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Monday
March 11, 1996

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[Three Sessions]

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April 9, 1996 at 9:00 am
April 23, 1996 at 9:00 am

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Contents

Federal Register
Vol. 61, No. 48
Monday, March 11, 1996

Agency for Toxic Substances and Disease Registry
NOTICES
Organization, functions, and authority delegations:
Agency for Toxic Substances and Disease Registry, 9710

Agricultural Marketing Service
RULES
Agricultural commodities; U.S. grade standards and other selected regulations; removal from CFR; Federal regulatory reform; comment period extension, 9589–9590
PROPOSED RULES
Fruits, vegetables, and other products, processed:
Inspection, certification, and standards for schedule, 9654–9655

Agriculture Department
See Agricultural Marketing Service
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Tooele Army Depot, UT, 9680

Centers for Disease Control and Prevention
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 9710–9711

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 9734

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Globex foreign exchange facility; establishment, 9678–9680

Customs Service
RULES
Organizations and functions; field organization, ports of entry, etc.:
International Criminal Police Organization; port of entry designation, 9638–9639

Defense Department
See Army Department
See Defense Logistics Agency
See Engineers Corps

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching programs, 9680–9681

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Indian education programs—
Tribally controlled postsecondary vocational institutions program, 9864–9884
Individuals with disabilities—
Closing date; correction, 9682
Projects With Industry program; waiver, 9682–9683

Employment and Training Administration
NOTICES
Adjustment assistance:
Douglas County, Inc., 9721–9722
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Title III high wage job opportunities for dislocated workers demonstration program, 9722–9733
Unemployment compensation:
Ex-servicemembers; renumeration schedules, 9734

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Stockpile stewardship and management program, 9683–9685

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Hinton, WV; Bluestone Dam safety assurance program, 9681–9682

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 9642–9644
Ohio, 9644–9646
Wisconsin, 9639–9642
Water programs:
Oil discharge program; Federal regulatory review, 9646–9648
PROPOSED RULES
Air programs:
State operating permit programs—
Tennessee, 9661–9670
Air quality implementation plans; approval and promulgation; various States:
Missouri, 9661
Ohio, 9661
Wisconsin, 9661
NOTICES
Grants, State and local assistance:
State and tribal environmental programs; performance partnership grants; interim guidance, 9696–9708

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Air carrier certification and operations:
Domestic, flag, supplemental, commuter, and on-demand operations; operating requirements; editorial and terminology changes
Correction, 9612–9613
Airworthiness directives:
Airbus, 9604–9606
Boeing, 9601–9604, 9607–9611
Jetstream, 9606–9607
Pratt & Whitney, 9599–9601
Class E airspace, 9612
PROPOSED RULES
Class E airspace, 9655–9659

Federal Communications Commission
RULES
Radio stations; table of assignments:
Pennsylvania, 9648
Television broadcasting:
Telecommunications Act of 1996—
Sexually explicit adult programming; scrambling or blocking, 9648–9650
PROPOSED RULES
Television broadcasting:
Telecommunications Act of 1996—
Sexually explicit adult programming; scrambling or blocking, 9671–9673
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 9708–9709

Federal Deposit Insurance Corporation
RULES
Contractor conflict of interests, 9590–9599

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Rate schedule and tariff changes; filing requirements, 9613–9637
NOTICES
Electric rate and corporate regulation filings:
Consolidated Edison Co. of New York, Inc., et al., 9694–9695
Meetings; Sunshine Act, 9695–9696
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 9685–9686
CNG Transmission Corp., 9686
Columbia Gas Transmission Corp., 9686–9687
Columbia Gulf Transmission Co., 9687–9688
El Paso Natural Gas Co., 9688
Equitrans, L.P., 9688
Michigan Gas Storage Co., 9688–9689
National Fuel Gas Supply Corp., 9689
Northern Natural Gas Co., 9689–9690
Northwest Pipeline Corp., 9690–9691
Panhandle Eastern Pipe Line Co., 9691
Southern Natural Gas Co., 9691–9692
Tennessee Gas Pipeline Co., 9692
Texas Eastern Transmission Corp., 9692–9693
Transcontinental Gas Pipe Line Corp., 9693
Trunkline Gas Co., 9693–9694
West Texas Gas, Inc., 9694
Wyoming Interstate Co., Ltd., 9694

Federal Highway Administration
NOTICES
Intelligent Transportation System (ITS) Early Deployment Planning Program; implementation, 9860–9862

Federal Railroad Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Railroad Safety Advisory Committee, 9740–9741

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Compass Bancshares, Inc., et al., 9709
Mid Am, Inc., et al., 9709–9710

Federal Transit Administration
RULES
Temporary local match waiver for Sections 9 and 18; CFR part removed, 9650–9651

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and threatened species:
Interim listing priority guidance, 9651–9653
NOTICES
Endangered and threatened species permit applications, 9715–9716
Environmental statements; availability, etc.:
Incidental take permits—
San Mateo County, CA; mission blue butterfly, etc., 9717–9718
Volusia County, FL; loggerhead sea turtle, etc., 9716–9717
Nonindigenous aquatic nuisance prevention and control:
Aquatic nuisance species task force; document availability, 9718–9719

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Deputy Commissioners et al.; correction, 9639
NOTICES
Debarment orders:
Copanos, John D., 9711–9713

Food Safety and Inspection Service
PROPOSED RULES
Federal regulatory review; comment period reopening, 9655

Foreign Claims Settlement Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9720–9721
Meetings; Sunshine Act, 9721

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Arizona, 9675
PETsMART, Inc.; warehouse/distribution facility, 9674–9675

Minnesota
Plastic Products Co., Inc., Facilities; plastic in-line skates, 9675–9676
Missouri, 9676

Forest Service
NOTICES
Environmental statements; notice of intent:
Beaverhead National Forest et al., MT, 9674

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Harrison Stockyard Auction, Inc., AR, et al., 9674

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Small cities program; application deadline extension, 9714–9715

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Indian gaming profits to tribal members; withholding on distributions; correction, 9639
PROPOSED RULES
Income taxes:
Tax-qualified retirement plans; eligible rollover distributions; cross reference; hearing, 9659–9660
Practice and administration:
Tax-qualified retirement plans; eligible rollover distributions; cross reference; correction, 9660
Procedure and administration:
Return information disclosure; property or services for tax administration purposes; Justice Department; correction, 9660
NOTICES
Meetings:
Art Advisory Panel, 9744

International Trade Administration
NOTICES
Antidumping:
Oil country tubular goods from—
Canada, 9676
Titanium sponge from—
Russia, 9676–9678

Justice Department
See Foreign Claims Settlement Commission

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 9721

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9719–9720

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 9734

Maritime Administration
PROPOSED RULES
Cargo preference—U.S. flag vessels:
Available U.S.-flag commercial vessels, 9670–9671

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground coal mine ventilation; safety standards, 9764–9846

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 9734

National Highway Traffic Safety Administration
NOTICES
Meetings:
International Harmonization of Safety Standards; meetings schedule, 9741–9742

National Institutes of Health
NOTICES
Meetings:
National Institute of Mental Health, 9713
Research Grants Division special emphasis panels, 9713–9714

National Oceanic and Atmospheric Administration
PROPOSED RULES
Ocean and coastal resource management:
Coastal zone management program regulations; Federal regulatory review, 9746–9762

National Park Service
NOTICES
Mining plans of operation; availability, etc.:
Mojave National Preserve, CA, 9720

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 9735–9736
Generic letters:
Testing of safety-related logic circuits; workshop, 9736
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 9736

Postal Service
NOTICES
Privacy Act:
Computer matching programs, 9736–9737

Presidential Advisory Committee on Gulf War Veterans' Illnesses
NOTICES
Meetings, 9737

Presidential Documents
ADMINISTRATIVE ORDERS
Argentina-U.S. nuclear energy cooperation agreement (Presidential Determination No. 96–12 of February 28, 1996), 9887
Iran emergency; continuation (Notice of March 8, 1996), 9897
Narcotics; major producing and transit countries, certification (Presidential Determination No. 96–13 of March 1, 1996), 9891
Palestine Liberation Organization; suspension of restrictions on relations with U.S., delegation of responsibilities to Secretary of State, 9889
Soviet Union, New Independent States of the Former:
Assistance program (Presidential Determination No. 96–14 of March 1, 1996), 9893

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Supplemental annuity program; determination of quarterly rate of excise tax, 9737–9738

Securities and Exchange Commission
PROPOSED RULES
Securities:
Disclosure Simplification Task Force recommendations, 9848–9857
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 9739–9740
Applications, hearings, determinations, etc.:
Mobile Mini, Inc., 9738
Simula, Inc., 9738
Voice Control Systems, Inc., 9738–9739

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 9740

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Ellis & Eastern Co., 9742
Livonia, Avon & Lakeville Railroad Corp., 9742–9743
Railroad services abandonment:
Central Kansas Railway, Limited Liability Co., 9743
Central Railroad Co. of Indiana, 9743–9744

Tennessee Valley Authority
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9740

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service

United States Enrichment Corporation
NOTICES
Meetings; Sunshine Act, 9744

Separate Parts In This Issue

Part II
National Oceanic and Atmospheric Administration, Coastal Zone Management, 9746–9762

Part III
Department of Labor, Mine Safety and Health Administration, 9764–9846

Part IV
Securities and Exchange Commission, 9848–9857

Part V
Department of Transportation, Federal Highway Administration, 9860–9862

Part VI
Education Department, 9864–9884

Part VII
The President, 9887–9893

Part VIII
The President, 9897

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

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12957 (Continued by Notice of March 8, 1996) 9897

12959 (See Notice of March 8, 1996) 9897

Administrative Orders:

Memorandums:

February 29, 1996 9889

Notices:

March 8, 1996 9897

Presidential Determinations:

No. 96–12 of February 28, 1996 9887

No. 96–13 of March 1, 1996 9891

No. 96–14 of March 1, 1996 9893

7 CFR

29 9589
31 9589
32 9589
51 9589
52 9589
53 9589
54 9589
56 9589
58 9589
70 9589
160 9589

Proposed Rules:

52 9654

9 CFR

Proposed Rules:

301 9655
304 9655
305 9655
306 9655
307 9655
318 9655
325 9655
381 9655

12 CFR

366 9590

14 CFR

39 (5 documents) 9599, 9601, 9604, 9606, 9607

71 9612

121 9612

Proposed Rules:

71 (4 documents) 9655, 9656, 9657, 9658

15 CFR

Proposed Rules:

923 9746
926 9746
927 9746
928 9746
932 9746
933 9746

17 CFR

Proposed Rules:

210 9848
228 9848
229 9848
230 9848
232 9848
239 9848
240 9848
249 9848

18 CFR

154 9613

19 CFR

148 9638

21 CFR

5 9639

26 CFR

31 9639

Proposed Rules:

1 (2 documents) 9659, 9660

301 9660

30 CFR

75 9764

40 CFR

52 (3 documents) 9639, 9642, 9644

112 9646

114 9646

117 9646

Proposed Rules:

52 (3 documents) 9661

70 9661

46 CFR

Proposed Rules:

381 9670

47 CFR

73 9648

76 9648

Proposed Rules:

76 9671

49 CFR

671 9650

50 CFR

17 96510

Rules and Regulations

Federal Register
Vol. 61, No. 48
Monday, March 11, 1996

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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 31, 32, 51, 52, 53, 54, 56, 58, 70, and 160

[Docket Number FV–95–303]

Removal of U.S. Grade Standards and Other Selected Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopen and Extension of Comment Period.

SUMMARY: Notice is hereby given that the time period for filing comments is reopened and extended on the interim final rule published in the December 4, 1995, issue of the Federal Register (60 FR 62172–62181). The comment period is extended until July 9, 1996. The comment period is extended to allow interested parties adequate time to comment.

DATES: Comments must be received by July 9, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be submitted in duplicate, signed, include the address of the sender, and should bear reference to the date and page number of this issue of the Federal Register. Commentors are encouraged to include definitive information which explains and supports the sender's views. Written comments may be mailed to Eric Forman, Deputy Director, Fruit and Vegetable Division, USDA, AMS, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments will be available for public inspection during regular business hours in Room 2085–South Building; 14th Street and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Eric Forman (202) 690–0262.

SUPPLEMENTARY INFORMATION: On December 4, 1995, an interim final rule was published in the Federal Register requesting comments on USDA's initiative to remove voluntary U.S. grade standards and other selected regulations covering a number of agricultural commodities (dairy products, tobacco, wool, mohair, fresh and processed fruits and vegetables, livestock, meats and meat products, eggs, and poultry and rabbit products) from the Code of Federal Regulations (CFR). Comments were to be received by February 2, 1996.

On January 31, 1996, we received a comment from the American Dairy Products Institute (ADPI) requesting that implementation of the removal of grade standards for dairy products from the CFR be postponed and that the period for comment be extended for an additional 120 days. On February 2, 1996, we received a comment from the American Meat Institute (AMI) requesting that the comment period be extended for an additional 60 days to allow time for clarification of the procedures for developing and revising standards that will ensure that industry will be able to comment on, and receive responses to, their concerns about future modifications to grade standards.

Both commentors expressed several of their concerns and the importance of having the comment period extended to allow additional time for their members to truly evaluate this initiative and the full impact it would have on their industry. This rule was developed in response to the President's regulatory review initiative. This provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers and still reduce the regulatory burden. As part of this initiative, voluntary standards that are currently in the CFR and are administered by AMS are being removed from that publication. This rule eliminates selected regulations which encompass approximately 1,200 pages of the CFR. With respect to the official grade standards, this includes all the standards except those which are currently in the rulemaking process, or are incorporated by reference in marketing orders/agreements appearing at 7 CFR Parts 900 through 999 or those necessary for implementing government price support. Those grade standards will continue to appear in the CFR, although they will also be available in separate publications along with all other grade standards, except those for wool and mohair. Standards for wool and mohair and related regulations will be removed from the CFR and will no longer be available since there is no demand for services pertaining to wool or mohair.

Since the Department has no objection to the requests for extension of the comment period, we suggest that the period be reopened and extended for an additional 120 days. Accordingly, the comment period is extended to July 9, 1996.

List of Subjects

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 31

Wool.

7 CFR Part 32

Mohair.

7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

7 CFR Part 160

Administrative practice and procedure, Advertising, Forests and forest products, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Dated: February 29, 1996.

David N. Lewis,

Acting Administrator.

[FR Doc. 96–5716 Filed 3–8–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064–AB39

Contractor Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC or Corporation), with the concurrence of the Office of Government Ethics (OGE), is adopting an interim final rule implementing certain provisions of section 19 of the Resolution Trust Corporation Completion Act (the Completion Act) and soliciting comments. Section 19 of the Completion Act amended section 12 of the Federal Deposit Insurance Act (FDI Act) and requires the Board of Directors to prescribe regulations to ensure that contractors meet minimum standards of competence, experience, integrity and fitness, and requires that these regulations establish prohibitions on the Corporation's ability to contract with or have certain entities provide services to the FDIC. Section 19 of the Completion Act also requires that the Board of Directors prescribe regulations governing conflicts of interest, ethical responsibilities, and the use of confidential information for those independent contractors who are not deemed under the FDI Act, as amended, to be employees of the Corporation for purposes of Title 18 of the United States Code. Pursuant to the authority granted to it under the Completion Act, the Board of Directors is making the regulations required under section 19 of the Completion Act applicable to any FDIC contracts for services and has combined the required regulations in the interim final rule.

The Board determined that combining the prescribed regulations into one rule would provide the most consistent treatment of contractors and reduce confusion in the application of the regulations.

DATES: *Effective date.* April 10, 1996.

Comment period date. Comments must be received on or before May 10, 1996.

ADDRESSES: Send comments to Jerry L. Langley, Executive Secretary, FDIC, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW, Washington, DC 20429 on business days between 8:30 a.m. and 5:00 p.m. [FAX number: (202) 898–3604; Internet: comments@FDIC.gov]. Comments will be available for inspection and photocopying at the FDIC's Reading Room, room 7118, 550 17th Street, NW, Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James T. Lantelme, Assistant General Counsel, Regional Affairs Section, Legal Division, (202) 736–0120; or Richard M. Handy, Ethics Program Manager, Office of the Executive Secretary, (202) 898–7271, both at the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On June 24, 1994, the Corporation published for comment a proposed rule applicable to independent contractors designed to establish standards governing conflicts of interest, ethical responsibilities, and the use of confidential information and procedures for ensuring that independent contractors meet minimum standards of competence, experience, integrity, and fitness (59 FR 32661–32668). The proposed rule was published in response to the requirements of Section 19(a) of the Resolution Trust Corporation Completion Act, codified at 12 U.S.C. 1822(f), which requires that the Board of Directors prescribe regulations establishing procedures for ensuring that any individual who is performing any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness and prohibiting any person who does not meet such standards from entering into contracts for services with or performing services on behalf of the Corporation. The Completion Act also requires the Board of Directors, with the concurrence of OGE, to prescribe regulations governing conflicts of interest, ethical responsibilities, and the use of confidential information. The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. The Corporation received six comment letters and, after careful consideration of each comment, has made appropriate modifications to the rule. In addition, OGE requested numerous changes which resulted in the reorganization and modification of some provisions. The Board determined that an interim final rule would be appropriate in order to allow interested parties to comment on the revised rule while providing for the prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the FDIC. The Corporation, with the concurrence of OGE, is now publishing, as an interim final rule, the Contractor Conflicts of Interest rule, to be codified in new part 366 of 12 CFR chapter III.

Pursuant to the Completion Act, OGE is providing its concurrence to those provisions of the interim final rule which govern conflicts of interest, ethical responsibilities, and the use of confidential information as applicable to independent contractors which are not deemed under 12 U.S.C. 1822(f)(1)(B) to be employees of the Corporation for purposes of Title 18 of the United States Code. Contractors who are deemed under 12 U.S.C. 1822(f)(1)(B) to be employees of the Corporation, are subject, in addition to the interim final rule, to Title 18 of the United States Code; the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635); the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation (5 CFR part 3201); the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations (5 CFR part 2634); and the Supplemental Financial Disclosure Requirements for Employees of the Federal Deposit Insurance Corporation (5 CFR part 3202).

II. Summary of the Comments

The Corporation received comments from four law firms and two corporations. The comments from the two corporations involved concerns over the administrative burden that might be imposed through compliance with the reporting requirements under § 366.6 of the proposed rule. The comments from the law firms raised a variety of issues including the potential effects of state privacy laws, changes in the treatment of law firms, concerns over threshold amount in the definition of *default on a material obligation*, the impact of the rule on the use of

subsidiaries, and the potential for former insiders of failed institutions to be involved in the liquidation of other failed institutions.

III. Analysis of the Comments and Changes to the Rule

Section 366.1 Authority, Purpose and Scope

Authority. Section 366.1(a) of the proposed rule was modified by adding section 12(f)(4) of the Federal Deposit Insurance Act to the list of authorities.

Purpose. Section 366.1(b) of the proposed rule was simplified by dividing the provision into its component parts and changing its language to be consistent with language used elsewhere in the rule.

Scope. One of the law firm commenters suggested that the scope of the rule be limited by adding a provision which would provide that the existing policies concerning outside counsel conflicts of interest remain unchanged after adoption of the rule. The Board declined to modify the scope of the rule with regard to law firms. Section 19(a) of the Completion Act, codified at 12 U.S.C. 1822(f), does not provide an exception to its application for legal services contracts. To date, the FDIC's Legal Division has applied the Resolution Trust Corporation's (RTC) rule, 12 CFR part 1606, entitled Qualification of, Ethical Standards for, and Restrictions on the Use of Confidential Information by Independent Contractors (part 1606), in its contract relationships with law firms. Part 1606 was promulgated by the RTC in response to requirements imposed upon it by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The FDIC has substantially identical restrictions on the use of contractors imposed by the Completion Act. Thus, it is not expected that the FDIC's relationships with the law firms with which it contracts will substantially change after the promulgation of the interim final rule. However, in order to better clarify the scope of the rule, § 366.1(c)(1) of the proposed rule was reorganized and revised in order to (1) eliminate unnecessary language and simplify the provision, (2) clearly set forth that the rule is applicable to law firms, (3) clarify the application of the rule to subcontractors of FDIC contractors, and (4) at the request of the Board, remove Corporate leases of real property from coverage under the rule.

Section 366.1(c)(2) was not changed.

Resolution Trust Corporation. Section 366.1(d) was simplified by eliminating unnecessary language.

Previous policies. Section 366.1(e) was eliminated as being unnecessary. Effective on April 10, 1996, this part supersedes and replaces the FDIC's ''Statement of Policy on Contracting with Outside Firms'', which was published in the Federal Register on May 17, 1993, at 58 FR 28866.

Section 366.2 Definitions

Affiliated business entity. Section 366.2(a), the definition of *affiliated business entity,* was modified at the request of OGE. The Office of Government Ethics believed that the discretionary aspect of the definition set forth in the proposed rule was too subjective and that FDIC concerns as to whether various types of relationships constitute affiliations are adequately addressed through the use of the defined term *control* in the *affiliated business entity* definition. Under the definition of *control,* the FDIC is able to determine that an entity is an affiliated business entity when such entity has the ability to exercise a controlling influence over a company's management and policies. Additionally, OGE suggested the deletion of the statement concerning when a subfranchiser would not be considered to be an affiliated business entity of its master franchiser on the basis that the remaining definition adequately addresses that issue.

Company. The definition of *company,* as set forth in § 366.2(b) of the proposed rule, was modified through the elimination of the term *individual* from such definition. The Office of Government Ethics disagreed with the proposed inclusion of the term *individual* since such term was not consistent with the remaining business enterprises listed under the definition and was contrary to the common meaning of such term. In making such change, it was determined to be unnecessary to separately define the term *individual* since its meaning is commonly understood. Revision of the definition of *company* also necessitated revision of the definitions of *contractor, management official,* and *person.*

Contractor. The definition of *contractor* was changed due to the impact of changes to other definitions. In § 366.2(e) of the proposed rule, a two-part definition was provided. Section 366.2(e)(1) provided that a contractor was a company which had submitted an offer to, or had a contractual arrangement with, the FDIC to perform services. Since the definition of *company* has been modified to exclude the term *individual,* the proposed rule was further modified by replacing the term *company* with *person* at § 366.2(d) of the interim final rule in order to include individuals in the coverage of the definition of *contractor.* The second part of the definition of *contractor,* found at § 366.2(e)(2) of the proposed rule, involved subcontracting relationships. Section 366.2(o) of the interim final rule provides a separate definition of the term *subcontractor.*

Management official. The definition of the term *management official,* as set forth in § 366.2(m) of the proposed rule, was modified at OGE's request to provide greater guidance in the use of such term. In the proposed rule, *management official* was defined to mean an individual who controls a company. In § 366.2(i) of the interim final rule, *management official* is more specifically defined as a shareholder, employee, or partner who controls a company and any individual who directs the day-to-day operations of a company. For partnerships, all general partners are considered management officials, except when a partnership has a management or executive committee, in which case the members of such committees are considered management officials.

