	18	394	5.9–33.4	5.9–33.4
HAZWOPER (1910.120)	3–6–89 (54 FR 9311)	32	18,700	153	153
Excavations (Subpt P)	10–31–89 (54 FR 45,954)	74	800	306	306
Process Safety Mgmt (1910.119)	2–24–92 57 FR 6356	330	1,917	880.7	470.8
Permit-Required Confined Spaces (1910.146)	1–14–93 58 FR 4462	54	5,041	202.4	202.4

OSHA assessed employee risk by evaluating exposure to fall hazards throughout the construction industry, except insofar as § 1926.500(a)(2) specified construction activity that is not covered by subpart M. The *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, Section IV, above, presents OSHA's estimate of the costs and benefits of the revised fall protection standard in terms of the Standard Industrial Classification (SIC) codes for the industries regulated.

The record indicates clearly that employees in all covered sectors face significant risks related to fall hazards, and that compliance with the revised fall protection standard is reasonably necessary to protect affected employees from that risk.

OSHA has considered and responded to all substantive comments regarding the proposed fall protection standard on their merits in the Section III, *Summary and Explanation of the Standard*, earlier in this preamble. In particular, OSHA evaluated all suggested changes to the proposed rule in terms of their impact on worker safety, their feasibility, their cost effectiveness, and their consonance with the OSH Act.

VI. References

1. Advisory Committee on Construction Safety and Health, *Transcripts of meetings held on November 29–30, 1977; January 10, 1978; February 14, 1978; December 5, 1978; December 16, 1978; June 29–30, 1982.*

2. U.S. Department of Labor, Occupational Safety and Health Administration, *Preliminary Regulatory Impact and Regulatory Flexibility Assessment of Subpart M—Fall Protection*, Office of Regulatory Analysis, Washington, D.C., March 1984.

3. U.S. Department of Labor, Occupational Safety and Health Administration, *Occupational Fatalities Related to Roofs, Ceilings, and Floors as Found in Reports of OSHA Fatality/Catastrophe Investigations*, November, 1979.

4. American National Standard ANSI A10.11–1979, *American National Standard for Safety Nets Used During Construction, Repair, and Demolition Operations*, American National Standards Institute, New York.

5. American National Standard, ANSI A10.14–1975, *Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Droplines for Construction and Industrial Use*, American National Standards Institute, New York.

6. U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Injuries and Illnesses in 1979: Summary*, Washington, D.C., April 1981.

7. Andrew C. Sulowski, "Selecting Fall Arresting Systems," *National Safety News*, October 1979.

8. National Bureau of Standards (NBS), NBSIR 76–1146 *A Study of Personal Fall-Safety Equipment*, Washington, D.C.: NBS, June 1977.

9. International Standards Organization (ISO), Secretariat Association Francaise de Normalisation (AFNOR). *Personal Fall Arresting Systems and Components*, (ISO/TC 94/SC4 N50E). New York, NY: ANSI, 1983.

10. Noel, Georges; Amphoux, M., et al, *Safety Equipment in Construction and Public Works Transportation*, (No. 362) Technical Institute for Construction and Public Works. Montreuil, France: 1978.

11. British Standards Institution (BSI). *Specification for Industrial Safety Belts, Harnesses and Safety Lanyards*, (BS 1397), London, England: BSI, 1979.

12. Hearon, Bernard F. and Brinkley, James W., *Fall Arrest and Post-Fall Suspension: Literature Review and Directions for Further Research*, (AFAMRL-TR–84–021), Air Force Aerospace Medical Research Laboratory, Wright-Patterson AFB, Dayton, Ohio: 1984.

13. Written comments on OSHA's Proposed Rule on Powered Platforms for Exterior Building Maintenance (50 FR 2890, January 22, 1985), Docket No. S–700A.

14. Yancey, Carino and Sansalone, *Perimeter Safety Net Projection Requirements*, Center for Building Technology, National Bureau of Standards, Washington, D.C., May 1986 (NBSIR 85–3271).

VII. State Plan Requirements

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within 6 months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States and territories are: Alaska, Arizona,

California, Connecticut, (State and local government workers only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, (State and local government workers only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

VIII. Federalism

The Final Rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce, must be justified by compelling local conditions, *see* Section 18(c)(2).

The Federal fall protection standards for construction workers are not unique to any one state or region of the country. Nonetheless, states with occupational safety and health plans approved under Section 18 of the OSH Act will be able to develop their own state standards to deal with any special problems which might be encountered in a particular area. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this Final Rule addresses a clear national problem related to occupational safety and health of construction workers. Those states which have elected to participate under Section 18 of the OSH Act are not preempted by this standard, and will be able to address special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as that standard.

IX. OMB Review Under the Paperwork Reduction Act

The OMB regulations, 5 CFR part 1320, contain procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The final Fall Protection standard requires employers who use fall protection plans to allow OSHA access to those plans to determine if they are in compliance with § 1926.502(k). The collection of information has been approved and the OMB clearance number is 1218–0197.

X. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Parts 1910 and 1926

Construction industry, Construction safety, Excavations, Fall protection, Hoisting safety, Occupational safety and health, Protective equipment, Safety, Tools.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 35736), and 29 CFR part 1911, 29 CFR parts 1910 and 1926 are amended as set forth below.

Signed at Washington, DC this 29th day of July 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart R—[Amended]

1. The authority citation for subpart R of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

2. Paragraph (g)(2)(i) of § 1910.269 is revised to read as follows:

§ 1910.269 Electric power generation, transmission, and distribution.

* * * * *

(g) * * *

(2) *Fall protection.* (i) Personal fall arrest equipment shall meet the requirements of subpart M of Part 1926 of this Chapter.

* * * * *

PART 1926—[AMENDED]

Subpart E—[Amended]

3. The authority citation for subpart E of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1926.104 [Removed]

4. Section § 1926.104 is removed.

§ 1926.753 [Added]

5. Paragraph (a) of § 1926.105 is redesignated as new § 1926.753 in subpart R and the section heading "Safety Nets." is added.

§ 1926.105 [Removed and Reserved]

6. Section 1926.105 is removed and reserved.

§ 1926.107 [Amended]

7. Paragraphs (b), (c) and (f) of § 1926.107 are removed.

Subpart H—[Amended]

8. The authority citation for subpart H of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable. Section 1926.250 also issued under 29 CFR Part 1911.

9. Paragraph (b)(2) of § 1926.250 is revised to read as follows:

§ 1926.250 General requirements for storage.

* * * * *

(b) * * *

(2) Each employee required to work on stored material in silos, hoppers, tanks, and similar storage areas shall be equipped with personal fall arrest

equipment meeting the requirements of subpart M of this part.

* * * * *

Subpart N—[Amended]

10. The authority citation for subpart N of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

11. Paragraphs (c)(2) and (g)(4)(i)(C) of § 1926.550 are revised to read as follows:

§ 1926.550 Cranes and derricks.

* * * * *

(c) * * *

(2) Each employee required to perform duties on the horizontal boom of hammerhead tower cranes shall be protected against falling by guardrails or by a personal fall arrest system in conformance with subpart M of this part.

* * * * *

(g) * * *

(4) * * *

(i) * * *

(C) The personnel platform itself, except the guardrail system and personal fall arrest system anchorages, shall be capable of supporting, without failure, its own weight and at least five times the maximum intended load. Criteria for guardrail systems and personal fall arrest system anchorages are contained in subpart M of this Part

* * * * *

Subpart P—[Amended]

12. The authority citation for subpart P of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1926.651 also issued under 29 CFR Part 1911.

13. The section heading and paragraph (1) of § 1926.651 are revised to read as follows:

§ 1926.651 Specific excavation requirements.

* * * * *

(1) Walkways shall be provided where employees or equipment are required or permitted to cross over excavations. Guardrails which comply with § 1926.502(b) shall be provided where walkways are 6 feet (1.8 m) or more above lower levels.

Subpart Q—[Amended]

14. The authority citation for subpart Q of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1926.701 [Amended]

15. Paragraph (f)(2) of § 1926.701 is removed and the paragraph designation (1) is removed.

16. The authority citation for subpart R of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Subpart V—[Amended]

17.–18. The authority citation for subpart V of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable. Section 1926.951 also issued under 29 CFR Part 1911.

19. Paragraph (b)(4)(i) of § 1926.951 is revised to read as follows:

§ 1926.951 Tools and protective equipment.

* * * * *

(b) * * *

(4)(i) Lifelines and lanyards shall comply with the provisions of § 1926.502.

* * * * *

21. Subpart M of Part 1926 is revised to read as follows:

Subpart M—Fall Protection

Sec.

1926.500 Scope, application, and definitions applicable to this subpart.
1926.501 Duty to have fall protection.
1926.502 Fall protection systems criteria and practices.
1926.503 Training requirements.
Appendix A to Subpart M—Determining Roof Widths
Appendix B to Subpart M—Guardrail Systems
Appendix C to Subpart M—Personal Fall Arrest Systems
Appendix D to Subpart M—Positioning Device Systems
Appendix E to Subpart M—Sample Fall Protection Plans

Subpart M—Fall Protection

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR Part 1911.

§ 1926.500 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* (1) This subpart sets forth requirements and criteria for fall protection in construction workplaces covered under 29 CFR part 1926. Exception: The provisions of this subpart do not apply when employees are making an inspection, investigation, or assessment of workplace conditions prior to the actual start of construction work or after all construction work has been completed.

(2) Section 1926.501 sets forth those workplaces, conditions, operations, and circumstances for which fall protection shall be provided except as follows:

(i) Requirements relating to fall protection for employees working on scaffolds are provided in subpart L of this part.

(ii) Requirements relating to fall protection for employees working on certain cranes and derricks are provided in subpart N of this part.

(iii) Requirements relating to fall protection for employees performing steel erection work in buildings are provided in subpart R of this part.

(iv) Requirements relating to fall protection for employees working on certain types of equipment used in tunneling operations are provided in subpart S of this part.

(v) Requirements relating to fall protection for employees engaged in the construction of electric transmission and distribution lines and equipment are provided in subpart V of this part.

(vi) Requirements relating to fall protection for employees working on stairways and ladders are provided in subpart X of this part.

(3) Section 1926.502 sets forth the requirements for the installation, construction, and proper use of fall protection required by part 1926, except as follows:

(i) Performance requirements for guardrail systems used on scaffolds and performance requirements for falling object protection used on scaffolds are provided in subpart L of this part.

(ii) Performance requirements for stairways, stairrail systems, and handrails are provided in subpart X of this part.

(iii) Additional performance requirements for personal climbing equipment, lineman's body belts, safety straps, and lanyards are provided in Subpart V of this part.

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection systems.

(b) *Definitions.*

Anchorage means a secure point of attachment for lifelines, lanyards or deceleration devices.

Body belt (safety belt) means a strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness means straps which may be secured about the employee in a manner that will distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders with means for attaching it to other components of a personal fall arrest system.

Buckle means any device for holding the body belt or body harness closed around the employee's body.

Connector means a device which is used to couple (connect) parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or dee-ring sewn into a body belt or body harness, or a snap-hook spliced or sewn to a lanyard or self-retracting lanyard).

Controlled access zone (CAZ) means an area in which certain work (e.g., overhand bricklaying) may take place without the use of guardrail systems, personal fall arrest systems, or safety net systems and access to the zone is controlled.

Dangerous equipment means equipment (such as pickling or galvanizing tanks, degreasing units, machinery, electrical equipment, and other units) which, as a result of form or function, may be hazardous to employees who fall onto or into such equipment.

Deceleration device means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc., which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

Deceleration distance means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

Equivalent means alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

Free fall means the act of falling before a personal fall arrest system begins to apply force to arrest the fall.

Free fall distance means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

Guardrail system means a barrier erected to prevent employees from falling to lower levels.

Hole means a gap or void 2 inches (5.1 cm) or more in its least dimension, in a floor, roof, or other walking/working surface.

Infeasible means that it is impossible to perform the construction work using a conventional fall protection system (i.e., guardrail system, safety net system, or personal fall arrest system) or that it is technologically impossible to use any one of these systems to provide fall protection.

Lanyard means a flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

Leading edge means the edge of a floor, roof, or formwork for a floor or other walking/working surface (such as the deck) which changes location as additional floor, roof, decking, or formwork sections are placed, formed, or constructed. A leading edge is considered to be an "unprotected side and edge" during periods when it is not actively and continuously under construction.

Lifeline means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Low-slope roof means a roof having a slope less than or equal to 4 in 12 (vertical to horizontal).

Lower levels means those areas or surfaces to which an employee can fall. Such areas or surfaces include, but are not limited to, ground levels, floors, platforms, ramps, runways, excavations, pits, tanks, material, water, equipment, structures, or portions thereof.

Mechanical equipment means all motor or human propelled wheeled equipment used for roofing work, except wheelbarrows and mopcarts.

Opening means a gap or void 30 inches (76 cm) or more high and 18 inches (48 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

Overhand bricklaying and related work means the process of laying bricks and masonry units such that the surface of the wall to be jointed is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. Related work includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

Personal fall arrest system means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these. As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Positioning device system means a body belt or body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning.

Rope grab means a deceleration device which travels on a lifeline and automatically, by friction, engages the lifeline and locks so as to arrest the fall of an employee. A rope grab usually

employs the principle of inertial locking, cam/level locking, or both.

Roof means the exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

Roofing work means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

Safety-monitoring system means a safety system in which a competent person is responsible for recognizing and warning employees of fall hazards.

Self-retracting lifeline/lanyard means a deceleration device containing a drum-wound line which can be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which, after onset of a fall, automatically locks the drum and arrests the fall.

Snaphook means a connector comprised of a hook-shaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released, automatically closes to retain the object. Snaphooks are generally one of two types:

(1) The locking type with a self-closing, self-locking keeper which remains closed and locked until unlocked and pressed open for connection or disconnection; or

(2) The non-locking type with a self-closing keeper which remains closed until pressed open for connection or disconnection. As of January 1, 1998, the use of a non-locking snaphook as part of personal fall arrest systems and positioning device systems is prohibited.

Steep roof means a roof having a slope greater than 4 in 12 (vertical to horizontal).

Toeboard means a low protective barrier that will prevent the fall of materials and equipment to lower levels and provide protection from falls for personnel.

Unprotected sides and edges means any side or edge (except at entrances to points of access) of a walking/working surface, e.g., floor, roof, ramp, or runway where there is no wall or guardrail system at least 39 inches (1.0 m) high.

Walking/working surface means any surface, whether horizontal or vertical on which an employee walks or works, including, but not limited to, floors, roofs, ramps, bridges, runways, formwork and concrete reinforcing steel but not including ladders, vehicles, or trailers, on which employees must be located in order to perform their job duties.

Warning line system means a barrier erected on a roof to warn employees that they are approaching an unprotected roof side or edge, and which designates an area in which roofing work may take place without the use of guardrail, body belt, or safety net systems to protect employees in the area.

Work area means that portion of a walking/working surface where job duties are being performed.

§ 1926.501 Duty to have fall protection.

(a) *General.* (1) This section sets forth requirements for employers to provide fall protection systems. All fall protection required by this section shall conform to the criteria set forth in § 1926.502 of this subpart.

(2) The employer shall determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to support employees safely. Employees shall be allowed to work on those surfaces only when the surfaces have the requisite strength and structural integrity.

(b)(1) *Unprotected sides and edges.* Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

(2) *Leading edges.* (i) Each employee who is constructing a leading edge 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of § 1926.502.

Note: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with § 1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems.

(ii) Each employee on a walking/working surface 6 feet (1.8 m) or more above a lower level where leading edges are under construction, but who is not engaged in the leading edge work, shall be protected from falling by a guardrail system, safety net system, or personal fall arrest system. If a guardrail system is chosen to provide the fall protection, and a controlled access zone has already been established for leading edge work, the control line may be used in lieu of a guardrail along the edge that parallels the leading edge.

(3) *Hoist areas.* Each employee in a hoist area shall be protected from falling 6 feet (1.8 m) or more to lower levels by guardrail systems or personal fall arrest systems. If guardrail systems, [or chain, gate, or guardrail] or portions thereof, are removed to facilitate the hoisting operation (e.g., during landing of materials), and an employee must lean through the access opening or out over the edge of the access opening (to receive or guide equipment and materials, for example), that employee shall be protected from fall hazards by a personal fall arrest system.

(4) *Holes.* (i) Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.

(ii) Each employee on a walking/working surface shall be protected from tripping in or stepping into or through holes (including skylights) by covers.

(iii) Each employee on a walking/working surface shall be protected from objects falling through holes (including skylights) by covers.

(5) *Formwork and reinforcing steel.* Each employee on the face of formwork or reinforcing steel shall be protected from falling 6 feet (1.8 m) or more to lower levels by personal fall arrest systems, safety net systems, or positioning device systems.

(6) *Ramps, runways, and other walkways.* Each employee on ramps, runways, and other walkways shall be protected from falling 6 feet (1.8 m) or more to lower levels by guardrail systems.

(7) *Excavations.* (i) Each employee at the edge of an excavation 6 feet (1.8 m) or more in depth shall be protected from falling by guardrail systems, fences, or barricades when the excavations are not readily seen because of plant growth or other visual barrier;

(ii) Each employee at the edge of a well, pit, shaft, and similar excavation 6 feet (1.8 m) or more in depth shall be protected from falling by guardrail systems, fences, barricades, or covers.

(8) *Dangerous equipment.* (i) Each employee less than 6 feet (1.8 m) above dangerous equipment shall be protected from falling into or onto the dangerous

equipment by guardrail systems or by equipment guards.

(ii) Each employee 6 feet (1.8 m) or more above dangerous equipment shall be protected from fall hazards by guardrail systems, personal fall arrest systems, or safety net systems.

(9) *Overhand bricklaying and related work.* (i) Except as otherwise provided in paragraph (b) of this section, each employee performing overhand bricklaying and related work 6 feet (1.8 m) or more above lower levels, shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or shall work in a controlled access zone.

(ii) Each employee reaching more than 10 inches (25 cm) below the level of the walking/working surface on which they are working, shall be protected from falling by a guardrail system, safety net system, or personal fall arrest system.

Note: Bricklaying operations performed on scaffolds are regulated by subpart L—Scaffolds of this part.

(10) *Roofing work on Low-slope roofs.* Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted.

(11) *Steep roofs.* Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.

(12) *Precast concrete erection.* Each employee engaged in the erection of precast concrete members (including, but not limited to the erection of wall panels, columns, beams, and floor and roof "tees") and related operations such as grouting of precast concrete members, who is 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems, unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of § 1926.502.

Note: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with § 1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems.

(13) *Residential construction.* Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of § 1926.502.

Note: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with § 1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems.

(14) *Wall openings.* Each employee working on, at, above, or near wall openings (including those with chutes attached) where the outside bottom edge of the wall opening is 6 feet (1.8 m) or more above lower levels and the inside bottom edge of the wall opening is less than 39 inches (1.0 m) above the walking/working surface, shall be protected from falling by the use of a guardrail system, a safety net system, or a personal fall arrest system.

(15) *Walking/working surfaces not otherwise addressed.* Except as provided in § 1926.500(a)(2) or in § 1926.501 (b)(1) through (b)(14), each employee on a walking/working surface 6 feet (1.8 m) or more above lower levels shall be protected from falling by a guardrail system, safety net system, or personal fall arrest system.

(c) *Protection from falling objects.* When an employee is exposed to falling objects, the employer shall have each employee wear a hard hat and shall implement one of the following measures:

(1) Erect toeboards, screens, or guardrail systems to prevent objects from falling from higher levels; or,

(2) Erect a canopy structure and keep potential fall objects far enough from the edge of the higher level so that those objects would not go over the edge if they were accidentally displaced; or,

(3) Barricade the area to which objects could fall, prohibit employees from entering the barricaded area, and keep objects that may fall far enough away from the edge of a higher level so that those objects would not go over the edge if they were accidentally displaced.

§ 1926.502 Fall protection systems criteria and practices.

(a) *General.* (1) Fall protection systems required by this part shall comply with the applicable provisions of this section.

(2) Employers shall provide and install all fall protection systems required by this subpart for an employee, and shall comply with all other pertinent requirements of this subpart before that employee begins the work that necessitates the fall protection.

(b) *Guardrail systems.* Guardrail systems and their use shall comply with the following provisions:

(1) Top edge height of top rails, or equivalent guardrail system members, shall be 42 inches (1.1 m) plus or minus 3 inches (8 cm) above the walking/working level. When conditions warrant, the height of the top edge may exceed the 45-inch height, provided the guardrail system meets all other criteria of this paragraph ( ).

Note: When employees are using stilts, the top edge height of the top rail, or equivalent member, shall be increased an amount equal to the height of the stilts.

(2) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members shall be installed between the top edge of the guardrail system and the walking/working surface when there is no wall or parapet wall at least 21 inches (53 cm) high.

(i) Midrails, when used, shall be installed at a height midway between the top edge of the guardrail system and the walking/working level.

(ii) Screens and mesh, when used, shall extend from the top rail to the walking/working level and along the entire opening between top rail supports.

(iii) Intermediate members (such as balusters), when used between posts, shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members (such as additional midrails and architectural panels) shall be installed such that there are no openings in the guardrail system that are more than 19 inches (.5 m) wide.

(3) Guardrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 N) applied within 2 inches (5.1 cm) of the top edge, in any outward or downward direction, at any point along the top edge.

(4) When the 200 pound (890 N) test load specified in paragraph (b)(3) of this section is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than 39 inches (1.0 m) above the walking/working level. Guardrail system components selected and constructed in accordance with the Appendix B to subpart M of this part will be deemed to meet this requirement.

(5) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force of at least 150 pounds (666 N) applied in any downward or outward direction at any point along the midrail or other member.

(6) Guardrail systems shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(7) The ends of all top rails and midrails shall not overhang the terminal posts, except where such overhang does not constitute a projection hazard.

(8) Steel banding and plastic banding shall not be used as top rails or midrails.

(9) Top rails and midrails shall be at least one-quarter inch (0.6 cm) nominal diameter or thickness to prevent cuts and lacerations. If wire rope is used for top rails, it shall be flagged at not more than 6-foot intervals with high-visibility material.

(10) When guardrail systems are used at hoisting areas, a chain, gate or removable guardrail section shall be placed across the access opening between guardrail sections when hoisting operations are not taking place.

(11) When guardrail systems are used at holes, they shall be erected on all unprotected sides or edges of the hole.

(12) When guardrail systems are used around holes used for the passage of materials, the hole shall have not more than two sides provided with removable guardrail sections to allow the passage of materials. When the hole is not in use, it shall be closed over with a cover, or a guardrail system shall be provided along all unprotected sides or edges.

(13) When guardrail systems are used around holes which are used as points of access (such as ladderways), they shall be provided with a gate, or be so offset that a person cannot walk directly into the hole.

(14) Guardrail systems used on ramps and runways shall be erected along each unprotected side or edge.

(15) Manila, plastic or synthetic rope being used for top rails or midrails shall be inspected as frequently as necessary to ensure that it continues to meet the strength requirements of paragraph (b)(3) of this section.

(c) *Safety net systems.* Safety net systems and their use shall comply with the following provisions:

(1) Safety nets shall be installed as close as practicable under the walking/working surface on which employees are working, but in no case more than 30 feet (9.1 m) below such level. When nets are used on bridges, the potential fall area from the walking/working surface to the net shall be unobstructed.