Person. The definition of *person,* found at § 366.2(q) of the proposed rule, was changed to be more compatible with its common meaning. One of the law firm commenters objected to the scope of the information that was required to be submitted by law firm employees under § 366.6(a) of the proposed rule due to the mistaken belief that a more common definition of the word *person* was applicable. Since the definition set forth in the proposed rule is inconsistent with the common meaning of *person* and would likely cause confusion among contractors and those FDIC employees charged with enforcement of the rule, its definition was changed in the interim final rule to include an individual or company. Such change satisfied similar concerns which had been raised by OGE.

Confidential information. The definition of *confidential information,* found at § 366.2(c) of the proposed rule, was moved to § 366.8(c) in the interim final rule and simplified by eliminating unnecessary language.

Conflict of interest. The definition of *conflict of interest,* found at § 366.2(d) of the proposed rule, was changed at the request of OGE and one of the corporate commenters in order to provide a more narrow definition and eliminate redundant language.

Section 366.2(d)(1) of the proposed rule had two subparts. The first subpart, concerning actual adverse impact on a contractor's ability to impartially provide services, was determined to be

included within the second subpart, which set forth that a conflict of interest would exist where a reasonable individual with knowledge of the relevant facts would question the contractor's ability to impartially provide services to the FDIC. Therefore, the first subpart was eliminated in the interim final rule and, with language changes to accommodate changes made to other definitions, the second subpart was rewritten to simplify the standard.

Sections 366.2(d)(2) and (4) of the proposed rule were combined in § 366.2(c)(4) of the interim final rule and their breadth reduced. Under the revised provision, the FDIC is able to determine that facts exist which would provide a contractor with an unfair competitive advantage which could benefit the contractor or any person with whom the contractor has or is likely to have a personal or business relationship. Such situations are likely to arise in situations where (1) a contractor or a person associated with the contractor intends to purchase assets held by the FDIC which were managed by the contractor; (2) information could be obtained by a contractor through the performance of an FDIC contract which would not be available to other bidders to a subsequent contract and which information could provide the contractor or a person associated with the contractor with an unfair competitive advantage in the preparation of its bid; and (3) confidential information could be obtained through the performance of an FDIC contract which would provide the contractor, or a person associated with the contractor, with information which could be utilized to obtain an advantage in the purchase of the securities of an insured depository institution. Such situations are not exclusive. OGE believed that the unintended advantage standard set forth in the original provision was vague and contractors would be unable to provide the requisite certifications for such standard. Additionally, the discretionary standard set forth in § 366.2(d)(4) of the proposed rule was more narrowly tailored, yet, for the most part, is retained in § 366.2(c)(4) of the interim final rule and allows the FDIC to review the myriad of possible factual scenarios to determine if performance under an FDIC contract has created a situation which would reduce competition in the marketplace.

Section 366.2(d)(3) of the proposed rule, which specifically provides that a conflict of interest exists where a contractor is an adverse party to the FDIC in a lawsuit, was retained in § 366.2(c)(2) of the interim final rule and the $50,000 threshold was removed. OGE questioned the need for such provision since such provision is a subset of the general standard set forth in § 366.2(c)(1) of the interim final rule. However, the FDIC has experienced situations in which contractors have certified that they have no conflicts of interest under current FDIC policies while being an adversary to the FDIC in a lawsuit. The rationale most often provided by contractors to justify their contention that there was no conflict was that the litigation involved matters or insured depository institutions which were unrelated to the contracts under consideration. In order to avoid such problem, the provision has been retained in the interim final rule.

Section 366.2(c)(3) of the interim final rule was added at the request of the Board in order to clearly state that a conflict of interest exists where a contractor has been suspended or debarred from contracting with other Federal entities. In planning the merger of the RTC into the FDIC, it was determined that it was appropriate for the FDIC to adopt a debarment program similar to that established by the RTC. To aid in properly administering such program, it was important that consideration of such program be included in the interim final rule.

Control. Section 366.2(f)(1) of the proposed rule was not changed in the interim final rule, but was renumbered as § 366.2(e). The Office of Government Ethics believed that § 366.2(f)(2) of the proposed rule was redundant and requested that it be deleted. In response, the FDIC has dropped that proposed paragraph from this interim final rule.

Default on a material obligation. At the suggestion of OGE, § 366.2(g) of the proposed rule was modified in § 366.2(f) of the interim final rule by clarifying FDIC's intent that if a qualifying default had ever occurred, it would be covered and by specifying that the determination of whether the $50,000 threshold amount had been met to qualify a default as a default on a material obligation would be considered beginning on the 90th day after delinquency and thereafter.

One of the law firm commenters requested that the $50,000 threshold amount be raised due to possible punitive effects of the rule on honest and hard working persons who could be precluded from providing services to the FDIC as contractors due to circumstances beyond their control. The Board does not agree with the commenter's contention. The FDIC, in its ''Statement of Policy on Contracting with Outside Firms'', which was published in the Federal Register on May 17, 1993 (58 FR 28866), utilized a similar $50,000 threshold amount and did not experience a lack of contractors willing to perform services for the FDIC. Additionally, the scope of the definition is limited to defaults on loans or advances from insured depository institutions, the institutions for which the FDIC has responsibility for providing deposit insurance and resolution in the event of a failure, and it would be inappropriate for the FDIC to contract with entities that have significantly contributed to losses incurred by such institutions.

Federal banking agency. The definition of *Federal banking agency* found at § 366.2(h) of the proposed rule was deleted. Other changes to the rule made the definition unnecessary.

The definition of *Federal deposit insurance fund,* found at § 366.2(i) of the proposed rule, was combined with the definition of *substantial loss to Federal deposit insurance funds,* found at § 366.2(t) of the proposed rule, and the revised rule set forth as the definition of *substantial loss to Federal deposit insurance funds,* found at § 366.2(o) of the interim final rule.

The definition of *FDIC* found at § 366.2(j) of the proposed rule was modified to include the statutory citations for the authority of the Corporation to act as conservator and operator of a bridge bank. The revised definition is found at § 366.2(g) of the interim final rule.

The definition of *insider* found at § 366.2(k) of the proposed rule was deleted. Other changes to the rule made the definition unnecessary.

The definition of *insured depository institution* found at § 366.2(l) of the proposed rule was not changed (see § 366.2(h) of the interim final rule).

The definition of *management official* found at 366.2(m) of the proposed rule was not changed (see 366.2(i) of the interim final rule).

The first sentence in the definition of *offer,* found at § 366.2(n) of the proposed rule, was simplified and an accommodation made for the removal of the definition of offeror. In the proposed version, an offer was defined to be a response submitted by an *offeror* to an FDIC solicitation. In the interim final rule, an offer is defined to be a proposal to provide services to the FDIC.

The definition of *offeror* found at § 366.2(o) of the proposed rule was deleted due to changes in the rule which made the use of such term unnecessary.

The definition of *pattern or practice of defalcation* found in § 366.2(p) of the proposed rule was not changed but the defined term was changed to *pattern or practice of defalcation regarding*

obligations to better track the statutory language. See § 366.2 (k).

The definition of *RTC* found in § 366.2(r) of the proposed rule was not changed (see § 366.2(m)).

The definition of *solicitation* found at § 366.2(s) of the proposed rule was deleted due to changes in the rule which made the use of such term unnecessary.

The definition of *subcontractor* found at § 366.2(n) of the interim final rule was added to accommodate the suggestion of one of the commenters for greater clarity in the application of the rule to subcontractors.

The definition of *substantial loss to Federal deposit insurance funds* found at 366.2(t) of the proposed rule was changed to delete 366.2(t)(3), concerning nonrecourse loans made to insiders from an insured depository institution. Persons causing a loss due to such loans will otherwise be barred under the remaining definitions of *substantial loss to Federal deposit insurance funds* and the other disqualifying conditions found at 366.4(a) of the interim final rule. The revised definition is found at 366.2(o) of the interim final rule.

Section 366.3 Qualification of Contractors

Since publication of the proposed rule, the FDIC has designated the FDIC Executive Secretary as the appropriate official to handle the matters which had been designated for the Contractor Fitness and Integrity Compliance Officer as referenced in § 366.3(a)(2) of the proposed rule. Additionally, the provisions relating to the officials responsible for administration of the rule were simplified and provided with their own distinct section. In § 366.3 of the interim final rule, entitled *appropriate officials*, the General Counsel and Executive Secretary, or their designees, are assigned responsibility for the administration of the rule with regard to law firms and other contractors, respectively. Section 366.3(b) of the proposed rule was moved to 366.4 of the interim final rule.

Section 366.4 Disqualification of Contractors

At the request of OGE, § 366.3(b) of the proposed rule, entitled *Qualification for service on behalf of the FDIC*, was moved to § 366.4(a) of the interim final rule and § 366.3(b)(5) was incorporated in § 366.5 of the interim final rule. Section 366.4 was simplified by incorporating only the mandatory prohibitions on the use of contractors which were imposed on the FDIC by Section 19(a) of the Completion Act, 12 U.S.C. 1822(f)(4)(E). OGE believed separating the mandatory provisions from the conflict of interest provisions would decrease the possibility of confusion about the variant authority pursuant to which the respective provisions were being promulgated and the degree of discretion the FDIC may have with respect to issues arising under the respective authorities. By distinguishing between the mandatory prohibitions imposed by the Completion Act and conflicts of interest generally, the certifications required to be made under § 366.6(a) of the interim final rule are more easily identified by contractors thereby simplifying the certification process. The separation of the mandatory bars from the conflict of interest provisions facilitates differentiation between those provisions requiring OGE concurrence and those not requiring such concurrence.

Section 366.4(a) and (b) of the proposed rule were consolidated and simplified in § 366.4(b) of the interim final rule. The terms *offeror, person*, and *company* were eliminated and replaced with the term *contractor* and unnecessary language was eliminated. Additionally, in order to avoid the significant administrative and contractual burdens which would be imposed by awarding a contract to a disqualified contractor, the 10 day requirement for reporting undisclosed disqualifying conditions was refined to be the earlier of 10 days after discovery or prior to award.

Section 366.4(c) of the proposed rule was simplified in of the interim final rule. Additionally, §§ 366.4(c)(2) and (3) of the interim final rule were moved from § 366.8 of the proposed rule in order to provide greater clarity in the application of the provision. The moved provisions, as revised, provide the FDIC with the option to require that corrective action be taken by the contractor, to immediately terminate any contracts with the contractor in default and order a transfer of duties, or to declare any contracts with such contractor in default and temporarily waive such default in order to protect the FDIC's interests in the orderly transition of matters to a new contractor.

Section 366.4(d) of the proposed rule was revised to provide for the possibility of a secondary review process apart from the appropriate official who originally rendered such decision. The secondary review would be based upon written application made to the Chairman of the FDIC, or the Chairman's designee.

Section 366.5 Contractor Conflicts of Interest and Ethical Responsibilities

One of the law firm commenters was concerned that the example set forth in § 366.5(a)(1) of the proposed rule could be construed as suggesting that an insider of an insured depository institution for which the FDIC or RTC has been appointed receiver would not have a conflict of interest with respect to a contract which involves services to an unrelated institution. The issue of whether a conflict of interest exists due to a person's former association with a failed institution would have to be determined on a case-by-case basis after review of the relationship of such person to the failed institution. However, in order to avoid inappropriate application of the standard, the examples were removed from the rule.

At the request of OGE, the first sentence in § 366.5(a) of the proposed rule was removed since it stated a matter which added no substance to the rule. The remainder of the provision was restated more succinctly and, as discussed above, the examples removed from the text. The rule, as restated, provides that the FDIC will not award contracts to contractors that have conflicts of interest associated with a particular contract or permit contractors to continue performance under existing contracts when such contractors have conflicts of interest, unless such conflicts are eliminated by the contractor or are waived by the appropriate FDIC official.

At the request of OGE, the standard of review for waiver requests as provided in § 366.5(b) and (c) of the proposed rule was consolidated in § 366.5(b) of the interim final rule and revised to clearly state that waivers will only be granted when the interests of the FDIC in the contractor's participation outweigh the concern that a reasonable person may question the integrity of the FDIC's operations. The standard set forth in the proposed rule provided that a waiver would be granted pursuant to the discretion of the appropriate official. The Office of Government Ethics stated that, in the interests of fairness to contractors, a discernable standard of review should be provided in the rule to be applied to all waiver requests.

The Office of Government Ethics also requested that § 366.5(b) and (c) of the proposed rule, which provided separate procedures for pre- and post-offer requests for review of conflicts, be consolidated into one time-frame. Section 366.5(c) of the interim final rule provides the consolidated provision.

The Office of Government Ethics requested that the separate treatment of contractors for legal services versus other services as provided in proposed § 366.5(b), (c), and (d) be explained in the preamble and consolidated in the text of the rule through the use of one paragraph covering pre-bid requests for review of conflicts of interest for contractors other than law firms and sole practitioner lawyers. The interim final rule, in § 366.5(c)(3), provides that requests for pre-bid review of conflicts for contractors other than law firms and sole practitioner attorneys will only be considered if the participation of the contractor in the bidding process is necessary to provide adequate competition. It is the FDIC's preference to do business only with contractors which do not have conflicts of interest. However, it is recognized that there may be situations in which there are few qualified contractors and the participation of contractors which have conflicts is important to encourage competition.

With regard to the different treatment accorded law firms and sole practitioner lawyers in the conflict review process, the regulation recognizes the additional responsibilities that are placed on law firms and sole practitioner lawyers providing services to the FDIC and also observes the separate contracting processes that exist in the Legal Division for the selection and retention of contractors.

Specifically, in addition to the conflicts of interest requirements imposed by this regulation, law firms and sole practitioner lawyers who are providing services to the FDIC are required to follow applicable provisions of their State Code of Professional Responsibility, the Model Rules of Professional Conduct and additional requirements set forth in the FDIC Legal Division's Guide for Outside Counsel and its Statement of Policies Concerning Outside Counsel Conflicts of Interest. Law firms and sole practitioner lawyers are also subject to a separate contracting process due to the close fiduciary relationship that a law firm or sole practitioner lawyer has when representing the FDIC. Law firms and sole practitioner lawyers are required to submit to the Legal Division an application to provide services which requires disclosure of any conflicts of interest existing under the broader requirements imposed upon lawyers. If the information submitted does not indicate the existence of any conditions that would bar retention, the law firm or sole practitioner lawyer is added to a list of available counsel. The list of available counsel provides the primary source for identifying lawyers available for engagement on specific legal matters and, if so identified, additional disclosure and review are required concerning case-specific qualification criteria. Counsel are also required to enter into a Legal Services Agreement with the Legal Division which governs all engagements with the FDIC. The selection and retention process for law firms and sole practitioner lawyers is substantially different from the process utilized for other contractors, which typically includes the development of a procurement requisition, the preparation and issuance of a request for proposals, and the subsequent evaluation of bids or proposals received. The establishment of a separate procedure under § 366.5 for resolution or waiver of conflicts of interest for law firms and sole practitioner lawyers is an acknowledgement of relevant differences in type of services and the differing relationship that lawyers have with the FDIC as their client.

Proposed § 366.5(d) was also revised in the interim final rule to include the remedies available to the FDIC in the event a conflict of interest is discovered after contract award as was provided in proposed § 366.8(a).

Section 366.5(e) of the proposed rule was revised to provide for the possibility of a secondary review process apart from the appropriate official who originally rendered such decision. The secondary review would be based upon written application made to the Chairman of the FDIC, or the Chairman's designee. It also provides the FDIC with the discretion to stay corrective or other actions ordered by the appropriate official pending reconsideration of the decision.

Section 366.6 Information Required to be Submitted

At the request of OGE, in order to provide greater specificity to contractors with respect to the scope of required certifications, proposed § 366.6(a) was modified to specifically identify the Representations and Certifications Form to be submitted by all contractors with every offer. Also, the provision was altered to assure that FDIC would obtain the information the FDIC deems appropriate to make a determination with respect to disqualifying conditions and conflicts of interest. Additionally, the information to be included in the Representations and Certifications Form was tailored in § 366.6(a)(1) to accommodate the changes in the structure of §§ 366.4 and 366.5 of the interim final rule and reduced, at the request of one of the Corporate and law firm commenters to include only the contractor; proposed § 366.6(a)(2) was reworked to accommodate the changes to the definitions and the required certifications reduced to include only the contractor or any company under the contractor's control; to accommodate the reductions in the certifications required under § 366.6(a)(1) and (2) of the proposed rule while not imposing a significant paperwork collection on the contractor and the FDIC, § 366.6(a)(3) in the interim final rule was added which requires that the contractor provide an agreement that it will not allow any employee, agent, or subcontractor to work on an FDIC contract unless it has first verified that such employee, agent, or subcontractor is not subject to disqualifying conditions or otherwise has a conflict of interest; and proposed § 366.6(a)(3) was moved to § 366.6(a)(4) of the interim final rule and the scope of the other information which can be requested narrowed to be dependent on the contract under consideration.

One of the law firm commenters stated that the FDIC had acted outside the scope of its authority in imposing the requirement in proposed § 366.6(a)(2) that a contractor provide a list and description of any defaults to insured depository institutions for the 10-year period preceding the submission of an offer. The Board disagrees with the commenter's contention. The Completion Act, at 12 U.S.C. 1822(f)(4)(C), requires the FDIC to obtain a list and description of any default to an insured depository institution for the 5-year period preceding the submission of an offer to the FDIC and any other information as the Board may prescribe by regulation. The Board determined that since the Completion Act provisions were extracted from FIRREA, which was promulgated in 1989, it was important that the FDIC be informed as to whether a contractor or any company under the contractor's control defaulted on a material obligation for the 10 year period preceding the offer.

A law firm commenter expressed concern that the information disclosure requirements contained in § 366.6(a) of the proposed rule might conflict with California state laws involving privacy rights. However, the Completion Act, at 12 U.S.C. 1822(f)(4)(D), requires certain information be collected by the contractor for persons to be employed by a contractor to perform services under an FDIC contract.

One of the law firm commenters objected to the scope of the disclosures to be made and was concerned that outside contractors of law firms would be required to make significant

disclosures to the law firm in order for the law firm to continue to use such entities and enter into contracts with the FDIC. Additionally, both of the corporate commenter's objected to the scope of the certifications to be obtained under the proposed rule as applied to large diversified corporations and their employees since certifications would need to be obtained from all affiliated business entities and the employees of the contractor. Consideration to the commenters' concerns was given in the revision of § 366.6 of the proposed rule. In § 366.6(a) of the interim final rule, certifications regarding disqualifying factors and conflicts of interest must be provided for the contractor; a list of defaults must be provided for the contractor and any company under the contractor's control; and the contractor must agree that it will not allow any employee, agent, or subcontractor to perform services under the FDIC contract unless it verifies that such employee, agent, or subcontractor does not have a disqualifying condition or a conflict of interest and has not defaulted on a material obligation. The scope of the required certifications and disclosures was thus limited to those entities which would be directly involved in the performance of the FDIC contract or which are under the contractor's control.

Section 366.6(b)(1) of the proposed rule was revised to reduce the reporting and review burden placed upon contractors and the FDIC. In the proposed rule, a contractor was required to obtain and submit certifications for all employees who were to provide services on any FDIC contract. Additionally, in § 366.6(b)(2), the FDIC could request the submission of such information at any time. In § 366.6(b) of the interim final rule, a contractor is required to obtain verification of the lack of disqualifying conditions and conflicts of interest for employees who will provide services on an FDIC contract and to provide the FDIC with immediate notification if the certifications provided in § 366.6(a) were incorrect at the time of submission or subsequently became incorrect.

At the request of OGE, § 366.6(c) of the proposed rule was simplified in the interim final rule and provides that a contractor which fails to provide information may be determined by the FDIC to be ineligible for the award of an FDIC contract or in default under an existing contract with the FDIC.

The Board was concerned that the reduction in the disclosures required to be submitted under the rule might provide an opportunity for abuse by contractors. In order to aid the FDIC in obtaining compliance with the rule, the proposed rule was modified through the addition of § 366.6(d) which requires contractors to retain the records relied upon in making the requisite disclosures for three years after the expiration or termination of the relevant contract and to make such information available to the FDIC upon request.

The Board was also concerned unforeseeable circumstances might require immediate contracting in order to protect the assets or interests of the FDIC. In order to provide reasonable protection and allow the FDIC to act promptly in order to protect its interests, § 366.6(e) was added which provides that, in the event of an emergency, the FDIC may authorize delayed compliance with the rule. Delayed compliance is allowed only when it is necessary to protect FDIC personnel or property.

To clarify that, on a contract-by-contract basis, the FDIC may add additional contractual conditions or limitations on a contractor, § 366.6(f) was added. Part 366 establishes the minimum standards as required by the Completion Act and additional standards may be required as the FDIC deems appropriate.

Section 366.7 Minimum Ethical Standards for Independent Contractors

Section 366.7 was added to the interim final rule to comply with the portion of the Completion Act that requires the FDIC to establish minimum ethical standards for contractors. Section 366.7(a) provides that a contractor shall not improperly solicit favors, gifts, or other items of monetary value; improperly use FDIC property; use its status as an FDIC contractor for its benefit except as contemplated by the contract; or make unauthorized promises or commitments on behalf of the FDIC.

Section 366.7(b) and (c) identify potentially applicable criminal provisions to contractors that solicit or accept bribes or make false statements to the Government.

The penalties for violating the provisions of § 366.7 are provided in § 366.7(d).

Section 366.8 Confidentiality of Information

Section 366.7 of the proposed rule was modified at § 366.8 of the interim final rule. Section 366.8(a) was added to provide a general duty to be adhered to by contractors in protection of confidential information.

Section 366.8(b) sets forth the penalties for the failure to properly protect confidential information as required under § 366.8(a).

Section 366.8(c) defines *confidential information* as information obtained from the FDIC or a third party in connection with an FDIC contract but does not include information generally available to the public provided such information was not made publicly available by the contractor without appropriate authorization.

Section 366.9 Liability for Rescission or Termination

Section 366.8(a) of the proposed rule set forth that the FDIC could rescind or terminate a contract with a contractor who violated the requirements of part 366. The termination provision has been set forth in each appropriate section of the interim final rule.

Section 366.8(b) of the proposed rule was revised to accommodate the revised structure of the interim final rule and is now set forth in § 366.9.

Section 366.10 Finality of Determination

Section 366.9 of the proposed rule is now set forth at § 366.10 of the interim final rule.

IV. Matters of Regulatory Procedure

Regulatory Flexibility Act

The Board of Directors has concluded that the interim final rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the interim final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The FDIC's contract and procurement information requirements constitute a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The collection pursuant to the proposed rule was reviewed and approved by the Office of Management and Budget (OMB) under control number 3064–0072. Any changes made to the Representations and Certifications forms resulting from the promulgation of this interim final rule will be submitted to OMB for review and approval pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 366

Conflict of interests, Government contracts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, pursuant to its authority under section 19 of the Resolution Trust Corporation Completion Act, the Board of Directors of the FDIC, with the concurrence of OGE, amends title 12, Chapter III of the Code of Federal Regulations by adding part 366 to read as follows:

PART 366—CONTRACTOR CONFLICTS OF INTEREST

Sec.
366.1 Authority, purpose, and scope.
366.2 Definitions.
366.3 Appropriate officials.
366.4 Disqualification of contractors.
366.5 Contractor conflicts of interest.
366.6 Information required to be submitted.
366.7 Minimum ethical standards for independent contractors.
366.8 Confidentiality of information.
366.9 Liability for rescission or termination.
366.10 Finality of determination.

Authority: 12 U.S.C. 1819, 1822(f)(3) and (4).

§ 366.1 Authority, purpose, and scope.

(a) *Authority.* This part is adopted pursuant to section 12(f)(3) and (4) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(3) and (4), and the rule-making authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. Pursuant to those sections and consistent with the goals and purposes of titles 18 and 41 of the U.S. Code, the FDIC is promulgating regulations in this part applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information. The regulations in this part also establish procedures for ensuring that independent contractors meet minimum standards of competence, experience, integrity, and fitness. The FDIC will apply this part to contractual activities it undertakes, including situations in which it is acting as manager of the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund (FRF). This part is in addition to, and not in lieu of, any other statute or regulation which may apply to such contractual activities. This part does not apply to the FDIC when acting as a conservator of a failed financial institution or when operating a bridge bank.

(b) *Purpose.* Consistent with the goals and purposes of titles 18 and 41 of the U.S. Code, this part seeks to establish:

(1) Minimum standards which govern conflicts of interest, ethical responsibilities, and the use of confidential information by contractors;

(2) Procedures to ensure that independent contractors meet minimum standards of competence, experience, integrity, and fitness; and

(3) Official written guidance to contracting personnel who award contracts for services and to contractors who bid on such contracts.

(c) *Scope.* (1) (i) This part applies to:

(A) Contractors, including law firms and other independent contractors, that are not deemed, under 12 U.S.C. 1822(f)(1)(B), to be employees of the FDIC, which submit offers to provide services to the FDIC or which enter into contracts for services with the FDIC; and

(B) Subcontractors which enter into contracts to perform services under a proposed or existing contract with the FDIC.

(ii) Contractors that are deemed under 12 U.S.C. 1822(f)(1)(B) to be employees of the Corporation are subject, in addition to this part, to Title 18 of the United States Code; the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635); the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation (5 CFR part 3201); the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture regulations (5 CFR part 2634); and the Supplemental Financial Disclosure Requirements for Employees of the Federal Deposit Insurance Corporation (5 CFR part 3202).

(2) For all contractors subject to this part, the FDIC will apply this part to contracts which are entered into between the contractors and the FDIC on or after April 10, 1996. In addition, this part applies to contracts between contractors subject to this part and the FDIC which exist on April 10, 1996 for which a contractual action, such as a modification, extension, or exercise of an option, takes place on or after April 10, 1996.

(d) *Resolution Trust Corporation transition.* This part shall apply to all RTC contractors that provide services to the FDIC after the RTC's termination which occurred, by statute, December 31, 1995.

§ 366.2 Definitions.

As used in this part:

(a) *Affiliated business entity* means a company that is under the control of the contractor, is in control of the contractor or is under common control with the contractor.

(b) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, or any other organization or institution, but shall not include any corporation the majority of the shares of which are owned by the United States, any state, or the District of Columbia.

(c) *Conflict of interest* means a situation in which:

(1) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a proposed or existing FDIC contract; or

(2) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, is an adverse party to the FDIC, RTC, FSLIC, or their successors in a lawsuit; or

(3) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC, has ever been suspended, excluded, or debarred from contracting with a Federal entity or has ever had a contract with the FDIC, RTC, FSLIC or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or

(4) Any other facts exist which the FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interests of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

(d) *Contractor* means a person which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services.

(e) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company's directors or trustees; or the ability to exercise a controlling influence over the company's management and policies. For purposes

of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(f) *Default on a material obligation* means a loan or advance from an insured depository institution which has ever been delinquent for 90 or more days as to payment of principal or interest, or a combination thereof, with a remaining balance of principal and accrued interest on the ninetieth day, or any time thereafter, in an amount in excess of $50,000.

(g) *FDIC* means the Federal Deposit Insurance Corporation in its receivership and corporate capacities. It does not mean the FDIC in its conservatorship capacity or when it is operating a bridge bank as defined, respectively, in 12 U.S.C. 1821(c) and (n).

(h) *Insured depository institution* means any bank or savings association the deposits of which are insured by the FDIC.

(i) *Management official* means any shareholder, employee or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership whose management committee or executive committee has responsibility for the day-to-day operations of the partnership, management official means only a member of such committee but, if no such committee exists, management official means each of the general partners.

(j) *Offer* means a proposal to provide services to the FDIC. For law firms or sole practitioner lawyers, ''offer'' also means the application submitted by the law firm to the FDIC.

(k) *Pattern or practice of defalcation regarding obligations* means two or more instances in which:

(1) A loan or advance from an insured depository institution is in default for ninety (90) or more days as to payment of principal, interest, or a combination thereof and there remains a legal obligation to pay an amount in excess of $50,000; or

(2) A loan or advance from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000 to the insured depository institution.

(l) *Person* means an individual or company.

(m) *RTC* means the former Resolution Trust Corporation in any of its capacities.

(n) *Subcontractor* means a person that enters into a contract with an FDIC contractor to perform services under a proposed or existing contract with the FDIC.

(o) *Substantial loss to Federal deposit insurance funds* means:

(1) A loan or advance from an insured depository institution, which is currently owed to the FDIC, RTC, FSLIC or their successors, or the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), the FRF, or funds maintained by the RTC for the benefit of insured depositors, that is or has ever been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of $50,000;

(2) An obligation to pay an outstanding, unsatisfied, final judgment in excess of $50,000 in favor of the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF or the funds maintained by the RTC for the benefit of insured depositors; or

(3) A loan or advance from an insured depository institution which is currently owed to the FDIC, RTC, FSLIC or their successors, or the BIF, the SAIF, the FRF or the funds maintained by the RTC for the benefit of insured depositors, where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000.

§ 366.3 Appropriate officials.

(a) The General Counsel of the FDIC, or the designee of the General Counsel, shall administer the provisions of this part with respect to contracts involving the provision of services by law firms or sole practitioner lawyers.

(b) The FDIC Executive Secretary, or the designee of the Executive Secretary, shall administer the provisions of this part with respect to all other contracts.

§ 366.4 Disqualification of contractors.

(a) *Disqualifying conditions.* No person shall perform services under an FDIC contract and no contractor shall enter into any contract with the FDIC if that person or contractor:

(1) Has been convicted of any felony;

(2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation or their successors;

(3) Has demonstrated a pattern or practice of defalcation regarding obligations; or

(4) Has caused a substantial loss to Federal deposit insurance funds.

(b) *Contractors with disqualifying conditions arising prior to contract award.* (1) A contractor which has any of the disqualifying conditions identified in paragraph (a) of this section prior to the award of an FDIC contract is disqualified and is prohibited from entering into contracts with the FDIC.

(2) If after submitting an offer but prior to award, a contractor discovers that it has any of the disqualifying conditions identified in paragraph (a) of this section, it shall notify the FDIC in writing within 10 days or prior to award, whichever is earlier.

(c) *Disqualifying conditions that arise or are discovered after contract award.* A contractor must notify the FDIC in writing within 10 days after discovering that it or any person performing services under an FDIC contract has any of the disqualifying conditions identified in paragraph (a) of this section. Such notification shall contain a detailed description of the disqualifying condition and may include a statement of how the contractor intends to resolve such condition. The FDIC, after receipt of such notification or other discovery of the contractor's disqualifying condition, shall take such action as it determines is in the FDIC's best interests, including that:

(1) The FDIC may notify the contractor in writing of the corrective actions, if any, which the contractor must take to eliminate the disqualifying condition. Corrective actions must be completed by the contractor not later than 30 days after notification is mailed by the FDIC unless the FDIC, at its sole discretion, determines that it will be in the best interests of the FDIC to grant the contractor an extension of time in which to complete such corrective action;

(2) The FDIC may immediately declare any contracts with such contractor in default, terminate the contracts, and order an immediate transfer of duties and responsibilities under the contracts; or

(3) The FDIC may declare any contracts with such contractor in default and temporarily waive such default in order to allow an orderly transfer of duties and responsibilities under the contracts.

(d) *Reconsideration of decisions.* Decisions issued by the FDIC may be reconsidered upon application by an affected party to the Chairman or the Chairman's designee. Such requests

shall be in writing and contain the bases for the request. The FDIC, at its discretion and after determining that it is in its best interests, may stay any corrective or other actions ordered by it pending reconsideration of a decision.

§ 366.5 Contractor conflicts of interest.

(a) *General.* The FDIC will not award contracts to contractors that have conflicts of interest associated with a particular contract or permit contractors to continue performance under existing contracts when such contractors have conflicts of interest, unless such conflicts are eliminated by the contractor or are waived by the appropriate FDIC official.

(b) *Waivers.* Waivers of conflicts of interest will only be granted when, in light of all relevant circumstances, the interests of the FDIC in the contractor's participation outweigh the concern that a reasonable person may question the integrity of the FDIC's operations.

(c) *Conflicts of interest arising prior to contract award (1) Requests for review of conflicts of interest.* (i) A contractor, with its offer, may request a determination as to the existence of a conflict of interest, may request that the conflict of interest, if any, be waived in accordance with paragraph (b) of this section, or may propose how the contractor could eliminate the conflict.

(ii) If after submitting an offer, but prior to award, a contractor discovers that it has a conflict, it shall notify the FDIC in writing within 10 days or prior to award, whichever is earlier. The contractor, with its notice, may make such requests or proposals regarding the conflict or potential conflict as are described in paragraph (c)(1)(i) of this section.

(2) *Review by the FDIC.* (i) Subject to the restrictions set forth in paragraphs (c)(2)(ii) and (c)(3) of this section, the appropriate FDIC official, at his or her sole discretion, may determine whether a conflict of interest exists, may waive the conflict of interest in accordance with paragraph (b) of this section, or may approve in writing a contractor's proposal to eliminate a conflict of interest.

(ii) For contractors other than law firms and sole practitioner lawyers, the FDIC may consider a contractor's conflict or potential conflict of interest only if the FDIC first determines that the contractor's offer is the most advantageous of all received.

(3) *Pre-bid requests and pre-bid review for contractors other than law firms and sole practitioner lawyers.* A request for pre-bid review must be in writing and describe in detail the conflict or potential conflict of interest. The request may provide a proposal for elimination of the conflict or request a waiver of the conflict. The FDIC may perform a pre-bid review of conflicts of interest only if it first determines, at its sole discretion, that the participation of the contractor in the bidding process is necessary to provide adequate competition.

(d) *Conflicts of interest that arise or are discovered after contract award.* A contractor shall notify the FDIC in writing within 10 days after discovering that it has a conflict of interest. Such notification shall contain a detailed description of the conflict of interest and state how the contractor intends to eliminate the conflict. The FDIC, after receipt of such notification or other discovery of the contractor's conflict or potential conflict of interest, shall take such action as it determines is in the FDIC's best interests, including that:

(1) The FDIC may notify the contractor in writing of its finding as to whether a conflict of interest exists and the basis for such determination; whether or not a waiver will be granted; or whether corrective actions may be taken in order to eliminate the conflict of interest. Corrective actions must be completed by the contractor not later than 30 days after notification is mailed by the FDIC unless the FDIC, at its sole discretion, determines that it is in the best interests of the FDIC to grant the contractor an extension in which to complete such corrective action;

(2) The FDIC may immediately declare any affected contracts with such contractor in default, terminate the contracts, and order an immediate transfer of duties and responsibilities under such contracts; or

(3) The FDIC may declare any affected contract with such contractor in default and temporarily waive such default in order to allow an orderly transfer of duties and responsibilities under such contract.

(e) *Reconsideration of decisions.* Decisions issued pursuant to this part may be reconsidered by the Chairman or the Chairman's designee upon application by the contractor. Such requests shall be in writing and shall contain the bases for the request. The FDIC, at its discretion and after determining that it is in its best interests, may stay any corrective or other actions ordered by the FDIC pending reconsideration of a decision.

§ 366.6 Information required to be submitted.

(a) *Initial submission.* Every offer submitted to the FDIC by any contractor shall include a completed Representations and Certifications Form and such other information as the FDIC may deem appropriate to permit it to make a determination with respect to disqualifying conditions or conflicts of interest. The Representations and Certifications Form shall require that the contractor provide the following:

(1) Certifications that, to the best of the contractor's knowledge, the contractor is not disqualified from service on behalf of the FDIC because of the existence of any of the conditions identified in § 366.4(a), or conflicts of interest as defined in § 366.2(c)(1) through (3), subject to the contractor's request for waiver of a conflict of interest or proposal for elimination of a conflict of interest as described in § 366.5;

(2) A list and description of any instance during the ten (10) years preceding the submission of the offer in which the contractor or any company under the contractor's control defaulted on a material obligation to any insured depository institution;

(3) The contractor's agreement that it will not allow any employee, agent, or subcontractor to perform services under the proposed contract with the FDIC unless the contractor first verifies with each such employee, agent, or subcontractor that, to the best of such person's knowledge, such person:

(i) Is not disqualified from performing services under the FDIC contract because of the existence of any of the conditions identified in § 366.4(a);

(ii) Has no conflicts of interest as defined in § 366.2(c)(1) through (3), subject to a request by the contractor for a conflict of interest waiver or proposal for the elimination of a conflict of interest as set forth in § 366.5; and

(iii) Has not, during the ten (10) years preceding the submission of the offer, defaulted on a material obligation to any insured depository institution; and

(4) Any other information which the FDIC may deem appropriate, the scope of which will be dependent on the particular contract under consideration.

(b) *Subsequent submissions.* During the term of the contract, the contractor shall:

(1) Verify the information described in paragraph (a)(3) of this section for any employee, agent, or subcontractor who will perform services under the contract for whom such information has not been previously verified, prior to such employee, agent, or subcontractor performing services under the contract; and

(2) Immediately notify the FDIC if any of the information submitted pursuant to paragraph (a) of this section was incorrect at time of submission or has subsequently become incorrect.

(c) *Failure to provide information.* A contractor that fails to provide any required information or misstates a material fact may be determined by the FDIC to be ineligible for the award of the FDIC contract for which such information is required or to be in default with respect to any existing contract for which such information is required.

(d) *Retention of information.* A contractor shall retain the information upon which it relied in preparing its certification(s) during the term of the contract and for a period of three (3) years following the termination or expiration of the contract and shall make such information available for review by the FDIC upon request.

(e) *Delayed compliance in emergencies.* In emergencies, when unforeseeable circumstances make it necessary to contract immediately in order to protect FDIC personnel or property, the FDIC may authorize delayed compliance with this part.

(f) *Additional contractual requirements.* In addition to the provisions of this part, the FDIC may include in its contract provisions, conditions and limitations, including additional standards for contractor fitness and integrity.

§ 366.7 Minimum ethical standards for independent contractors.

(a) In connection with the performance of any contract and during the term of such contract, a contractor, shall not:

(1) Accept or solicit for itself or others favors, gifts, or other items of monetary value from any person the contractor knows is seeking official action from the FDIC in connection with the contract or has interests which may be substantially affected by the contractor's performance or nonperformance of duties to the FDIC;

(2) Use improperly or allow the improper use of FDIC property, or property over which the contractor has supervision or charge by reason of the contract;

(3) Use its status as an FDIC contractor for its personal, financial or business benefit or for the benefit of a third party, except as contemplated by the contract;

(4) Make any promise or commitment on behalf of the FDIC not authorized by the FDIC.

(b) Pursuant to 18 U.S.C. 201, whoever acts for or on behalf of the FDIC is deemed to be a public official and public officials are prohibited from soliciting or accepting anything of value in return for being influenced in the performance of official actions. Violators are subject to criminal sanctions under Title 18 of the United States Code.

(c) Pursuant to 18 U.S.C. 1001, whoever knowingly and willingly falsifies a material fact, makes a false statement, or utilizes a false writing in connection with an FDIC contract is subject to criminal sanctions under Title 18 of the United States Code.

(d) A contractor that violates the provisions of this section may be determined by the FDIC to be ineligible for the award of an FDIC contract and the FDIC may determine that such contractor is in default under any existing FDIC contract.

§ 366.8 Confidentiality of information.

(a) A contractor has a duty to protect confidential information and shall not use or allow the use of confidential information to further a private interest other than as contemplated by the contract.

(b) If a contractor fails to comply with the provisions of this section, the FDIC may:

(1) Declare the contractor ineligible for the award of any FDIC contract not yet awarded; or

(2) Declare the contractor in default under any existing contract with the FDIC.

(c) As used in this section, ''confidential information'' means information that a contractor obtains from the FDIC or a third party in connection with an FDIC contract but does not include information generally available to the public unless the information becomes available to the public as a result of unauthorized disclosure by the contractor.

§ 366.9 Liability for rescission or termination.

The FDIC may seek its actual, direct, and consequential damages from a contractor whose disqualifying conditions, conflicts of interest, failure to comply with information submission or confidentiality requirements, or failure to comply with the minimum ethical standards for independent contractors were the basis for rescission or termination of a contract between the FDIC and the contractor. This right to terminate or rescind and these remedies are cumulative and in addition to any other remedies or rights the FDIC may have under the terms of the contract, at law, or otherwise.

§ 366.10 Finality of determination.

Any determination made by the FDIC pursuant to this part is at the FDIC's sole discretion and shall not be subject to further review.

By Order of the Board of Directors.

Dated at Washington, D.C. this 6th day of February 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Concurred in this 27th day of February 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 96–5254 Filed 3–8–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–72–AD; Amendment 39–9533; AD 96–05–07]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes 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 amendment requires inspection of certain fuse pins, and replacement of certain fuse pins with certain other fuse pins. This amendment also requires inspections of refinished straight fuse pins and replacement of cracked refinished straight fuse pins with certain other straight fuse pins. This amendment is prompted by the development of new corrosion-resistant steel fuse pins. The actions specified by this 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: Effective April 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–16–09, amendment 39–8666 (58 FR 45044, August 26, 1993), which is applicable to certain Boeing Model 757 series airplanes, was published as a supplemental notice of proposed rulemaking in the Federal Register on June 8, 1995 (60 FR 30208). The action proposed to require:

1. Inspections to detect cracking of straight fuse pins,
2. Replacement of cracked straight fuse pins with either new 15–5PH corrosion- resistant steel fuse pins or like pins,
3. Replacement of bulkhead fuse pins with new 15–5PH corrosion-resistant steel fuse pins, and
4. Repetitive inspections of newly-installed fuse pins. (Installation of the new 15–5PH corrosion-resistant steel fuse pins would allow a longer repetitive inspection interval than was previously provided by AD 93–16–09.)

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

All of the commenters support the proposed rule.

One of the commenters, however, requests that the FAA consider revising this AD to include terminating action when Boeing finalizes its proposed pylon modification program. The commenter considers that that program, together with the replacement of the fuse pins, should constitute terminating action for the repetitive inspections that are required by this AD. The FAA acknowledges this comment, and may consider additional rulemaking once the manufacturer's pylon modification program has been developed, reviewed, and approved.

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

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

The actions that are currently required by AD 93–16–09 take approximately 8 work hours per fuse pin; there are 4 fuse pins per airplane. The average labor rate is approximately $60 per work hour. Based on these figures, the cost impact of the actions currently required by AD 93–16–09 on U.S. operators is estimated to be $455,040, or $1,920 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 will actually be lessened (since the inspections are not required to be performed as frequently as they were previously required under AD 93–16–09).

The new actions that are required by this new AD will take approximately 56 work hours per fuse pin to accomplish, at an average labor rate of $60 per work hour (There are 4 fuse pins per airplane). Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $3,185,280, or $13,440 per airplane.

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

§ 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), amendment 39–9533, to read as follows:

96–05–07 Boeing: Amendment 39–9533. Docket 94–NM–72–AD. Supersedes AD 93–16–09, Amendment 39–8666.

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

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: 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 the straight 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 pin with a new straight fuse pin, P/N 311N5067–1. Prior to the accumulation of 3,800 total flight cycles on that newly installed straight fuse pin, perform an eddy current inspection to detect cracking in that straight fuse pin, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles on that newly installed straight fuse pin. Or

(ii) Replace the cracked straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1. Prior to the accumulation of 14,000 total flight cycles on that newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in that newly installed 15–5PH fuse pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on that newly installed 15–5PH fuse pin.

(b) For airplanes equipped with refinished straight fuse pins, P/N 311N5067–1: Prior to the accumulation of 1,000 total flight cycles on the refinished straight fuse pin, perform an eddy current inspection to detect cracking in the refinished straight 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 refinished straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with the service bulletin.

(i) Replace the cracked refinished straight fuse pin with a crack-free refinished straight fuse pin, P/N 311N5067–1. Prior to the accumulation of 1,000 total flight cycles on that newly installed refinished straight fuse pin, perform an eddy current inspection to detect cracking in that newly installed refinished straight fuse pin, in accordance with the procedures described in the service bulletin. Repeat this inspection thereafter at intervals not to exceed 1,000 flight cycles on the newly installed refinished straight fuse pin. Or

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

(iii) Replace the cracked refinished straight fuse pin with a new 15–5PH fuse pin, P/N 311N5217–1. Prior to the accumulation of 14,000 total flight cycles on that newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in that newly installed 15–5PH pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on that newly installed 15–5PH fuse pin.

(c) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 3,000 flight cycles after the effective date of this AD, replace the bulkhead fuse pins with 15–5PH fuse pins, P/N 311N5217–1, in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994, and accomplish the requirements of paragraph (d) of this AD.

(d) 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 15–5PH fuse pins, in accordance with the procedures described in 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 3,500 flight cycles on the 15–5PH fuse pin.

(2) If any cracking is detected, accomplish the requirements of both paragraphs (d)(2)(i) and (d)(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 procedures described in the service bulletin. And

(ii) Prior to the accumulation of 14,000 total flight cycles on that newly installed 15–5PH fuse pin, perform an eddy current inspection to detect cracking in that newly installed 15–5PH fuse pin, in accordance with the procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on that newly installed 15–5PH fuse pin.

(e) Fuse pins must be of the same type on the same strut. For example, a steel fuse pin having P/N 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, fuse pins on one strut may differ from those on another strut, provided the fuse pins are not of mixed types on the same strut.

(f) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) 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.

(h) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 757–54A0019, Revision 5, dated March 17, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 10, 1996.