(2) Safety nets shall extend outward from the outermost projection of the work surface as follows:

Vertical distance from working level to horizontal plane of net	Minimum required horizontal distance of outer edge of net from the edge of the working surface
Up to 5 feet	8 feet.
More than 5 feet up to 10 feet.	10 feet.
More than 10 feet	13 feet.

(3) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in paragraph (c)(4) of this section.

(4) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in paragraph (c)(4)(i) of this section.

(i) Except as provided in paragraph (c)(4)(ii) of this section, safety nets and safety net installations shall be drop-tested at the jobsite after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at 6-month intervals if left in one place. The drop-test shall consist of a 400 pound (180 kg) bag of sand 30 ± 2 inches (76 ± 5 cm) in diameter dropped into the net from the highest walking/working surface at which employees are exposed to fall hazards, but not from less than 42 inches (1.1 m) above that level.

(ii) When the employer can demonstrate that it is unreasonable to perform the drop-test required by paragraph (c)(4)(i) of this section, the employer (or a designated competent person) shall certify that the net and net installation is in compliance with the provisions of paragraphs (c)(3) and (c)(4)(i) of this section by preparing a certification record prior to the net being used as a fall protection system. The certification record must include an identification of the net and net installation for which the certification record is being prepared; the date that it was determined that the identified net and net installation were in compliance with paragraph (c)(3) of this section and the signature of the person making the determination and certification. The most recent certification record for each net and net installation shall be available at the jobsite for inspection.

(5) Defective nets shall not be used. Safety nets shall be inspected at least once a week for wear, damage, and other deterioration. Defective components shall be removed from service. Safety nets shall also be inspected after any occurrence which could affect the integrity of the safety net system.

(6) Materials, scrap pieces, equipment, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(7) The maximum size of each safety net mesh opening shall not exceed 36 square inches (230 cm^2) nor be longer than 6 inches (15 cm) on any side, and the opening, measured center-to-center of mesh ropes or webbing, shall not be longer than 6 inches (15 cm). All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(8) Each safety net (or section of it) shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(9) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than 6 inches (15 cm) apart.

(d) *Personal fall arrest systems.* Personal fall arrest systems and their use shall comply with the provisions set forth below. Effective January 1, 1998, body belts are not acceptable as part of a personal fall arrest system. Note: The use of a body belt in a positioning device system is acceptable and is regulated under paragraph (e) of this section.

(1) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(2) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(3) Dee-rings and snaphooks shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(4) Dee-rings and snaphooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(5) Snaphooks shall be sized to be compatible with the member to which they are connected to prevent unintentional disengagement of the snaphook by depression of the snaphook keeper by the connected member, or shall be a locking type snaphook designed and used to prevent disengagement of the snaphook by the contact of the snaphook keeper by the connected member. Effective January 1, 1998, only locking type snaphooks shall be used.

(6) Unless the snaphook is a locking type and designed for the following connections, snaphooks shall not be engaged:

(i) directly to webbing, rope or wire rope;

(ii) to each other;

(iii) to a dee-ring to which another snaphook or other connector is attached;

(iv) to a horizontal lifeline; or

(v) to any object which is incompatibly shaped or dimensioned in relation to the snaphook such that unintentional disengagement could occur by the connected object being able to depress the snaphook keeper and release itself.

(7) On suspended scaffolds or similar work platforms with horizontal lifelines which may become vertical lifelines, the devices used to connect to a horizontal lifeline shall be capable of locking in both directions on the lifeline.

(8) Horizontal lifelines shall be designed, installed, and used, under the supervision of a qualified person, as part of a complete personal fall arrest system, which maintains a safety factor of at least two.

(9) Lanyards and vertical lifelines shall have a minimum breaking strength of 5,000 pounds (22.2 kN).

(10) (i) Except as provided in paragraph (d)(10)(ii) of this section, when vertical lifelines are used, each employee shall be attached to a separate lifeline.

(ii) During the construction of elevator shafts, two employees may be attached to the same lifeline in the hoistway, provided both employees are working atop a false car that is equipped with guardrails; the strength of the lifeline is 10,000 pounds [5,000 pounds per employee attached] (44.4 kN); and all other criteria specified in this paragraph for lifelines have been met.

(11) Lifelines shall be protected against being cut or abraded.

(12) Self-retracting lifelines and lanyards which automatically limit free fall distance to 2 feet (0.61 m) or less shall be capable of sustaining a minimum tensile load of 3,000 pounds (13.3 kN) applied to the device with the lifeline or lanyard in the fully extended position.

(13) Self-retracting lifelines and lanyards which do not limit free fall distance to 2 feet (0.61 m) or less, ripstitch lanyards, and tearing and deforming lanyards shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN) applied to the device with the lifeline or lanyard in the fully extended position.

(14) Ropes and straps (webbing) used in lanyards, lifelines, and strength components of body belts and body harnesses shall be made from synthetic fibers.

(15) Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least 5,000 pounds (22.2 kN) per employee attached, or shall be designed, installed, and used as follows:

(i) as part of a complete personal fall arrest system which maintains a safety factor of at least two; and

(ii) under the supervision of a qualified person.

(16) Personal fall arrest systems, when stopping a fall, shall:

(i) limit maximum arresting force on an employee to 900 pounds (4 kN) when used with a body belt;

(ii) limit maximum arresting force on an employee to 1,800 pounds (8 kN) when used with a body harness;

(iii) be rigged such that an employee can neither free fall more than 6 feet (1.8 m), nor contact any lower level;

(iv) bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet (1.07 m); and,

(v) have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of 6 feet (1.8 m), or the free fall distance permitted by the system, whichever is less.

Note: If the personal fall arrest system meets the criteria and protocols contained in Appendix C to subpart M, and if the system is being used by an employee having a combined person and tool weight of less than 310 pounds (140 kg), the system will be considered to be in compliance with the provisions of paragraph (d)(16) of this section. If the system is used by an employee having a combined tool and body weight of 310 pounds (140 kg) or more, then the employer must appropriately modify the criteria and protocols of the Appendix to provide proper protection for such heavier weights, or the system will not be deemed to be in compliance with the requirements of paragraph (d)(16) of this section.

(17) The attachment point of the body belt shall be located in the center of the wearer's back. The attachment point of the body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head.

(18) Body belts, harnesses, and components shall be used only for employee protection (as part of a personal fall arrest system or positioning device system) and not to hoist materials.

(19) Personal fall arrest systems and components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection until inspected and determined by a competent person to be undamaged and suitable for reuse.

(20) The employer shall provide for prompt rescue of employees in the event of a fall or shall assure that employees are able to rescue themselves.

(21) Personal fall arrest systems shall be inspected prior to each use for wear, damage and other deterioration, and defective components shall be removed from service.

(22) Body belts shall be at least one and five-eighths (1⅝) inches (4.1 cm) wide.

(23) Personal fall arrest systems shall not be attached to guardrail systems, nor shall they be attached to hoists except as specified in other subparts of this Part.

(24) When a personal fall arrest system is used at hoist areas, it shall be rigged to allow the movement of the employee only as far as the edge of the walking/working surface.

(e) *Positioning device systems.* Positioning device systems and their use shall conform to the following provisions:

(1) Positioning devices shall be rigged such that an employee cannot free fall more than 2 feet (.9 m).

(2) Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or 3,000 pounds (13.3 kN), whichever is greater.

(3) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(4) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of this system.

(5) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.2 kN)

(6) Dee-rings and snaphooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(7) Snaphooks shall be sized to be compatible with the member to which they are connected to prevent unintentional disengagement of the snaphook by depression of the snaphook keeper by the connected member, or shall be a locking type snaphook designed and used to prevent disengagement of the snaphook by the contact of the snaphook keeper by the connected member. As of January 1, 1998, only locking type snaphooks shall be used.

(8) Unless the snaphook is a locking type and designed for the following connections, snaphooks shall not be engaged:

(i) directly to webbing, rope or wire rope;

(ii) to each other;

(iii) to a dee-ring to which another snaphook or other connector is attached;

(iv) to a horizontal lifeline; or

(v) to any object which is incompatibly shaped or dimensioned in relation to the snaphook such that unintentional disengagement could occur by the connected object being able to depress the snaphook keeper and release itself.

(9) Positioning device systems shall be inspected prior to each use for wear, damage, and other deterioration, and defective components shall be removed from service.

(10) Body belts, harnesses, and components shall be used only for employee protection (as part of a personal fall arrest system or positioning device system) and not to hoist materials.

(f) *Warning line systems.* Warning line systems [See § 1926.501(b)(10)] and their use shall comply with the following provisions:

(1) The warning line shall be erected around all sides of the roof work area.

(i) When mechanical equipment is not being used, the warning line shall be erected not less than 6 feet (1.8 m) from the roof edge.

(ii) When mechanical equipment is being used, the warning line shall be erected not less than 6 feet (1.8 m) from the roof edge which is parallel to the direction of mechanical equipment operation, and not less than 10 feet (3.1 m) from the roof edge which is perpendicular to the direction of mechanical equipment operation.

(iii) Points of access, materials handling areas, storage areas, and hoisting areas shall be connected to the work area by an access path formed by two warning lines.

(iv) When the path to a point of access is not in use, a rope, wire, chain, or other barricade, equivalent in strength and height to the warning line, shall be placed across the path at the point where the path intersects the warning line erected around the work area, or the path shall be offset such that a person cannot walk directly into the work area.

(2) Warning lines shall consist of ropes, wires, or chains, and supporting stanchions erected as follows:

(i) The rope, wire, or chain shall be flagged at not more than 6-foot (1.8 m) intervals with high-visibility material;

(ii) The rope, wire, or chain shall be rigged and supported in such a way that its lowest point (including sag) is no less than 34 inches (.9 m) from the walking/working surface and its highest point is no more than 39 inches (1.0 m) from the walking/working surface;

(iii) After being erected, with the rope, wire, or chain attached, stanchions shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 N) applied horizontally against the stanchion, 30 inches (.8 m) above the walking/working surface, perpendicular to the warning line, and in the direction of the floor, roof, or platform edge;

(iv) The rope, wire, or chain shall have a minimum tensile strength of 500 pounds (2.22 kN), and after being attached to the stanchions, shall be capable of supporting, without breaking, the loads applied to the stanchions as prescribed in paragraph (f)(2)(iii) of this section; and

(v) The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(3) No employee shall be allowed in the area between a roof edge and a warning line unless the employee is performing roofing work in that area.

(4) Mechanical equipment on roofs shall be used or stored only in areas where employees are protected by a warning line system, guardrail system, or personal fall arrest system.

(g) *Controlled access zones.* Controlled access zones [See § 1926.501(b)(9) and § 1926.502(k)] and their use shall conform to the following provisions.

(1) When used to control access to areas where leading edge and other operations are taking place the controlled access zone shall be defined by a control line or by any other means that restricts access.

(i) When control lines are used, they shall be erected not less than 6 feet (1.8 m) nor more than 25 feet (7.7 m) from the unprotected or leading edge, except when erecting precast concrete members.

(ii) When erecting precast concrete members, the control line shall be erected not less than 6 feet (1.8 m) nor more than 60 feet (18 m) or half the length of the member being erected, whichever is less, from the leading edge.

(iii) The control line shall extend along the entire length of the unprotected or leading edge and shall be approximately parallel to the unprotected or leading edge.

(iv) The control line shall be connected on each side to a guardrail system or wall.

(2) When used to control access to areas where overhand bricklaying and related work are taking place:

(i) The controlled access zone shall be defined by a control line erected not less than 10 feet (3.1 m) nor more than 15 feet (4.5 m) from the working edge.

(ii) The control line shall extend for a distance sufficient for the controlled access zone to enclose all employees performing overhand bricklaying and related work at the working edge and shall be approximately parallel to the working edge.

(iii) Additional control lines shall be erected at each end to enclose the controlled access zone.

(iv) Only employees engaged in overhand bricklaying or related work shall be permitted in the controlled access zone.

(3) Control lines shall consist of ropes, wires, tapes, or equivalent materials, and supporting stanchions as follows:

(i) Each line shall be flagged or otherwise clearly marked at not more than 6-foot (1.8 m) intervals with high-visibility material.

(ii) Each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than 39 inches (1 m) from the walking/working surface and its highest point is not more than 45 inches (1.3 m) [50 inches (1.3 m) when overhand bricklaying operations are being performed] from the walking/working surface.

(iii) Each line shall have a minimum breaking strength of 200 pounds (.88 kN).

(4) On floors and roofs where guardrail systems are not in place prior to the beginning of overhand bricklaying operations, controlled access zones shall be enlarged, as necessary, to enclose all points of access, material handling areas, and storage areas.

(5) On floors and roofs where guardrail systems are in place, but need to be removed to allow overhand bricklaying work or leading edge work to take place, only that portion of the guardrail necessary to accomplish that day's work shall be removed.

(h) *Safety monitoring systems.* Safety monitoring systems [See § 1926.501(b)(10) and § 1926.502(k)] and their use shall comply with the following provisions:

(1) The employer shall designate a competent person to monitor the safety of other employees and the employer shall ensure that the safety monitor complies with the following requirements:

(i) The safety monitor shall be competent to recognize fall hazards;

(ii) The safety monitor shall warn the employee when it appears that the employee is unaware of a fall hazard or is acting in an unsafe manner;

(iii) The safety monitor shall be on the same walking/working surface and within visual sighting distance of the employee being monitored;

(iv) The safety monitor shall be close enough to communicate orally with the employee; and

(v) The safety monitor shall not have other responsibilities which could take the monitor's attention from the monitoring function.

(2) Mechanical equipment shall not be used or stored in areas where safety monitoring systems are being used to monitor employees engaged in roofing operations on low-slope roofs.

(3) No employee, other than an employee engaged in roofing work [on low-sloped roofs] or an employee covered by a fall protection plan, shall be allowed in an area where an employee is being protected by a safety monitoring system.

(4) Each employee working in a controlled access zone shall be directed to comply promptly with fall hazard warnings from safety monitors.

(i) *Covers.* Covers for holes in floors, roofs, and other walking/working surfaces shall meet the following requirements:

(1) Covers located in roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the cover.

(2) All other covers shall be capable of supporting, without failure, at least twice the weight of employees, equipment, and materials that may be imposed on the cover at any one time.

(3) All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees.

(4) All covers shall be color coded or they shall be marked with the word "HOLE" or "COVER" to provide warning of the hazard.

Note: This provision does not apply to cast iron manhole covers or steel grates used on streets or roadways.

(j) *Protection from falling objects.* Falling object protection shall comply with the following provisions:

(1) Toeboards, when used as falling object protection, shall be erected along the edge of the overhead walking/working surface for a distance sufficient to protect employees below.

(2) Toeboards shall be capable of withstanding, without failure, a force of at least 50 pounds (222 N) applied in any downward or outward direction at any point along the toeboard.

(3) Toeboards shall be a minimum of 3 1/2 inches (9 cm) in vertical height from their top edge to the level of the walking/working surface. They shall have not more than 1/4 inch (0.6 cm) clearance above the walking/working surface. They shall be solid or have openings not over 1 inch (2.5 cm) in greatest dimension.

(4) Where tools, equipment, or materials are piled higher than the top edge of a toeboard, paneling or screening shall be erected from the walking/working surface or toeboard to the top of a guardrail system's top rail or midrail, for a distance sufficient to protect employees below.

(5) Guardrail systems, when used as falling object protection, shall have all openings small enough to prevent passage of potential falling objects.

(6) During the performance of overhand bricklaying and related work:

(i) No materials or equipment except masonry and mortar shall be stored within 4 feet (1.2 m) of the working edge.

(ii) Excess mortar, broken or scattered masonry units, and all other materials and debris shall be kept clear from the work area by removal at regular intervals.

(7) During the performance of roofing work:

(i) Materials and equipment shall not be stored within 6 feet (1.8 m) of a roof edge unless guardrails are erected at the edge.

(ii) Materials which are piled, grouped, or stacked near a roof edge shall be stable and self-supporting.

(8) Canopies, when used as falling object protection, shall be strong enough to prevent collapse and to prevent penetration by any objects which may fall onto the canopy.

(k) *Fall protection plan.* This option is available only to employees engaged in leading edge work, precast concrete erection work, or residential construction work (See § 1926.501(b)(2), (b)(12), and (b)(13)) who can demonstrate that it is infeasible or it creates a greater hazard to use conventional fall protection equipment. The fall protection plan must conform to the following provisions.

(1) The fall protection plan shall be prepared by a qualified person and developed specifically for the site where the leading edge work, precast concrete work, or residential construction work is being performed and the plan must be maintained up to date.

(2) Any changes to the fall protection plan shall be approved by a qualified person.

(3) A copy of the fall protection plan with all approved changes shall be maintained at the job site.

(4) The implementation of the fall protection plan shall be under the supervision of a competent person.

(5) The fall protection plan shall document the reasons why the use of conventional fall protection systems (guardrail systems, personal fall arrest systems, or safety nets systems) are infeasible or why their use would create a greater hazard.

(6) The fall protection plan shall include a written discussion of other measures that will be taken to reduce or eliminate the fall hazard for workers who cannot be provided with protection from the conventional fall protection systems. For example, the employer shall discuss the extent to which scaffolds, ladders, or vehicle mounted work platforms can be used to provide a safer working surface and thereby reduce the hazard of falling.

(7) The fall protection plan shall identify each location where conventional fall protection methods cannot be used. These locations shall then be classified as controlled access zones and the employer must comply with the criteria in paragraph (g) of this section.

(8) Where no other alternative measure has been implemented, the employer shall implement a safety monitoring system in conformance with § 1926.502(h).

(9) The fall protection plan must include a statement which provides the name or other method of identification for each employee who is designated to work in controlled access zones. No other employees may enter controlled access zones.

(10) In the event an employee falls, or some other related, serious incident occurs, (e.g., a near miss) the employer

shall investigate the circumstances of the fall or other incident to determine if the fall protection plan needs to be changed (e.g. new practices, procedures, or training) and shall implement those changes to prevent similar types of falls or incidents.

§ 1926.503 Training requirements.

The following training provisions supplement and clarify the requirements of § 1926.21 regarding the hazards addressed in subpart M of this part.

(a) *Training Program.* (1) The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards.

(2) The employer shall assure that each employee has been trained, as necessary, by a competent person qualified in the following areas:

(i) The nature of fall hazards in the work area;

(ii) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;

(iii) The use and operation of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, controlled access zones, and other protection to be used;

(iv) The role of each employee in the safety monitoring system when this system is used;

(v) The limitations on the use of mechanical equipment during the performance of roofing work on low-sloped roofs;

(vi) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection; and

(vii) The role of employees in fall protection plans;

(viii) The standards contained in this subpart.

(b) *Certification of training.* (1) The employer shall verify compliance with paragraph (a) of this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

(2) The latest training certification shall be maintained.

(c) *Retraining.* When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (a) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(1) Changes in the workplace render previous training obsolete; or

(2) Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or

(3) Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill.

Note: The following appendices to subpart M of this part serve as non-mandatory guidelines to assist employers in complying with the appropriate requirements of subpart M of this part.

Appendix A to Subpart M—Determining Roof Widths Non-mandatory Guidelines for Complying With § 1926.501(b)(10)

(1) This Appendix serves as a guideline to assist employers complying with the requirements of § 1926.501(b)(10). Section 1910.501(b)(10) allows the use of a safety monitoring system alone as a means of providing fall protection during the performance of roofing operations on low-sloped roofs 50 feet (15.25 m) or less in width. Each example in the appendix shows a roof plan or plans and indicates where each roof or roof area is to be measured to determine its width. Section views or elevation views are shown where appropriate. Some examples show "correct" and "incorrect" subdivisions of irregularly shaped roofs divided into smaller, regularly shaped areas. In all examples, the dimension selected to be the width of an area is the lesser of the two primary dimensions of the area, as viewed from above. Example A shows that on a simple rectangular roof, width is the lesser of the two primary overall dimensions. This is also the case with roofs which are sloped toward or away from the roof center, as shown in Example B.

(2) Many roofs are not simple rectangles. Such roofs may be broken down into subareas as shown in Example C. The process of dividing a roof area can produce many different configurations. Example C gives the general rule of using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than 50 feet (15.25 m) wide. The intent is to minimize the number of roof areas where safety monitoring systems alone are sufficient protection.

(3) Roofs which are comprised of several separate, non-contiguous roof areas, as in Example D, may be considered as a series of individual roofs. Some roofs have penthouses, additional floors, courtyard openings, or similar architectural features; Example E shows how the rule for dividing roofs into subareas is applied to such configurations. Irregular, non-rectangular roofs must be considered on an individual basis, as shown in Example F.

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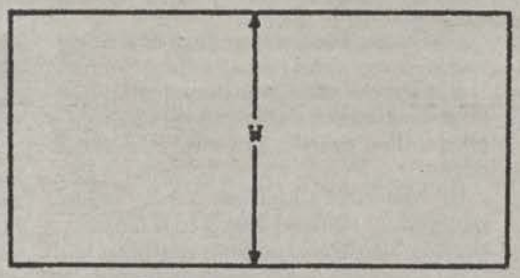
Example A

Rectangular Shaped Roofs

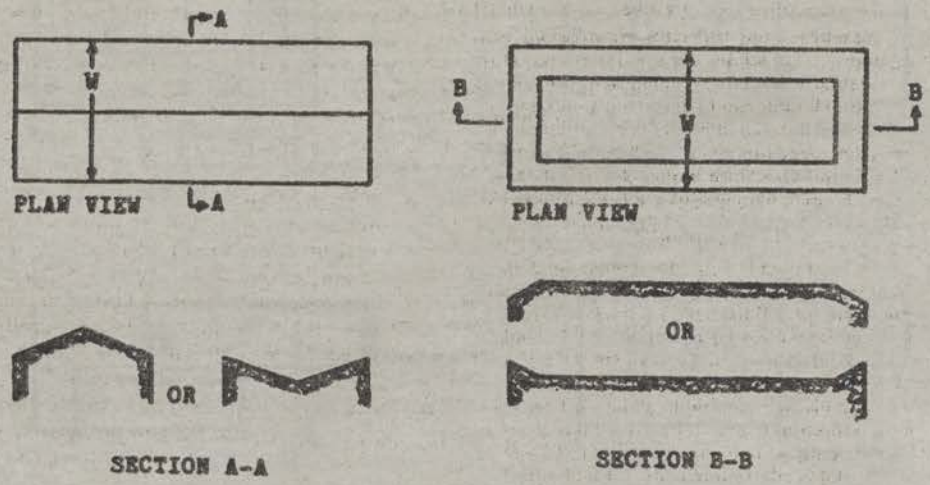


PLAN VIEW

BILLING CODE 4510–26–C

Example B

Sloped Rectangular Shaped Roofs



BILLING CODE 4510-26-C

Example C

Irregularly Shaped Roofs With Rectangular Shaped Sections

Such roofs are to be divided into sub-areas by using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than or equal to 50 feet (15.25 meters) in width, in order to limit the size of roof areas where the safety monitoring system alone can be used [1926.502(b)(10)]. Dotted lines are used in the examples to show the location of dividing lines. W denotes incorrect measurements of width.

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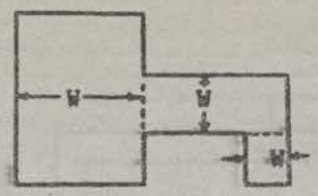
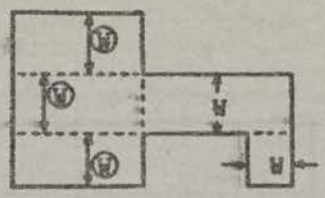
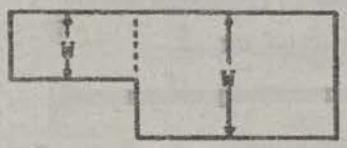


Correct



Incorrect



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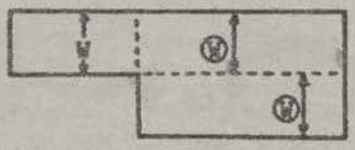

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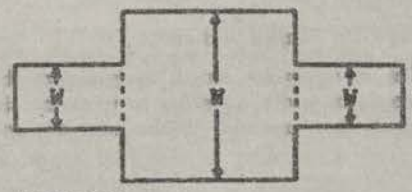
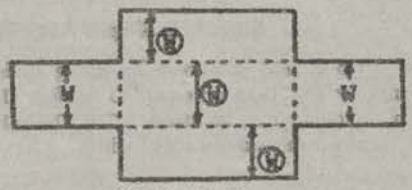


Correct



Incorrect

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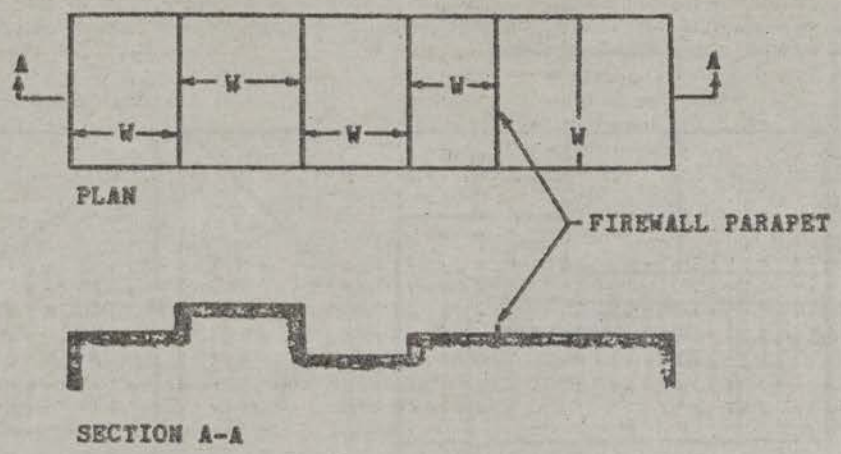
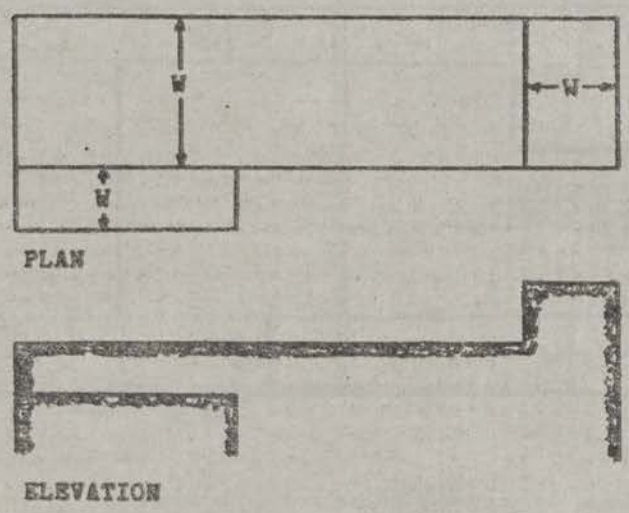
Example D

Separate, Non-Contiguous Roof Areas

1.



2.



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Example E

Roofs With Penthouses, Open Courtyards, Additional Floors, etc.

Such roofs are to be divided into sub-areas by using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than or equal to 50 feet (15.25 meters) in width, in order to limit the size of roof areas where the safety monitoring system alone can be used [1926.502(b)(10)]. Dotted lines are used in the examples to show the location of dividing lines. W denotes incorrect measurements of width.

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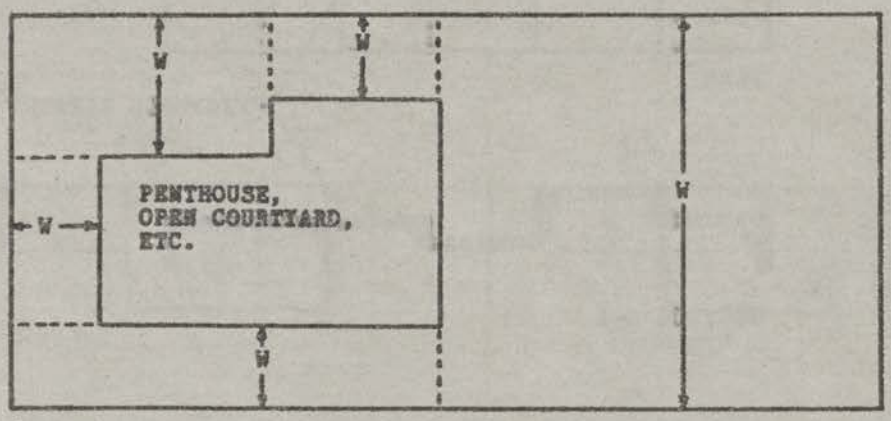
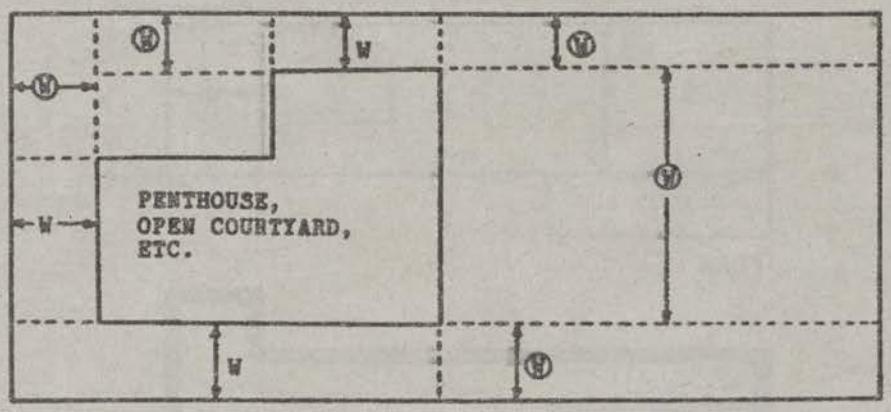


Correct

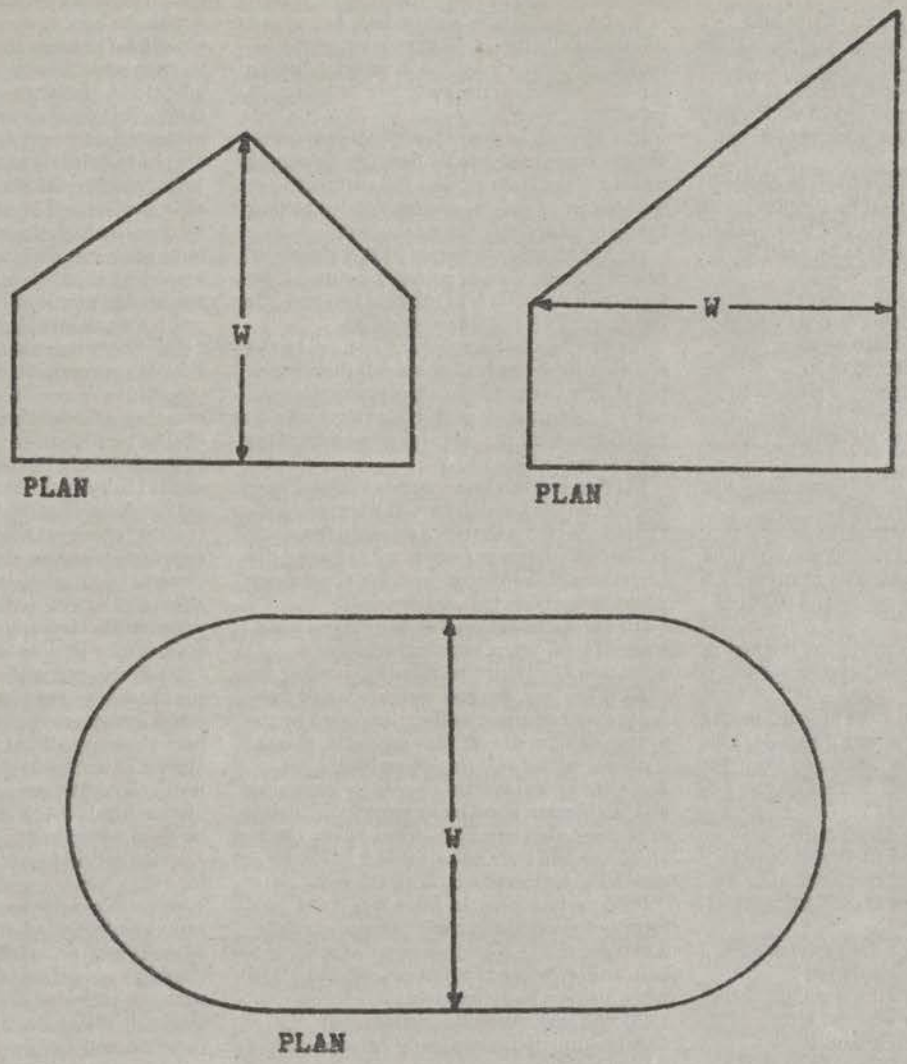


Incorrect

BILLING CODE 4510–26–C

Example F

Irregular, Non-Rectangular Shaped Roofs



BILLING CODE 4510-26-C

Appendix B to Subpart M—Guardrail Systems Non-Mandatory Guidelines for Complying with § 1926.502(b)

The standard requires guardrail systems and components to be designed and built to meet the requirements of § 1926.502 (b) (3), (4), and (5). This Appendix serves as a non-mandatory guideline to assist employers in complying with these requirements. An employer may use these guidelines as a starting point for designing guardrail systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of § 1926.502(b) (3), (4), and (5). Components for which no specific guidelines are given in this Appendix (e.g., joints, base connections, components made with other materials, and components with other dimensions) must also be designed and constructed in such a way that the completed system meets the requirements of § 1926.502.

(1) For wood railings: Wood components shall be minimum 1500 lb-ft/in^2 fiber (stress grade) construction grade lumber; the posts shall be at least 2-inch by 4-inch (5 cm x 10 cm) lumber spaced not more than 8 feet (2.4 m) apart on centers; the top rail shall be at least 2-inch by 4-inch (5 cm x 10 cm) lumber, the intermediate rail shall be at least 1-inch by 6-inch (2.5 cm x 15 cm) lumber. All lumber dimensions are nominal sizes as provided by the American Softwood Lumber Standards, dated January 1970.

(2) For pipe railings: posts, top rails, and intermediate railings shall be at least one and one-half inches nominal diameter (schedule 40 pipe) with posts spaced not more than 8 feet (2.4 m) apart on centers.

(3) For structural steel railings: posts, top rails, and intermediate rails shall be at least 2-inch by 2-inch (5 cm x 10 cm) by ⅜-inch (1.1 cm) angles, with posts spaced not more than 8 feet (2.4 m) apart on centers.

Appendix C to Subpart M—Personal Fall Arrest Systems Non-Mandatory Guidelines for Complying With § 1926.502(d)

I. *Test methods for personal fall arrest systems and positioning device systems*—(a) *General.* This appendix serves as a non-mandatory guideline to assist employers comply with the requirements in § 1926.502(d). Paragraphs (b), (c), (d) and (e) of this Appendix describe test procedures which may be used to determine compliance with the requirements in § 1926.502 (d)(16). As noted in Appendix D of this subpart, the test methods listed here in Appendix C can also be used to assist employers comply with the requirements in § 1926.502(e) (3) and (4) for positioning device systems.

(b) *General conditions for all tests in the Appendix to § 1926.502(d).* (1) Lifelines, lanyards and deceleration devices should be attached to an anchorage and connected to the body-belt or body harness in the same manner as they would be when used to protect employees.

(2) The anchorage should be rigid, and should not have a deflection greater than 0.04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(3) The frequency response of the load measuring instrumentation should be 500 Hz.

(4) The test weight used in the strength and force tests should be a rigid, metal, cylindrical or torso-shaped object with a girth of 38 inches plus or minus 4 inches (96 cm plus or minus 10 cm).

(5) The lanyard or lifeline used to create the free fall distance should be supplied with the system, or in its absence, the least elastic lanyard or lifeline available to be used with the system.

(6) The test weight for each test should be hoisted to the required level and should be quickly released without having any appreciable motion imparted to it.

(7) The system's performance should be evaluated taking into account the range of environmental conditions for which it is designed to be used.

(8) Following the test, the system need not be capable of further operation.

(c) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus 5 pounds (135 kg plus or minus 2.5 kg) should be used. (See paragraph (b)(4) of this section.)

(2) The test consists of dropping the test weight once. A new unused system should be used for each test.

(3) For lanyard systems, the lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

(4) For rope-grab-type deceleration systems, the length of the lifeline above the centerline of the grabbing mechanism to the lifeline's anchorage point should not exceed 2 feet (0.61 m).

(5) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to 2 feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of 1 foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight should be rigged to free fall a distance of 7.5 feet (2.3 m) from a point that is 1.5 feet (.46 m) above the anchorage point, to its hanging location (6 feet below the anchorage). The test weight should fall without interference, obstruction, or hitting the floor or ground during the test. In some cases a non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

(6) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to 2 feet (0.61 m) or less, the test weight should be rigged to free fall a distance of 4 feet (1.22 m).

(7) Any weight which detaches from the belt or harness has failed the strength test.

(d) *Force test*—(1) *General.* The test consists of dropping the respective test weight once as specified in paragraph (d)(2)(i) or (d)(3)(i) of this section. A new, unused system should be used for each test.

(2) *For lanyard systems.* (i) A test weight of 220 pounds plus or minus 3 pounds (100 kg plus or minus 1.6 kg) should be used. (See paragraph (b)(4) of this appendix).

(ii) Lanyard length should be 6 feet plus or minus two inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

(iii) The test weight should fall free from the anchorage level to its hanging location (a total of 6 feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(3) *For all other systems.* (i) A test weight of 220 pounds plus or minus 3 pounds (100 kg plus or minus 1.6 kg) should be used. (See paragraph (b)(4) of this appendix)

(ii) The free fall distance to be used in the test should be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of 6 feet (1.83 m), except as follows:

(A) For deceleration systems which have a connection link or lanyard, the test weight should free fall a distance equal to the connection distance (measured between the centerline of the lifeline and the attachment point to the body belt or harness).

(B) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to 2 feet (0.61 m) or less, the test weight should free fall a distance equal to that permitted by the system in normal use. (For example, to test a system with a self-retracting lifeline or lanyard, the test weight should be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and deceleration distance measured).

(4) A system fails the force test if the recorded maximum arresting force exceeds 1,260 pounds (5.6 kN) when using a body belt, and/or exceeds 2,520 pounds (11.2 kN) when using a body harness.

(5) The maximum elongation and deceleration distance should be recorded during the force test.

(e) *Deceleration device tests.* (1) *General.* The device should be evaluated or tested under the environmental conditions, (such as rain, ice, grease, dirt, type of lifeline, etc.), for which the device is designed.

(2) *Rope-grab-type deceleration devices.* (i) Devices should be moved on a lifeline 1,000 times over the same length of line a distance of not less than 1 foot (30.5 cm), and the mechanism should lock each time.

(ii) Unless the device is permanently marked to indicate the type(s) of lifeline which must be used, several types (different diameters and different materials), of lifelines should be used to test the device.

(3) *Other self-activating-type deceleration devices.* The locking mechanisms of other self-activating-type deceleration devices designed for more than one arrest should lock each of 1,000 times as they would in normal service.

II. *Additional non-mandatory guidelines for personal fall arrest systems.* The following information constitutes additional guidelines for use in complying with requirements for a personal fall arrest system.

(a) *Selection and use considerations.* (1) The kind of personal fall arrest system selected should match the particular work situation, and any possible free fall distance should be kept to a minimum. Consideration should be given to the particular work environment. For example, the presence of acids, dirt, moisture, oil, grease, etc., and their effect on the system, should be evaluated. Hot or cold environments may also have an adverse effect on the system. Wire rope should not be used where an electrical hazard is anticipated. As required by the standard, the employer must plan to have means available to promptly rescue an employee should a fall occur, since the suspended employee may not be able to reach a work level independently.

(2) Where lanyards, connectors, and lifelines are subject to damage by work operations such as welding, chemical cleaning, and sandblasting, the component should be protected, or other securing systems should be used. The employer should fully evaluate the work conditions and environment (including seasonal weather changes) before selecting the appropriate personal fall protection system. Once in use, the system's effectiveness should be monitored. In some cases, a program for cleaning and maintenance of the system may be necessary.

(b) *Testing considerations.* Before purchasing or putting into use a personal fall arrest system, an employer should obtain from the supplier information about the system based on its performance during testing so that the employer can know if the system meets this standard. Testing should be done using recognized test methods. This Appendix contains test methods recognized for evaluating the performance of fall arrest systems. Not all systems may need to be individually tested; the performance of some systems may be based on data and calculations derived from testing of similar systems, provided that enough information is available to demonstrate similarity of function and design.

(c) *Component compatibility considerations.* Ideally, a personal fall arrest system is designed, tested, and supplied as a complete system. However, it is common practice for lanyards, connectors, lifelines, deceleration devices, body belts and body harnesses to be interchanged since some components wear out before others. The employer and employee should realize that not all components are interchangeable. For instance, a lanyard should not be connected between a body belt (or harness) and a deceleration device of the self-retracting type since this can result in additional free fall for which the system was not designed. Any substitution or change to a personal fall arrest system should be fully evaluated or tested by a competent person to determine that it meets the standard, before the modified system is put in use.

(d) *Employee training considerations.* Thorough employee training in the selection and use of personal fall arrest systems is imperative. Employees must be trained in the safe use of the system. This should include the following: application limits; proper anchoring and tie-off techniques; estimation

of free fall distance, including determination of deceleration distance, and total fall distance to prevent striking a lower level; methods of use; and inspection and storage of the system. Careless or improper use of the equipment can result in serious injury or death. Employers and employees should become familiar with the material in this Appendix, as well as manufacturer's recommendations, before a system is used. Of uppermost importance is the reduction in strength caused by certain tie-offs (such as using knots, tying around sharp edges, etc.) and maximum permitted free fall distance. Also, to be stressed are the importance of inspections prior to use, the limitations of the equipment, and unique conditions at the worksite which may be important in determining the type of system to use.

(e) *Instruction considerations.* Employers should obtain comprehensive instructions from the supplier as to the system's proper use and application, including, where applicable:

(1) The force measured during the sample force test;

(2) The maximum elongation measured for lanyards during the force test;

(3) The deceleration distance measured for deceleration devices during the force test;

(4) Caution statements on critical use limitations;

(5) Application limits;

(6) Proper hook-up, anchoring and tie-off techniques, including the proper dee-ring or other attachment point to use on the body belt and harness for fall arrest;

(7) Proper climbing techniques;

(8) Methods of inspection, use, cleaning, and storage; and

(9) Specific lifelines which may be used. This information should be provided to employees during training.

(f) *Rescue considerations.* As required by § 1926.502(d)(20), when personal fall arrest systems are used, the employer must assure that employees can be promptly rescued or can rescue themselves should a fall occur. The availability of rescue personnel, ladders or other rescue equipment should be evaluated. In some situations, equipment which allows employees to rescue themselves after the fall has been arrested may be desirable, such as devices which have descent capability.

(g) *Inspection considerations.* As required by § 1926.502(d)(21), personal fall arrest systems must be regularly inspected. Any component with any significant defect, such as cuts, tears, abrasions, mold, or undue stretching; alterations or additions which might affect its efficiency; damage due to deterioration; contact with fire, acids, or other corrosives; distorted hooks or faulty hook springs; tongues unfitted to the shoulder of buckles; loose or damaged mountings; non-functioning parts; or wearing or internal deterioration in the ropes must be withdrawn from service immediately, and should be tagged or marked as unusable, or destroyed.

(h) *Tie-off considerations.* (1) One of the most important aspects of personal fall protection systems is fully planning the system *before* it is put into use. Probably the most overlooked component is planning for suitable anchorage points. Such planning should ideally be done before the structure or building is constructed so that anchorage points can be incorporated during construction for use later for window cleaning or other building maintenance. If properly planned, these anchorage points may be used *during* construction, as well as afterwards.

(i) Properly planned anchorages should be used if they are available. In some cases, anchorages must be installed immediately prior to use. In such cases, a registered professional engineer with experience in designing fall protection systems, or another qualified person with appropriate education and experience should design an anchor point to be installed.

(ii) In other cases, the Agency recognizes that there will be a need to devise an anchor point from existing structures. Examples of what might be appropriate anchor points are steel members or I-beams if an acceptable strap is available for the connection (do not use a lanyard with a snaphook clipped onto itself); large eye-bolts made of an appropriate grade steel; guardrails or railings if they have been designed for use as an anchor point; or masonry or wood members only if the attachment point is substantial and precautions have been taken to assure that bolts or other connectors will not pull through. A qualified person should be used to evaluate the suitable of these "make shift" anchorages with a focus on proper strength.

(2) Employers and employees should at all times be aware that the strength of a personal fall arrest system is based on its being attached to an anchoring system which does not reduce the strength of the system (such as a properly dimensioned eye-bolt/snap-hook anchorage). Therefore, if a means of attachment is used that will reduce the strength of the system, that component should be replaced by a stronger one, but one that will also maintain the appropriate maximum arrest force characteristics.

(3) Tie-off using a knot in a rope lanyard or lifeline (at any location) can reduce the lifeline or lanyard strength by 50 percent or more. Therefore, a stronger lanyard or lifeline should be used to compensate for the weakening effect of the knot, or the lanyard length should be reduced (or the tie-off location raised) to minimize free fall distance, or the lanyard or lifeline should be replaced by one which has an appropriately incorporated connector to eliminate the need for a knot.

(4) Tie-off of a rope lanyard or lifeline around an "H" or "I" beam or similar support can reduce its strength as much as 70 percent due to the cutting action of the beam edges. Therefore, use should be made of a webbing lanyard or wire core lifeline around the beam; or the lanyard or lifeline should be protected from the edge; or free fall distance should be greatly minimized.

(5) Tie-off where the line passes over or around rough or sharp surfaces reduces strength drastically. Such a tie-off should be avoided or an alternative tie-off rigging should be used. Such alternatives may include use of a snap-hook/dee ring connection, wire rope tie-off, an effective padding of the surfaces, or an abrasion-resistance strap around or over the problem surface.

(6) Horizontal lifelines may, depending on their geometry and angle of sag, be subjected to greater loads than the impact load imposed by an attached component. When the angle of horizontal lifeline sag is less than 30 degrees, the impact force imparted to the lifeline by an attached lanyard is greatly amplified. For example, with a sag angle of 15 degrees, the force amplification is about 2:1 and at 5 degrees sag, it is about 6:1. Depending on the angle of sag, and the line's elasticity, the strength of the horizontal lifeline and the anchorages to which it is attached should be increased a number of times over that of the lanyard. Extreme care should be taken in considering a horizontal lifeline for multiple tie-offs. The reason for this is that in multiple tie-offs to a horizontal lifeline, if one employee falls, the movement of the falling employee and the horizontal lifeline during arrest of the fall may cause other employees to fall also. Horizontal lifeline and anchorage strength should be increased for each additional employee to be tied off. For these and other reasons, the design of systems using horizontal lifelines must only be done by qualified persons. Testing of installed lifelines and anchors prior to use is recommended.