Issued in Renton, Washington, on March 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5369 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–71–AD; Amendment 39–9534; AD 96–05–08]

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes 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 amendment adds requirements to inspect straight fuse pins and replace any cracked straight fuse pins with either new corrosion-resistant steel fuse pins or like pins; replace bulkhead fuse pins with new corrosion-resistant steel fuse pins; and repetitively inspect newly installed fuse pins. This amendment is prompted by the development of new corrosion-resistant steel fuse pins. The actions specified by this 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: Effective April 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle,

Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–16–08, amendment 39–8665 (58 FR 45041, August 26, 1993), which is applicable to certain Boeing Model 757 series airplanes, was published as a supplemental notice of proposed rulemaking in the Federal Register on May 18, 1995 (60 FR 26697). That action proposed to add a requirement to inspect straight fuse pins and replace any cracked straight fuse pins with either new corrosion-resistant steel fuse pins or like pins; replace bulkhead fuse pins with new corrosion-resistant steel fuse pins; and repetitively inspect newly installed fuse pins.

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

One commenter, an affected operator, requests that the applicability of the proposed rule be revised to exclude any new airplanes that are delivered with the new, improved fuse pins already installed. This commenter presents two reasons for this request:

1. The commenter recently received airplanes that were already equipped with the new (15–5PH) mid spar fuse pins. These particular airplanes are not included in the effectivity listing of the Boeing service bulletin that was referenced in the proposed rule. Since applicability of the proposed rule would include all Model 757's equipped with Rolls Royce engines, the commenter's airplanes would be subject to the requirements of the AD, even though these airplanes were not listed in the referenced service bulletin.

2. New airplanes delivered with the new fuse pins will be inspected, and any replacement of fuse pins can be made, under the regular maintenance program.

The FAA does not concur with the commenter's request.

As for Item 1, the applicability of an AD takes precedence over the effectivity listing of a service bulletin. Further, the inspection and replacement procedures outlined in the referenced Boeing service bulletin can be accomplished on any Model 757, and are not specifically tailored only to airplanes specified in the effectivity listing of the service bulletin.

As for Item 2, the FAA is not aware of any current maintenance program requirement that includes the inspection and replacement of 15–5PH fuse pins at the intervals set forth in this AD. The FAA established the intervals based on the manufacturer's analysis and testing, which demonstrated that the 15–5PH fuse pin has a fatigue threshold of 14,000 flight cycles. This identified threshold is applicable to all 15–5PH fuse pins, regardless of whether or not the airplane on which they are installed is listed in the referenced Boeing service bulletin. If the fuse pins are not replaced or inspected at the times required by this AD, the safety concerns associated with fracture of the fuse pins will still exist. The FAA considers issuance of this AD to be necessary, since AD's are the means by which the accomplishment of procedures and adherence to specific necessary compliance times are made mandatory.

This same commenter contends that the manufacturer should revise the referenced Boeing service bulletin to include procedures for eddy current inspections of the 15–5PH fuse pins, as well as instructions for removal and replacement of those pins. The revised service bulletin should also include a listing of all applicable airplanes. The commenter requests that the proposed rule be changed to reference the revised service bulletin.

The FAA does not concur that a change to the rule is necessary. As for the procedures for inspections, the referenced Boeing service bulletin specifies that they can be found in the 757 Nondestructive Test (NDT) Manual, Part 6, Subject 54–40–01, Figure 1 (this is noted on page 16 of the Boeing service bulletin). As for removal and replacement procedures, Figure 4 of the referenced Boeing service bulletin displays a detail of the 15–5PH fuse pin installation that can be used in accomplishing those actions. As for the listing of applicable airplanes, while it may be convenient for operators to have all affected airplanes listed in the service bulletin, the FAA reiterates that the applicability statement of an AD takes precedence over the effectivity listing of any service bulletin. The FAA does intend to recommend to Boeing that, whenever it plans to revise Service Bulletin 757–54A0020, the procedures for inspection, removal, and replacement of the 15–5PH fuse pins be included.

One commenter requests that paragraph (a)(2)(ii) of the proposal be revised to indicate that installation of the new 15–5PH fuse pins constitutes terminating action for the inspections of the older style fuse pins. This commenter asserts that the new pins have not yet been shown to be unsafe in-service. Further, once the new 15–5PH pins are installed, they can be regularly inspected under the operator's FAA-approved maintenance program.

The FAA does not concur. As indicated earlier, the manufacturer has demonstrated, by analysis supported by tests, that the 15–5PH fuse pin has a fatigue threshold of 14,000 flight cycles. In fact, in Revision 5 of Boeing Service Bulletin 757–54A0020, which was referenced in the proposed AD, the manufacturer recommends that all 15–5PH fuse pins be replaced with new pins after 14,000 flight cycles. As an option, at 14,000 flight cycles, the 15–5PH fuse pins may be examined for cracks and, if no cracking is evident, they may be continually reexamined at 3,500 flight cycle intervals. The FAA has determined that this inspection schedule is both appropriate and warranted to address the unsafe condition that arises from the consequences of fractured fuse pins. Also, as indicated earlier, the FAA is not aware of any current maintenance program requirement that includes the inspection and replacement of 15–5PH fuse pins at the intervals set forth in this AD. The FAA finds that the issuance of this AD is necessary in order to ensure that the accomplishment of the procedures and the adherence to specific compliance times are achieved.

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

There are approximately 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 will be affected by this proposed AD.

The inspections that were previously required by AD 93–16–08, and retained in this new AD, take approximately 8 work hours per fuse pin; there are 4 fuse pins per airplane. The average labor rate is approximately $60 per work hour. Based on these figures, the current cost impact of these inspections on U.S. operators is estimated to be $228,480, or $1,920 per airplane, per inspection

cycle. However, since the integrity and strength of the new steel fuse pins permit longer inspection intervals, the cost impact of these inspections will be lessened, since the inspections are not required to be performed as frequently as they were previously required under AD 93–16–08.

The replacement that is required by this new AD will take approximately 56 work hours per fuse pin, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the replacement action on U.S. operators is estimated to be $1,599,360, or $13,440 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

§ 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), amendment 39–9534, to read as follows:

96–05–08 Boeing: Amendment 39–9534. 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.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: 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 a 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 a 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 procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(b) For airplanes equipped with refinished straight fuse pins, P/N 311N5067–1: Perform an eddy current inspection to detect cracking in those fuse pins at intervals not to exceed 1,500 flight cycles on the refinished 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 refinished straight fuse pin.

(2) If any cracking is detected, prior to further flight, accomplish the requirements of either paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with the service bulletin.

(i) Replace the cracked refinished straight fuse pin with a crack-free refinished straight fuse pin, P/N 311N5067–1, and perform an eddy current inspection to detect cracking in the refinished straight fuse pin at intervals not to exceed 1,500 flight cycles, in accordance with the procedures described in the service bulletin. Or

(ii) Replace the cracked refinished straight fuse pin with a 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

(iii) Replace the cracked refinished straight fuse pin with a 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 procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(c) For airplanes equipped with bulkhead fuse pins, P/N 311N5211–1: Within 3,000 flight cycles after the effective date of this AD, replace the 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 (d) of this AD.

(d) 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 the procedures described in 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 3,500 flight cycles on the fuse pin.

(2) If any cracking is detected, accomplish the requirements of paragraphs (d)(2)(i) and (d)(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 procedures described in the service bulletin. And

(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 procedures described in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles on the newly installed fuse pin.

(e) Fuse pins must be of the same type on the same strut. For example, a steel fuse pin having P/N 311N5067–1 may not be installed on the same strut that has a corrosion-resistant steel (CRES) fuse pin having P/N 311N5217–1 installed on that strut. However, fuse pins on one strut may differ from those on another strut, provided the fuse pins are not of mixed types on the same strut.

(f) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) 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.

(h) The actions shall be done in accordance with Boeing Service Bulletin 757–54A0020, Revision 5, dated March 17, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on April 10, 1996.

Issued in Renton, Washington, on March 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5367 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–156–AD; Amendment 39–9535; AD 96–05–09]

Airworthiness Directives; Airbus Model A300, A300–600, A310, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to all Airbus Model A300, A300–600, A310, A330, and A340 series airplanes. The existing AD currently requires an inspection of the sliding side windows in the cockpit to identify suspect windows; and either deactivation of the sliding window defogging system; installation of thermo-sensitive indicators; or replacement of the window. This amendment adds a requirement to replace suspect windows with serviceable windows, which, when accomplished, terminates the requirements of the AD. The actions specified by this amendment are intended to prevent rupture of a cockpit sliding window and subsequent rapid decompression of the fuselage due to fracture of the window as a result of thermal stress created by overheating of the wires of the heating element in a localized area.

DATES: Effective April 10, 1996.

The incorporation by reference of Airbus All Operators Telex 30–01, Revision 2, dated listed in the regulations is approved by the Director of the Federal Register as of April 10, 1996.

The incorporation by reference of Airbus All Operators Telex 30–01, dated December 22, 1994, listed in the regulations, was approved previously by the Director of the Federal Register as of February 14, 1994 (60 FR 5564, January 30, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Beilonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding, amendment 39–9125 (60 FR 5564, January 30, 1995), which is applicable to all Airbus Model A300, A300–600, A310, A330, and A340 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on October 26, 1995 (60 FR 54820). That NPRM proposed to continue to require certain actions previously required by AD 95–01–51, specifically:

1. the inspection of the sliding side windows in the cockpit to identify the part number of the windows; and

2. if suspect windows are installed, either deactivation of the sliding window defogging system; or installation of thermo-sensitive indicators, daily inspections of those indicators, and deactivation of the defogging system, if necessary; or replacement of the window.

The NPRM also proposed to require the eventual replacement of suspect windows with serviceable windows. This replacement of the windows would constitute terminating action for the requirements of the AD.

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

One commenter supports the proposal.

The Air Transport Association (ATA) of America, on behalf of its two member operators that are subject to this AD, requests that the FAA withdraw the proposal. This commenter indicates that these two U.S. operators have already replaced the subject cockpit sliding windows with approved alternative parts on all of their affected airplanes. Additionally, the commenter states that the part numbered windows that prompted the airworthiness concern are no longer manufactured or available for purchase. For these reasons, this commenter contends that the proposed rule is not warranted.

The FAA does not concur with the commenter's request. The FAA has received no documentation verifying that all affected U.S.-registered airplanes have been modified in accordance with the actions required by this rule. Regardless of whether or not all current U.S.-registered airplanes have been modified, the FAA has received no data or other evidence to verify that all affected airplanes, worldwide, have been modified. Without this AD, an

unmodified airplane potentially could be imported and placed on the U.S. Register in the future, thereby reintroducing the unsafe condition into the U.S. fleet. It is the responsibility of the FAA, and the intent of this AD, to ensure that this does not happen. Therefore, the issuance of this AD is both warranted and necessary.

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

There are approximately 66 Model A300, A300–600, and A310 series airplanes of U.S. registry that will be affected by this AD. (Currently, there are no Model A330 or A340 series airplanes on the U.S. Register.)

The actions that are currently required by AD 95–01–51 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $3,960, or $60 per airplane.

The replacement of the windows will take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact on U.S. operators of the new requirements of this AD is estimated to be $27,720, or $420 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that two U.S. operators have already replaced the subject windows in accordance with the requirements of this AD. Therefore, the future cost impact of this AD on U.S. operators is expected to be less that the figure indicated above.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9125 (60 FR 5564, January 30, 1995), and by adding a new airworthiness directive (AD), amendment 39–9535, to read as follows:

96–05–09 Airbus Industrie: Amendment 39–9535. Docket 95–NM–156–AD. Supersedes AD 95–01–51, Amendment 39–9125.

Applicability: All Model A300, A300–600, A310, A330, and A340 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of a cockpit sliding window and subsequent rapid decompression of the fuselage due to fracture of the window as a result of thermal stress created by overheating of the wires of the heating element in a localized area, accomplish the following:

(a) Within 7 days after February 14, 1995 (the effective date of AD 95–01–51, amendment 39–9125), perform an inspection of the left- and right-hand sliding side windows in the cockpit to identify the part number (P/N) of those windows, in accordance with paragraph 4.1 of Airbus All Operators Telex (AOT) 30–01, dated December 22, 1994; or Revision 2, dated March 6, 1995.

(b) If no window manufactured by PPG Industries having P/N NP175202–1 (left-hand side) or NP175202–2 (right-hand side) is installed, no further action is required by this AD.

(c) If any window manufactured by PPG Industries having P/N NP 175202–1 (left-hand side) or NP 175202–2 (right-hand side) is installed, prior to further flight, accomplish either paragraph (c)(1), (c)(2), or (c)(3) of this AD in accordance with Airbus AOT 30–01, dated December 22, 1994; or Revision 2, dated March 6, 1995.

(1) Deactivate the associated sliding window defogging system in accordance with the procedures specified in paragraph 4.2.2 of the AOT. The defogging system may remain deactivated until the window is replaced in accordance with paragraph (d) of this AD. Or

Note 2: This AD may permit the defogging system to be deactivated for a longer time than is specified in the Master Minimum Equipment List (MMEL). In any case, the provisions of this AD prevail.

(2) Install thermo-sensitive indicators in two areas of the sliding side window (left- and right-hand sides) in accordance with the procedures specified in paragraph 4.3 of the AOT. Thereafter, perform a daily inspection of the indicators to determine if the 60-degree segment of any indicator turns from light grey to black, in accordance with the procedures specified in paragraph 4.3 of the AOT. If any indicator turns black, prior to further flight, deactivate the associated sliding window defogging system in accordance with paragraph (c)(1) of this AD.

(3) Replace the PPG Industries window [having part number (P/N) NP 175202–1 (left-hand side) or NP 175202–2 (right-hand side)] with a serviceable window manufactured by PPG Industries or by SPS, as listed in paragraph 5.1 of the AOT, in accordance with the procedures specified in paragraph 5.1 of the AOT. After such replacement, no further action is required by this AD.

(d) Within 90 days after the effective date of this AD, replace any PPG Industries window having part number (P/N) NP 175202–1 (left-hand side) or NP 175202–2 (right-hand side) with a serviceable window manufactured by PPG Industries or by SPS, as listed in paragraph 5.1 of AOT 30–01, dated December 22, 1994; or paragraphs 5.2.1 (PPG Industries windows) and 5.2.2 (SPS windows) of AOT 30–01, Revision 2, dated March 6, 1995. Accomplish the replacement in accordance with the procedures specified in AOT 30–01, dated December 22, 1994, or Revision 2, dated March 6, 1995. After such replacement, no further action is required by this AD.

(e) 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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) 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.

(g) The actions shall be done in accordance with Airbus All Operators Telex 30–01, dated December 22, 1994; or Airbus All Operators Telex 30–01, Revision 2, dated March 6, 1995. The incorporation by reference of Airbus All Operators Telex 30–01, dated December 22, 1994, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 14, 1995 (60 FR 5564, January 30, 1995). The incorporation by reference of Airbus All Operators Telex 30–01, Revision 2, dated March 6, 1995, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 10, 1996.

Issued in Renton, Washington, on March 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5366 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–71–AD; Amendment 39–9536; AD 94–24–09 R1]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that currently requires repetitive inspections to detect damage to the overwing fairings, and replacement or repair of structurally damaged fairings. That AD was prompted by a report indicating that an overwing fairing detached from an airplane. The actions specified by that AD are intended to prevent reduced controllability of the airplane due to loss of an overwing fairing. This amendment adds an optional terminating action for the currently required inspections, and limits the applicability of the rule.

DATES: Effective April 10, 1996.

The incorporation by reference of Jetstream Alert Service Bulletin J41–53–028, Revision 2, dated January 17, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of April 10, 1996.

The incorporation by reference of Jetstream Alert Service Bulletin J41–53–028, Revision 1, dated October 12, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 14, 1995 (59 FR 60891, November 29, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 94–24–09, amendment 39–9082 (59 FR 60891, November 29, 1994), which is applicable to certain Jetstream Model 4101 airplanes, was published in the Federal Register on October 11, 1995 (60 FR 52870). The action proposed to revise AD 94–24–09 to continue to require repetitive inspections to detect damage to the overwing fairings, and replacement or repair of structurally damaged fairings. The action also proposed to provide an optional terminating action for the repetitive inspections.

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

The commenter supports the proposed rule.

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

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD.

The inspections currently required by AD 94–24–09 take approximately 0.25 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the current inspection requirements of this AD on U.S. operators is estimated to be $210, or $15 per airplane, per inspection.

Should an operator elect to install the optional terminating modification, it will take approximately 20 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,300 per airplane. Based on these figures, the cost impact of this optional terminating modification on U.S. operators is estimated to be $8,500 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9082 (59 FR 60891, November 29, 1994), and by adding a new airworthiness directive (AD), amendment 39–9536, to read as follows:

94–24–09 R1 Jetstream Aircraft Limited: Amendment 39–9536. Docket 95–NM–71–AD. Revises AD 94–24–09, Amendment 39–9082.

Applicability: Model 4101 airplanes; constructor's number 41004 and subsequent; on which Modification JM41392 has not been installed (either during production or in accordance with Jetstream Service Bulletin J41–53–031); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after December 14, 1994 (the effective date of AD 94–24–09, amendment 39–9082), perform a detailed visual inspection to detect structural damage (such as creasing, cracking, or holes) to the left (Part 1) and right (Part 2) overwing fairings, in accordance with Jetstream Alert Service Bulletin J41–53–028, Revision 1, dated October 12, 1994; or Revision 2, dated January17, 1995.

(1) If no structural damage is detected, repeat the inspection thereafter at intervals not to exceed 7 days.

(2) If creasing or cracking is detected, prior to further flight, inspect and repair it, in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service.

Note 2: Jetstream Alert Service Bulletin J41–53–028 references British Aerospace Public Limited Company Drawing 141R0700, Issue 3, dated September 14, 1994, and British Aerospace Public Limited Company Drawing 141R0705, Issue 2, dated September 22, 1994, for repair and inspection procedures.

(3) If holes are detected, prior to further flight, repair in accordance with the Jetstream Series 4100 Structural Repair Manual. Repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service.

(b) Installation of Modification No. JM41392, Parts 1 and 2, in accordance with Jetstream Service Bulletin J41–53–031, dated November 22, 1994, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(c) 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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) 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.

(e) The inspections and repair shall be done in accordance with Jetstream Alert Service Bulletin J41–53–028, Revision 1, dated October 12, 1994; or Jetstream Alert Service Bulletin J41–53–028, Revision 2, dated January 17, 1995, which contains the following list of effectives pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 5, 6	2	January 17, 1995.
2, 4, 7, 8	Original	September 22, 1994.

The incorporation by reference of Jetstream Alert Service Bulletin J41–53–028, Revision 1, dated October 12, 1994, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of December 14, 1995 (59 FR 60891, November 29, 1994). The incorporation by reference of Jetstream Alert Service Bulletin J41–53–028, Revision 2, dated January 17, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 10, 1996.

Issued in Renton, Washington, on March 4, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5525 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–277–AD; Amendment 39–9537; AD 96–06–01]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Abex Spoiler Actuators

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 757 series airplanes that are equipped with certain Abex spoiler actuator electro-hydraulic servo valves (EHSV) installed in Abex spoiler actuators. This action requires a one-time inspection of the spoiler actuator to determine if a suspect EHSV is incorrectly installed, and replacement of the EHSV, if necessary. This amendment is prompted by reports that a bias spring in the Abex EHSV of certain Abex spoiler actuators has been found to be incorrectly installed. The actions specified in this AD are intended to prevent a significant control upset of the airplane as a result of problems associated with an incorrectly installed EHSV in the spoiler actuator assembly.

DATES: Effective March 26, 1996.

Comments for inclusion in the Rules Docket must be received on or before May 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–277–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Information concerning this AD action may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2788; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports that a bias spring in the Abex electro-hydraulic servo valve

(EHSV) in certain Abex spoiler actuators that are installed on certain Boeing Model 757 series airplanes has been found to be incorrectly installed. One operator received three valves on which the bias spring was installed on the wrong side of the EHSV second stage spool. Investigation revealed that the valves had been assembled incorrectly during repair at a non-U.S. repair facility. The subject EHSV's are Abex P/N 72196, Boeing Specification S251N116–1, Model 410–1870.

If the jet pipe in the first stage of the EHSV is plugged, or if the differential pressure between the extend and retract ports pressurized by the jet pipe is inadequate, an incorrectly installed bias spring on the second stage spool would cause the spoiler to be driven into the ''deploy'' position. Such inadvertent spoiler deployment would result in the airplane experiencing a rolling moment. If the airplane is already banked or is at a low altitude, or if the crew does not respond rapidly enough to control the uncommanded roll, a significant control upset of the airplane could result.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the occurrence of a significant control upset of the airplane due to problems associated with suspect EHSV's in the spoiler actuator. This AD requires a one-time inspection of the Abex EHSV on the spoiler actuator to determine if a suspect valve is incorrectly installed; if so, the EHSV must be replaced.

None of the Model 757 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–277–AD.'' The postcard will be date stamped and returned to the commenter.

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

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–06–01 Boeing: Amendment 39–9537. Docket 95–NM–277–AD.

Applicability: Model 757 airplanes, certificated in any category, that are equipped with Abex spoiler actuators having Abex electro-hydraulic servo valves (EHSV), part number 72196, with the serial numbers listed in Table 1 of this AD:

TABLE 1

EHSV serial No.	Boeing order No.*	Shipment date*
AH–0001	C716657	8 November 1991.
AH–0002	C716657	8 November 1991.
AH–0003	C727995	25 August 1994.
AH–0004	C727995	25 August 1994.
AH–0005	C727995	25 August 1995.
AH–0006	C727995	25 August 1995.
AH–0007	C727995	25 August 1995.
13	C731181	12 June 1995.
49	C730878	01 June 1995.
61	C727955	13 September 1994.
131	C708905	13 November 89.
233	C727730	17 June 1994.
241	C731540	13 September 1995.
260	C727955	13 September 1994.
279	C728298	02 September 1994.
275	C727880	24 June 1994.
308	C725421	01 December 1993.
329	C727711	17 June 1994.
347	C727518	14 June 1994.
401	C728298	05 September 1994.
407	C727730	17 June 1994.
427	C731181	03 July 1995.

TABLE 1—Continued

EHSV serial No.	Boeing order No.*	Shipment date*
450	C731181	03 July 1995.
445	C706627	22 February 89.
457	C731663	12 September 1995.
456	C728887	28 November 1994.
463	C731435	21 August 1995.
484	C727748	22 June 1994.
515	C727745	24 June 1994.
569	C728290	05 September 1994.
579	C724176	14 September 1993.
611	C727955	14 September 1994.
607	C727997	20 July 1994.
647	C728459	10 October 1994.
726	C731096	04 September 1995.
725	C729525	19 December 1994.
819	C728135	03 August 1994.
890	C726803	06 April 1994.
874	C730890	26 April 1995.
912	C727977	04 August 1994.
991	C713602	10 December 90.
998	C731477	4 September 1995.
1022	C708905	13 November 89.
1023	C708905	13 November 89.
1072	C709166	14 November 89.
1148	C730192	13 March 1995.
1175	C723278	05 August 1993.
1227	C728303	31 August 1994.
1283	C731833	04 September 1995.
1487	C728549	04 October 1994.
1655	C728442	28 November 1994.
1780	C726757	06 April 1994.
1807	C728669	29 September 1994.
1862	C727625	17 June 1994.
1929	C727977	04 August 1994.