(7) The strength of an eye-bolt is rated along the axis of the bolt and its strength is greatly reduced if the force is applied at an angle to this axis (in the direction of shear). Also, care should be exercised in selecting the proper diameter of the eye to avoid accidental disengagement of snap-hooks not designed to be compatible for the connection.

(8) Due to the significant reduction in the strength of the lifeline/lanyard (in some cases, as much as a 70 percent reduction), the sliding hitch knot (prusik) should not be used for lifeline/lanyard connections except in emergency situations where no other available system is practical. The "one-and-one" sliding hitch knot should never be used because it is unreliable in stopping a fall. The "two-and-two," or "three-and-three" knot (preferable) may be used in emergency situations; however, care should be taken to limit free fall distance to a minimum because of reduced lifeline/lanyard strength.

(i) *Vertical lifeline considerations.* As required by the standard, each employee must have a separate lifeline [except employees engaged in constructing elevator shafts who are permitted to have two employees on one lifeline] when the lifeline is vertical. The reason for this is that in multiple tie-offs to a single lifeline, if one employee falls, the movement of the lifeline during the arrest of the fall may pull other employees' lanyards, causing them to fall as well.

(j) *Snap-hook considerations.* (1) Although not required by this standard for all connections until January 1, 1998, locking snaphooks designed for connection to suitable objects (of sufficient strength) are highly recommended in lieu of the nonlocking type. Locking snaphooks incorporate a positive locking mechanism in addition to the spring loaded keeper, which will not allow the keeper to open under moderate pressure without someone first

releasing the mechanism. Such a feature, properly designed, effectively prevents roll-out from occurring.

(2) As required by § 1926.502(d)(6), the following connections must be avoided (unless properly designed locking snaphooks are used) because they are conditions which can result in roll-out when a nonlocking snaphook is used:

(i) Direct connection of a snaphook to a horizontal lifeline.

(ii) Two (or more) snaphooks connected to one dee-ring.

(iii) Two snaphooks connected to each other.

(iv) A snaphook connected back on its integral lanyard.

(v) A snaphook connected to a webbing loop or webbing lanyard.

(vi) Improper dimensions of the dee-ring, rebar, or other connection point in relation to the snaphook dimensions which would allow the snaphook keeper to be depressed by a turning motion of the snaphook.

(k) *Free fall considerations.* The employer and employee should at all times be aware that a system's maximum arresting force is evaluated under normal use conditions established by the manufacturer, and in no case using a free fall distance in excess of 6 feet (1.8 m). A few extra feet of free fall can significantly increase the arresting force on the employee, possibly to the point of causing injury. Because of this, the free fall distance should be kept at a minimum, and, as required by the standard, in no case greater than 6 feet (1.8 m). To help assure this, the tie-off attachment point to the lifeline or anchor should be located at or above the connection point of the fall arrest equipment to belt or harness. (Since otherwise additional free fall distance is added to the length of the connecting means (i.e. lanyard)). Attaching to the working surface will often result in a free fall greater than 6 feet (1.8 m). For instance, if a 6 foot (1.8 m) lanyard is used, the total free fall distance will be the distance from the working level to the body belt (or harness) attachment point plus the 6 feet (1.8 m) of lanyard length. Another important consideration is that the arresting force which the fall system must withstand also goes up with greater distances of free fall, possibly exceeding the strength of the system.

(l) *Elongation and deceleration distance considerations.* Other factors involved in a proper tie-off are elongation and deceleration distance. During the arresting of a fall, a lanyard will experience a length of stretching or elongation, whereas activation of a deceleration device will result in a certain stopping distance. These distances should be available with the lanyard or device's instructions and must be added to the free fall distance to arrive at the total fall distance before an employee is fully stopped. The additional stopping distance may be very significant if the lanyard or deceleration device is attached near or at the end of a long lifeline, which may itself add considerable distance due to its own elongation. As required by the standard, sufficient distance to allow for all of these factors must also be maintained between the employee and obstructions below, to prevent an injury due to impact before the system fully arrests the fall. In addition, a minimum of 12 feet (3.7 m) of lifeline should be allowed below the securing point of a rope grab type deceleration device, and the end terminated to prevent the device from sliding off the lifeline. Alternatively, the lifeline should extend to the ground or the next working level below. These measures are suggested to prevent the worker from inadvertently moving past the end of the lifeline and having the rope grab become disengaged from the lifeline.

(m) *Obstruction considerations.* The location of the tie-off should also consider the hazard of obstructions in the potential fall path of the employee. Tie-offs which minimize the possibilities of exaggerated swinging should be considered. In addition, when a body belt is used, the employee's body will go through a horizontal position to a jack-knifed position during the arrest of all falls. Thus, obstructions which might interfere with this motion should be avoided or a severe injury could occur.

(n) *Other considerations.* Because of the design of some personal fall arrest systems, additional considerations may be required for proper tie-off. For example, heavy deceleration devices of the self-retracting type should be secured overhead in order to avoid the weight of the device having to be supported by the employee. Also, if self-retracting equipment is connected to a horizontal lifeline, the sag in the lifeline should be minimized to prevent the device from sliding down the lifeline to a position which creates a swing hazard during fall arrest. In all cases, manufacturer's instructions should be followed.

Appendix D to Subpart M—Positioning Device Systems

Non-Mandatory Guidelines for Complying With § 1926.502(e)

I. *Testing Methods For Positioning Device Systems.* This appendix serves as a non-mandatory guideline to assist employers comply with the requirements for positioning device systems in § 1926.502(e). Paragraphs (b), (c), (d) and (e) of Appendix C of subpart M relating to § 1926.502(d)—Personal Fall Arrest Systems—set forth test procedures which may be used, along with the procedures listed below, to determine compliance with the requirements for positioning device systems in § 1926.502(e)(3) and (4) of Subpart M.

(a) *General.* (1) Single strap positioning devices shall have one end attached to a fixed anchorage and the other end connected to a body belt or harness in the same manner as they would be used to protect employees. Double strap positioning devices, similar to window cleaner's belts, shall have one end of the strap attached to a fixed anchorage and the other end shall hang free. The body belt or harness shall be attached to the strap in the same manner as it would be used to protect employees. The two strap ends shall be adjusted to their maximum span.

(2) The fixed anchorage shall be rigid, and shall not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

(3) During the testing of all systems, a test weight of 250 pounds plus or minus 3 pounds (113 kg plus or minus 1.6 kg) shall be used. The weight shall be a rigid object with a girth of 38 inches plus or minus 4 inches (96 cm plus or minus 10 cm).

(4) Each test shall consist of dropping the specified weight one time without failure of the system being tested. A new system shall be used for each test.

(5) The test weight for each test shall be hoisted exactly 4 feet (1.2 m above its "at rest" position), and shall be dropped so as to permit a vertical free fall of 4 feet (1.2 m).

(6) The test is failed whenever any breakage or slippage occurs which permits the weight to fall free of the system.

(7) Following the test, the system need not be capable of further operation; however, all such incapacities shall be readily apparent.

II. *Inspection Considerations.* As required in § 1926.502 (e)(5), positioning device systems must be regularly inspected. Any component with any significant defect, such as cuts, tears, abrasions, mold, or undue stretching; alterations or additions which might affect its efficiency; damage due to deterioration; contact with fire, acids, or other corrosives; distorted hooks or faulty hook springs; tongues unfitted to the shoulder of buckles; loose or damaged mountings; non-functioning parts; or wearing or internal deterioration in the ropes must be withdrawn from service immediately, and should be tagged or marked as unusable, or destroyed.

Appendix E to Subpart M—Sample Fall Protection Plan

Non-Mandatory Guidelines for Complying With § 1926.502(k)

Employers engaged in leading edge work, precast concrete construction work and residential construction work who can demonstrate that it is infeasible or creates a greater hazard to use conventional fall protection systems must develop and follow a fall protection plan. Below are sample fall protection plans developed for precast concrete construction and residential work that could be tailored to be site specific for other precast concrete or residential jobsite. This sample plan can be modified to be used for other work involving leading edge work. The sample plan outlines the elements that must be addressed in any fall protection plan. The reasons outlined in this sample fall protection plan are for illustrative purposes only and are not necessarily a valid, acceptable rationale (unless the conditions at the job site are the same as those covered by these sample plans) for not using conventional fall protection systems for a particular precast concrete or residential construction worksite. However, the sample plans provide guidance to employers on the type of information that is required to be discussed in fall protection plans.

Sample Fall Protection Plans

Fall Protection Plan For Precast/Prestress Concrete Structures

This Fall Protection Plan is specific for the following project:

Location of Job _____

Erecting Company _____
Date Plan Prepared or Modified _____
Plan Prepared By _____
Plan Approved By _____
Plan Supervised By _____

The following Fall Protection Plan is a sample program prepared for the prevention of injuries associated with falls. A Fall Protection Plan must be developed and evaluated on a site by site basis. It is recommended that erectors discuss the written Fall Protection Plan with their OSHA Area Office prior to going on a jobsite.

I. Statement of Company Policy

(Company Name) is dedicated to the protection of its employees from on-the-job injuries. All employees of (Company Name) have the responsibility to work safely on the job. The purpose of this plan is: (a) To supplement our standard safety policy by providing safety standards specifically designed to cover fall protection on this job and; (b) to ensure that each employee is trained and made aware of the safety provisions which are to be implemented by this plan prior to the start of erection.

This Fall Protection Plan addresses the use of other than conventional fall protection at a number of areas on the project, as well as identifying specific activities that require non-conventional means of fall protection. These areas include:

a. Connecting activity (point of erection).
b. Leading edge work.
c. Unprotected sides or edge.
d. Grouting.

This plan is designed to enable employers and employees to recognize the fall hazards on this job and to establish the procedures that are to be followed in order to prevent falls to lower levels or through holes and openings in walking/working surfaces. Each employee will be trained in these procedures and strictly adhere to them except when doing so would expose the employee to a greater hazard. If, in the employees opinion, this is the case, the employee is to notify the foreman of the concern and the concern addressed before proceeding.

Safety policy and procedure on any one project cannot be administered, implemented, monitored and enforced by any one individual. The total objective of a safe, accident free work environment can only be accomplished by a dedicated, concerted effort by every individual involved with the project from management down to the last employee. Each employee must understand their value to the company; the costs of accidents, both monetary, physical, and emotional; the objective of the safety policy and procedures; the safety rules that apply to the safety policy and procedures; and what their individual role is in administering, implementing, monitoring, and compliance of their safety policy and procedures. This allows for a more personal approach to compliance through planning, training, understanding and cooperative effort, rather than by strict enforcement. If for any reason an unsafe act persists, strict enforcement will be implemented.

It is the responsibility of (name of competent person) to implement this Fall Protection Plan. (Name of Competent Person) is responsible for continual observational safety checks of their work operations and to enforce the safety policy and procedures. The foreman also is responsible to correct any unsafe acts or conditions immediately. It is the responsibility of the employee to understand and adhere to the procedures of this plan and to follow the instructions of the foreman. It is also the responsibility of the employee to bring to managements attention any unsafe or hazardous conditions or acts that may cause injury to either themselves or any other employees. Any changes to this Fall Protection Plan must be approved by (name of Qualified Person).

II. Fall Protection Systems to Be Used on This Project

Where conventional fall protection is infeasible or creates a greater hazard at the leading edge and during initial connecting activity, we plan to do this work using a safety monitoring system and expose only a minimum number of employees for the time necessary to actually accomplish the job. The maximum number of workers to be monitored by one safety monitor is six (6). We are designating the following trained employees as designated erectors and they are permitted to enter the controlled access zones and work without the use of conventional fall protection.

Safety monitor:
Designated erector:
Designated erector:
Designated erector:
Designated erector:
Designated erector:
Designated erector:

The safety monitor shall be identified by wearing an orange hard hat. The designated erectors will be identified by one of the following methods:

1. They will wear a blue colored arm band, or
2. They will wear a blue colored hard hat, or
3. They will wear a blue colored vest.

Only individuals with the appropriate experience, skills, and training will be authorized as designated erectors. All employees that will be working as designated erectors under the safety monitoring system shall have been trained and instructed in the following areas:

1. Recognition of the fall hazards in the work area (at the leading edge and when making initial connections—point of erection).
2. Avoidance of fall hazards using established work practices which have been made known to the employees.
3. Recognition of unsafe practices or working conditions that could lead to a fall, such as windy conditions.
4. The function, use, and operation of safety monitoring systems, guardrail systems, body belt/harness systems, control zones and other protection to be used.
5. The correct procedure for erecting, maintaining, disassembling and inspecting the system(s) to be used.
6. Knowledge of construction sequence or the erection plan.

A conference will take place prior to starting work involving all members of the erection crew, crane crew and supervisors of any other concerned contractors. This conference will be conducted by the precast concrete erection supervisor in charge of the project. During the pre-work conference, erection procedures and sequences pertinent to this job will be thoroughly discussed and safety practices to be used throughout the project will be specified. Further, all personnel will be informed that the controlled access zones are off limits to all personnel other than those designated erectors specifically trained to work in that area.

Safety Monitoring System

A safety monitoring system means a fall protection system in which a competent person is responsible for recognizing and warning employees of fall hazards. The duties of the safety monitor are to:

1. Warn by voice when approaching the open edge in an unsafe manner.
2. Warn by voice if there is a dangerous situation developing which cannot be seen by another person involved with product placement, such as a member getting out of control.
3. Make the designated erectors aware they are in a dangerous area.
4. Be competent in recognizing fall hazards.
5. Warn employees when they appear to be unaware of a fall hazard or are acting in an unsafe manner.
6. Be on the same walking/working surface as the monitored employees and within visual sighting distance of the monitored employees.
7. Be close enough to communicate orally with the employees.
8. Not allow other responsibilities to encumber monitoring. If the safety monitor becomes too encumbered with other responsibilities, the monitor shall (1) stop the erection process; and (2) turn over other responsibilities to a designated erector; or (3) turn over the safety monitoring function to another designated, competent person. The safety monitoring system shall not be used when the wind is strong enough to cause loads with large surface areas to swing out of radius, or result in loss of control of the load, or when weather conditions cause the walking-working surfaces to become icy or slippery.

Control Zone System

A controlled access zone means an area designated and clearly marked, in which leading edge work may take place without the use of guardrail, safety net or personal fall arrest systems to protect the employees in the area. Control zone systems shall comply with the following provisions:

1. When used to control access to areas where leading edge and other operations are taking place the controlled access zone shall be defined by a control line or by any other means that restricts access.

When control lines are used, they shall be erected not less than 6 feet (1.8 m) nor more than 60 feet (18 m) or half the length of the member being erected, whichever is less, from the leading edge.

2. The control line shall extend along the entire length of the unprotected or leading

edge and shall be approximately parallel to the unprotected or leading edge.

3. The control line shall be connected on each side to a guardrail system or wall.

4. Control lines shall consist of ropes, wires, tapes, or equivalent materials, and supporting stanchions as follows:

5. Each line shall be flagged or otherwise clearly marked at not more than 6-foot (1.8 m) intervals with high- visibility material.

6. Each line shall be rigged and supported in such a way that its lowest point (including sag) is not less than 39 inches (1 m) from the walking/working surface and its highest point is not more than 45 inches (1.3 m) from the walking/working surface.

7. Each line shall have a minimum breaking strength of 200 pounds (.88 kN).

Holes

All openings greater than 12 in. x 12 in. will have perimeter guarding or covering. All predetermined holes will have the plywood covers made in the precasters' yard and shipped with the member to the jobsite. Prior to cutting holes on the job, proper protection for the hole must be provided to protect the workers. Perimeter guarding or covers will not be removed without the approval of the erection foreman.

Precast concrete column erection through the existing deck requires that many holes be provided through this deck. These are to be covered and protected. Except for the opening being currently used to erect a column, all opening protection is to be left undisturbed. The opening being uncovered to erect a column will become part of the point of erection and will be addressed as part of this Fall Protection Plan. This uncovering is to be done at the erection foreman's direction and will only occur immediately prior to "feeding" the column through the opening. Once the end of the column is through the slab opening, there will no longer exist a fall hazard at this location.

III. Implementation of Fall Protection Plan

The structure being erected is a multistory total precast concrete building consisting of columns, beams, wall panels and hollow core slabs and double tee floor and roof members.

The following is a list of the products and erection situations on this job:

Columns

For columns 10 ft to 36 ft long, employees disconnecting crane hooks from columns will work from a ladder and wear a body belt/harness with lanyard and be tied off when both hands are needed to disconnect. For tying off, a vertical lifeline will be connected to the lifting eye at the top of the column, prior to lifting, to be used with a manually operated or mobile rope grab. For columns too high for the use of a ladder, 36 ft and higher, an added cable will be used to reduce the height of the disconnecting point so that a ladder can be used. This cable will be left in place until a point in erection that it can be removed safely. In some cases, columns will be unhooked from the crane by using an erection tube or shackle with a pull pin which is released from the ground after the column is stabilized.

The column will be adequately connected and/or braced to safely support the weight of a ladder with an employee on it.

Inverted Tee Beams

Employees erecting inverted tee beams, at a height of 6 to 40 ft, will erect the beam, make initial connections, and final alignment from a ladder. If the employee needs to reach over the side of the beam to bar or make an adjustment to the alignment of the beam, they will mount the beam and be tied off to the lifting device in the beam after ensuring the load has been stabilized on its bearing. To disconnect the crane from the beam an employee will stand a ladder against the beam. Because the use of ladders is not practical at heights above 40 ft, beams will be initially placed with the use of tag lines and their final alignment made by a person on a manlift or similar employee positioning systems.

Spandrel Beams

Spandrel beams at the exterior of the building will be aligned as closely as possible with the use of tag lines with the final placement of the spandrel beam made from a ladder at the open end of the structure. A ladder will be used to make the initial connections and a ladder will be used to disconnect the crane. The other end of the beam will be placed by the designated erector from the double tee deck under the observation of the safety monitor.

The beams will be adequately connected and/or braced to safely support the weight of a ladder with an employee on it.

Floor and Roof Members

During installation of the precast concrete floor and/or roof members, the work deck continuously increases in area as more and more units are being erected and positioned. Thus, the unprotected floor/roof perimeter is constantly modified with the leading edge changing location as each member is installed. The fall protection for workers at the leading edge shall be assured by properly constructed and maintained control zone lines not more than 60 ft away from the leading edge supplemented by a safety monitoring system to ensure the safety of all designated erectors working within the area defined by the control zone lines.

The hollow core slabs erected on the masonry portion of the building will be erected and grouted using the safety monitoring system. Grout will be placed in the space between the end of the slab and face shell of the concrete masonry by dumping from a wheelbarrow. The grout in the keyways between the slabs will be dumped from a wheelbarrow and then spread with long handled tools, allowing the worker to stand erect facing toward the unprotected edge and back from any work deck edge.

Whenever possible, the designated erectors will approach the incoming member at the leading edge only after it is below waist height so that the member itself provides protection against falls.

Except for the situations described below, when the arriving floor or roof member is within 2 to 3 inches of its final position, the designated erectors can then proceed to their position of erection at each end of the member under the control of the safety monitor. Crane hooks will be unhooked from double tee members by designated erectors under the direction and supervision of the safety monitor.

Designated erectors, while waiting for the next floor or roof member, will be constantly under the control of the safety monitor for fall protection and are directed to stay a minimum of six (6) ft from the edge. In the event a designated erector must move from one end of a member, which has just been placed at the leading edge, they must first move away from the leading edge a minimum of six (6) ft and then progress to the other end while maintaining the minimum distance of six (6) ft at all times.

Erection of double tees, where conditions require bearing of one end into a closed pocket and the other end on a beam ledge, restricting the tee legs from going directly into the pockets, require special considerations. The tee legs that are to bear in the closed pocket must hang lower than those at the beam bearing. The double tee will be "two-lined" in order to elevate one end higher than the other to allow for the low end to be ducked into the closed pocket using the following procedure.

The double tee will be rigged with a standard four-way spreader off of the main load line. An additional choker will be attached to the married point of the two-legged spreader at the end of the tee that is to be elevated. The double tee will be hoisted with the main load line and swung into a position as close as possible to the tee's final bearing elevation. When the tee is in this position and stabilized, the whip line load block will be lowered to just above the tee deck. At this time, two erectors will walk out on the suspended tee deck at midspan of the tee member and pull the load block to the end of the tee to be elevated and attach the additional choker to the load block. The possibility of entanglement with the crane lines and other obstacles during this two lining process while raising and lowering the crane block on that second line could be hazardous to an encumbered employee. Therefore, the designated erectors will not tie off during any part of this process. While the designated erectors are on the double tee, the safety monitoring system will be used. After attaching the choker, the two erectors then step back on the previously erected tee deck and signal the crane operator to hoist the load with the whip line to the elevation that will allow for enough clearance to let the low end tee legs slide into the pockets when the main load line is lowered. The erector, who is handling the lowered end of the tee at the closed pocket bearing, will step out on the suspended tee. An erection bar will then be placed between the end of the tee leg and the inside face of the pocketed spandrel member. The tee is barred away from the pocketed member to reduce the friction and lateral force against the pocketed member. As the tee is being lowered, the other erector remains on the tee which was previously erected to handle the other end. At this point the tee is slowly lowered by the crane to a point where the tee legs can freely slide into the pockets. The erector working the lowered end of the tee must keep pressure on the bar

between the tee and the face of the pocketed spandrel member to very gradually let the tee legs slide into the pocket to its proper bearing dimension. The tee is then slowly lowered into its final erected position.

The designated erector should be allowed onto the suspended double tee, otherwise there is no control over the horizontal movement of the double tee and this movement could knock the spandrel off of its bearing or the column out of plumb. The control necessary to prevent hitting the spandrel can only be done safely from the top of the double tee being erected.

Loadbearing Wall Panels: The erection of the loadbearing wall panels on the elevated decks requires the use of a safety monitor and a controlled access zone that is a minimum of 25 ft and a maximum of ½ the length of the wall panels away from the unprotected edge, so that designated erectors can move freely and unencumbered when receiving the panels. Bracing, if required for stability, will be installed by ladder. After the braces are secured, the crane will be disconnected from the wall by using a ladder. The wall to wall connections will also be performed from a ladder.

Non-Loadbearing Panels (Cladding): The locating of survey lines, panel layout and other installation prerequisites (prewelding, etc.) for non-loadbearing panels (cladding) will not commence until floor perimeter and floor openings have been protected. In some areas, it is necessary because of panel configuration to remove the perimeter protection as the cladding is being installed. Removal of perimeter protection will be performed on a bay to bay basis, just ahead of cladding erection to minimize temporarily unprotected floor edges. Those workers within 6 ft of the edge, receiving and positioning the cladding when the perimeter protection is removed shall be tied off.

Detailing

Employees exposed to falls of six (6) feet or more to lower levels, who are not actively engaged in leading edge work or connecting activity, such as welding, bolting, cutting, bracing, guying, patching, painting or other operations, and who are working less than six (6) ft from an unprotected edge will be tied off at all times or guardrails will be installed. Employees engaged in these activities but who are more than six (6) ft from an unprotected edge as defined by the control zone lines, do not require fall protection but a warning line or control lines must be erected to remind employees they are approaching an area where fall protection is required.

IV. Conventional Fall Protection Considered for the Point of Erection or Leading Edge Erection Operations

A. Personal Fall Arrest Systems

In this particular erection sequence and procedure, personal fall arrest systems requiring body belt/harness systems, lifelines and lanyards will not reduce possible hazards to workers and will create offsetting hazards during their usage at the leading edge of precast/prestressed concrete construction.

Leading edge erection and initial connections are conducted by employees who are specifically trained to do this type of work and are trained to recognize the fall hazards. The nature of such work normally exposes the employee to the fall hazard for a short period of time and installation of fall protection systems for a short duration is not feasible because it exposes the installers of the system to the same fall hazard, but for a longer period of time.

1. It is necessary that the employee be able to move freely without encumbrance in order to guide the sections of precast concrete into their final position without having lifelines attached which will restrict the employees ability to move about at the point of erection.

2. A typical procedure requires 2 or more workers to maneuver around each other as a concrete member is positioned to fit into the structure. If they are each attached to a lifeline, part of their attention must be diverted from their main task of positioning a member weighing several tons to the task of avoiding entanglements of their lifelines or avoiding tripping over lanyards. Therefore, if these workers are attached to lanyards, more fall potential would result than from not using such a device.

In this specific erection sequence and procedure, retractable lifelines do not solve the problem of two workers becoming tangled. In fact, such a tangle could prevent the lifeline from retracting as the worker moved, thus potentially exposing the worker to a fall greater than 6 ft. Also, a worker crossing over the lifeline of another worker can create a hazard because the movement of one person can unbalance the other. In the event of a fall by one person there is a likelihood that the other person will be caused to fall as well. In addition, if contamination such as grout (during hollow core grouting) enters the retractable housing it can cause excessive wear and damage to the device and could clog the retracting mechanism as the lanyard is dragged across the deck. Obstructing the cable orifice can defeat the devices shock absorbing function, produce cable slack and damage, and adversely affect cable extraction and retraction.

3. Employees tied to a lifeline can be trapped and crushed by moving structural members if the employee becomes restrained by the lanyard or retractable lifeline and cannot get out of the path of the moving load.

The sudden movement of a precast concrete member being raised by a crane can be caused by a number of factors. When this happens, a connector may immediately have to move a considerable distance to avoid injury. If a tied off body belt/harness is being used, the connector could be trapped. Therefore, there is a greater risk of injury if the connector is tied to the structure for this specific erection sequence and procedure.

When necessary to move away from a retractable device, the worker cannot move at a rate greater than the device locking speed typically 3.5 to 4.5 ft/sec. When moving toward the device it is necessary to move at a rate which does not permit cable slack to build up. This slack may cause cable retraction acceleration and cause a worker to lose their balance by applying a higher than normal jerking force on the body when the cable suddenly becomes taut after building up momentum. This slack can also cause damage to the internal spring-loaded drum, uneven coiling of cable on the drum, and possible cable damage.

The factors causing sudden movements for this location include:

(a) Cranes

(1) Operator error.
(2) Site conditions (soft or unstable ground).
(3) Mechanical failure.
(4) Structural failure.
(5) Rigging failure.
(6) Crane signal/radio communication failure.

(b) Weather Conditions

(1) Wind (strong wind/sudden gusting)—particularly a problem with the large surface areas of precast concrete members.
(2) Snow/rain (visibility).
(3) Fog (visibility).
(4) Cold—causing slowed reactions or mechanical problems.
(c) Structure/Product Conditions.
(1) Lifting Eye failure.
(2) Bearing failure or slippage.
(3) Structure shifting.
(4) Bracing failure.
(5) Product failure.
(d) Human Error.
(1) Incorrect tag line procedure.
(2) Tag line hang-up.
(3) Incorrect or misunderstood crane signals.
(4) Misjudged elevation of member.
(5) Misjudged speed of member.
(6) Misjudged angle of member.

4. Anchorages or special attachment points could be cast into the precast concrete members if sufficient preplanning and consideration of erectors position is done before the members are cast. Any hole or other attachment must be approved by the engineer who designed the member. It is possible that some design restrictions will not allow a member to be weakened by an additional hole; however, it is anticipated that such situations would be the exception, not the rule. Attachment points, other than on the deck surface, will require removal and/or patching. In order to remove and/or patch these points, requires the employee to be exposed to an additional fall hazard at an unprotected perimeter. The fact that attachment points could be available anywhere on the structure does not eliminate the hazards of using these points for tying off as discussed above. A logical point for tying off on double tees would be using the lifting loops, except that they must be cut off to eliminate a tripping hazard at an appropriate time.

5. Providing attachment at a point above the walking/working surface would also create fall exposures for employees installing their devices. Final positioning of a precast concrete member requires it to be moved in such a way that it must pass through the area that would be occupied by the lifeline and the lanyards attached to the point above. Resulting entanglements of lifelines and lanyards on a moving member could pull employees from the work surface. Also, the structure is being created and, in most cases, there is no structure above the members being placed.

(a) Temporary structural supports, installed to provide attaching points for lifelines limit the space which is essential for orderly positioning, alignment and placement of the precast concrete members. To keep the lanyards a reasonable and manageable length, lifeline supports would necessarily need to be in proximity to the positioning process. A sudden shift of the precast concrete member being positioned because of wind pressure or crane movement could make it strike the temporary supporting structure, moving it suddenly and causing tied off employees to fall.

(b) The time in manhours which would be expended in placing and maintaining temporary structural supports for lifeline attaching points could exceed the expended manhours involved in placing the precast concrete members. No protection could be provided for the employees erecting the temporary structural supports and these supports would have to be moved for each successive step in the construction process, thus greatly increasing the employees exposure to the fall hazard.

(c) The use of a cable strung horizontally between two columns to provide tie off lines for erecting or walking a beam for connecting work is not feasible and creates a greater hazard on this multi-story building for the following reasons:

(1) If a connector is to use such a line, it must be installed between the two columns. To perform this installation requires an erector to have more fall exposure time attaching the cable to the columns than would be spent to make the beam to column connection itself.

(2) If such a line is to be installed so that an erector can walk along a beam, it must be overhead or below him. For example, if a connector must walk along a 24 in. wide beam, the presence of a line next to the connector at waist level, attached directly to the columns, would prevent the connector from centering their weight over the beam and balancing themselves. Installing the line above the connector might be possible on the first level of a two-story column; however, the column may extend only a few feet above the floor level at the second level or be flush with the floor level. Attaching the line to the side of the beam could be a solution; however, it would require the connector to attach the lanyard below foot level which would most likely extend a fall farther than 6 ft.

(3) When lines are strung over every beam, it becomes more and more difficult for the crane operator to lower a precast concrete member into position without the member becoming fouled. Should the member become entangled, it could easily dislodge the line from a column. If a worker is tied to it at the time, a fall could be caused.

6. The ANSI A10.14–1991 American National Standard for Construction and Demolition Operations—Requirements for Safety Belts, Harnesses, Lanyards and Lifelines for Construction and Demolition Use, states that the anchor point of a lanyard or deceleration device should, if possible, be located above the wearer's belt or harness attachment. ANSI A10.14 also states that a suitable anchorage point is one which is located as high as possible to prevent contact with an obstruction below should the worker fall. Most manufacturers also warn in the user's handbook that the safety block/retractable lifeline must be positioned above the D-ring (above the work space of the intended user) and OSHA recommends that fall arrest and restraint equipment be used in accordance with the manufacturer's instructions.

Attachment of a retractable device to a horizontal cable near floor level or using the inserts in the floor or roof members may result in increased free fall due to the dorsal D-ring of the full-body harness riding higher than the attachment point of the snaphook to the cable or insert (e.g., 6 foot tall worker with a dorsal D-ring at 5 feet above the floor or surface, reduces the working length to only one foot, by placing the anchorage five feet away from the fall hazard). In addition, impact loads may exceed maximum fall arrest forces (MAF) because the fall arrest D-ring would be 4 to 5 feet higher than the safety block/retractable lifeline anchored to the walking-working surface; and the potential for swing hazards is increased.

Manufacturers also require that workers not work at a level where the point of snaphook attachment to the body harness is above the device because this will increase the free fall distance and the deceleration distance and will cause higher forces on the body in the event of an accidental fall.

Manufacturers recommend an anchorage for the retractable lifeline which is immovably fixed in space and is independent of the user's support systems. A moveable anchorage is one which can be moved around (such as equipment or wheeled vehicles) or which can deflect substantially under shock loading (such as a horizontal cable or very flexible beam). In the case of a very flexible anchorage, a shock load applied to the anchorage during fall arrest can cause oscillation of the flexible anchorage such that the retractable brake mechanism may undergo one or more cycles of locking/unlocking/locking (ratchet effect) until the anchorage deflection is dampened. Therefore, use of a moveable anchorage involves critical engineering and safety factors and should only be considered after fixed anchorage has been determined to be not feasible.

Horizontal cables used as an anchorage present an additional hazard due to amplification of the horizontal component of maximum arrest force (of a fall) transmitted to the points where the horizontal cable is attached to the structure. This amplification is due to the angle of sag of a horizontal cable and is most severe for small angles of sag. For a cable sag angle of 2 degrees the horizontal force on the points of cable attachment can be amplified by a factor of 15.

It is also necessary to install the retractable device vertically overhead to minimize swing falls. If an object is in the worker's swing path (or that of the cable) hazardous situations exist: (1) due to the swing, horizontal speed of the user may be high enough to cause injury when an obstacle in the swing fall path is struck by either the user or the cable; (2) the total vertical fall distance of the user may be much greater than if the user had fallen only vertically without a swing fall path.

With retractable lines, overconfidence may cause the worker to engage in inappropriate behavior, such as approaching the perimeter of a floor or roof at a distance appreciably greater than the shortest distance between the anchorage point and the leading edge. Though the retractable lifeline may arrest a worker's fall before he or she has fallen a few feet, the lifeline may drag along the edge of the floor or beam and swing the worker like a pendulum until the line has moved to a position where the distance between the anchorage point and floor edge is the shortest distance between those two points. Accompanying this pendulum swing is a lowering of the worker, with the attendant danger that he or she may violently impact the floor or some obstruction below.

The risk of a cable breaking is increased if a lifeline is dragged sideways across the rough surface or edge of a concrete member at the same moment that the lifeline is being subjected to a maximum impact loading during a fall. The typical 3/16 in. cable in a retractable lifeline has a breaking strength of from 3000 to 3700 lbs.

7. The competent person, who can take into account the specialized operations being performed on this project, should determine when and where a designated erector cannot use a personal fall arrest system.

B. Safety Net Systems

The nature of this particular precast concrete erection worksite precludes the safe use of safety nets where point of erection or leading edge work must take place.

1. To install safety nets in the interior high bay of the single story portion of the building poses rigging attachment problems. Structural members do not exist to which supporting devices for nets can be attached in the area where protection is required. As the erection operation advances, the location of point of erection or leading edge work changes constantly as each member is attached to the structure. Due to this constant change it is not feasible to set net sections and build separate structures to support the nets.

2. The nature of the erection process for the precast concrete members is such that an installed net would protect workers as they position and secure only one structural member. After each member is stabilized the net would have to be moved to a new location (this could mean a move of 8 to 10 ft or the possibility of a move to a different level or area of the structure) to protect workers placing the next piece in the construction sequence. The result would be the installation and dismantling of safety nets repeatedly throughout the normal work day. As the time necessary to install a net, test, and remove it is significantly greater than the time necessary to position and secure a precast concrete member, the exposure time for the worker installing the safety net would be far longer than for the workers whom the net is intended to protect. The time exposure repeats itself each time the nets and supporting hardware must be moved laterally or upward to provide protection at the point of erection or leading edge.

3. Strict interpretation of § 1926.502(c) requires that operations shall not be

undertaken until the net is in place and has been tested. With the point of erection constantly changing, the time necessary to install and test a safety net significantly exceeds the time necessary to position and secure the concrete member.

4. Use of safety nets on exposed perimeter wall openings and opensided floors, causes attachment points to be left in architectural concrete which must be patched and filled with matching material after the net supporting hardware is removed. In order to patch these openings, additional numbers of employees must be suspended by swing stages, boatswain chairs or other devices, thereby increasing the amount of fall exposure time to employees.

5. Installed safety nets pose an additional hazard at the perimeter of the erected structure where limited space is available in which members can be turned after being lifted from the ground by the crane. There would be a high probability that the member being lifted could become entangled in net hardware, cables, etc.

6. The use of safety nets where structural wall panels are being erected would prevent movement of panels to point of installation. To be effective, nets would necessarily have to provide protection across the area where structural supporting wall panels would be set and plumbed before roof units could be placed.

7. Use of a tower crane for the erection of the high rise portion of the structure poses a particular hazard in that the crane operator cannot see or judge the proximity of the load in relation to the structure or nets. If the signaler is looking through nets and supporting structural devices while giving instructions to the crane operator, it is not possible to judge precise relationships between the load and the structure itself or to nets and supporting structural devices. This could cause the load to become entangled in the net or hit the structure causing potential damage.

C. Guardrail Systems

On this particular worksite, guardrails, barricades, ropes, cables or other perimeter guarding devices or methods on the erection floor will pose problems to safe erection procedures. Typically, a floor or roof is erected by placing 4 to 10 ft wide structural members next to one another and welding or grouting them together. The perimeter of a floor and roof changes each time a new member is placed into position. It is unreasonable and virtually impossible to erect guardrails and toe boards at the ever changing leading edge of a floor or roof.

1. To position a member safely it is necessary to remove all obstructions extending above the floor level near the point of erection. Such a procedure allows workers to swing a new member across the erected surface as necessary to position it properly without worrying about knocking material off of this surface.

Hollow core slab erection on the masonry wall requires installation of the perimeter protection where the masonry wall has to be constructed. This means the guardrail is installed then subsequently removed to continue the masonry construction. The erector will be exposed to a fall hazard for a longer period of time while installing and removing perimeter protection than while erecting the slabs.

In hollow core work, as in other precast concrete erection, others are not typically on the work deck until the precast concrete erection is complete. The deck is not complete until the leveling, aligning, and grouting of the joints is done. It is normal practice to keep others off the deck until at least the next day after the installation is complete to allow the grout to harden.

2. There is no permanent boundary until all structural members have been placed in the floor or roof. At the leading edge, workers are operating at the temporary edge of the structure as they work to position the next member in the sequence. Compliance with the standard would require a guardrail and toe board be installed along this edge. However, the presence of such a device would prevent a new member from being swung over the erected surface low enough to allow workers to control it safely during the positioning process. Further, these employees would have to work through the guardrail to align the new member and connect it to the structure. The guardrail would not protect an employee who must lean through it to do the necessary work, rather it would hinder the employee to such a degree that a greater hazard is created than if the guardrail were absent.

3. Guardrail requirements pose a hazard at the leading edge of installed floor or roof sections by creating the possibility of employees being caught between guardrails and suspended loads. The lack of a clear work area in which to guide the suspended load into position for placement and welding of members into the existing structure creates still further hazards.

4. Where erection processes require precast concrete stairways or openings to be installed as an integral part of the overall erection process, it must also be recognized that guardrails or handrails must not project above the surface of the erection floor. Such guardrails should be terminated at the level of the erection floor to avoid placing hazardous obstacles in the path of a member being positioned.

V. Other Fall Protection Measures Considered for This Job

The following is a list and explanation of other fall protection measures available and an explanation of limitations for use on this particular jobsite. If during the course of erecting the building the employee sees an area that could be erected more safely by the use of these fall protection measures, the foreman should be notified.

A. Scaffolds are not used because:

1. The leading edge of the building is constantly changing and the scaffolding would have to be moved at very frequent intervals. Employees erecting and dismantling the scaffolding would be exposed to fall hazards for a greater length of time than they would by merely erecting the precast concrete member.

2. A scaffold tower could interfere with the safe swinging of a load by the crane.

3. Power lines, terrain and site do not allow for the safe use of scaffolding.

B. Vehicle mounted platforms are not used because:

1. A vehicle mounted platform will not reach areas on the deck that are erected over other levels.

2. The leading edge of the building is usually over a lower level of the building and this lower level will not support the weight of a vehicle mounted platform.

3. A vehicle mounted platform could interfere with the safe swinging of a load by the crane, either by the crane swinging the load over or into the equipment.

4. Power lines and surrounding site work do not allow for the safe use of a vehicle mounted platform.

C. Crane suspended personnel platforms are not used because:

1. A second crane close enough to suspend any employee in the working and erecting area could interfere with the safe swinging of a load by the crane hoisting the product to be erected.

2. Power lines and surrounding site work do not allow for the safe use of a second crane on the job.

VI. Enforcement

Constant awareness of and respect for fall hazards, and compliance with all safety rules are considered conditions of employment. The jobsite Superintendent, as well as individuals in the Safety and Personnel Department, reserve the right to issue disciplinary warnings to employees, up to and including termination, for failure to follow the guidelines of this program.

VII. Accident Investigations

All accidents that result in injury to workers, regardless of their nature, shall be investigated and reported. It is an integral part of any safety program that documentation take place as soon as possible so that the cause and means of prevention can be identified to prevent a reoccurrence.

In the event that an employee falls or there is some other related, serious incident occurring, this plan shall be reviewed to determine if additional practices, procedures, or training need to be implemented to prevent similar types of falls or incidents from occurring.

VIII. Changes to Plan

Any changes to the plan will be approved by (name of the qualified person). This plan shall be reviewed by a qualified person as the job progresses to determine if additional practices, procedures or training needs to be implemented by the competent person to improve or provide additional fall protection. Workers shall be notified and trained, if necessary, in the new procedures. A copy of this plan and all approved changes shall be maintained at the jobsite.

Sample Fall Protection Plan for Residential Construction

(Insert Company Name)

This Fall Protection Plan Is Specific For The Following Project:

Location of Job _____
Date Plan Prepared or Modified _____
Plan Prepared By _____
Plan Approved By _____
Plan Supervised By _____

The following Fall Protection Plan is a sample program prepared for the prevention of injuries associated with falls. A Fall Protection Plan must be developed and evaluated on a site by site basis. It is recommended that builders discuss the written Fall Protection Plan with their OSHA Area Office prior to going on a jobsite.

I. Statement of Company Policy

(Your company name here) is dedicated to the protection of its employees from on-the-job injuries. All employees of (Your company name here) have the responsibility to work safely on the job. The purpose of the plan is to supplement our existing safety and health program and to ensure that every employee who works for (Your company name here) recognizes workplace fall hazards and takes the appropriate measures to address those hazards.

This Fall Protection Plan addresses the use of conventional fall protection at a number of areas on the project, as well as identifies specific activities that require non-conventional means of fall protection. During the construction of residential buildings under 48 feet in height, it is sometimes infeasible or it creates a greater hazard to use conventional fall protection systems at specific areas or for specific tasks. The areas or tasks may include, but are not limited to:

a. Setting and bracing of roof trusses and rafters;

b. Installation of floor sheathing and joists;

c. Roof sheathing operations; and

d. Erecting exterior walls.

In these cases, conventional fall protection systems may not be the safest choice for builders. This plan is designed to enable employers and employees to recognize the fall hazards associated with this job and to establish the safest procedures that are to be followed in order to prevent falls to lower levels or through holes and openings in walking/working surfaces.

Each employee will be trained in these procedures and will strictly adhere to them except when doing so would expose the employee to a greater hazard. If, in the employee's opinion, this is the case, the employee is to notify the competent person of their concern and have the concern addressed before proceeding.

It is the responsibility of (name of competent person) to implement this Fall Protection Plan. Continual observational safety checks of work operations and the enforcement of the safety policy and procedures shall be regularly enforced. The crew supervisor or foreman (insert name) is responsible for correcting any unsafe practices or conditions immediately.

It is the responsibility of the employer to ensure that all employees understand and adhere to the procedures of this plan and to follow the instructions of the crew supervisor. It is also the responsibility of the employee to bring to management's attention any unsafe or hazardous conditions or practices that may cause injury to either themselves or any other employees. Any changes to the Fall Protection Plan must be approved by (name of qualified person).

II. Fall Protection Systems To Be Used on This Job

Installation of roof trusses/rafters, exterior wall erection, roof sheathing, floor sheathing and joist/truss activities will be conducted by employees who are specifically trained to do this type of work and are trained to recognize the fall hazards. The nature of such work normally exposes the employee to the fall hazard for a short period of time. This Plan details how (Your company name here) will minimize these hazards.

Controlled Access Zones

When using the Plan to implement the fall protection options available, workers must be protected through limited access to high hazard locations. Before any non-conventional fall protection systems are used as part of the work plan, a controlled access zone (CAZ) shall be clearly defined by the competent person as an area where a recognized hazard exists. The demarcation of the CAZ shall be communicated by the competent person in a recognized manner, either through signs, wires, tapes, ropes or chains.

(Your company name here) shall take the following steps to ensure that the CAZ is clearly marked or controlled by the competent person:

- All access to the CAZ must be restricted to authorized entrants;
- All workers who are permitted in the CAZ shall be listed in the appropriate sections of the Plan (or be visibly identifiable by the competent person) prior to implementation;
- The competent person shall ensure that all protective elements of the CAZ be implemented prior to the beginning of work.

Installation Procedures for Roof Truss and Rafter Erection

During the erection and bracing of roof trusses/rafters, conventional fall protection may present a greater hazard to workers. On this job, safety nets, guardrails and personal fall arrest systems will not provide adequate fall protection because the nets will cause the walls to collapse, while there are no suitable attachment or anchorage points for guardrails or personal fall arrest systems.

On this job, requiring workers to use a ladder for the entire installation process will cause a greater hazard because the worker must stand on the ladder with his back or side to the front of the ladder. While erecting the truss or rafter the worker will need both hands to maneuver the truss and therefore cannot hold onto the ladder. In addition, ladders cannot be adequately protected from movement while trusses are being maneuvered into place. Many workers may experience additional fatigue because of the increase in overhead work with heavy materials, which can also lead to a greater hazard.

Exterior scaffolds cannot be utilized on this job because the ground, after recent backfilling, cannot support the scaffolding. In most cases, the erection and dismantling of the scaffold would expose workers to a greater fall hazard than erection of the trusses/rafters.

On all walls eight feet or less, workers will install interior scaffolds along the interior wall below the location where the trusses/rafters will be erected. "Sawhorse" scaffolds constructed of 46 inch sawhorses and 2x10 planks will often allow workers to be elevated high enough to allow for the erection of trusses and rafters without working on the top plate of the wall.

In structures that have walls higher than eight feet and where the use of scaffolds and ladders would create a greater hazard, safe working procedures will be utilized when working on the top plate and will be monitored by the crew supervisor. During all stages of truss/rafter erection the stability of the trusses/rafters will be ensured at all times.

(Your company name here) shall take the following steps to protect workers who are exposed to fall hazards while working from the top plate installing trusses/rafters:

- Only the following trained workers will be allowed to work on the top plate during roof truss or rafter installation:

_____

_____

_____

- Workers shall have no other duties to perform during truss/rafter erection procedures;
- All trusses/rafters will be adequately braced before any worker can use the truss/rafter as a support;
- Workers will remain on the top plate using the previously stabilized truss/rafter as a support while other trusses/rafters are being erected;
- Workers will leave the area of the secured trusses only when it is necessary to secure another truss/rafter;
- The first two trusses/rafters will be set from ladders leaning on side walls at points where the walls can support the weight of the ladder; and
- A worker will climb onto the interior top plate via a ladder to secure the peaks of the first two trusses/rafters being set.