TABLE 1—Continued

EHSV serial No.	Boeing order No.*	Shipment date*
1986Z	C727730	17 June 1994.
2017Z	C725411	24 November 1993.
2034	C727730	17 June 1994.
2073	C731272	12 September 1995.
2125	C725713	12 January 1994.
2220	C729735	29 March 1995.
2334	C727730	17 June 1994.
2348	C727730	17 June 1994.
2426	C731623	12 July 1995.

*The Boeing Order Number and Shipment Date are included in this listing to enable operators to review their records in order to determine if a suspect EHSV has been ordered, and if, or where, it has been installed on an airplane.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a significant control upset of the airplane due to problems associated with incorrectly assembled Abex electro-hydraulic servo valves (EHSV) on certain Abex spoiler actuators, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform the following procedure:

(1) While the airplane is on the ground, extend the flaps to 40 degrees. and visually inspect the spoiler actuator EHSV assembly to determine the location of the second stage bias spring end cap assembly.

(2) If the second stage bias spring cap assembly is on the aft or lower side of the EHSV assembly, prior to further flight, replace the EHSV, having Abex part number 72196, with a serviceable unit in accordance with the airplane maintenance manual.

Note 2: To be correctly positioned, the second stage bias spring cap assembly should be on the upper or forward side of the EHSV assembly. Appendix 1 of this AD provides a visual representation of the correct positioning of the EHSV assembly.

(b) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

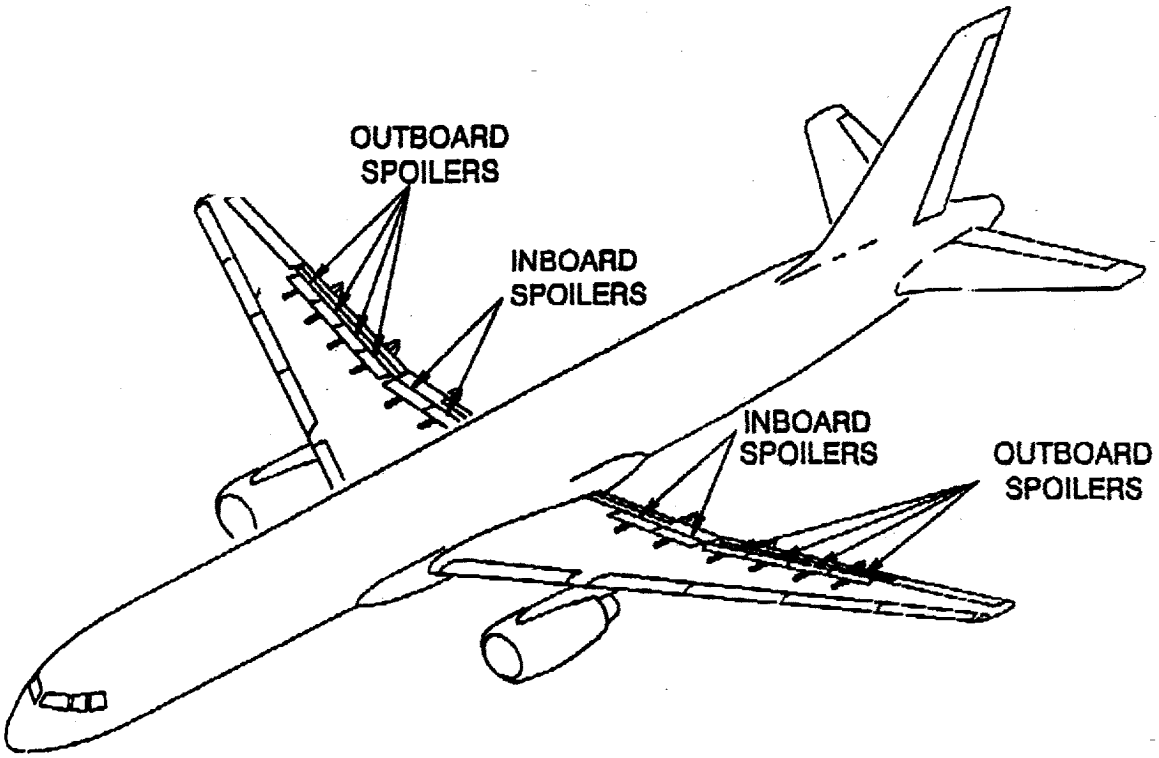
(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

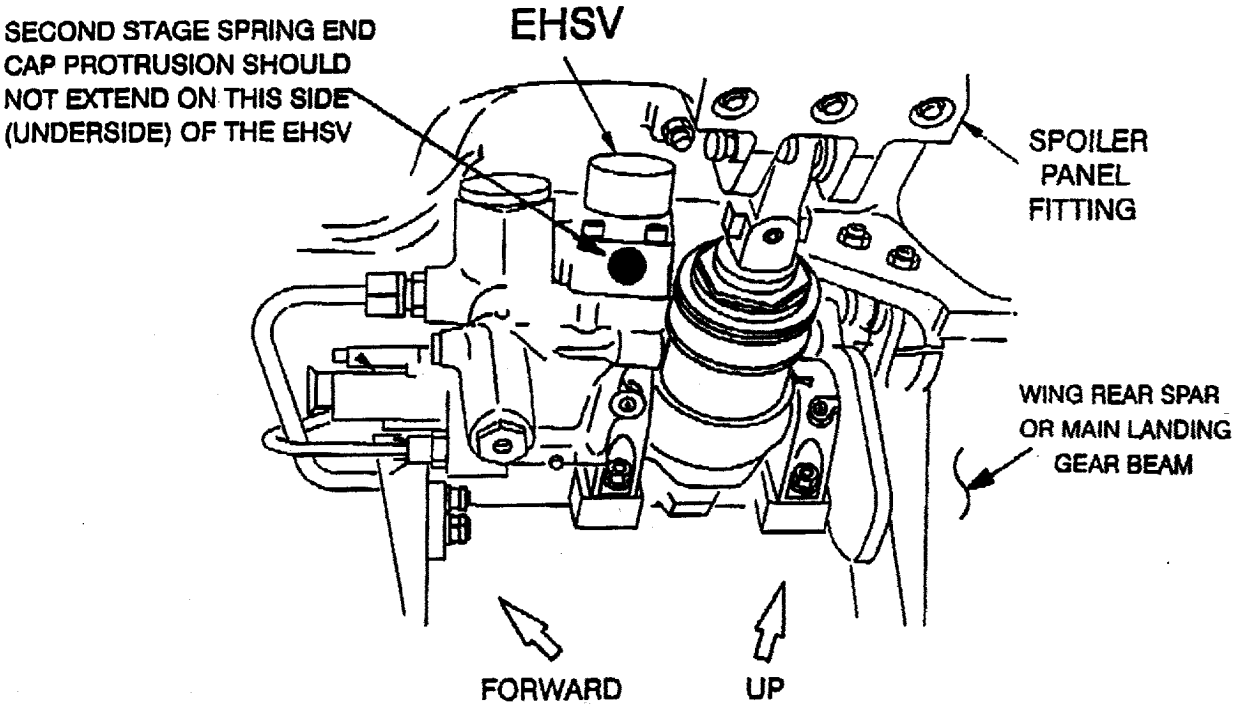
(d) This amendment becomes effective on March 26, 1996.

BILLING CODE 4910–13–U

Appendix 1

Boeing Model 757 Actuator Installation





BILLING CODE 4910–13–C

Issued in Renton, Washington, on March 5, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5689 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–45]

Amendment of Class E Airspace; Hanford, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Hanford, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 32 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hanford Municipal Airport, Hanford, CA.

EFFECTIVE DATE: 0901 UTC June 20, 1996.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On January 8, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Hanford, CA (61 FR 548). This action will provide adequate controlled airspace to accommodate a GPS SIAP to RWY 32 at Hanford Municipal Airport, Hanford, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Hanford, CA. The development of a GPS SIAP to RWY 32 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 32 SIAP at Hanford Municipal Airport, Hanford, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Hanford, CA [Revised]

Hanford Municipal Airport, CA
(lat. 36°19′07″ N, long. 119°37′44″ W)
Visalia VOR/DME
(lat. 36°22′02″ N, long. 119°28′56″ W)
Blair Airport, CA
(lat. 36°16′31″ N, long. 119°38′26″ W)

That airspace extending upward from 700 feet above the surface within a 2.6-mile radius of the Hanford Municipal Airport and within 1.8 miles north and 2.3 miles south of the Visalia VOR/DME 246° radial, extending from the 2.6-mile radius to the Visalia VOR/DME and 1.5 miles each side of the 152° bearing from the Hanford Municipal Airport, extending from the 2.6 mile radius to 5 miles southeast of the Hanford Municipal Airport, excluding the Visalia, CA, Class E airspace area, and excluding that airspace within a 1-mile radius of the Blair Airport.

* * * * *

Issued in Los Angeles, California, on February 23, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–5724 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 121

[Docket No. 28154; Amendment No. 121–254]

RIN 2120–AC79

Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Editorial and Terminology Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects an error in a document published on January 26, 1996 (61 FR 2608), which removed § 121.404. The FAA intended to remove the version of § 121.404 that was effective before December 20, 1995, and not the revision of § 121.404 published on December 20, 1995 (60 FR 65948). Therefore, the version of § 121.404 that was published on December 20, 1995, is reinstated in this document.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking (ARM–100); Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9685.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Section 121.404 is added to read as follows:

§ 121.404 Compliance dates: Crew and dispatcher resource management training.

After March 19, 1988, no certificate holder may use a person as a flight crewmember, and after March 19, 1999, no certificate holder may use a person as a flight attendant or aircraft dispatcher unless that person has completed approved crew resource management (CRM) or dispatcher resource management (DRM) initial training, as applicable, with that certificate holder or with another certificate holder.

Issued in Washington, D.C., on March 4, 1996.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 96–5726 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM95–3–001; Order No. 582–A]

Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs Final Rule; Order on Rehearing

Issued: February 29, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order on the requests for rehearing of Order No. 582, the final rule amending part 154 of the Commission's regulations under the Natural Gas Act. That order adopted procedural rules governing the form and composition of interstate natural gas pipeline tariffs and the filing of rates and charges for the transportation of natural gas in interstate commerce under sections 4 and 5 of the Natural Gas Act (NGA) and section 311 of the Natural Gas Policy Act. Also, minor modifications to the electronic filing instructions for tariff sheets are added as an appendix.

EFFECTIVE DATE: The revised regulations will become effective April 10, 1996.

FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0491.

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 at 888 First 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 if dialing locally or 1–800–856–3720 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format. 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 the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

This order grants, in part, and denies, in part, requests for rehearing of Order No. 582 (Rule).[1] That order adopted procedural rules governing the form and composition of interstate natural gas pipeline tariffs and the filing of rates and charges for the transportation of natural gas in interstate commerce under sections 4 and 5 of the Natural Gas Act (NGA) and section 311 of the Natural Gas Policy Act. Also, minor modifications to the electronic filing instructions for tariff sheets are added as an appendix.

I. Background

On September 28, 1995, the Commission issued Order No. 582, the final rule in Docket No. RM95–3–000 revising part 154, Chapter I, Title 18, Code of Federal Regulations.[2] This order responds to requests for rehearing or clarification of the Rule filed by Amoco Production Company, et al. (Amoco), American Forest and Paper Association, ANR Pipeline/Colorado Interstate Gas Co.(ANR/CIG), Associated Gas Distributors (AGD), Chevron, U.S.A. Inc. et al. (Chevron), Colorado Interstate Gas Company, Columbia Gas Transmission/Columbia Gulf Transmission, Great Lakes Gas Transmission (Great Lakes), Interstate Natural Gas Association of America (INGAA), JMC Power Projects, Natural Gas Supply Association (NGSA), Mississippi River Transmission Co. (MRT), Natural Gas Clearinghouse, Natural Gas Supply Association (NGSA), Panhandle Eastern Pipe Line, Texas Eastern Transmission Corp., and Williston Basin Interstate Pipeline Company.

II. Discussion

a. Section 154.1 Application; Obligation to File

1. Requests for Rehearing

Section 154.1(d) requires that any executed service agreement which deviates in a material aspect from the form of service agreement in a pipeline's tariff must be filed with the Commission.[3] This requirement codified existing Commission policy.[4]

Amoco argues that the Rule violates section 4(c) of the NGA by allowing the interstate pipelines to make substantive deviations from pro forma contracts without honoring the statutory and regulatory duty to file contracts with the Commission so that the public and shippers can determine whether or not they have been subjected to undue discrimination.[5]

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), II FERC Stats. & Regs. ¶ 19,100–19,183 (1995)(regulatory text), III FERC Stats. & Regs. ¶ 31,025 (1995)(preamble). This order on rehearing is a companion to the order on rehearing, issued concurrently in Docket No. RM95–4–001, which concerns amendments to, among other things, the Uniform System of Accounts and FERC Form No. 2. Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), 72 FERC ¶ 61,301 (1995).

[2] Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs, 60 FR 3111 (January 13, 1995), IV FERC Stats. & Regs. ¶ 32,511 (1995).

[3] Section 154.1, Application; Obligation to file, requires:

(b) Every natural gas company must file with the Commission and post in conformity with the requirements of this part, schedules showing all rates and charges for any transportation or sale of natural gas subject to the jurisdiction of the Commission, and the classifications, practices, rules, and regulations affecting such rates, charges, and services, together with all contracts related thereto.

(d) For the purposes of paragraph (b) of this section, any contract that conforms to the form of service agreement that is part of the pipeline's tariff pursuant to § 154.110 does not have to be filed. Any contract or executed service agreement which deviates in any material aspect from the form of service agreement in the tariff is subject to the filing requirements of this part.

[4] *See*, Tennessee Gas Pipeline Company, *et al.*, 65 FERC ¶ 61,356 (1993); *reh'g denied*, 67 FERC ¶ 61,196 (1994).

[5] The Commission has included as § 154.1(b) the description of the purpose of part 154, which reflects the requirement of Section 4(c) of the NGA that every natural gas company must file with the Commission, and maintain open for public inspection, its schedules and contracts. 15 U.S.C. § 717c(c).

Amoco states that the regulatory text is correct as a matter of law and policy. However, Amoco states that the Commission eviscerated the regulation by not defining ''materiality,'' and eliminating the items most likely to be the instrument of undue discrimination and unjust and unreasonable terms and conditions from qualification as ''material deviations.'' Amoco took the items listed in the Preamble as not likely to trigger a filing, and argues that, under certain circumstances, unfair discrimination could occur.

Amoco states that any material deviations from the tariff (which include those items excluded by dicta in Order No. 582) should be filed in order to be sure that there is no undue discrimination.

2. Commission Response

The use of forms of service agreements as the basis of contracts between a pipeline and its customers ensures that there are no unreasonable differences among the pipeline's customers as to the rates, charges, services, or facilities, while minimizing the amount of paper filed with the Commission. A contract that conforms to a pro forma service agreement need not be filed with the Commission because the Commission has already considered and determined that the pro forma service agreement is just and reasonable. Any contract that deviates in a material way from a pro forma service agreement must be evaluated anew to determine that it is not unjust, unreasonable, unduly preferential, or otherwise unacceptable.

Many commenters to the NOPR requested the Commission to be more specific as to what deviations or substantive additional provisions will trigger this filing requirement.[6] To accommodate these requests the Preamble gave examples of provisions that would not normally be expected to be ''material'' deviations.[7]

The Commission will clarify the prior order. To illustrate, a pro forma service agreement may contain blanks to be filled in, or ranges for terms of service (such as 950–1100 psi). A contract would be consistent with the tariff if, for example, it was completed by filling in the blanks or included terms that fall within the prescribed ranges. There is no need to burden the pipeline with filing all contracts that conform to the pro forma agreement that has been filed and approved by the Commission as a part of the tariff. Of course, where a contract conflicts with the tariff, the tariff controls until the contract is filed and accepted by the Commission. Thus, any contract which is not consistent with the pro forma service agreement must be filed with the Commission. The Commission is continuing to consider in another proceeding how much flexibility in contract terms should be permitted. On January 31, 1996, the Commission issued a policy statement that it is willing to entertain, on a shipper-by-shipper basis, requests to implement negotiated rates where customers retain the ability to choose a cost-of-service based tariff rate as a recourse.[8] In that policy statement the Commission established a proceeding in Docket No. RM96–7–000 to explore how much flexibility could be permitted, although it is likely in any event that case-by-case application will be necessary.

b. Section 154.4 Electronic and Paper Media

New § 154.4 requires electronic media filings in addition to paper copies.[9] Section 154.4(a) states that a pipeline must file information contained in spreadsheet format electronically and continue to serve customers with paper copies of filings, but it does not require a pipeline to provide such information to its customers in an electronic format.

APGA requests clarification that a pipeline must, upon request, provide such spreadsheet information, including all formulas embedded in the spreadsheet, to its customers in an electronic medium. In the alternative, APGA requests rehearing of this issue.

In the Rule, the Commission adopted a tab delimited ASCII format for most numeric data and a format compatible with the filing company's spreadsheet application for Statements I, J, and those parts of Statement H containing state tax calculations.[10] To the extent APGA's request seeks to expand the use of the format compatible with the filing company's spreadsheet application to other statements, the request is denied. The Commission adopted the tab delimited format as the default for numeric data because it was recommended by several parties in comments to the NOPR. It is also a more generic format capable of being read or created by several software packages. This allows greater access to the data to the general public without imposing the burden of buying and learning to use numerous proprietary spreadsheet packages. Since statements other than statements I, J, and parts of H do not generally contain complex formulae, the loss of the formulae will not impair review of the data.

APGA's second request, that the electronic data be available from the pipeline if requested, is addressed in section II.i.5 of this order.

c. Section 154.5 Rejection of Filings

Section 154.5 states that filings that fail to comply with part 154 regulations may be rejected by the Director of the Office of Pipeline Regulation (Director) pursuant to the authority delegated to the Director in § 375.307(b)(2).[11]

1. Requests for Rehearing

INGAA argues that the regulation does not give sufficient guidance to the Director as to how to exercise this authority, even if this authority has not been changed or augmented by the Rule. INGAA seeks clarification that only patently deficient rate case filings can be rejected and that Staff would be required to make such a determination within 15 days of the filing date. INGAA states that this would give applicants and intervenors a level of assurance that a rate case filing will proceed on time under the indicated filing date, thus avoiding confusion as to when new rates would go into effect. Under INGAA's plan, if lesser deficiencies were found, the applicant would have 30 days to rectify such deficiencies.

ANR and CIG request that the Commission clarify that so long as there is no ''patent failure'' to comply with the Commission's requirements, any deficiency may be cured by the pipeline and the filing date will be the effective date of the filing.

ANR and CIG further request that the Commission reconsider the decision not

[6] For example, Columbia requested that the Commission clarify that specifically drafted provisions addressing flow rates, pressure obligations, maximum delivery obligations, term, and other ''tariff-contemplated'' items are not ''material'' deviations. Amoco, *et al.*, requested that the Commission clarify ''material deviations,'' such that contracts must be filed which provide for any difference (from that specified in the tariff) in maximum rates, rate design, balancing provisions, penalties, operational flexibility, or any other variation. On the other hand, IPAA stated that the legal concept of materiality may depend upon ''where one resides in the food chain'' and suggested that all deviating agreements be filed.

[7] III FERC Stats. & Regs. ¶ 31,025 at 31,385.

[8] Statement of Policy and Request for Comments in Docket Nos. RM95–6–000, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; and, RM96–7–000, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

[9] Section 154.4 provides, in pertinent part:

(a) *General rule.* All statements filed pursuant to subpart D of this part, and all workpapers in spreadsheet format, and tariff sheets other than those in Volume No. 2, must be submitted on electronic media.

[10] III FERC Stats. & Regs. ¶ 31, 025 at 31,435.

[11] Section 154.5 states:

A filing that fails to comply with this part may be rejected by the Director of the Office of Pipeline Regulation pursuant to the authority delegated to the Director in § 375.307(b)(2) of this chapter.

to set forth a procedure that would be followed if a filing is deemed not in compliance with the Commission's filing requirements. Specifically, ANR and CIG suggest that the Commission notify a pipeline in writing within 12 days of filing of a rate case of any deficiencies in the filing and allow the pipeline ten days to correct the deficiency or request a waiver of a filing requirement. ANR and CIG state that this procedure would still allow the Commission to act within 30 days of the pipeline's filing of the rate case. To the extent there is a change or addition to the filing, ANR and CIG suggest that intervenors and protestors be permitted to supplement their filings. ANR and CIG state that this procedure is consistent with the 12 day period in which interested parties may intervene, comment or protest under § 154.210.

2. Commission Response

Section 154.5 merely sets out, in the rate and tariff filing requirements, the existing power of the Director to reject tariff or rate schedule filings.[12] Section 154.5 signals the Commission's intent to have the Director reject filings that do not comply with the filing requirements promulgated by this order.

To the extent that the requests for clarification only seek assurance that the regulation does not delegate any new power to the Director, they are granted. However, any specific guidelines or procedures to be followed by the Director in exercising this authority must be set out in part 375, not in the pipeline filing requirements.

The purpose of the regulation is to indicate that the Director's power is to reject a filing based on the procedural inadequacy of the filing, not the substance. Only the Commission rejects on the basis of substance. When a rate filing is procedurally correct but is not sufficient to determine just and reasonableness, the appropriate action is for the Commission to reject the filing on the merits or to accept the filing but suspend the proposed rates pending a hearing. To the extent a filing does not include the information required by the regulations and is so deficient that it prejudices the Commission in the discharge of its duty to decide whether or not to investigate or suspend the increased rates, the Commission expects the Director to reject the filing.

[12] Section 375.307 delegates to the Director of the Office of Pipeline Regulation the authority to reject a tariff or rate schedule or filing if it patently fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted.

d. Section 154.7 General Requirements for the Submission of a Tariff Filing or Executed Service Agreement

Section 154.7 is a new section setting forth the content of a tariff filing or executed service agreement.[13]

1. Transmittal Letter to Contain Quantified Summary

Section 154.7(a)(6) requires the letter of transmittal to contain a statement of the nature, the reasons, and the basis for the filing. The statement must include a summary of the changes or additions made to the tariff or executed service agreement, as appropriate.