The workers responsible for detaching trusses from cranes and/or securing trusses at the peaks traditionally are positioned at the peak of the trusses/rafters. There are also situations where workers securing rafters to ridge beams will be positioned on top of the ridge beam.

(Your company name here) shall take the following steps to protect workers who are exposed to fall hazards while securing trusses/rafters at the peak of the trusses/ridge beam:

- Only the following trained workers will be allowed to work at the peak during roof truss or rafter installation:

_____

_____

_____

- Once truss or rafter installation begins, workers not involved in that activity shall not stand or walk below or adjacent to the roof opening or exterior walls in any area where they could be struck by falling objects;
- Workers shall have no other duties than securing/bracing the trusses/ridge beam;
- Workers positioned at the peaks or in the webs of trusses or on top of the ridge beam shall work from a stable position, either by sitting on a "ridge seat" or other equivalent surface that provides additional stability or by positioning themselves in previously

stabilized trusses/rafters and leaning into and reaching through the trusses/rafters;

• Workers shall not remain on or in the peak/ridge any longer than necessary to safely complete the task.

Roof Sheathing Operations

Workers typically install roof sheathing after all trusses/rafters and any permanent truss bracing is in place. Roof structures are unstable until some sheathing is installed, so workers installing roof sheathing cannot be protected from fall hazards by conventional fall protection systems until it is determined that the roofing system can be used as an anchorage point. At that point, employees shall be protected by a personal fall arrest system.

Trusses/rafters are subject to collapse if a worker falls while attached to a single truss with a belt/harness. Nets could also cause collapse, and there is no place to attach guardrails.

All workers will ensure that they have secure footing before they attempt to walk on the sheathing, including cleaning shoes/boots of mud or other slip hazards.

To minimize the time workers must be exposed to a fall hazard, materials will be staged to allow for the quickest installation of sheathing.

(Your company name here) shall take the following steps to protect workers who are exposed to fall hazards while installing roof sheathing:

• Once roof sheathing installation begins, workers not involved in that activity shall not stand or walk below or adjacent to the roof opening or exterior walls in any area where they could be struck by falling objects;

• The competent person shall determine the limits of this area, which shall be clearly communicated to workers prior to placement of the first piece of roof sheathing;

• The competent person may order work on the roof to be suspended for brief periods as necessary to allow other workers to pass through such areas when this would not create a greater hazard;

• Only qualified workers shall install roof sheathing;

• The bottom row of roof sheathing may be installed by workers standing in truss webs;

• After the bottom row of roof sheathing is installed, a slide guard extending the width of the roof shall be securely attached to the roof. Slide guards are to be constructed of no less than nominal 4" height capable of limiting the uncontrolled slide of workers. Workers should install the slide guard while standing in truss webs and leaning over the sheathing;

• Additional rows of roof sheathing may be installed by workers positioned on previously installed rows of sheathing. A slide guard can be used to assist workers in retaining their footing during successive sheathing operations; and

• Additional slide guards shall be securely attached to the roof at intervals not to exceed 13 feet as successive rows of sheathing are installed. For roofs with pitches in excess of 9-in-12, slide guards will be installed at four-foot intervals.

• When wet weather (rain, snow, or sleet) are present, roof sheathing operations shall be suspended unless safe footing can be assured for those workers installing sheathing.

• When strong winds (above 40 miles per hour) are present, roof sheathing operations are to be suspended unless wind breakers are erected.

Installation of Floor Joists and Sheathing

During the installation of floor sheathing/joists (leading edge construction), the following steps shall be taken to protect workers:

• Only the following trained workers will be allowed to install floor joists or sheathing:

_____

_____

_____

• Materials for the operations shall be conveniently staged to allow for easy access to workers;

• The first floor joists or trusses will be rolled into position and secured either from the ground, ladders or sawhorse scaffolds;

• Each successive floor joist or truss will be rolled into place and secured from a platform created from a sheet of plywood laid over the previously secured floor joists or trusses;

• Except for the first row of sheathing which will be installed from ladders or the ground, workers shall work from the established deck; and

• Any workers not assisting in the leading edge construction while leading edges still exist (e.g. cutting the decking for the installers) shall not be permitted within six feet of the leading edge under construction.

Erection of Exterior Walls

During the construction and erection of exterior walls, employers shall take the following steps to protect workers:

• Only the following trained workers will be allowed to erect exterior walls:

_____

_____

_____

• A painted line six feet from the perimeter will be clearly marked prior to any wall erection activities to warn of the approaching unprotected edge;

• Materials for operations shall be conveniently staged to minimize fall hazards; and

• Workers constructing exterior walls shall complete as much cutting of materials and other preparation as possible away from the edge of the deck.

III. Enforcement

Constant awareness of and respect for fall hazards, and compliance with all safety rules are considered conditions of employment. The crew supervisor or foreman, as well as individuals in the Safety and Personnel Department, reserve the right to issue disciplinary warnings to employees, up to and including termination, for failure to follow the guidelines of this program.

IV. Accident Investigations

All accidents that result in injury to workers, regardless of their nature, shall be investigated and reported. It is an integral part of any safety program that documentation take place as soon as possible so that the cause and means of prevention can be identified to prevent a reoccurrence.

In the event that an employee falls or there is some other related, serious incident occurring, this plan shall be reviewed to determine if additional practices, procedures, or training need to be implemented to prevent similar types of falls or incidents from occurring.

V. Changes to Plan

Any changes to the plan will be approved by (name of the qualified person). This plan shall be reviewed by a qualified person as the job progresses to determine if additional practices, procedures or training needs to be implemented by the competent person to improve or provide additional fall protection. Workers shall be notified and trained, if necessary, in the new procedures. A copy of this plan and all approved changes shall be maintained at the jobsite.

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Tuesday
August 9, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Fair Housing Initiatives Program, Private Enforcement Initiative Special Project; Fiscal Year 1994 Competitive Solicitation; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3797; FR-3742-N-01]

NOFA for Fair Housing Initiatives Program, Private Enforcement Initiative Special Project; FY 1994 Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $2 million of 1994 Fiscal Year (FY) funding for special projects to address property insurance and mortgage lending discrimination under the Private Enforcement Initiative of the Fair Housing Initiatives Program (FHIP). FHIP assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application kit for funding under this Notice will be available following publication of the Notice. The actual application due date will be specified in the application kit. However, applicants will be given at least 45 days from today's date, until September 23, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1-800-343-3442. Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone number (202) 708-0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708-0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529-0033.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing and in other real estate-related transactions. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organizations Initiative.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.408, Administrative Enforcement Initiative; 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative; and 14.413, Fair Housing Organizations Initiative.

(b) Allocation Amounts

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L. 103-124), (94 App. Act) appropriated $20,481,000 for the FHIP program. Of this amount, $2,000,000 of Private Enforcement Initiative funds are being made available for the special projects announced in this NOFA. The remaining $18,481,000 was made available in a NOFA published on May 16, 1994 (59 FR 25532) (technical correction published June 7, 1994, 59 FR 29432). The amounts included in this NOFA are subject to change based on fund availability.

Of the $2 million available under this NOFA, $1.5 million is available for enforcement project applications that address any aspect of property insurance discrimination cognizable under the Fair Housing Act. Applications for property insurance projects should not exceed $300,000. The remaining $500,000 is available for enforcement project applications that address any aspect of mortgage lending discrimination cognizable under the Fair Housing Act. Applications for mortgage lending projects should not exceed $250,000.

If the entire $2 million available is not awarded under this NOFA, it may be used to fund additional applications under the FY 1994 FHIP NOFA published on May 16, or it may be added to funds made available in any FY 1995 FHIP NOFA that will be published. In addition, should HUD determine, based upon the availability of funds and the number and quality of applications in response to this NOFA, to fund additional projects under this NOFA, up to $500,000 of FY 1995 Private Enforcement Initiative funds will be made available to continue to make awards.

(c) Eligibility. Eligible activities and applicants, and additional requirements that apply to the Private Enforcement Initiative are listed below. All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities.

(1) *Eligible applicants.* Organizations that are eligible to receive FY 1994 funding assistance under the Private Enforcement Initiative are:

(i) *Qualified fair housing enforcement organizations.* A qualified fair housing organization is any organization, whether or not it is solely engaged in fair housing enforcement activities, that:

(A) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(B) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(C) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

(ii) *Fair housing enforcement organizations* with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims. A fair housing enforcement organization is an organization that:

(A) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(B) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(C) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

(2) *Eligible Activities.*

(i) *Property insurance discrimination.* A total of $1.5 million is available for enforcement project applications that address any aspect of property insurance discrimination cognizable under the Fair Housing Act. Project applications should not exceed $300,000. All testing projects under this NOFA must include other investigative activities in addition to testing. All projects must provide for administrative or judicial enforcement activities to follow for any unlawful discrimination that is disclosed. The following activities are provided as examples of eligible activities:

(A) Applicants can propose testing and other investigative activities to compare accepted and rejected property insurance applications and determine whether race/ethnicity of the applicant and/or the community where the property was located, or the age of the property was a factor in the rejection. Project applications may address the issuance, renewal, non-renewal or cancellation of policies by insurance companies, independent agents, captive agents or any other provider of property insurance. Activities may include comparisons of terms and conditions, such as the extent of coverage, premiums charged, terms of payment, property inspection requirements and discounts offered to insurance applicants that result in unlawful discrimination. Other investigative activities, in addition to testing, may include obtaining for use in administrative or judicial enforcement activities:

(*1*) Evidence (testimony or documents of disparate treatment or disparate impact) from current or former agents and other employees of insurance companies;

(*2*) Evidence (testimony or documents of disparate treatment or disparate impact) from current or former policyholders;

(*3*) Discovery made available in other lawsuits against insurance companies;

(*4*) Insurance testing data gathered by other organizations;

(*5*) Industry expert testimony on property insurance discrimination;

(*6*) Market conduct examinations;

(*7*) Equal-employment opportunity data on the number of minority agents, supervisors, management officials, and officers;

(*8*) Information on the current and former locations of insurance agencies, including main offices, branch offices and agents, compared to racial/ethnic data at the time of establishment, movement or closure;

(*9*) Data on sales and marketing practices;

(*10*) Data which indicate the discriminatory racial impact of selected underwriting and other sales and marketing practices, e.g. age and minimum coverage requirements; and

(*11*) Complaints filed with state insurance commissioners, public or private civil rights agencies, and other fair housing groups.

(B) Applicants can propose to pursue litigation and litigation support activities for cases in which evidence of discrimination in property insurance has already been secured through previously conducted testing and other investigative activities. Litigation support activities may include, for example, obtaining and/or providing a complainant, an enforcement agency, HUD, and/or the Department of Justice with testimony and evidence relevant to a particular case being heard before an Administrative Law Judge or in a Federal Court.

(C) Applicants can propose to analyze multi-year data on the geographic distribution of policies, location of offices and agents and marketing policies of insurance companies as they relate to the racial composition of a particular metropolitan area to determine whether such placement and marketing procedures result in a discriminatory impact on minorities.

(ii) *Mortgage lending discrimination.* A total of $500,000 is available for enforcement project applications that address any aspect of mortgage lending discrimination cognizable under the Fair Housing Act. Project applications should not exceed $250,000. All testing projects under the NOFA must include other investigative activities in addition to testing. All projects must provide for administrative or judicial enforcement activities to follow for any unlawful discrimination that is disclosed. The following are provided as examples of eligible activities:

(A) Applicants can propose to conduct an in-depth examination of a particular geographic area, identified in the application, with a diverse population that is separated into discrete, racially identifiable sections, to determine the presence and extent of discriminatory mortgage lending practices in the area. The examination must not be based solely on Home Mortgage Disclosure Act (HMDA) data. Discriminatory mortgage lending practices may be those which are subject to an impact analysis, such as the effect of a minimum loan amount on the ability of protected classes to obtain financing or the application of underwriting criteria which have the effect of discriminating against minorities. Such criteria could include, for example, the failure of the lender to accept cash on hand in lieu of a bank statement; denial of a loan because the applicant has no credit history, banking or checking account, credit accounts, credit cards, etc.; tiered pricing of mortgage costs based on the amount of the loan, the age or location of the property; and failure to gross up taxable and non-taxable income in calculating debt to income ratios.

(B) Applicants can propose to examine the interrelationship of various discriminatory mortgage lending practices and their role in creating geographic areas that are separated into discrete, racially identifiable sections. This includes, for example, discriminatory marketing practices; discriminatory appraisals; discriminatory underwriting criteria; overt differences in treatment; and the effects of discriminatory practices of financial institutions, such as discriminatory appraisals, on the ability of other institutions to operate in a manner that does not have a discriminatory effect. Also included as discriminatory practices for

examination are secondary market policies and practices; underwriting criteria which have a disparate impact; and discriminatory lender practices, such as minimum loan amounts, compensation practices, overages and other practices that have a disparate impact upon a protected class.

(C) Applicants can propose to pursue litigation and litigation support activities for cases in which documentation of discrimination in mortgage lending has already been secured through previously conducted testing and other investigative activities. Litigation support activities may include, for example, obtaining and/or providing a complainant, an enforcement agency, HUD, and/or the Department of Justice with testimony and evidence relevant to a particular case being heard before an Administrative Law Judge or in a Federal Court.

(D) Applicants can propose testing and other investigatory activities in connection with any of the above activities. Other investigative activities, in addition to testing, may include obtaining for use in administrative or judicial enforcement activities:

(1) Evidence (testimony or documents of disparate treatment or disparate impact) from current or former agents and other employees of mortgage lending companies;

(2) Discovery made available in other lawsuits against mortgage lending companies;

(3) Mortgage lending testing data gathered by other organizations;

(4) Industry expert testimony on mortgage lending discrimination;

(5) Market conduct examinations;

(6) Equal employment opportunity data on the number of minority loan officers, supervisors and management officials;

(7) Information of the current and former locations of mortgage lending companies;

(8) Data on sales and marketing practices; and

(9) Demographic data which indicate the discriminatory racial/ethnic impact of underwriting criteria.

(iii) *Additional requirements.*

(A) Applications are solicited for project proposals not to exceed 18 months in implementation. For projects more than 12 months in duration, the proposal must include a verbal briefing to HUD officials after nine months of project implementation.

(B) Applicants may propose to do an interrelated project that includes discrimination in mortgage lending and discrimination in property insurance. However, such applications cannot exceed maximum amounts established under the individual categories. Further, applicants must identify the category under which they wish such proposals to be considered.

(C) Applications must include activities that will provide:

(1) Detailed documentation of the findings that support the project's conclusions, and of the raw data that were used for analysis and determination;

(2) Detailed characteristics of the targeted community and any selected comparison site, showing the significant factors that were used to determine comparability and the source of the information used to identify these characteristics and factors;

(3) A detailed implementation guide for replication and use in other areas, including an explanation of methodology (e.g., how to compare accepted and rejected applications to determine whether race or other prohibited basis was a factor in the rejection; what to look for when doing on-site property visits; or how to establish discriminatory impact, providing detailed characteristics of the specific practice and showing the significant factors that were used to determine whether the practice had a discriminatory impact, and the source of the information used to identify these characteristics and factors) and detailed guidance on how to analyze data obtained using the methodology.

(D) Testers in testing activities funded with Private Enforcement Initiative funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques.

(E) Projects that appear to be aimed solely or primarily at research or data-gathering unrelated to existing or planned fair housing enforcement programs will not be approved. Data-gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(F) In accordance with 24 CFR 125.404, no recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(G) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(d) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

All projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) *The anticipated impact of the project proposed on the concerns identified in the application.* (20 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(1) of this NOFA under the heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (20 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III. (a)(6) and III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for measuring the actual results against the intended

results of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) will be taken into account as part of the assessment. This may be evidenced by the applicant's financial management of previous FHIP or other civil rights project management, a certification from cognizant auditor, and other documentation. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), and III.(a)(5) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (30 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices (especially programs addressing discrimination in financing, insurance, or other real-estate related transactions), including the applicant's management of past and current FHIP or other civil rights projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors/consultants. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points). Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources are available. The resources that will be considered must be targeted specifically for the proposed project, and must be over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the Selection Criteria for Ranking Applications for Assistance identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. Applications will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications.

(3) Cost Factors

The Department expects to fund multiple applications as a result of this NOFA. At some point, however, two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. At that point, the project's cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(e) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, reduction or limitation of further funding for administrative enforcement activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the

toll free number 1–800–343–3442. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, S.W., Washington, DC 20410.

The application due date will be specified in the application kit. However, applicants will be given at least 45 days from today's date, until September 23, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

The application deadline is firm as to date. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity. Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) *General requirements.* The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A budget—which must include $3,000 to be used for travel costs for training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants;

(4) A statement indicating the need for FHIP funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities and the applicant's planned or implemented financial control procedures that will demonstrate the applicant's capability in managing financial resources;

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured, and;

(7) A description of how the project will be of continuing use in dealing with housing discrimination after funded activities have been completed;

(8) HUD Form 2880, Applicant Disclosures;

(9) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of the twelfth month.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF–LLL).

(11) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(i) Section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135.

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(iii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(b) *Additional Private Enforcement Initiative Requirements.* In addition to meeting the application requirements contained in section III.(a), above, all proposals for testing under the Private Enforcement Initiative must include:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices, and has sufficient knowledge of fair housing testing to enable the applicant to implement a testing program successfully;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational

or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test.

IV. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons

who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 27, 1994.

Paul Williams,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

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Tuesday
August 9, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 261

Federally Assisted Low Income Housing Drug Elimination Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 261

(Docket No. R-94-1741; FR-3467-P-01)

RIN 2502-AG07

Federally Assisted Low Income Housing Drug Elimination Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Assisted Housing Drug Elimination Program, as authorized by section 581 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625) and section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992). The program authorizes HUD to make grants to owners of federally assisted low income housing for use in eliminating drug-related crime and/or the problems associated with it.

DATES: Comments due date: October 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Comments received by facsimile machine (FAX) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Lessley Wiles, Office of Multifamily Housing Management, Operations Division, (202) 708-0216 (voice) or (202) 708-3938 (TDD for speech or hearing-impaired). (These are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0476.

I. Background

The Public Housing Drug Elimination Program was first authorized by Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901-11908). Implementing regulations for this program were issued by HUD and codified at 24 CFR 961. Applicants eligible to receive grants under this program were public housing agencies (PHAs), including Indian housing authorities (IHAs).

Section 581 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625) amended the Drug Elimination Program in a number of ways, including the addition of authorization to make grants to private, for-profit and nonprofit owners of federally assisted low-income housing for use in eliminating drug-related crime. The statutory program requirements for the Public and Indian Housing Drug Elimination Program and the Assisted Housing Drug Elimination Program are identical, although the Department is permitted to establish other criteria, in addition to those applicable to public and Indian housing, for the evaluation of funding applications submitted by owners of federally assisted low-income housing. The statute provides that such additional criteria shall be designed only to reflect—(1) relevant differences between the financial resources and other characteristics of public housing authorities and owners of federally assisted low-income housing, or (2) relevant differences between the problem of drug-related crime in public housing and the problem of drug-related crime in federally assisted low-income housing. Comments are specifically invited on what additional criteria consistent with the guidance, cited above, provided by the statute would be appropriate for selecting grant recipients.

This rule would implement the Assisted Housing Drug Elimination Program. It follows the statute and the rule for the Public and Indian Housing Drug Elimination Program very closely. The main difference from the Public and Indian Housing Drug Elimination Program is in the level of detail provided in the rule. To permit the Department to be more responsive in the targeting of resources under this program, which have generally been made available at a much lower level than for public and Indian housing, this rule would provide for more flexibility in Notices of Funding Availability (NOFAs) concerning the scope of submission requirements and eligible activities for any particular funding round.

II. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide grants to eliminate drug-related crime in federally assisted low-income housing. Although small entities in the form of owners of federally assisted low-income housing could participate in the program, the rule is not intended to and would not have a significant economic impact on them.

Family

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this rule have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would implement a program that would encourage owners of federally assisted low-income housing to develop a plan for addressing the problem of drug-related crime, and to make available grants to carry out this plan. As such, the program is intended to improve the quality of life of federally assisted low-income housing residents, including families, by reducing the incidence of drug-related crime.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of

power and responsibilities among the various levels of government and, therefore, the provisions of this rule do not have "federalism implications" within the meaning of the Order. The rule implements a program that encourages owners of federally assisted low-income housing to develop a plan for addressing the problem of drug-related crime, and makes available grants to help them carry out their plans. As such, the program would help combat serious drug-related crime problems in their housing. In addition, further review under the Order is unnecessary, since the rule generally tracks the statute and involves little implementing discretion.

This proposed rule was listed as Item No. 1562 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20442) under Executive Order 12866 and the Regulatory Flexibility Act.

The Assisted Housing Drug Elimination Program is listed in the Catalog of Federal Domestic Assistance as number 14–854.

List of Subjects in 24 CFR Part 261

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—low and moderate income housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 24, chapter II, of the Code of Federal Regulations is amended by adding part 261, consisting of §§261.1 through 261.29, to read as follows:

PART 261—ASSISTED HOUSING DRUG ELIMINATION PROGRAM

Subpart A—General

Sec.
261.1 Purpose and scope.
261.5 Definitions.

Subpart B—Use of Grant Funds

261.10 Applicants and activities.

Subpart C—Application and Selection

261.15 Application selection and requirements.
261.18 Resident comments on grant application.

Subpart D—Grant Administration

261.26 Grant administration.
261.28 Grantee reports.
261.29 Other Federal requirements.

Authority: 42 U.S.C. 3535(d) and 11901 et seq.

Subpart A—General

§261.1 Purpose and scope.

The purposes of the Assisted Housing Drug Elimination Program are to:

(a) Eliminate drug-related crime and the problems associated with it in and around the premises of federally assisted, low-income housing;

(b) Encourage owners of federally assisted, low-income housing to develop a plan that includes initiatives that can be sustained over a period of several years for addressing drug-related crime and/or the problems associated with it in and around the premises of assisted housing proposed for funding under this part; and

(c) Make available federal grants to help owners of federally assisted, low-income housing carry out their plans.

§961.5 Definitions.

Act means The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

Chief executive officer of a State or a unit of general local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

Controlled substance means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954.

Drug intervention means a process to identify assisted housing resident drug users and assist them in modifying their behavior and/or refer them to drug treatment to eliminate drug abuse.

Drug prevention means a process to provide goods and services designed to alter factors, including activities, environmental influences, risks and expectations, that lead to drug abuse.

Drug-related crime means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, a controlled substance.

Drug treatment means a program for the residents of an applicant's development that strives to end drug abuse and to eliminate its negative effects through rehabilitation and relapse prevention.

Federally assisted, low-income housing (includes the term "assisted housing" as used in this rule) means housing assisted under:

(1) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (12 U.S.C. 1701 et seq.). (Note: However, section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts are not considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing and are not eligible for funding.);

(2) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(3) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note) (not including tenant-based assistance).

Governmental jurisdiction means the unit of general local government, State, or area of operation of an Indian tribe in which the housing development administered by the applicant is located.

HUD or *Department* means the United States Department of Housing and Urban Development.

In and around means within, or adjacent to, the physical boundaries of a housing development.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the housing developments owned by the applicant.

Problems associated with drug-related crime means the negative physical, social, educational and economic impact of drug-related crime on assisted housing residents, and the deterioration of the assisted housing environment because of drug-related crime.

Resident Organization (RO) means an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent;

(2) It may represent residents in more than one housing development, but it must fairly represent residents from each development that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization represents.

Single State Agency means an agency responsible for licensing and monitoring State or tribal drug abuse programs.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public or Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

Unit of general local government means any city, county, town, municipality, township, parish, village, local public authority or other general purpose political subdivision of a State.

Subpart B—Use of Grant Funds

§ 261.10 Applicants and activities.

Applicants and activities eligible for funding under the Assisted Housing Drug Elimination Program are listed in this section. The applicants and activities eligible under any particular funding round may be limited in a Notice of Funding Availability (NOFA) published in the **Federal Register**. Additional details concerning eligible and ineligible applicants and activities will also be published in the NOFAs for this program.

(a) *Eligible applicants.* The applicant must be the owner of a federally assisted low-income housing project under: (1) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (12 U.S.C. 1701 et seq.). (Note: However, section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts are not considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing and are not eligible for funding.);

(2) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(3) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note) (not including tenant-based assistance).

(b) *Eligible activities.* An application for funding under this program may be for one or more of the following eligible activities, as further specified in program NOFAs:

(1) Employment of security personnel.

(2) Reimbursement of local law enforcement agencies for additional security and protective services.

(3) Physical improvements to enhance security.

(4) Employment of one or more individuals:

(i) To investigate drug-related crime, and the problems associated with it, on or about the real property comprising any federally assisted, low-income housing project; and

(ii) To provide evidence relating to such crime in any administrative or judicial proceeding.

(5) The provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials.

(6) Drug-abuse prevention, intervention and treatment programs to reduce the use of drugs.

(7) Continuation of current program activities. Current or previous Assisted Housing Drug Elimination Program grant recipients may apply, on the same basis as other applicants, for grants to continue their grant activities or implement other program activities. The Department will evaluate an applicant's performance under any previous Drug Elimination Program grants within the past five years. Subject to evaluation and review are the applicant's financial and program performance; reporting and special condition compliance; accomplishment of stated goals and objectives under the previous grant; and program adjustments made in response to previous ineffective performance. If the evaluation discloses a pattern under past grants of ineffective performances with no corrective measures attempted, it will result in a deduction of points from the current application. Since this is a competitive program, HUD does not guarantee continued funding of any previously funded Drug Elimination Program Grant.

Subpart C—Application and Selection

§ 261.15 Application selection and requirements.

(a) *Selection criteria.* HUD will review each application that it determines meets the requirements of this part and assign points in accordance with the selection criteria. The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in Notices of Funding Availability (NOFAs) published for this program. Each application submitted for a grant under this part will be evaluated on the basis of the following selection criteria:

(1) First criterion: the extent of the drug-related crime problem in the applicant's development or developments proposed for assistance.

(2) Second criterion: the quality of the plan to address the crime problem in the developments proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years.

(3) Third criterion: the capability of the applicant to carry out the plan.

(4) Fourth criterion: the extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.

(b) *Plan requirement.* Each application must include a plan for addressing the problem of drug-related crime and/or the problems associated with drug-related crime on the premises of the housing for which the application is being submitted. For applications that cover more than one housing development, the plan does not have to address each development separately if the same activities will apply to each development. Only where program activities will differ from one development to another must the plan address each development separately.

(c) *Notice of Funding Availability.* HUD will publish Notices of Funding Availability (NOFAs) in the **Federal Register**, as appropriate, to inform the public of the availability of grant amounts under this part. NOFAs will provide specific guidance with respect to the grant process, including the deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the eligible applicants and activities; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing the problem of drug-related crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that the Department has determined to be necessary and appropriate to provide for the implementation and administration of the program under this part. (Approved by the Office of Management and Budget under control number 2502-0476).

(d) *Environmental review.* Grants under this part are categorically

excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

§ 261.18 Resident comments on grant application.

The applicant must provide the residents of developments proposed for funding under this part, as well as any resident organizations that represent those residents, with a reasonable opportunity to comment on its application for funding under this program. The applicant must give these comments careful consideration in developing its plan and application as well as in the implementation of funded programs. Copies of all written comments submitted must be maintained by the grantee for three years.

Subpart D—Grant Administration

§ 261.26 Grant administration.

(a) *General.* Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part, any Notice of Funding Availability (NOFA) issued for this program, 24 CFR part 85, applicable laws and regulations, applicable OMB circulars, HUD fiscal and audit controls, grant agreements, grant special conditions, the grantee's approved budget (SF–424A), budget narrative, plan, and activity timetable.

(b) *Grant term extensions.* (1) *Grant term.* Terms of the grant agreement may not exceed 12 months, unless an extension is approved by the local HUD Office. The maximum extension allowable for any grant is 6 months. Any funds not expended at the end of the grant term shall be remitted to HUD.

(2) *Extension.* Grantees may be granted an extension of the grant term in response to a written request for an extension stating the need for the extension and indicating the additional time required.

(3) *Receipt.* The request must be received by the local HUD Office before the termination of the grant, and requires approval by the local HUD Office with jurisdiction over the grantee.

(4) *Term.* The maximum extension allowable for any program period is 6 months. Requests for retroactive extension of program periods will not be considered. Only one extension will be permitted. Extensions will only be considered if the extension criteria of paragraph (5) of this section are met by the grantee at the time the request for the extension of the deadline is submitted for approval.

(5) *Extension criteria.* The following criteria must be met by the grantee when submitting a request to extend the expenditure deadline for a program or set of programs.

(i) *Financial status reports.* There must be on file with the local HUD Office current and acceptable Financial Status Reports, SF–269As.

(ii) *Grant agreement special conditions.* All grant agreement special conditions must be satisfied except those conditions that must be fulfilled in the remaining period of the grant. This also includes the performance and resolution of audit findings in a timely manner.

(iii) *Justification.* A narrative justification must be submitted with the program extension request. Complete details must be provided, including the circumstances which require the proposed extension, and explanation of the impact of denying the request.

(6) *HUD action.* The local HUD Office will take action on an extension request within 15 working days after receipt of the request.

(c) *Duplication of funds.* To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Program. The grantee must establish an auditable system to provide adequate accountability for funds that it has been awarded. The grantee is responsible for ensuring that there is no duplication of funds.

(d) *Insurance.* Each grantee is required to obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants are required to assess their potential liability arising out of the employment or contracting of security personnel, law enforcement personnel, investigators, and drug treatment providers, and the establishment of voluntary tenant patrols; to evaluate the qualifications and training of the individuals or firms undertaking these functions; and to consider any limitations on liability under State or local law. Grantees are required to obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 261.10(b)(5). Voluntary tenant patrol liability insurance costs are eligible program expenses. Subgrantees are required to obtain their own liability insurance.

(e) *Failure to implement program.* If the grant plan, approved budget and timetable, as described in the approved application, are not operational within 60 days of the grant agreement date, the grantee must report by letter to the local HUD Office the steps being taken to initiate the plan and timetable, the reason for the delay, and the expected starting date. Any timetable revisions which resulted from the delay must be included. The local HUD Office will determine if the delay is acceptable, approve/disapprove the revised plan and timetable, and take any additional appropriate action.

(f) *Sanctions.* (1) HUD may impose sanctions if the grantee:

(i) Is not complying with the requirements of 24 CFR part 261 or of other applicable Federal law;

(ii) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports under § 261.28;

(iii) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(iv) Does not adhere to grant agreement requirements or special conditions;

(v) Proposes substantial plan changes to the extent that, if originally submitted, would have resulted in the application not being selected for funding;

(vi) Engages in the improper award or administration of grant subcontracts;

(vii) Does not submit reports; or

(viii) Files a false certification.

(2) HUD may impose the following sanctions:

(i) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(ii) Disallow all or part of the cost of the activity or action not in compliance;

(iii) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(iv) Require that some or all of the grant amounts be remitted to HUD;

(v) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(vi) Withhold further awards for the program or

(vii) Take other remedies that may be legally available.

§ 261.28 Grantee reports.

Grantees are responsible for managing the day-to-day operations of grant and

subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity of the grant.

(a) *Final performance report.* (1) *Evaluation.* Grantees are required to provide the local HUD Office with a final cumulative performance report that evaluates the grantee's overall performance against its plan. This report shall include in summary form (but is not limited to) the following: any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress meets expectations; a discussion of the grantee's efforts in encouraging resident participation; a description of any other programs that may have been initiated, expanded or deleted as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(2) *Reporting period.* The final performance report shall cover the period from the date of the grant agreement to the termination date of the grant agreement. The report is due to the local HUD Office within 90 days after termination of the grant agreement.

(b) *Semi-annual financial status reporting requirements.*

(1) *Form.* The grantee shall provide a semi-annual financial status report. The grantee shall use the SF–269A, Financial Status Report-Long Form, to report the status of funds for non-construction programs. The grantee shall use SF–269A, Block 12, "Remarks," to report on the status of programs, functions or activities within the program.

(2) *Reporting period.* Semi-annual financial status reports (SF–269A) covering the first 180 days of funded activities must be submitted to the local HUD Office between 190 and 210 days after the date of the grant agreement. If the SF–269A is not received on or before the due date (210 days after the date of the grant agreement) by the local HUD Office, grant funds will not be advanced until the reports are received.

(c) *Final financial status report (SF–269A).*

(1) *Cumulative summary.* The final report will be a cumulative summary of expenditures to date and must indicate the exact balance of unexpended funds. The grantee must remit all Drug Elimination Program funds (including any unexpended funds) owed to HUD within 90 days after the termination of the grant agreement.

(2) *Reporting period.* The final financial status report shall cover the period from the date of the grant agreement to the termination date of the grant agreement. The report is due to the local HUD Office within 90 days after the termination of the grant agreement.

(d) *Report submission.* The grantee shall submit all required reports to the local HUD Office.

§ 261.29 Other Federal requirements.

Use of grant funds requires compliance with the following additional Federal requirements:

(a) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements apply to this program:

(1) The requirements of The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations issued at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) *Use of debarred, suspended or ineligible contractors.* Use of grant funds under this program requires compliance with the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) *Flood insurance.* Grants will not be awarded for proposed activities that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79; or

(2) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(3) Flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) *Lead-based paint.* (1) *Scope.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations apply to all housing constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under § 261.10(b)(3).

(2) *Exceptions.* The following activities are not covered by this section:

(i) Installation of security devices;

(ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or

(iii) Any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(e) *Conflicts of interest.* No person, as described in paragraphs (1) and (2) of this section, may obtain a personal or financial interest or benefit from an activity funded under this program, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee that

receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decision making process or gain inside information with regard to such activities.

(f) *Drug Free Workplace Act of 1988.* The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F apply to this program.

(g) *Anti-lobbying provisions under section 319.* The use of funds under this part is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and implementing regulations at 24 CFR part 87. These authorities prohibit recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. However, since grantees sometimes may expect to receive additional grant funds through reallocations, all potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(h) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3 apply to this program.

Dated: June 30, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–19229 Filed 8–8–94; 8:45 am]

BILLING CODE 4210–27–P

federal register

Tuesday
August 9, 1994

Part VI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Document on Good Clinical Practices; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N-0198]

International Conference on Harmonisation; Draft Document on Good Clinical Practices; Guideline for the Investigator's Brochure

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft document entitled "Guideline for the Investigator's Brochure." The document describes the minimum information that should be included in an Investigator's Brochure and provides a suggested format. This document was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft document is intended to help ensure that the Investigator's Brochure contains information that will help clinical investigators understand the rationale for and comply with key features of a protocol and to help ensure that sponsors provide up-to-date Investigator's Brochures to their investigators. The concepts in this draft document will later be incorporated into a larger document on good clinical practices.

DATES: Written comments by October 11, 1994.

ADDRESSES: Submit written comments on the draft document to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft document: Bette L. Barton, Center for Drug Evaluation and Research (HFD-344), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1032.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Research Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on October 27, 1993, the ICH Steering Committee agreed that the following draft document entitled "Guideline for the Investigator's Brochure" should be made available for public comment. The draft document is the product of the Efficacy Expert Working Group of the ICH. The draft document describes the minimum information that should be included in an Investigator's Brochure, such as information on physical, chemical, and pharmaceutical properties, and the drug's effect in humans; a suggested layout is also provided. Comments about this draft will be considered by FDA and the Expert Working Group. Modifications will appear in a larger draft document on good clinical practices. Ultimately, FDA intends to adopt the ICH Steering Committee's final guidelines and recommendations.

Although not required, FDA would normally provide at least a 75-day comment period and preferably a 90-day comment period to provide interested persons with ample time to review and comment upon this type of an action. However, the comment period for this guideline has been shortened to 60 days so that comments may be received by FDA in time to be discussed at an October 1994 meeting involving this guideline.

Guidelines are generally issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this document when made final would not be issued under current § 10.90(b), and it would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before October 11, 1994, submit to the Dockets Management Branch (address above) written comments on the draft document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft document follows:

Guideline for the Investigator's Brochure

1. Introduction

The Investigator's Brochure (IB) is a compilation of the clinical and nonclinical data on the investigational product which is relevant to its study in human subjects. Its purpose is to provide the investigators and others involved in the study with the information to facilitate their understanding of the rationale for, and their compliance with, many key features of the protocol, such as the dose, dose frequency/interval, methods of administration and safety monitoring procedures. It also provides insight to support the clinical management of the study subjects during the course of the clinical trial. The data should be presented in a concise, simple, objective, balanced and nonpromotional form which enables a clinician, or potential investigator, to understand it and make his/her own unbiased risk-benefit assessment of the appropriateness of the proposed trial. For this reason, the compilation of an Investigator's Brochure should generally be supervised by a medically qualified person, and the content should be approved by the disciplines that generated the described data.

These guidelines delineate the minimum information to be included in an Investigator's Brochure and provide a suggestion for its layout. It is expected that the type and extent of information available will vary with the stage of development. Where the investigational product is marketed and the pharmacology is widely

understood by medical practitioners, an extensive Investigator's Brochure may not be required. Where regulatory requirements permit, a current basic drug information brochure, package leaflet, or labelling may be an appropriate alternative, provided that it includes current, comprehensive detailed information on all aspects of the investigational product which might be of importance to the investigator. Where a new aspect is being studied in a marketed drug which may lead to new regulatory approval, an Investigator's Brochure specific to that aspect should be prepared. The Investigator's Brochure should be reviewed at least annually and revised as necessary in compliance with a sponsor's procedures. More frequent revision may be appropriate depending on the stage of development and generation of relevant new information. However, in accordance with Good Clinical Practice, relevant new information may be so important that it needs to be communicated to the investigators, and possible Ethics Committees (EthC's)/Institutional Review Boards (IRB's) and/or regulatory authorities prior to inclusion in a revision of the Investigator's Brochure.

Generally, the sponsor is responsible for ensuring that an up-to-date Investigator's Brochure is made available to the investigator. In the case of an investigator-sponsored study, that individual should determine whether a brochure is available from the commercial manufacturer. If the investigational product is being produced through an investigator-sponsor, he/she is responsible for providing the necessary information to the study personnel. In some such cases, preparation of a formal Investigator's Brochure is impractical. If so, an expanded background section in the study protocol, containing the minimum current information described in this guideline, may provide an acceptable substitute.

2. General Considerations

The Investigator's Brochure should include:

2.1. A Title Page

This should bear: The sponsor's name, the identity of the investigational product (i.e., research number, chemical or approved generic name; and trade name(s) where legally permissible and desired by the sponsor), and a dated statement of the formal release[1] of the investigator's brochure. It is also suggested that an edition number and a reference to the number and date of the edition that it supersedes may prove useful. An example is given in Appendix 1.

2.2. A Confidentiality Statement

The sponsor may wish to include a statement requiring the investigator/recipients to treat the Brochure as a confidential document for the sole information of the Investigator's team.

3. Contents of the Investigator's Brochure

The IB also contains the following sections, each with literature references where appropriate:

[1] The sponsor should have a procedure for the approval and release of the document.

3.1. Table of Contents

An example of the Table of Contents is to be found in Appendix 2.

3.2. Summary

A brief summary (preferably not exceeding two pages) should be given, highlighting the significant chemical, pharmaceutical, pharmacological, toxicological, pharmacokinetic, metabolic, and clinical information available which is relevant to the stage of clinical development of the investigational product.

3.3. Introduction

A brief introductory statement containing the chemical name (and generic and trade name(s) when approved) of the investigational product, all active ingredients, the investigational product's pharmacological class and its expected position within this class (for example, advantages), the rationale for performing research with the investigational product, the anticipated prophylactic, therapeutic or diagnostic EFFICACY indication(s) and the general approach to be followed in evaluating the investigational product should be given.

3.4. Physical, Chemical, and Pharmaceutical Properties

A description of the investigational product substance, including the chemical and/or structural formula(e) and a brief summary of relevant physical, chemical, and pharmaceutical properties should be given. Any structural similarities to other known compounds should also be mentioned.

3.5. Nonclinical Studies

Introduction:

The results of all nonclinical pharmacology, toxicology, pharmacokinetic, and drug metabolism studies should be provided in summary form. In each case, the methodology used, the results, and a discussion of the relevance of the findings in connection with the expected therapeutic and possible undesired effects in humans should be given.

The information provided should include the following, as appropriate if known/available:

Species and strain(s) tested.
Number and sex of animals in each group.
Unit dose (milligram/kilogram(mg/kg)).
Dose interval.
Route of administration.
Duration of dosing.
Information on systemic exposure.
Duration of postexposure followup (recovery period).
Results, including the following aspects:
Nature and frequency of pharmacological or toxic effects.
Severity or intensity of pharmacological or toxic effects.
Time to onset.
Reversibility.
Duration.
Dose response.

Tabular format/listings should be used whenever possible to enhance the clarity of the presentation.

A discussion should follow each section highlighting the most important findings from the studies including the dose response of observed effects, relevance to humans, and aspects to be studied in humans. If applicable, the effective and nontoxic dose findings in the same animal species should be compared or the therapeutic ratio should be discussed. The relevance of this information to the proposed human dosing should be addressed. Wherever possible, comparisons should be made in terms of systemic exposure rather than on a mg/kg basis.

3.5.1. Nonclinical Pharmacology

A summary of the pharmacological aspects of the investigational product and, as far as possible, its significant metabolites studied in animals should be included. Such a summary should incorporate studies which assess potential therapeutic activity (for example, efficacy models, receptor binding and specificity) as well as those which assess safety (for example, special studies to assess pharmacological actions other than the intended therapeutic effect(s)).

3.5.2. Toxicology

A summary of the toxicological effects found in studies conducted in different animal species should be described under the following headings where appropriate:

Single dose.
Repeated dose.
Genotoxicity (mutagenicity).
Reproductive toxicity.
Carcinogenicity.
Special studies, for example, irritancy and sensitization.

3.5.3. Pharmacokinetics and Drug Metabolism in Animals

A summary of the pharmacokinetics and biological transformation and disposition of the investigational product in all species tested should be given. The discussion of the findings should address the local and systemic bioavailability of the investigational product and its metabolites and their relationship to the pharmacological and toxicological findings in animal species.

3.6. Effects in Humans

Introduction:

A thorough discussion of the known effects of the investigational product in humans should be provided, including information on pharmacokinetics, metabolism, pharmacodynamics, dose-response, safety, therapeutic efficacy, and other pharmacological activities. Where possible, a summary of each completed clinical study should be provided, although if there is a large number of studies, an integrated summary may be more appropriate (see 3.6.3). Information should also be provided regarding results of any use of the investigational product other than from clinical trials, such as from experience after marketing.

3.6.1. Pharmacokinetics

A summary of information on the pharmacokinetics of the investigational product should be presented, including the following, if available:

Pharmacokinetics, including metabolism.
Bioavailability of the investigational product (absolute where possible, and/or comparative) using a defined dosage form.

Plasma protein binding studies.

Population subgroups, for example, gender, age, impaired organ function.

Interactions, for example, drug-drug interactions, effects of food.

Other pharmacokinetic data, for example, derived from clinical trials, population studies.

3.6.2. Clinical Trials (Phases I–IV)

A summary of information relating to investigational product safety, pharmacodynamics, efficacy, and dose-response obtained from preceding trials in humans, whether in healthy volunteers and/or patients, should be provided. If possible each trial should be summarized individually. Where the number of trials is large it may be appropriate to summarize them in groups by phase to facilitate discussion of the data and their implications. For each trial, the aim, design, methods, results (safety and efficacy) and conclusions should be described.

A discussion of the implications of the results should be provided and recommendations for further investigation should be made, unless this has already been included in an integrated summary.

3.6.3. Integrated Summaries of Drug Safety and Therapeutic Efficacy

In cases where a number of clinical studies have been completed, the use of integrated summaries on safety and efficacy by indication may provide a clearer and more informative presentation of the data. The summaries should describe the number of studies completed, the number of subjects enrolled, the dose and duration of therapy, the results in terms of safety, therapeutic efficacy and dose-response for each, any significant subject compliance problems noted, and any significant variations in investigational product effects in patient subgroups noted. Tabular summaries of adverse drug events for all study treatments in all clinical trials (including those from all studied indications) are strongly recommended. Where differences in adverse drug event patterns/incidences exist they should be listed by indication.

3.6.4. Other Human Use

Countries should be identified in which the investigational product has been marketed or approved. The approved indications, dose, and labelling conditions including precautions, contraindications, warnings, and drug interactions should be mentioned. When the investigational product is marketed, the serious drug event profile should be included. Any uses, formulations, or routes of administration, other than those used in the study, should be summarized with emphasis on safety information.

3.7 Investigational Product

The justification of a particular formulation and its stage of development (final or developmental) and of the dosage strength and the route(s) of administration should be stated. To permit appropriate safety measures to be taken in the course of the trial, a description of the formulation(s) to be used, including excipients and their proportions, should be provided. Instructions for the storage and handling of the dosage forms should also be given.

3.8. Overall Discussion of Data and Guidance for the Investigator

This section should provide an overall discussion of the nonclinical and clinical data, integrating information from various sources on different aspects of the investigational product wherever possible. In this way the prospective investigator can be provided with the most informative interpretation of the available data and at the same time with an assessment of the implications of the information for future clinical trials.

For example:

• Information obtained from pharmacokinetic and metabolic studies in animals and in humans may be correlated with the safety and efficacy results in the same species to provide an understanding of the dose and concentration relationships of these effects.

• Pharmacokinetic and metabolic data in humans may be compared to those in animals to provide an insight into the suitability of the animal models for predicting toxic and other pharmacological effects in humans.

• Experience across clinical trials should be analyzed and any correlation of the investigational product's effects with the dose, duration of treatment, and/or patient population described.

• Where appropriate, the published results on related drugs should be discussed. This could help the Investigator to anticipate adverse drug events or other problems in clinical trials.

The overall aim of this section is to provide the investigator with a clear understanding of the possible risks and adverse effects, and of the special patient observations and precautions that may be needed for a specific trial based on the available chemical, pharmaceutical, pharmacological, toxicological, and clinical information on the investigational product. Guidance should also be given on the surveillance and treatment of overdose and adverse drug events based on previous human experience and the pharmacology of the investigational product.

Appendix 1

TITLE PAGE: EXAMPLE

Sponsor's Name

Product:

Research Number:

Name(s): Chemical, Generic (if approved).

Trade Name(s) (if legally permissible and desired by the sponsor).