NGSA believes that the abbreviated form of the filing should contain a quantified summary of the proposed changes as well as a narrative summary. NGSA states that § 154.7(a)(6) should require a table or listing of the cost of service, rate base and throughput underlying the proposed rates compared to the same information underlying the last rate found by the Commission to be just and reasonable. NGSA argues that such information would enable parties to readily ascertain the magnitude and the sources of the changes being proposed and, thus, negate the need on the part of many parties to receive a copy of the full filing. NGSA states that adding this small amount of quantified information to the abbreviated filing could reduce the number of full filings the pipelines are requested to provide.

This request for rehearing is granted. The burden to the pipeline to provide the additional summary would be minimal. Although NGSA suggests that the information could reduce requests for full filings, the Commission accepts that, in some cases, the quantification summary may engender additional requests for full filings. Nonetheless, considering the short time period in which the Commission and interested parties have to review the filing, this additional information would, in most cases, speed processing and reduce requests for additional information or complete filings. The regulations will be amended such that a filing under subpart D requires a table or listing of the cost of service, rate base and throughput underlying the proposed rates compared to the same information underlying the last rate found by the Commission to be just and reasonable.

[13] Section 154.7 states, in pertinent part:

The following must be included with the filing of any tariff, executed service agreement, or part thereof, or change thereto.

(a) A letter of transmittal containing:

* * * * *

(6) a statement of the nature, the reasons, and the basis for the filing. The statement must include a summary of the changes or additions made to the tariff or executed service agreement, as appropriate. A detailed explanation of the need for each change or addition to the tariff or executed service agreement must be included. The natural gas company also must note all relevant precedents relied upon to prepare its filing.

* * * * *

(9) a motion, in case of minimal suspension, to place the proposed rates into effect at the end of the suspension period; or, a specific statement that the pipeline reserves its right to file a later motion to place the proposed rates into effect at the end of the suspension period.

2. Motion to Place Reduced Rates Into Effect

i. *Request for rehearing.* Section 154.7(a)(9) requires that the transmittal letter contain either a motion, in case of minimal suspension, to place the proposed rates into effect at the end of the suspension period; or a specific statement that the pipeline reserves its right to file a later motion to place the proposed rates into effect at the end of the suspension period.

JMC Power Projects states that the new regulation grants the pipeline the option as to when to file a motion to place suspended rates into effect—either in its initial letter of transmittal or later. JMC Power Projects argues that a pipeline proposing to decrease its rates admits that its current rates are unjust and unreasonable and has an incentive to delay placing suspended decreased rates into effect.

JMC Power Projects seeks clarification that the motion of the pipeline to place suspended rates into effect pursuant to § 154.206(b) is the same motion to be filed as part of the transmittal letter pursuant to § 154.7(a)(9), and that the pipeline *must* file a motion to place the proposed rates into effect at the end of the suspension period. In the alternative, JMC Power Projects seek rehearing and requests that the Commission find that when a pipeline proposes a rate decrease, either no motion is necessary for the rates to go into effect or, if a motion is necessary, the pipeline *must* file a motion to place the suspended rates into effect at the end of the minimal suspension period.

JMC Power Projects states that its interpretation of the new regulations to the effect that a pipeline is *required* to file a motion to place *reduced* rates into effect at the end of the suspension period is consistent with past Commission practice. JMC Power Projects states that allowing a pipeline to delay placing decreased rates into effect beyond the minimal suspension period is unjust and unreasonable, particularly when customers in such a situation are not afforded refund protection.

ii. *Commission response.* JMC Power Projects is correct in stating that

pipelines have an option to file a motion to place suspended rates into effect either in the letter of transmittal or later. Also, the motion of the pipeline referred to in § 154.206(b) is the same motion referred to in § 154.7(a)(9).

However, the requested clarification that a pipeline is *required* to file a motion to place *reduced* rates into effect at the end of the suspension period is denied. The request is, in effect, asking for a special rule to govern proposed rate decreases. This is unnecessary as the revised regulation is consistent with the purposes of the NGA.

Section 4(e) of the NGA authorizes the Commission to suspend operation of a schedule and defer the use of a rate pending a hearing ''but not for a longer period than five months beyond the time when it would otherwise go into effect.'' [14] If the proceeding has not been concluded and an order made at the expiration of the suspension period, the proposed change shall go into effect ''on motion of the natural gas company making the filing.'' [15] The Act requires the motion; otherwise, the rates do not go into effect.

As a practical matter, where rates have been suspended for a minimal period as allowed under the statute, a hearing could not possibly be concluded by the expiration of the period.

The NGA states that refunds may be ordered ''where *increased* rates or charges are thus made effective.'' [16] Historically, the Commission has considered the suspension of a rate as a necessary step to assure that refunds may be ordered when appropriate. The refund is appropriate where the Commission ultimately determines that the proposed rate moved into effect at the end of the suspension period (motion rate) is too much of an increase over the last rate found to be just and reasonable (the refund floor). Thus, no refund is possible where a decrease is proposed. Even where the Commission ultimately finds that the rates should have been decreased further than proposed, the motion rate would be less than the refund floor.

Usually the Commission accepts a proposed rate decrease without suspension. Where the Commission does not suspend the effective date of a proposed decrease, a section 4(e) motion is not required and the proposed decrease goes into effect on the date proposed by the pipeline in its filing. However, it may be appropriate, under certain circumstances to suspend a rate decrease and in such instances a motion to place the rates into effect would be required; for example, where it may not be clear initially if it is a rate decrease due to pancaked cases. Thus, the Commission will retain this option. Accordingly, the request for clarification that a pipeline is required to file a motion to place reduced rates into effect at the end of the suspension period, is denied.

3. Effective Date After Minimal Suspension

ANR and CIG believe that in situations where the suspension period is likely to be minimal, pipelines will file the motion to place proposed rates into effect with the transmittal letter to ensure that the rates will be effective as soon as the suspension period ends. ANR and CIG ask whether it was the Commission's intent that, where the pipeline had reserved its right to file a later motion, the pipeline would lose a day or several days before rates were effective. If so, ANR and CIG request clarification and rehearing.

The request for rehearing is denied. A suspended rate may not go into effect prior to the motion of the pipeline. The procedures for motioning rates into effect after suspension are the same regardless of the length of the suspension period. NGA section 4(e) [17] requires that suspended rates are to go into effect ''on motion'' of the pipeline, not before the motion is made. Former § 154.67(a) read that the proposed rate ''shall become effective as of the date of receipt of such motion by the Commission or the expiration of the suspension period, whichever is later.'' Therefore, where the pipeline includes a motion in its filing and the proposed rates are suspended for a minimal period, the rates will become effective on the date proposed. Where the pipeline reserves its right to file a *later* motion and the rates are suspended for a minimal period, the rates will go into effect, later, on motion of the pipeline, as is required by the NGA.

4. Quarterly List of Tariff Sheets

In its Initial Comments, AGD recommended a general reporting obligation for a pipeline to provide to its customers, quarterly, a list of currently effective tariff sheets, whether or not the pipeline files any rate increase applications. The Rule states that AGD's suggested summary appears in § 154.7 and thus, what AGD seeks is already required. AGD maintains on rehearing that its recommendation has not been satisfied by the indicated regulation nor by any other part of Order No. 582.

Many pipelines voluntarily provide their customers with such a list. However, the Commission declines to burden all pipelines with this obligation. Customers may keep abreast of developments affecting pipeline services by monitoring the ''summary of changes or additions made to a tariff'' required by § 154.7(a)(6) when a pipeline files for a change. Further, this information is available to the public on the Commission's bulletin board system by accessing the FERC Automated System for Tariff Retrieval (FASTR).

e. Section 154.101 Form

Williston Basin points out that § 154.101 contains a typographical error. As written, it requires that the paper copy of a tariff sheet be reproduced on 8½ by 11 inch sheets of paper with margins of ¼ inches on the top, bottom, and left sides, and a margin of ½ inch on the right side. The NOPR stated that there is to be a 1 and ¼ inch margin on the left side of the sheet.

Williston Basin is correct. The regulation has been modified to require that the margins on the top, left, and bottom of the tariff sheet must be 1¼ inches.

f. Section 154.107 Currently Effective Rates

New § 154.107 governs the tariff sheets setting forth the natural gas company's currently effective rates. Section 154.107(b) requires that all rates be stated in thermal units.[18]

1. Requests for Rehearing

Great Lakes requests clarification or rehearing on the grounds that sufficient time is needed to permit pipelines to identify and resolve the issues related to conversion to thermal units, and to modify existing contractual and tariff provisions where the current arrangements are in volumetric units. Great Lakes states that the contractual changes necessary to fully convert to thermal rates may result in a reallocation of costs to effectuate the change in rates.

Great Lakes requests clarification that conversion to thermal units can be implemented through a compliance filing made under § 154.203; and, that any rates restated in thermal units can utilize the cost of service and billing units (converted to dekatherms) underlying the filing pipeline's currently effective rates.

Chevron, USA Inc., and Shell Western E&P Inc. (Designated Shippers) argue

[14] 15 U.S.C. 717c(e).

[15] *Id.*

[16] *Id.*

[17] 15 U.S.C. § 717c(e).

[18] Section 154.107(b) provides that ''[a]ll rates must be stated clearly in cents or dollars and cents per thermal unit. The unit of measure must be stated for each component of a rate.''

that to require a change in these rates, the Commission must find substantial evidence that stating rates on an Mcf basis is no longer a just and reasonable practice.[19]

The Rule states that the Commission ''does not intend to actively enforce this section until one year after the effective date of this rule.'' [20] Designated Shippers maintain that this delay in enforcement does not adequately address the hardships faced by these shippers or give the affected parties a forum to address the significant factual determinations that will have to be made in converting rates and capacity entitlements from Mcf units to a thermal basis. Designated Shippers state that these determinations are all the more critical on pipelines where the heating value of the gas varies widely from receipt point to receipt point, and where contract capacity, denominated in Mcf units, will have to be converted. Designated Shippers argue that the proper forum for determining these facts is an individual pipeline rate case.

If the Commission does not grant rehearing, Designated Shippers request clarification that implementing Order No. 582 will not require an effective rate increase for any individual shipper or result in the infringement of any shipper's contract rights. Designated Shippers state that if a conversion is made at the average Btu factor being shipped through the pipeline, some shippers will benefit, and other shippers will be harmed.

2. Commission Response

The Commission is committed to standardization of business practices in the natural gas industry. Most recently, the Commission underscored that commitment in its advance notice of proposed rulemaking for standards for business practices of interstate natural gas pipelines:

As a result of restructuring, the gas industry is becoming a national marketplace. In order to establish a more efficient and seamless pipeline grid, where buyers can easily and efficiently obtain and transport gas from all potential sources of supply, the development of standardized methods of conducting business along with standardized methods of communication is critical. Without common business practices and a common language for communication, the speed and efficiency with which shippers can transact business across multiple pipelines is now, and will continue to be, severely compromised. The industry must expeditiously complete standardization of crucial business practices to make the promise of a restructured and integrated pipeline grid a reality. Accordingly, the Commission intends to establish, by rule, standards governing pipelines' conduct of crucial business practices and the electronic means by which pipelines will exchange information with their customers and third-parties.[21]

At a conference held on September 21, 1995, to examine the industry's progress towards standardization, one participant pointed out the failure of the industry to decide on whether to require nominations to be reported in Mcf or MMBtu as an example of the lack of standardization in the industry.[22] The Commission's adoption of the provision at § 154.107 requiring rates to be stated in MMBtu or Dth is an outgrowth of its conviction that standardized business practices are essential to an integrated national pipeline grid.

Further, staff reviewed the tariffs of 11 pipelines which state rates exclusively on the basis of Mcf. All but three assure redelivery of thermally equivalent volumes. In other words, the pipeline redelivers a sufficient volume (in Mcf) to ensure the natural gas delivered contains the same heating value as the natural gas received. In this case, there is no guarantee that the volume (in Mcf) delivered will exactly equal the volume (in Mcf) received. The requirement that natural gas be redelivered in thermally equivalent volumes underscores the nature of the commodity being traded. Natural gas is of worth because of its heating content. The true commodity is the heating value of the natural gas. Rates should be reflective of the true commodity traded.

Stating rates in MMBtu or Dth as opposed to Mcf could cause some shippers to pay higher rates, but any such proposed rate changes will not be made without Commission review to ensure they are just and reasonable. All pipelines making the switch must file appropriate revisions to their tariffs. At that time, parties can raise their concerns about paying higher rates as a result of conversion to thermal units. All such concerns will be addressed when the Commission determines whether the proposed rates are just and reasonable. All issues regarding implementation of § 154.107(b) can be addressed in the individual proceeding to effectuate the new thermal rates. Therefore, the Commission will not grant rehearing.

We grant Great Lakes' request for clarification that a pipeline may file to state its rates on a thermal basis under § 154.107 without filing a major rate case filing under subpart D.[23]

g. Section 154.109 General Terms and Conditions

Section 154.109 requires that a pipeline set forth in its tariff its discount policy and the order in which each pipeline charge will be discounted.[24] The Rule stated that § 154.109(c) merely formalizes the Commission's policy on recognition of discounts as enunciated in *Natural*.[25]

PEC seeks clarification that the decision in *Natural* left individual pipelines free to argue, based on their individual facts and circumstances, that the order of discounting in *Natural* did not apply. INGAA seeks clarification, or in the alternative rehearing, that this provision does not apply to existing tariff provisions that provide for a permanent discount mechanism negotiated between parties in a previous regulatory proceeding. The Commission clarifies that if a pipeline's tariff contains an existing provision governing the order of discounts, accepted by the Commission, no modification to the tariff provision is required under § 154.109. The Commission further clarifies that a pipeline, in a filing to comply with this section, may attempt to show that an order of discounting other than that set forth in *Natural* should apply.

h. Section 154.206 Motion to Place Suspended Rates Into Effect

1. Effective Date Where Modifications are Ordered

Section 154.206(a) requires that, when rates have been suspended for more than a minimal period and the Commission has ordered changes or the rates include costs of facilities that are not in service, the motion to place suspended tariff sheets into effect must

[19] Designated Shippers cite to Mobil Oil Corp. v. FPC, 483 F.2d 1238 (D.C. Cir. 1973).

[20] III FERC Stats. & Regs. ¶ 31,025 at 31,392.

[21] 73 FERC ¶ 61,104 (1995).

[22] *Id.* at 61,323.

[23] Trailblazer Pipeline Company and Canyon Creek Compression Company have filed to restate their rates on a thermal basis in compliance with Order No. 582. Neither did so in a general rate proceeding.

[24] Section 154.109(c) provides:

The general terms and conditions of the tariff must contain a statement of the order in which the company discounts its rates and charges. The statement, specifying the order in which each rate component will be discounted, must be in accordance with Commission policy.

[25] III FERC Stats. & Regs. ¶ 31,025 at 31,394 (citing Natural Gas Pipeline Company of America (*Natural*), 69 FERC ¶ 61,029, (1994), *reh'g*, 70 FERC ¶ 61,317 (1995)). Under the policy, ''[t]he first item of the overall reservation charge discounted will be the GRI surcharge (for member pipelines), followed by the base rate reservation charge, Account No. 858 or other transition cost surcharges, and last, all GSR reservation surcharges. Other non-transition reservation surcharges will be attributed as agreed by the pipeline and its customers in individual proceedings.'' 69 FERC at 61,117 n.23.

be filed at least one day prior to the date the sheets are to take effect.[26]

i. *Requests for rehearing.* AGD is concerned that the regulations do not adequately assure pipeline compliance with whatever conditions or requirements for changes in rates that may have been imposed by the Commission's suspension order. AGD recommends that, in situations where the Commission has required changes in the filed rates, a minimum period of 14 days be fixed as the time between the filing of a motion to place rates in effect and the proposed effective date. AGD also recommends that the provision recommended in its Initial Comments be added to Section 154.206(a). [27]

AGD points out that the preamble to the Rule states that ''individual suspension orders may require pipelines to make compliance filings earlier, to reflect changes required by the Commission.'' [28] However, AGD states that this language is not a satisfactory answer to the problem because the regulations governing the time of motions placing rates in effect provides only 24 hours within which the pipeline's compliance with the Commission's required changes in its rate filing can be determined. AGD states that there is no assurance that, in individual cases, sufficient time will be provided to ascertain that the pipeline's compliance with Commission-mandated changes in its rates has occurred. AGD states that there is no regulatory bar to the pipeline's ability to place in effect, after the suspension period, rates which do not comply with the changes mandated by the Commission's suspension order.

ii. *Commission response.* The NOPR had proposed that when rates have been suspended for more than a minimal period and the Commission has ordered changes or the rates include costs of facilities that are not in service, the motion to place suspended tariff sheets into effect must be filed no less than 30 days nor more than 60 days prior to the date the sheets would take effect. AGD's Initial Comments had proposed that in addition to the 30–60 day opportunity to ascertain whether pipeline compliance with any Commission-ordered changes in its rates had occurred, that the regulations also include a provision which negated the pipeline's ability to place into effect any suspended rates which did not reflect changes the Commission had ordered. Columbia commented that the proposed requirement would cause pipelines to estimate test period data for that portion of the test period occurring after the date the pipeline must make the motion rate filing.

CNG and Columbia recommended no change to the practice of allowing pipelines to file motion rates one day before the effective date. CNG commented that the proposed rule would require pipelines to rely on estimated plant balances in determining the level of plant in service at the end of the test period. Further, CNG stated, the pipeline would be unable to determine the status of negotiations 30 days in the future, and would be compelled to move to make the rate increase effective at the earliest possible date. In light of these comments to the NOPR, the revised regulation was modified to continue the current practice of allowing pipelines to file motion rates one day before the effective date.

The modifications requested by AGD are denied. AGD is incorrect in stating the there is no ''regulatory bar'' to the pipeline's ability to place in effect, after the suspension period, rates which do not comply with the changes mandated by the Commission's suspension order. Pursuant to § 154.206, the motion must be accompanied by revised tariff sheets reflecting any changes ordered by the Commission. A motion that does not reflect the ordered changes would be in violation of the Commission order and the subject rates would be unlawful.

2. Withdrawal After Minimal Suspension

Section 154.206(c) provides that where the rate is suspended for a minimal period and the pipeline has included in its transmittal letter pursuant to § 154.7(a)(9), a motion to place the proposed rate into effect at the end of the suspension period, the change will go into effect, subject to refund, on the authorized effective date.

ANR and CIG seek clarification that if the pipeline includes a motion with the transmittal letter, and the Commission accepts the filing but requires changes to the pipeline's proposal, the pipeline will still have the option of withdrawing its motion before the rates, with the Commission modifications, go into effect.

This clarification is denied. As discussed above, the pipeline may choose to reserve its right to file a later motion and rates, suspended for a minimal period, will go into effect, later, on motion of the pipeline. Where the pipeline chooses to include a motion in its filing and the proposed rates are suspended for a minimal period, the rates will become effective on the date proposed. However, the pipeline may condition its motion on the Commission's accepting the proposed filing without modification.

i. *Section 154.208 Service on Customers and Other Parties.* New § 154.208 formally requires the filing company to serve its customers and state regulatory commissions on or before the filing date. The regulation requires that all customers and state commissions receive an abbreviated form of the filing.[29] Customers and state

[26] Section 154.206 states, in pertinent part:

§ 154.206 Motion to place suspended rates into effect

(a) If, prior to the end of the suspension period, the Commission has issued an order requiring changes in the filed rates, or the filed rates recover costs for facilities not certificated and in service as of the proposed effective date, in order to place the suspended rates into effect, the pipeline must file a motion at least one day prior to the effective date requested by the pipeline. The motion must be accompanied by revised tariff sheets reflecting any changes ordered by the Commission or modifications approved by the Commission during the suspension period under § 154.205. The filing of the revised tariff sheets must:

(1) comply with the requirements of subparts A, B, and C of this part;

(2) identify the Commission order directing the revision;

(3) list the modifications made to the currently effective rate during the suspension period, the docket number in which the modifications were filed, and identify the order permitting the modifications.

(b) Where the Commission has suspended the effective date of a change of rate, charge, classification, or service for a minimal period and the pipeline has not included a motion in its transmittal letter, or has specified in its transmittal letter pursuant to § 154.7(a)(9), that it reserves its right to file motion to place the proposed change of rate, charge, classification, or service into effect at the end of the suspension period, the change will go into effect, subject to refund, upon motion of the pipeline.

(c) Where the Commission has suspended the effective date of a change of rate, charge, classification, or service for a minimal period and the pipeline has included, in its transmittal letter pursuant to § 154.7(a)(9), a motion to place the proposed change of rate, charge, classification, or service into effect at the end of the suspension period, the change will go into effect, subject to refund, on the authorized effective date.

[27] That proviso states:

Provided, however, that no rates will be made effective pursuant to motion until after the party proposing a rate change has satisfied all conditions imposed by the Commission with regard to the contents of the rate increase filing.

[28] III FERC Stats. & Regs. ¶ 31,025 at 31,400.

[29] Section 154.208 Service on customers and other parties.

(a) On or before the filing date, the company must serve, upon all customers as of the date of the filing and all affected state regulatory commissions, an abbreviated form of the filing consisting of: the Letter of Transmittal; the Statement of Nature, Reason, and Basis; the changed tariff sheets; a summary of the cost-of-service and rate base; and, summary of the magnitude of the change.

(b) On or before the filing date, the company must serve a full copy of the filing upon all customers and state regulatory commissions that have made a standing request for such service.

(c) Within 48 hours of receiving a request for a complete copy from any customer or state commission that has not made a standing request, the company must serve a full copy of any filing.

commissions with an interest may then request a full copy. The pipeline must serve the full copy within 48 hours. However, pipelines must comply with any customer's standing request to receive a complete filing as the initial served filing. Customers are defined as customers of the pipeline with a contract for service as of the date of the rate case filing.[30]

2. Service Group

NGSA asks the Commission to include ''economically impacted parties'' as part of § 154.208. NGSA states that some gas producers effect title transfer of their gas either at the wellhead or at the outlet of a non-jurisdictional gas gathering system. NGSA states that because gas producer prices and wellhead operations are affected by the rates, terms and conditions of the pipeline's tariff, they should enjoy the full rights of any other potential intervenor to a rate case, including the expeditious receipt of the pipeline's rate case documents. NGSA states that ''economically impacted parties'' includes those purchasers of short-term released capacity who may not have ''a contract for service as of the date of the rate case filing.'' NGSA states that economically impacted parties should not be excluded from receiving the pipeline's rate case filing or because the timing of the rate case does not coincide with the timeframe specified within a contract.

America Forest and Paper Associates (AF&PA) requests that on rehearing the Commission revise § 154.208 to provide that, in addition to customers and affected state commissions, the pipelines must serve tariff filings on interested parties, such as trade associations and customer groups, and their representatives. AF&PA argues that trade associations and customer groups play an important role in proceedings before the Commission and enable the Commission to conduct an efficient decision-making process by allowing it to consider the views of many interested parties channeled through one source.

On the other hand, Columbia states that the requirement to serve even the abbreviated copy upon all customers is unduly burdensome. To illustrate, Columbia states that, Columbia Transmission, in addition to its firm customers, presently serves 300 interruptible transportation customers, and Columbia Gulf serves 200 interruptible customers. Columbia continues to believe that the Rule should be modified to require service only upon firm customers and affected state commissions on the filing date. Columbia states that service effected in this manner, along with the form of notice pursuant to § 154.209, is sufficient to assure adequate notice.

The requests for rehearing are denied. In light of the responses to the NOPR, the revised regulation is a combination of the alternatives suggested by several commenters and represents a reasonable middle ground between requiring service of a complete filing and service of just the transmittal letter. While reducing the filing burden to the pipeline, this course assures that all current customers and state regulatory commissions receive complete notice adequate to making informed decisions about the proposal. Adding or deleting recipients to the required service list would upset the balance achieved by the regulation.

3. ''Served'' or ''Received''

NGSA requests that the Commission clarify or modify § 154.208(c) so that pipelines are required to send the full rate case filing to a requestor such that it is received within 48 hours of their request. APGA and NGSA state that § 154.208(c) permits the pipelines to engage regular U.S. postal services 48 hours after the request had been made and receive the full filing two or three days after it is postmarked. APGA and NGSA believe that the existence of overnight express delivery services makes it possible for parties to receive a full filing within 48 hours of their request.

The request for rehearing is denied. Rule 2010 governing the timing of service states that service is made when the document is deposited in the mail or delivered in another manner.[31] The increased burden of requiring pipelines to ensure delivery within 48 hours is out of balance to the potential benefit to parties receiving the documents earlier. However, while not required, parties may agree to arrange for overnight delivery. It would be reasonable to expect the recipient to bear the cost of this additional service.

4. Service Recipient

APGA states that it is the customer's representative or agent, i.e., attorney or consultant, who has the most urgent need to review a complete copy of the filing in order to have time to prepare a motion to intervene, protest or comments within the deadline provided by the Rule for the filing of such pleadings. APGA requests that the Commission clarify that a customer may designate a representative or agent also to receive service of a complete copy of a rate filing on or before the filing date. In the alternative, APGA requests rehearing of this issue.

The request is granted in part. In past practice, a party could designate a recipient at the time it files an intervention or when the service list is created at hearing. Now that the filing company must serve its customers on or before the filing date, there must be a procedure for designating service recipients at the earlier time. The regulation will be revised to provide that a customer may designate a representative or agent to receive service on or before the filing date as suggested by APGA. The filing company is required to serve only one copy per customer, not multiple copies. However, while not required, parties may agree to arrange for multiple recipients or copies. It would be reasonable to expect the recipient to bear the cost of this additional service.

5. 48 Hours

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia) and INGAA request clarification that the parties may interpret § 154.208(c), requiring action within 48 hours, to mean two business days, thereby removing the concern that responsive action need not be taken on holidays or weekends.

Columbia's concern is unnecessary. Rule 2007 provides that ''any period of time'' prescribed by a Commission rule is computed to exclude the day of the act or event from which the time period begins. Further, the last day of the time period is not included if it is a weekend or holiday, in which case the period ends at the close of business on the next day that is not a weekend or holiday.[32] Nonetheless, to avoid any confusion the regulations will be revised to state that the pipeline must respond to such requests within two business days.

6. Electronic Version

NGC argues that the Commission erred by failing to require interstate pipelines to provide shippers with an electronic version of their filing. NGC states that the provision does not require pipelines to honor a customer's request to receive a copy of the filing in electronic format.

NGC states that rather than forcing customers to wait until the tariff data is entered into the Commission's FASTR system, which can take weeks, customers should have instant access to the full filing, through the acquisition of

[30] III FERC Stats. & Regs. ¶ 31,025 at 31,403.

[31] 18 CFR 385.2010.

[32] 18 CFR 385.2007(a).

the data in a standardized electronic format directly from the applicant. NGC states that since the pipelines are already required to file electronically, there will be little added burden or cost to making electronic versions of their filings available.

Under §§ 154.4 and 154.209 of the regulations, pipelines must file the form of notice, tariff sheets, and statements and workpapers required by subpart D of the regulations electronically. In Order No. 582, the Commission recognized that both the electronic and paper versions of the filing represent the official filing.[33] Parties receiving service under § 154.208 have a right to receive all or part of the official filing depending on their election. Since the electronic portion of the filing is part of the official filing, service would include the pertinent parts of the electronic version of the filing. However, in recognition that not all parties would be interested in receiving the electronic portion of the filing, a party may ask not to receive the electronic portion of the filing, if that is its wish.

j. Section 154.210 Protests, Interventions, and Comments

Section 154.210 states that interventions, comments, and protests must be filed within 12 calendar days of the filing date and comments must be filed at the same time as interventions and protests.[34]

APGA seeks rehearing on this issue and reiterates its request that parties be allowed a minimum of 15 days to file interventions.

The NOPR had proposed that the interventions, comments, and protests be filed within ''10 days'' of the filing. Many commenters objected to changing from the ''former 15-day'' time period and numerous alternatives were suggested for comment periods ranging from 10 to 30 days. The Commission has balanced the need to allow sufficient time for interested parties to review a filing with the need for the proceeding to progress swiftly. The use of the 12 calendar day standard achieves this balance. The request for rehearing is denied.

k. Section 154.301 Changes in Rates

PEC Pipelines request clarification as to what items are considered ''rate fixing adjustments'' and which are not.[35] PEC Pipelines requests clarification that cost-of-service items, contract demand levels, and throughput are not ''rate fixing adjustments,'' for purposes of this requirement. PEC Pipelines state that the mere fact that an element of cost-of-service—such as labor costs—has increased is not the type of ''rate fixing adjustment'' that should trigger an additional workpaper requirement. PEC Pipelines state that the same is true with respect to contract demand levels and throughput. PEC Pipelines state that the level of O&M expenses and throughput are already covered by the schedules set forth under § 154.312, Composition of Statements. On the other hand, PEC Pipelines state, certain items do affect the setting of the unit rate, such as cost allocation and rate design; logically, these items are those that should be considered ''rate fixing adjustments'' as addressed in § 154.301(c).

In response to PEC Pipelines' concern the Commission will revise this section by substituting the term ''change in rates or charges'' for ''rate fixing adjustments.'' This change is more in line with the current terminology where parties no longer refer to ''fixing'' a rate but ''making'' a rate change. The Commission agrees with PEC Pipelines that the mere fact that an element of the cost-of-service has increased does not trigger an additional workpaper requirement. Pipelines need to file alternate material when they are proposing a ratemaking change that is inconsistent with a prior Commission decision directly involving the filing company. Further, as the Commission does not require that a specific rate of return must be used in subsequent filings, the parenthetical language is removed because it is not necessary and may cause confusion.

l. Section 154.303 Test Periods.

Although § 154.303 is a complete redraft of former § 154.63(e)(2) (i) and (ii), the revised regulation maintains the same time scheme for the test period.[36] The test period consists of a base period followed by an adjustment period. The base period consists of 12 consecutive months of the most recently available actual experience. The last day of the base period may not be more than four months prior to the filing date. The adjustment period is a period of up to nine months immediately following the base period.

Section 154.303 clarifies that the pipeline must remove from rates moved

[33] III FERC Stats. and Regs., ¶ 31,025 at 31,437.

[34] Section 154.210 Protests, interventions, and comments

(a) Unless the notice issued by the Commission provides otherwise, any protest, intervention or comment to a tariff filing made pursuant to this part must be filed in accordance with § 385.211 of this chapter, not later than 12 days after the subject tariff filing. A protest must state the basis for the objection. A protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. A person wishing to become a party to the proceeding must file a motion to intervene.

(b) Any motion to intervene must be filed not later than 12 days after the subject tariff filing in accordance with § 385.214 of this chapter.

[35] Section 154.301 (c) provides:

A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's complete case-in-chief in the event that the change is suspended and the matter is set for hearing. If the rate fixing adjustments presented are not in full accord with any prior Commission decision directly involving the filing company, the company must include in its working papers alternate material reflecting the effect of such prior decision. (For purposes of this section, rate of return is not a rate fixing adjustment.)

[36] Section 154.303 Test periods.

Statements A through M, O, P, and supporting schedules, in § 154.312 and § 154.313, must be based upon a test period.

(a) If the natural gas company has been in operation for 12 months on the filing date, then the test period consists of a base period followed by an adjustment period.

(1) The base period consists of 12 consecutive months of the most recently available actual experience. The last day of the base period may not be more than 4 months prior to the filing date.

(2) The adjustment period is a period of up to 9 months immediately following the base period.

(3) The test period may not extend more than 9 months beyond the filing date.

(4) The rate factors (volumes, costs, and billing determinants) established during the base period may be adjusted for changes in revenues and costs which are known and measurable with reasonable accuracy at the time of the filing and which will become effective within the adjustment period. The base period factors must be adjusted to eliminate nonrecurring items. The company may adjust its base period factors to normalize items eliminated as nonrecurring.

(b) If the natural gas company has not been in operation for 12 months on the filing date, then the test period must consist of 12 consecutive months ending not more than one year after the filing date. Rate factors may be adjusted as in paragraph (a)(4) of this section but must not be adjusted for occurrences anticipated after the 12-month period.

(c)(1) Adjustments to base period experience, or to estimates where 12 months' experience is not available, may include the costs for facilities for which either a permanent or temporary certificate has been granted, provided such facilities will be in service within the test period; or a certificate application is pending. The filing must identify facilities, related costs and the docket number of each such outstanding certificate. Subject to paragraph (c)(2) of this section, adjustments to base period experience, or to estimates where 12 months' experience is not available, may include any amounts for facilities that require a certificate of public convenience and necessity, where a certificate has not been issued by the filing date but is expected to be issued before the end of the test period. Adjustments to base period may include costs for facilities that do not require a certificate and are in service by the end of the test period.

(2) When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities not in service as of the earlier of the effective date or the end of the test period.

(d) The Commission may allow reasonable deviation from the prescribed test period.

into effect the cost of any facilities not certificated (where a certificate is required) and in service as of the end of the test period.

1. Base Period

MRT and Williston Basin request that the Commission grant rehearing and amend § 154.303(a)(1) to lengthen the time from the last day of the base period to the filing date from four months to five months. MRT states that no pipeline would need to wait the full five months to file, but for pipelines with small staffs, like MRT, an additional month would greatly facilitate the timely filing of a high-quality initial filing and Statement P. Williston Basin argues that no justification has been given in Order No. 582 for reducing the already limited amount of time which a pipeline has to prepare its rate filings.

These requests, in effect, seek to set the test period back one month. This the Commission is reluctant to do. The regulations are constructed so that the rate paid by a customer is based upon representative costs recently incurred by the pipeline for providing the services to that customer. The regulations continue to set the cutoff date for these representative costs at four months before the filing. MRT and Williston Basin have not shown that this period is unreasonable.

2. Costs of Facilities for Which a Certificate Application is Pending

i. *Requests for rehearing.* Williston Basin seeks rehearing of the requirements of § 154.303(c). Section 154.303(c)(1) permits a pipeline to include, in adjustments to the base period, costs of facilities for which a certificate application is pending. Section 154.303(c)(2) requires that when a pipeline files a motion to place the proposed rates into effect, the tariff filing must be revised to exclude the costs associated with any facilities not in service as of the earlier of the effective date or the end of the test period.

Williston Basin states that there is a problem where a pipeline files its motion to put its proposed rates into effect before the end of the adjustment period. In those circumstances, Williston Basin argues, the pipeline should be permitted to include the cost of the facilities estimated to be in service at the end of the adjustment period, subject to true-up when the actual costs are known.

Williston Basin states that if the Commission suspends the proposed rates for one day but the adjustment period does not end for another five months, the pipeline would not be able to include the costs of facilities under construction for any of that five-month period even if the facilities are in service by the end of the adjustment period. Likewise, Williston Basin states, if the rates are suspended until the end of the adjustment period, the pipeline's motion filing would still be made before the end of the adjustment period and the exact costs of the facilities would not be known on the day the motion is made.

PEC states that the Commission should clarify that it did not intend to depart from past practice in promulgating § 154.303 and except from its § 154.303(c)(2) requirement costs associated with routine facility construction. PEC states that the clarified regulation would read as follows:

> When a pipeline files a motion to place rates into effect, the filing must be revised to exclude the costs associated with any facilities for which specific certificate authorization is required but is not expected to be granted or not in service by the end of the test period.

PEC states that the Commission should also clarify that costs through the end of the test period (not the earlier of the effective date or the end of the test period as stated in Order No. 582) may be included in rates. PEC states that if the Commission does not so clarify its regulations, the end of test period analysis will be skewed because not all of the costs of facilities at the end of the test period will be included, leading to mismatches in elements of cost of service. PEC argues that costs applicable to new facilities could be excluded on grounds that the facilities were not in service on an effective date occurring earlier than the end of the test period, even though volumes applicable to transportation through the facilities would be reflected in rates if the deliveries commenced prior to the end of the test period. PEC states that the basic objective of synchronizing all rate elements at the end of the test period will be thwarted. PEC states that the proposed revised § 154.303(c)(2) would correct this inconsistency.

ii. *Commission response.* These requests are granted. The regulation will be revised to return to the previous practice. Typically, at the end of the suspension period, the pipeline files a motion to place the proposed rates, as adjusted for any Commission determinations, into effect. The requirement that the motion rates not include costs through the end of the test period, when the effective date is earlier, negates the ability, otherwise provided by the regulations, to adjust for changes in revenues and costs which are known and measurable with reasonable accuracy at the time of the filing and which will become effective within the adjustment period. Accordingly, the regulation will be changed to allow a pipeline to file a motion to place rates into effect that include costs associated with facilities not in service as of the effective date subject to removal of such costs where the facilities are not in service by the end of the test period.

m. Section 154.304 Format of Statements, Schedules, Workpapers, and Supporting Data

Section 154.304 requires a narrative explanation of each proposed adjustment to base period actual volumes and costs.[37] The Rule indicated the Commission's intention to adopt two of NGSA's suggestions;[38] however, these changes did not appear in the regulatory text. The Commission is amending §§ 154.304 and 154.311 to reflect NGSA's suggestions that narrative explanations be placed at the beginning of the specific statements to which they apply and that statement updates be provided to parties specifically requesting them.

n. Section 154.305 Tax Normalization

Section 154.305 requires pipelines to use tax normalization to compute the income tax component of the cost-of-service and to adjust rate base by accumulated deferred income taxes related to components of the cost-of-service.

On rehearing, APGA requests that the Commission promulgate amendments to its regulations to curtail the practice whereby pipelines eliminate or reduce their accumulated deferred income tax (ADIT) account balance, which is typically deducted from rate base, and correspondingly increase their rate base and hence their return, when a pipeline undergoes a merger.

The request for rehearing is denied. Because the request concerns a ratemaking policy, it is beyond the scope of this rulemaking.

o. Section 154.311 Updating of Statements

Certain Statements and Schedules must be updated, once, 45 days after the end of the test period.

[37] Section 154.304(b) provides:

> The data in support of the proposed rate change must include the required particulars of book data, adjustments, and other computations and information on which the company relies, including a detailed narrative explanation of each proposed adjustment to base period actual volumes and costs.

[38] III FERC Stats. & Regs. ¶ 31,025 at 31,405.

INGAA requests clarification that the Commission did not intend nine 12-month running totals but rather intended a monthly total for each month in the nine-month period with a single set of updates encompassing a 12-month period. Second, INGAA states that the 45-day update requirement is insufficient time for this much data to be assembled since the books will not close until at least 10–15 days past the end of the test period. INGAA requests clarification that a period of 75 days be given for such updates. Third, INGAA urges the Commission to authorize the Director of OPR and presiding ALJ to suspend or terminate the update requirements if a settlement is pending approval, hearings have been completed, or an ALJ's decision is pending. INGAA states that updates in these situations would serve no purpose.

The Commission did not intend that updates would have nine different 12-month running totals for each month since updates would be filed 45 days after the end of the test period. Also, updates must include a monthly total for each month in the nine-month period with a single set of updates encompassing a 12-month period. INGAA's request for clarification on this issue is granted.

INGAA's suggestion of 75 days in lieu of 45 days will not be adopted. The Commission staff works expeditiously to complete the review of a pipeline's rate filing and prepare the preliminary staff position, testimony and exhibits. Companies have access to the data for updates within 10 to 15 days of closing and thus could file within the 45 day period seemingly without undue hardship. Thus, adding 30 additional days to the process would merely delay the case without a corresponding benefit.

We agree with INGAA's reasoning on the suspension of updates. The Secretary has the authority to grant extensions of time. The regulations will be revised to recognize the Secretary's authority to extend the time for the updates.

The Rule states that among the statements and schedules to be updated are H–1(3)(a) through H–1(3)(1). Williston Basin seeks clarification that the reference is to H–1(2)(a) through H–1(2)(k). Williston Basin is correct. The reference is being changed to H–1(2)(a) through H–1(2)(k).

p. Section 154.312 Composition of Statements

1. Schedule D–1

The PEC Pipeline Group suggests that the filings would be more comprehensible and consistent if § 154.312, Schedule D–1, were amended to include the functionalization of the as adjusted test period accumulated reserve for depreciation and amortization. PEC Pipeline Group also suggests a new Schedule D–3 showing the depreciation reserve balance applicable to the portion of the depreciation rate not yet approved. PEC Pipeline Group also suggests that Schedule D–1 should not be part of the workpapers.

Schedule D–1 will be amended to include the functionalization of the as adjusted test period accumulated reserve for depreciation and amortization. However, a new Schedule D–3 is not necessary since the information required to reflect the depreciation reserve balance applicable to the depreciation rate not yet approved can be shown on the same schedule. Schedule D–1 is properly a workpaper since it reflects supporting data for Statement D.

2. Statement G, Revenues, Credits, and Billing Determinants

Statement G is a summary of information on all jurisdictional services. Statement G must be filed with the rate case. More specific information, in Schedules G–1 through 6, must be filed 15 days later.

i. *Delayed filing of schedules.* APGA states that, now that the Commission under Order No. 636 has relieved pipelines of mandatory triennial rate filings, the pipeline is generally in complete control of the date on which it makes a rate filing, and there is no reason to conclude that it is burdensome to file the information required in Schedule G–1 through G–6 at the same time as the rate filing. APGA states that most of the information required to be filed in those schedules should be easily accessible by the pipeline directly from its computer database, with little or no analysis required.

APGA states that by permitting certain information to be filed after the filing date, the Commission is taking away with one hand what it has given customers with the other in requiring that a pipeline's Statement P testimony be filed concurrently with the rate case. In light of the Commission's requirement that this customer-specific information need only be served upon affected customers and those customers requesting service, APGA argues that the Commission should grant rehearing and require the information submitted under Schedules G–1 through G–6 to be filed concurrently with a pipeline's rate filing.

APGA's request for rehearing is denied. The Commission has required a summary Statement G to provide enough information to begin the analysis of the rate case. However, the customer specific information is not required immediately; and, is filed 15 days later to ease the burden of the compilation of such large scale information on the filing pipeline.

ii. *Confidentiality.* ANR and CIG join INGAA in urging the Commission to reconsider and incorporate the confidentiality provisions of the INGAA/AGD agreement in a final rule on rehearing.[39] In the alternative, ANR and CIG request that the Commission permit pipelines to have the option, in all instances where customer specific information is called for (for example, in the schedules required in Statement G, the Index of Customers and Form 2 Revenues and Discounts), of using customer codes to identify customers.

The PEC Pipeline Group disagrees with the Commission's position regarding pipelines' market power in today's market and regulatory environment. The PEC Pipeline Group states that pipelines compete with one another and with customers using capacity on pipeline systems in new and innovative ways under the auspices of Order No. 636; and, non-pipeline entities use capacity release and the ''gray'' market to compete with pipelines. PEC Pipeline Group states that the customers have a stake in avoiding public disclosure of the information because competitors of a customer will know what the pipeline expects to charge that customer over a future period of time, not just historically. PEC Pipeline Group requests clarification that coding and the projection of commodity billing determinants by rate schedule are appropriate to use in preparing Statement G and the related schedules. Alternatively, the PEC Pipeline Group requests clarification that the Commission recognizes the potential harmful effects on competition that public disclosure of test period information has and will thus entertain

[39] Specifically, the Agreement recommends that the Commission allow pipelines to serve Schedules G(1) and G(2) to requesting parties under a protective agreement document reached through negotiation between the pipeline and intervenors in the rate case. In the event that parties could not agree to such a document prior to filing, the pipeline would use the protective agreement employed for similar purposes in the pipeline's most recent rate case.

with favor, taking into account potential anticompetitive effects, requests for confidential treatment on a broad basis.

These requests are denied for the reasons discussed, at length, in the Rule.[40] The type of information for which PEC Pipeline seeks confidential treatment is the type of information that section 4(c) of the NGA requires pipelines to make publicly available.[41] If confidentiality is sought as to test period information, § 388.112 sets out the procedure to be followed.

iii. *Capacity Release.* Statement G requires that the pipeline provide: (1) Total revenues by rate schedule and by receipt and delivery rate zones, if applicable; and (2) billing determinants (demand and commodity) by rate schedule and by receipt and delivery rate zones, if applicable. Schedule G–3 also requires that the pipeline specify, quantify and justify each proposed adjustment including capacity release.

ANR and CIG seek clarification that the requirements of Statement G, relative to capacity release, requires only summary level total revenue and billing determinants by receipt and delivery rate zones, if applicable, and does not require such information for each capacity release transaction. In the alternative, ANR and CIG seek rehearing if Statement G would require data for each capacity release transaction. ANR and CIG state that, since most capacity release transactions are for a term of a month or less, requiring detail for each capacity release transaction would be unduly burdensome, for example: based upon current experience, ANR would have about 1000 capacity release contracts for the base period; CIG would have approximately 400 capacity release contracts for the base period. ANR and CIG state that if revenue and billing determinants of releasing shippers are not reduced for capacity release, then capacity release data is needed only for the design of usage rates. In such instances, ANR and CIG state capacity release data need only be provided by receipt and delivery rate zone, if applicable.

ANR and CIG are correct. The Commission clarifies that Statement G, relative to capacity release, requires only summary level total revenue and billing determinants by receipt and delivery rate zones by releasing shipper. It does not require such information for each capacity release transaction.

3. Schedule G–2

Schedule G–2 shows revenue and billing determinants by month, by customer name, by rate schedule, by receipt and delivery zone, if applicable, by major rate component and totals for the adjustment period. Great Lakes agrees that this requirement may be appropriate to the extent that a customer's adjusted throughput varies by month/season. However, Great Lakes states, in the absence of such a variation, the monthly breakdown of adjustment period throughput does not serve any useful purpose and creates unnecessary paperwork. Great Lakes requests clarification that no monthly breakdown is required if the pipeline provides a written statement that its projected annual throughput is evenly distributed over each month of the adjustment period.