INVESTIGATOR'S BROCHURE

Edition No.:

Release Date:

Replaces previous edition no. —— dated:

Appendix 2

EXAMPLE

TABLE OF CONTENTS OF INVESTIGATOR'S BROCHURE

- Confidentiality Statement (optional)
- Signature Page (optional)

1. Table of Contents
2. Summary
3. Introduction
4. Physical, Chemical, and Pharmaceutical Properties
5. Nonclinical studies
   5.1. Nonclinical Pharmacology
   5.2. Toxicology
   5.3. Pharmacokinetics and Drug Metabolism in Animals
6. Effects in Humans
   6.1. Pharmacokinetics
   6.2. Clinical Trials (Phases I–IV)
   6.3. Integrated Summaries of Drug Safety and Therapeutic Efficacy
   6.4. Other Human Use
7. Investigational Product
8. Overall Discussion of Data and Guide for the Investigator

N.B. References on
1. Publications
2. Internal Reports

These are to be found at the end of each chapter.

Appendix: e.g., Package Leaflet for Phase IV Trials

Supplement: e.g., Brochure/Summary Information of Product Characteristics

Dated: August 3, 1994.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–19357 Filed 8–8–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0197]

International Conference on Harmonisation; Draft Document on Essential Documents for the Conduct of a Clinical Study; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft document entitled "Guideline for Essential Documents for the Conduct of a Clinical Study." The draft document describes documents that individually and collectively permit evaluation of the conduct of a clinical study and the quality of the data produced. This document was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft document is intended to help ensure that essential documents meet

good clinical practice standards and all applicable regulatory requirements. The concepts in this draft document will later be incorporated into a larger document on good clinical practices.

DATES: Written comments by October 11, 1994.

ADDRESSES: Submit written comments on the draft document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft document: Bette L. Barton, Center for Drug Evaluation and Research (HFD–344), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1032.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are: The European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Research Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on October 27, 1993, the ICH Steering Committee agreed that the following draft document entitled "Guideline for Essential Documents for the Conduct of a Clinical Study" should be made available for public comment. This draft document is the product of the Efficacy Expert Working Group of the ICH. "Essential documents" individually and collectively permit evaluation of the conduct of a study and the quality of the data produced. The draft document describes the purpose of each document and states whether the document should be filed in the investigator's files or the sponsor's files. Comments about this draft will be considered by FDA and the Efficacy Expert Working Group of the ICH. Modifications will appear in a larger draft document on good clinical practices. Ultimately, FDA intends to adopt the ICH Steering Committee's final guidelines and recommendations.

Although not required, FDA would normally provide at least a 75-day comment period and preferably a 90-day comment period to provide interested persons with ample time to review and comment upon this type of an action. However, the comment period for this guideline has been shortened to 60 days so that comments may be received by FDA in time to be discussed at an October 1994 meeting involving this guideline.

Guidelines are generally issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline if made final would not be issued under current § 10.90(b), and it would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before October 11, 1994, submit to the Dockets Management Branch (address above) written comments on the draft document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft document follows:

Guideline for Essential Documents for the Conduct of a Clinical Study

Essential Documents are those documents which individually and collectively permit evaluation of the conduct of a study and the quality of the data produced. These documents serve to demonstrate the compliance of the investigator, sponsor, and monitor with the standards of Good Clinical Practice and with all applicable regulatory requirements.

Essential Documents also serve a number of other important purposes. Filing essential documents at the investigator and sponsor sites in a timely manner can greatly assist in the successful management and quality control of a study by the investigator, sponsor, and monitor. These documents are also the ones which are usually audited by the sponsor's quality assurance function or inspected by a regulatory agency as part of the process to confirm the validity of the study conduct and the integrity of the data collected.

The minimum list of essential documents which has been developed follows. The various documents are grouped in three sections according to the stage of the study during which they will normally be generated: (1) Before the clinical phase of the study commences, (2) during the clinical conduct of the study, and (3) after the completion or termination of the study. A description is given of the purpose of each document, and whether it should be filed in either the investigator or sponsor files or both. It is acceptable to combine some of the documents, provided the individual elements are readily identifiable.

Good Clinical Practice provides that trial master files be established at the beginning of the study, both at the investigator site and at the sponsor's office. The final close out visit of a study can only be done when the monitor has reviewed both investigator and sponsor files and confirms that all necessary essential documents are in the appropriate files.

Any or all of the documents addressed in this guideline may be subject to, and should be available for, audit by the sponsor or a nominated independent organization and/or inspection by competent authorities.

BILLING CODE 4160–01–F

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF	
		INVESTIGATOR	SPONSOR
SECTION I			
BEFORE THE CLINICAL PHASE OF THE STUDY COMMENCES			
During this planning stage the following documents will usually be generated and should be on file before the study can formally start:			
1.1 INVESTIGATOR BROCHURE	To document that up to date scientific information about the investigational product has been provided to the investigator	X	X
1.2 SIGNED PROTOCOL, AMENDMENTS, APPENDICES, CASE REPORT FORM (CRF)	To document investigator & sponsor agreement to the protocol plus any attachments and CRF	X	X
1.3 INFORMATION GIVEN TO STUDY SUBJECT - PATIENT INFORMATION SHEET (may be combined with Informed consent Form)	To document that subjects will be given appropriate information (content and wording) to support their ability to give fully informed consent	X	X
INFORMED CONSENT FORM	To document what subject will sign or whether other consent-verbal, witnessed, or by legal representative, will be obtained. Also subject's agreement to third party access to source documents. (Where required)	X	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
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TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
- ADVERTISEMENT FOR SUBJECT RECRUITMENT (if applicable)	To document that recruitment measures are appropriate and not coercive	X	X
1.4 INFORMATION ON COMPENSATION: - subject - investigator	To document extent of payment for participation in study is not coercive to either subject or investigator	X	X
1.5 INSURANCE STATEMENT (as required)	To document that subject will be informed whether compensation for trial-related injury will be available, and extent	X	X
1.6 SIGNED AGREEMENT BETWEEN INVOLVED PARTIES, e.g., - investigator/institution and sponsor - investigator/institution and sponsor designee (e.g. contract research organization) - sponsor and designee	To document agreement between investigator/institution and sponsor or sponsor designee on conduct of study according to terms set out in written agreement	X	X
1.7 DOCUMENTED APPROVAL OR OPINION OF ETHICS COMMITTEE (EthC)/ INSTITUTIONAL REVIEW BOARD (IRB) ON ORIGINAL: - protocol and CRF if applicable - informed consent form - subject information sheet - advertisement for subject recruitment (if used) - subject compensation where required - investigator compensation where required	To document that study has been subject to ethics review and approved in agreement with applicable guidelines on role of EthC/IRB. Identifies the version number and dates of the documents submitted and and approved	X	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	SPONSOR
1.8 ETHICS COMMITTEE/INSTITUTIONAL REVIEW BOARD COMPOSITION (where a regulatory or guideline requirement)	To document committee/board properly constituted within applicable guidelines on role of EthC/IRB	X	X
1.9 REGULATORY AUTHORITY: - authorization/approval/notification of protocol where required	To document appropriate regulatory approvals have been obtained before study initiation in compliance with national regulations	X	X
1.10 CURRICULUM VITAE OF INVESTIGATOR(S) AND TEAM	To document evidence of qualifications and eligibility to conduct study and/or provide medical supervision of subjects	X	X
1.11 NORMAL VALUES FOR ANY MEDICAL/LABORATORY/TECHNICAL PROCEDURE OR TEST INCLUDED IN THE PROTOCOL USED TO EVALUATE TREATMENT EFFEC S OR SAFETY	To document normal values and ranges for the tests.	X	X
1.12 MEDICAL/LABORATORY/TECHNICAL PROCEDURES/TESTS - certification or - accreditation or - established quality control and/or external quality assessment or - other validation	To document competency of facility to perform tests required, and support reliability of results	X	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
1.13 SAMPLE OF LABEL(S) ATTACHED TO TREATMENT CONTAINER(S)	To document compliance with labelling regulations and appropriateness of subject instructions		X
1.14 INSTRUCTIONS FOR HANDLING OF STUDY INVESTIGATIONAL PRODUCTS AND STUDY RELATED MATERIALS (if not included in protocol)	To document instructions needed to ensure proper storage, packaging, and dispensing of investigational products and study related materials	X	X
1.15 DETAILS OF SHIPMENT OF INVESTIGATIONAL PRODUCT(S) AND STUDY RELATED MATERIALS	To document shipment dates lot numbers and method of shipment of investigational product(s) and study related materials. Allows tracking of product lots for shelf life, review of shipping conditions, and accountability	X	X
1.16 CERTIFICATE(S) OF ANALYSIS OF INVESTIGATIONAL PRODUCT(S) SHIPPED	To document identity, purity, and strength of investigational products(s) to be used in the study	X	X
1.17 TREATMENT ALLOCATION AND DECODING DOCUMENTATION FOR BLINDED AND NON-BLINDED COMPARATOR STUDIES WHERE TREATMENT ALLOCATED BY THIRD PARTY	To document how, in case of an emergency, identity of blinded or third party blinded investigational product can be revealed without breaking the blind for remaining subjects' treatment	(or third party)	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
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FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	SPONSOR
1.18 MASTER RANDOMIZATION LIST	To document method for randomisation of study population.		X (or third party)
1.19 PRESTUDY MONITORING REPORT	To document evaluation of site suitability by sponsor representative (may be combined with 1.20)		X
1.20 STUDY INITIATION MONITORING REPORT	To document review of study procedures by sponsor representative with investigator and team (may be combined with 1.19)		X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	SPONSOR
Section II			
DURING THE CLINICAL CONDUCT OF THE STUDY			
In addition to having on file the above documents the following will be added to the files once the study starts as evidence that all new relevant information is documented as it becomes available:			
2.1 INVESTIGATOR BROCHURE UPDATES	To document that investigator is being kept informed in a timely manner of all new relevant information as it becomes available	X	X
2.2 ANY REVISION TO: - protocol and CRF - informed consent form - subject information sheet - advertisement for subject recruitment (if applicable)	To document keeping of accurate records of documents in effect at any given time during study	X	X
2.3 ETHICS COMMITTEE/INSTITUTIONAL REVIEW BOARD RESPONSIBILITIES. - Approval or opinion on --protocol amendments/any revision of --informed consent form --subject information sheet --advertisement for subject recruitment (if used) - Continuing review of study (where required)	To document EthC/IRB approval or opinion on amendments to protocol revisions and supporting documents prior to implementation or where required, continuing review of study	X	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
2.4 REGULATORY AUTHORIZATIONS/NOTIFICATIONS WHERE REQUIRED FOR: - protocol amendments and other documents	To document compliance with national regulatory requirements	X	X
2.5 CVs FOR ADDITIONAL INVESTIGATOR(S)	(see 1.10)	X	X
2.6 UPDATES TO NORMAL VALUES FOR ANY MEDICAL/LABORATORY/TECHNICAL PROCEDURES/TESTS	To document normal values and ranges for procedures or when values revised (see 1.11)	X	X
2.7 UPDATES OF MEDICAL/LABORATORY/TECHNICAL PROCEDURES/TESTS - Certification or - Accreditation or - Established quality control and/or external quality assessment or - Other validation	To document ongoing competency (see 1.12)	X	X
2.8 DOCUMENTATION OF INVESTIGATIONAL PRODUCT(S) AND STUDY RELATED MATERIALS SHIPMENT	(See 1.15)	X	X
2.9 CERTIFICATE(S) OF ANALYSIS FOR NEW BATCHES OF INVESTIGATIONAL PRODUCTS	(See 1.16)		X
2.10 MONITORING REPORT FOR VISITS	To document site visits and findings by monitor		X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
2.11 RELEVANT COMMUNICATIONS OTHER THAN SITE VISITS - letters - meeting notes - notes of telephone calls	To document any joint agreements or other discussions regarding study administration, protocol violations, study conduct, Adverse Event (AE) Reporting	X	X
2.12 SIGNED INFORMED CONSENT FORMS	To document that consent obtained in accordance with protocol and dated before formal enrollment into study. Agreement obtained to third party access to source documents (where required) (see 1.3)	X	
2.13 SOURCE DOCUMENTS	To document the existence of the subject and substantiate integrity of trial data collected. May include any original documents related to the study or to medical treatment or history of subject	X	
2.14 SIGNED AND COMPLETED CASE REPORT FORMS (CRF)	To document investigator or designee agreement with accuracy of observations recorded	X (copy)	X (original)

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
2.15 DOCUMENTATION OF CRF CORRECTIONS	To document changes/additions or corrections made to CRF after initial data input	X (copy)	X (original)
2.16 NOTIFICATION TO INVESTIGATOR OF EXPEDITED CLINICAL SAFETY REPORTS WITH CAUSALITY ASSESSMENT	To document notification of latest safety information	X	X
2.17 NOTIFICATION TO ETHICS COMMITTEE/INSTITUTIONAL REVIEW BOARD OF EXPEDITED CLINICAL SAFETY REPORTS WITH CAUSALITY (Where required)	To document notification of new safety information	X	X
2.18 REGULATORY NOTIFICATION (where required) FOR EXPEDITED CLINICAL SAFETY REPORTS WITH CAUSALITY	To document compliance with national regulatory or other requirements		X
2.19 INTERIM OR ANNUAL STUDY REPORTS TO ETHICS COMMITTEE (where required)	To document compliance with national regulatory or other requirements	X	X
2.20 SCREENING LOG	To document identification of subjects who entered prestudy screening tests but were withdrawn before receiving any study treatment	X	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
2.21 SUBJECT IDENTIFICATION CODE LIST	To document that investigator keeps a confidential list of names of subjects allocated to study numbers on enrolling in the study. Allows investigator to rapidly reveal identity of any subject in an emergency.	X	
2.22 SUBJECT ENROLLMENT LOG	To document chronological enrollment of subjects by study number	X	X
2.23 SITE INVESTIGATIONAL PRODUCTS ACCOUNTABILITY	To document that investigational product supplies have not been used for nonstudy purposes and all unused supplies have been returned to sponsor	X	X

INTERNATIONAL CONFERENCE ON HARMONIZATION
GUIDELINE FOR ESSENTIAL DOCUMENTS
FOR THE CONDUCT OF A CLINICAL STUDY

TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	SPONSOR
Section III			
AFTER COMPLETION OR TERMINATION OF THE STUDY:			
At the conclusion or termination of the study, all of the above documents will be in the file together with the following:			
3.1 SITE INVESTIGATIONAL PRODUCT(S) ACCOUNTABILITY	To document that no investigational product(s)has been used for non-study purposes. Documents the final accounting of investigational product(s) received at the site, dispensed to subjects, returned by subjects, and returned to sponsor	X	X
3.2 DOCUMENTATION OF INVESTIGATIONAL PRODUCT DESTRUCTION	To document destruction of unused supplies by sponsor or at site	X	X
3.3 COMPLETED SUBJECT IDENTIFICATION CODE LIST	To permit identification of all subjects enrolled in the study in case follow up is required. List should be kept in a confidential manner and for agreed upon time.	X	

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TITLE OF DOCUMENT	PURPOSE	LOCATED IN FILES OF INVESTIGATOR	LOCATED IN FILES OF SPONSOR
3.4 FINAL REPORT TO ETHICS COMMITTEE/INSTITUTIONAL REVIEW BOARD (If required)	To document completion or termination of study, number of subjects treated or withdrawn and any adverse events observed	X	X
3.5 FINAL CLINICAL STUDY REPORT	To document results and interpretation of study	X (if applicable)	X
3.6 AUDIT CERTIFICATE	To document that audit has been performed		X
3.7 RECORD OF RETAINED BODY FLUIDS/TISSUE SAMPLES (IF ANY)	To document location and identification of retained samples if assays need to be repeated	X	X
3.8 FINAL STUDY CLOSE OUT MONITORING REPORT	To document that all activities required for study close out are completed, and copies of essential documents are held in the appropriate files		X

Dated: August 3, 1994.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–19360 Filed 8–8–94; 8:45 am]

BILLING CODE 4160–01–C

federal register

Tuesday
August 9, 1994

Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Colorado River Indian Tribes and State of Arizona Gaming Compact of 1994, which was executed on April 14, 1994.

DATES: This action is effective August 9, 1994

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: July 29, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–19366 Filed 8–8–94; 8:45 am]

BILLING CODE 4310–02–P

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Federal Register

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Tuesday, August 9, 1994

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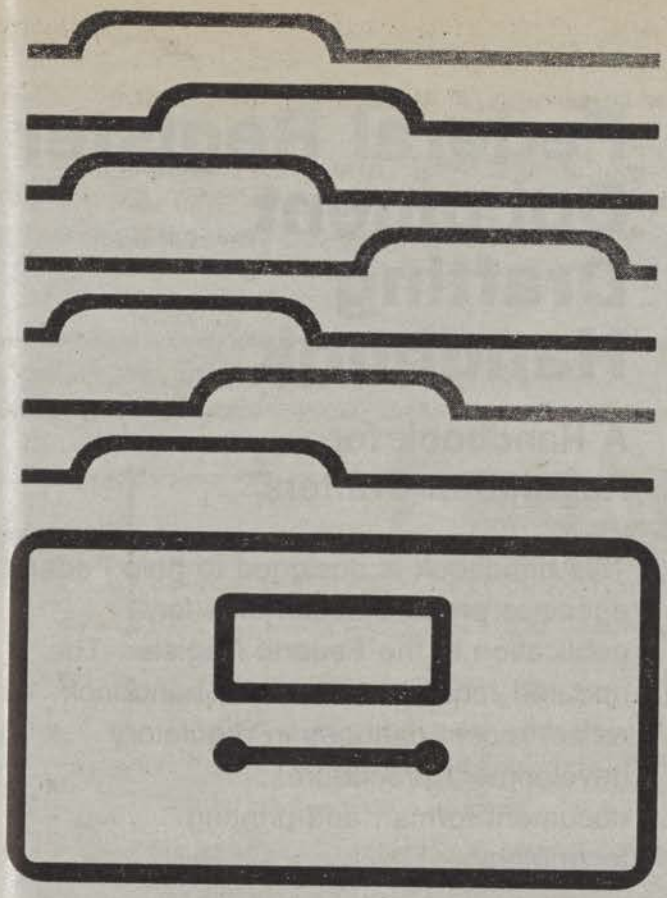

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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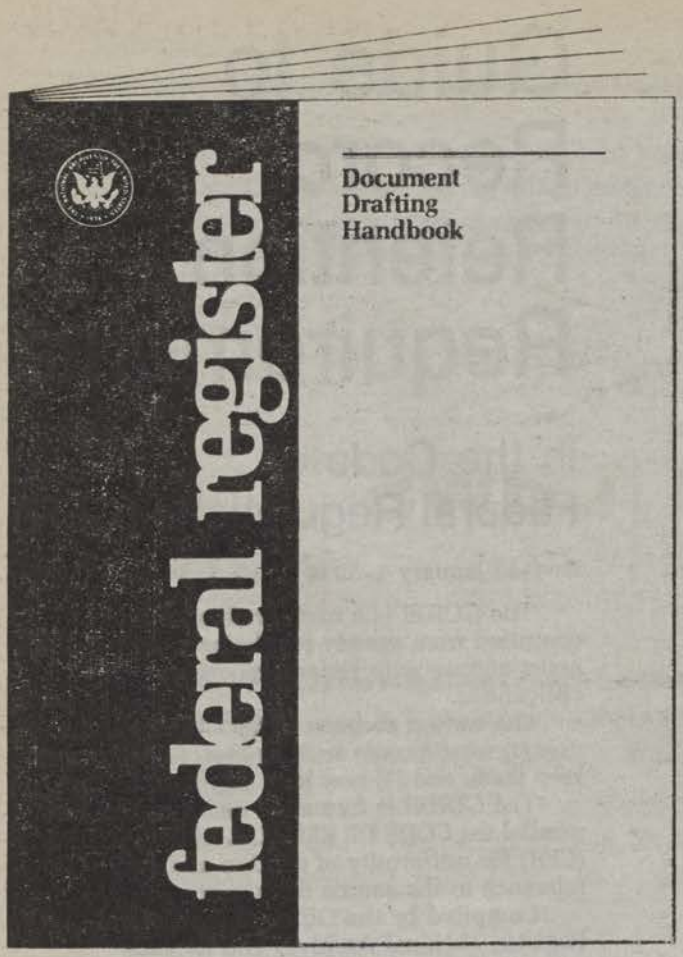

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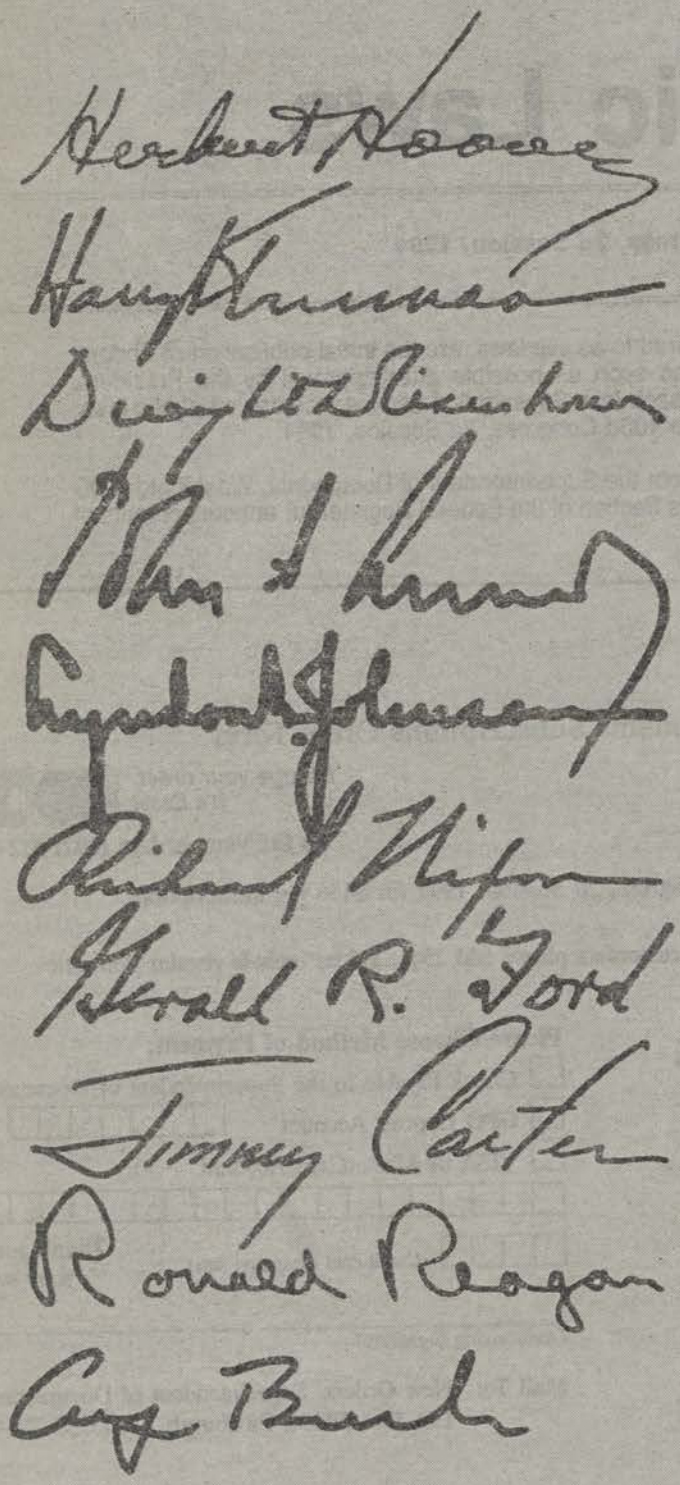

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