The request for rehearing is denied. There is no need to make a generic change in the Rule. However, a pipeline demonstrating that its projected annual throughput is evenly distributed by months, may ask for a waiver of the monthly filing requirements.

4. Schedules G–5 and I–4

Revenues from the release by the pipeline of transportation and compression capacity it holds on other pipelines (Account 858 capacity) must be reflected as a credit to Account 858 in Schedule I–4 and also as revenue in Schedule G–5 (Other Revenues).

INGAA seeks clarification that revenues from capacity release are not double counted. INGAA states that, while inclusion of such revenues as a credit against Account 858 costs is appropriate, Schedule I–4 in Section 154.312(o)(4)(v) requires that revenues from released capacity be reflected, separately, in Schedule G–5. INGAA states that under this methodology, revenues from released capacity would count twice against cost of service; once as a credit towards Account 858 costs and second as other revenue. INGAA requests that the requirement to include these amounts in Statement G–5 be removed.

The Commission agrees that these revenues should not be double counted. However, the revenues must be shown in both Schedules I–4 and G–5. If the revenues are credited to the cost of service in Schedule G–5, then these revenues shown in Account 858 may be removed from the total costs claimed on Schedule I–4. However, if they are not reflected as a credit to the cost of service through Schedule G–5, then they must be counted as a credit in Schedule I–4 and Account 858.

5. Schedule H–1(1)

Schedule H–1 requires identification and explanation of all accrual or other normalizing accounting entries reflected in the applicant's base period expenses.

In response to a comment, the Commission revised proposed Schedule H–1(1) to require the disclosure and explanation of all accruals, not just special accruals reflected in the monthly per book expenses in order to allow customers to test whether a pipeline is inflating its expenses in order to increase its rates.[42]

i. *Explanation of all accruals.* A. *Requests for rehearing.* Great Lakes argues that this section should not require the explanation of all accruals. Great Lakes argues that numerous accruals are necessarily recorded for items such as payroll, insurance, taxes, *etc.* Great Lakes states that separately identifying and explaining all base period accruals would be very time consuming and burdensome; and that, disclosure of meaningful data can be accomplished much more efficiently by adhering to the requirements set forth in both the Commission's previous regulations and the NOPR. Great Lakes states that adherence to this requirement, in addition to the Commission staff's audit and data request procedure, is more than sufficient to meet the commenter's concerns without requiring the burdensome production of data, the usefulness of which is questionable at best. PEC argues that there is no evidence that routine true-ups cause special ratemaking concerns and the original language should be reinstated.

ANR and CIG also seek rehearing on these grounds and add that a rate case filing is not the proper forum for the disclosure and explanation of all accruals because such evaluation is currently performed by the Commission's Office of Chief Accountant (OCA) Staff and a company's external accounting firm. ANR and CIG also seek clarification or rehearing concerning whether the new rule requires a pipeline to explain the accruals appearing in every month in the base period. Since most of the individual monthly accruals will have been paid during the base or test period, and therefore there should be no question regarding inflation of such expenses, the only explanation of accruals that would be of value to any extent would be those that are recorded at the end of the test period. Thus, ANG and CIG state, to the extent that the rule requires an explanation of accruals, the

[40] III FERC Stats. & Regs. ¶ 31,025 at 31,412–3.

[41] For a full discussion on this issue, *see* ANR Pipeline Company, 65 FERC ¶ 61,280 at 62,304–7 (1993).

[42] III FERC Stats. & Regs. ¶ 31,025 at 31,417.

explanation should only be with respect to accruals remaining on the books at the end of the test period.

Williston Basin seeks rehearing of the requirement that certain expenses be stated on a cash basis. Schedule H–1(1) requires that pipelines reconcile their base period expenses to actual case expenditures. Williston Basin states that this imposes an enormous burden on pipelines as it conflicts with the method by which pipelines maintain their accounts under the Uniform System of Accounts.[43] Williston Basin states that recording these types of items on a cash basis would violate the Uniform System of Accounts and require companies to maintain two sets of accounting records: one which complies with the Uniform System of Accounts and one from which the H Schedules can be prepared. Williston Basin states that instead of adopting Schedule H–1(1) as written in Order No. 582, the Commission should adopt Schedule H–1(1) as written in the NOPR, whereby only ''special accruals'' would be reconciled rather than ''all accruals.''

B. *Commission response.* These requests for rehearing are granted. Under accrual accounting, many expenses are accrued one month and paid the next. With thousands of accrued entries on the books of most pipelines, the additional disclosure requirements included in Schedule H–1(1) regulations would be extremely lengthy, burdensome and, except for project development expenses, unnecessary. In addition, many of the accruals would have been paid during the base period, and thus present no danger of expense inflation. The only explanation of accruals that might be of value would be that of expenses recorded at the end of the base period. Accordingly, Schedule H–1(1) will be modified such that only ''special accruals'' are reconciled.

ii. *Project development costs.* INGAA seeks clarification that Schedule H–1(1) regulations apply only to project development costs, as the Commission indicated in the preamble, and that these regulations should apply only to accruals remaining on the books at the end of the base period. This clarification is granted and Schedule H–1(1) is amended accordingly.

6. Schedule H–1(1)(c)

Schedule H–1(1)(c) requires a pipeline to show expenses and associated quantities applicable to Accounts 810, 811 and 812. Williston Basin seeks rehearing of this requirement. Williston Basin states that the cost portion of this schedule should be eliminated because fuel costs are recovered by a separate mechanism under Williston Basin's existing tariff and such costs should, therefore, not be subject to review here. Alternatively, Williston Basin states that if a pipeline's fuel reimbursement tracker does not require a redetermination of the base level of gas in a rate proceeding, the Commission should not require that the pipeline provide this information.

Williston Basin's request for rehearing is denied. As noted in the Rule, the Commission must review all fuel costs, whether recovered in a separate mechanism or not.[44] Fuel usage is an important element of a pipeline's costs and though these costs may be tracked, a pipeline's tracker may require a redetermination of the base level in a rate proceeding. Since both volumes and costs are recorded in the fuel accounts the data are readily available.

7. Schedules H–1(2)(j)(iv)

Schedule H–1(2)(j)(iv) requires that a pipeline document the derivation of the allocations used to appropriate costs among affiliated companies. The pipeline must also identify by account number all costs paid to or received from affiliated companies which are included in a pipeline's cost of service for both the base and test periods.

INGAA requests that Schedule H–1 be amended such that documentation demonstrating the derivation of allocation bases with underlying calculations are to be provided, as they are today, during discovery. INGAA states that requiring all pipelines to provide this information with the original rate case filing is unduly burdensome because there are numerous types of costs allocated between divisions or companies, each with its own ''allocation basis and underlying calculations.'' INGAA states that in addition to reducing the burden on pipelines, providing the information during discovery would allow the data to be tailored better to the needs of intervenors and the nature of the pipeline.

Rehearing is granted. The Commission agrees with INGAA that providing this type of information with the initial filing is not generally necessary. Schedule H–1(2)(j)(iv) will be amended by removing the requirement to provide documentation of the derivation of allocation bases.

8. Schedule I–1, Functionalization of Cost-of-Service

Schedule I–1 replaces current Statement I (Allocation of overall cost-of-service). The information on jurisdictional and nonjurisdictional sales allocation is eliminated as no longer needed.

Schedule I–1 (c) requires a pipeline that maintains its records by zones and proposes a zone rate methodology to provide functionalized costs for each zone. NGSA suggests that Schedule I–1 (c) should only be required for pipelines which separate their cost-of-service by zones. This is already the case. Section 154.310 requires a cost-of-service by zone only if a pipeline maintains records of costs by zones and proposes a zone rate methodology based on these costs. (See the discussion of § 154.310.)

9. Schedule I–1 (d)

NGSA states that on Schedule I–1 (d), pipelines should be required to show the basis for allocating all costs (A&G, working capital) among functions. NGSA states that the experience of its member companies is that the ''common and joint costs'' required by Schedule I often do not include A&G. Thus, the method used by the company to allocate A&G must be ascertained by means of the discovery process. NGSA submits that to explicitly include A&G in these regulations would clarify the requirement, and reduce discovery burden and delay in the rate case proceeding, and provide parties with important information with respect to an increasingly important category of costs.

The Commission agrees with NGSA that Schedule I often does not include the allocation of A&G and this allocation should be included. Accordingly, Schedule I–1(d) will be revised to include the allocation of A&G.

10. Statement O

NGSA requests that the rate history filing requirement be retained but modified to require the company to show its rate history only since its last major rate filing in Statement O. NGSA submits that retention of this limited

[43] According to the Uniform System of Accounts: ''The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts.'' 18 CFR Part 201, General Instruction No. 11. Under accrual accounting, assets and liabilities are recognized as they occur—not when they are paid. For example, the expense and liability for payroll taxes are recorded at the time the associated payroll is recorded, not when the taxes are paid. Similarly, the expense and liability for receipt of purchased materials is recorded when the materials are received. It is at the time of that the obligation to the vendor is established. Other examples of where the liability accrued precedes the actual cash payment include interest expense, income taxes, prepaid insurance, pension costs, post retirement benefit costs, and use taxes.

[44] III FERC Stats. & Regs. ¶ 31,025 at 31,417.

form of the rate history requirement does not represent a burden on the pipeline, and provides parties with important summary information, difficult to obtain by other means, regarding the levels and effective periods for rates which have been in effect since the company's last filing.

NGSA's request is denied. One purpose of the rule was to eliminate any unnecessary burdens of production to the pipeline company. This involves avoiding the duplication of information that can be gathered from another source. The history provided by Statement O is not relied on in the Commission analysis of a rate proceeding and is available through the Commission Issuance Posting System (CIPS).

11. Statement P

In the past, pipelines filed their Statement P testimony 15 days after filing the rate proposal. The Rule requires Statement P to be filed concurrently with the rate case so as to make a more complete explanation of the rate proposal available at the outset.

Williston Basin seeks rehearing of this requirement. Williston Basin states that the removal of this 15-day period unnecessarily shortens the period in which a pipeline must prepare and file a rate case. Williston Basin states that the Commission should grant rehearing so as not to place additional burdens on companies in preparing the voluminous statements and schedules that must accompany rate case filings.

This request is denied for the reasons discussed in the Rule.[45] The Commission's experience is that Statement P provides the most comprehensive description of the proposed rate change. To achieve its intended purpose of expediting the hearing, Statement P must serve as the applicant's complete case-in-chief, not a mere description of proposed rates.[46]

It is the pipelines' statutory burden to demonstrate that proposed rates are just and reasonable. When the rates cannot be determined to be just and reasonable by the filed material alone, a hearing must be established. This Rule represents a concerted effort to avoid lengthy hearings. One way to expedite the process is to get the information needed to make merits determinations (Statement P) to the Commission and other parties sooner than under the current regulations.

q. 154.314 Other Support for a Filing

The Rule does not require pipelines to file monthly financial reports prepared for management purposes and copies of accounting analyses of balance sheet accounts.[47]

APGA requests that the Commission grant rehearing and require pipelines to file financial reports as an integral part of a Section 4 rate filing. APGA submits that a pipeline's financial statements are essential to an understanding of a pipeline's rate of return presentation and should be available up front to the parties to a rate proceeding. APGA states that if information contained in such reports is deemed commercially sensitive by the pipeline, it may file such information under seal subject to a protective agreement.

APGA's request is denied. This data is not generally necessary in the early part of the process. Such information may be obtained through discovery after a rate case has been set for hearing.

r. Section 154.403 Periodic Rate Adjustments

New § 154.403 governs the passthrough, on a periodic basis, of a single cost item or revenue item not otherwise covered by subpart E, such as remaining purchased gas adjustment mechanisms, fuel loss and unaccounted-for gas, and transition cost filings.

1. Requests for Rehearing

NGSA requests that the Commission reconsider NGSA's suggestions for periodic rate filing requirements, summarized in the Rule. Specifically, NGSA suggested the following items be required with filings made under this section:

a. Reconciliation information for the past period which compares the volumes and revenues actually recovered to the volumes and costs used to design the rates previously in effect, with discounted transactions separately identified, and showing any past period underrecovery to be included in the new rate;

b. Actual data on costs incurred since the last filing, compared to the costs on which the previous rates were based;

c. Derivation of any discounting adjustment included in the proposed rates, citing the authority under which such adjustment is being made;

d. Citations to data sources and approval order for data used which is derived elsewhere; and

e. Requirement that costs, volumes, allocation and rate design be shown by zone of receipt/zone of delivery or other category used to charge rates, where appropriate.

NGSA is concerned that where information is not required, it is not likely to be supplied. For example, NGSA states that the regulations do not require companies to include actual fuel used and fuel retained from shippers under the existing fuel rates when filing for new fuel retention rates. Thus, NGSA states, parties do not know if the pipeline's existing fuel rates have overrecovered or underrecovered actual fuel costs, and may have no actual basis on which to evaluate the proposed rates. NGSA states that, pursuant to § 154.403(d)(3)), actual data are not required by the regulations where the proposed rates are based on estimates. Consequently, NGSA states, for filing under this subpart where discovery is not available to interested parties, there may be no way of obtaining the needed information. NGSA states that this circumstance would occur, for example, where the filing has not been set for hearing or where the parties had not previously agreed to a submission of the data.

2. Commission Response

Section 154.403 is intended to cover a disparate array of potential cost recovery or revenue credit surcharges, in addition to fuel reimbursement mechanisms. The regulations adopted are intended to ensure the widest possible applicability.

The Rule states that the information NGSA seeks will be available in the filings under this subpart.[48] NGSA requests that the regulations be revised to require reconciliation information for the past period which compares the volumes and revenues actually recovered to the volumes and costs use to design the rates previously in effect. Section 154.403(c)(6) already requires that where costs or revenue credits are accumulated over a past period for periodic recovery or return, the tariff must include provisions to define the past period, to detail the mechanism for recovering the cost or revenue, to describe the mechanism for calculating the entries to the deferral account and for passing through the account balance. Where necessary, the information NGSA seeks would be covered in the tariff provision required by § 154.403(c)(6).

[45] III FERC Stats. & Regs. ¶ 31,025 at 31,382 and 31,424.

[46] Statement P requires the pipeline to:

Provide copies of prepared testimony indicating the line of proof which the company would offer for its case-in-chief in the event that the rates are suspended and the matter set for hearing. Name the sponsoring witness of all text and testimony. Statement P must be filed concurrently with the other schedules.

[47] III FERC Stats. & Regs. ¶ 31,025 at 31,425.

[48] III FERC Stats. & Regs. ¶ 31,025 at 31,427.

Similarly, while the derivation of discounting adjustments is not specifically listed under the filing requirements in § 154.403(d), § 154.403(c)(8) requires the tariff to provide, on a step-by-step basis, how the pipeline's methodology for calculating its surcharge will be affected by rate discounts. The pipeline must then follow this methodology when it files to change its rates. When the pipeline files to establish its methodology in the tariff, sufficient detail must be incorporated in the tariff to establish the step-by-step calculation methodology. It is in fashioning the tariff provision that detailed information requirements will be established such as those NGSA would include in the regulations. It is not, therefore, necessary for the regulations to explicitly require discounted transactions to be separately identified. Nor is it necessary to modify the regulations to include the requirement that the derivation of any discounting adjustment be included in the proposed rates.

Some of the data NGSA wishes the regulations to require are already explicitly required by the new regulations. For example, § 154.403(d)(1)(ii) requires computations to be shown for each surcharge or fuel reimbursement percentage to be applied. The computations should be broken down by service, classification, area, zone, or other subcategory as appropriate. Therefore, NGSA's request that the regulations require costs, volumes, allocation, and rate design be shown by zone of receipt/zone of delivery or other category used to charge rates would be redundant. In addition, §§ 154.403(d)(1)(iv) and (v) require the pipeline to cite the source of the costs, revenues, rates, quantities, indices, load factors, percentages, or other numbers used in the calculations. NGSA's request that citations to data sources be required is, therefore, already in the regulations.

Section 154.403(c)(5) requires a step-by-step description of the cost calculation and flowthrough methodology to be included in the tariff. Any comparison between actual costs incurred and the costs underlying the previous rate may be appropriate for inclusion in the methodology required by the referenced section. That determination must be made at the time the tariff language setting forth the methodology is accepted.

s. Section 154.501(a)

Section 154.501(a) states that ''[t]he refund plus interest must be distributed as specified in the Commission order requiring or approving the refund, or if no date is specified, within 60 days of the order.''

1. Refund Upon Final Order

Williston Basin states that refunds should be required only upon the issuance of the final Commission order in the proceeding. Williston Basin states that in an instance where a pipeline requests rehearing or appellate review of a Commission order imposing refund liability, the refund should be deferred until after final ruling to avoid the necessity for further refunds or for the required rebilling of prematurely refunded amounts. Williston Basin states that it has become increasingly difficult, if not impossible, to collect prematurely refunded amounts from transient shippers.

Williston Basin states that shippers are well protected from any delay they might experience in receiving their refunds since they receive interest on the amount which the pipeline must refund; thus, they are made whole for any overpayment amounts which the pipeline held. Williston Basin states that if pipelines are forced prematurely to make refunds before a final, nonappealable agency order is issued pipelines could be left holding an empty bag as they would have to track down shippers that may no longer exist to recover these premature refunds.

2. Commission Response

Section 154.501(a) was patterned in part after former § 154.67(c). Former § 154.67(c) noted that the date of any refund would be determined in a final Commission order. Section 154.501(a) retained this provision but added that if no specific date is set, the refund must be made within 60 days of the order. The regulation did not specify the procedure to follow in an instance where a pipeline requests rehearing or appellate review of a Commission order imposing refund liability. To avoid any confusion, the regulation will be revised to read that in the event no date for the refund is set by the Commission order establishing the refund obligation, the refund must be made within 60 days of a final Commission order. For purposes of this section, final order will mean an order no longer subject to rehearing. Williston Basin's request that the refund disbursement be delayed until after judicial review is denied as inconsistent with the NGA.[49]

t. Section 501(d)

1. Higher Interest Rate

AGD proposes procedures to reduce the level and duration of excessive pipeline rate increases including an amendment to § 154.501(d). AGD proposes that the Commission exercise its discretion to prescribe a higher interest rate to apply to refunds of pipeline's excessive charges. The proposed percentage AGD recommends is one that would be high enough to deter the pipeline from seeking excessive rate increases so that such increases are limited to those which can be fully justified. AGD states that such an interest rate would be equal to the rate of return on equity sought by the pipeline in its rate filing. AGD states that this interest rate would be a significant deterrent to a pipeline's unsubstantiated rate increase proposal and provide the pipeline with a necessary incentive to cooperate with its customers in the early disposition of its rate increase proposal, an incentive that no longer exists under the SFV rate design standard.

2. Commission Response

AGD seeks to change the Commission's provision for carrying charges under § 154.501(d) from a vehicle to ensure compensation for the time value of money into an incentive mechanism for modest rate increase proposals on the part of the pipelines. The Commission does not intend to change any substantive ratemaking policies through this Rule. Thus, AGD's request is beyond the scope of the Rule and is denied.

3. Surcharges

ANR and CIG request clarification that the Commission's intent is to allow pipelines, that are required to pay surcharges to other pipelines as a result of a Commission order, to recover such surcharges from customers within 30 days of the pipeline paying such charges through the mechanism of a limited section 4 filing.[50]

[49] Section 19(c) of the NGA provides that:

The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. Waiting to disburse a refund until after appeals court review would entail undue delay and would be inconsistent with current practice. 15 U.S.C. 717r(c).

[50] For example, in Docket No. RP91–143–027, 72 FERC ¶ 61,081 (Remand Order), the Commission directed Great Lakes to effectuate refunds and surcharges to expansion and pre-expansion shippers, respectively. Under the clarification sought by ANR and CIG, pipelines that incur surcharges pursuant to the Remand Order could file limited section 4 filings seeking authority to increase their rates to pass through to their shippers the amount of the Great Lakes surcharge, and such authority would be granted.

If such clarification is denied, ANR and CIG request rehearing stating that the change to § 154.501 improperly mandates a one-sided exception to test period ratemaking. ANR and CIG state that requiring a pipeline to pay to customers refunds received after the end of the test period underlying the pipeline's rates violates §§ 154.303 and 154.63(e)(2) of the Commission's regulations. ANR and CIG state, unless the Commission implements an exception to this regulation in an even handed manner, equity dictates that pipelines should not be required to pass through a refund from an upstream pipeline unless the Commission determines that the pipeline is overrecovering its costs after reviewing all of the pipeline's other costs and revenues.

In any event, ANR and CIG request that the 30-day provision be clarified with respect to minor refunds and surcharges. Specifically, they request that minor refunds be treated as billing adjustments which will be reflected in the next billing 30 days subsequent to receipt, and surcharges be reflected in the next billing 30 days subsequent to billing.

4. Commission Response

In response to ANR/CIG's comments to the NOPR, the Commission stated in the Rule that cost increases must be filed for by the pipeline. Pipelines would not receive automatic passthrough authority within 30 days of the pipeline paying such charges. A pipeline paying increased charges to an upstream pipeline must file to recover these costs through a section 4 filing. The Commission will not prejudge the proper approach for passing through costs paid to one pipeline by another. Regulations governing such cost passthrough are contained elsewhere in Part 154. ANR/CIG's request for clarification is denied.

5. One-Way Tracker

ANR/CIG reiterates, on rehearing, its comment to the NOPR that the language proposed in the NOPR mandated the institution of a one-way tracker. In response to that comment, the Commission clarified the language of § 154.501(a)(2) to ensure that the refund either is a product of a prior Commission order or occurs in conjunction with a tracker filing instituted under § 154.403. The provision is not a universal requirement for flow through of upstream pipeline refunds as ANR/CIG implies and does not violate the test period concept. This is so because the refund passthrough either is required by a specific Commission order or is made in conjunction with a cost tracking provision approved by the Commission. A cost tracker permits the pipeline to recover costs paid subsequent to the end of the test period without having to file a general rate case and submit to a review of all costs and revenues. Therefore, to ensure those costs are not over-recovered, refunds of costs collected from customers by means of a rate established under a tracking mechanism must be flowed through to customers.

6. Minor Refunds

ANR/CIG request clarification that the 30-day provision relates to minor refunds and surcharges. Sections 154.501 and 154.502 relate solely to refunds, not to surcharges.

The Commission adopted a single generic standard of 30 days to pass through refunds. The difficulty with making an exception for minor refunds is defining what constitutes a minor refunds. A minor amount on one pipeline may represent a significant amount on another pipeline. It is preferable to have a single generic standard. The Commission will review requests for exceptions for disbursing minor refunds through billing adjustments on a case-by-case basis, thereby allowing such a provision to be tailored to the specific circumstances of each pipeline.

u. Topsheets

APGA requests rehearing of the Commission's determination that it should not establish a time frame for the submission of Staff topsheets.

This matter has been fully considered and discussed in the Rule. APGA's arguments do not warrant further consideration or a different conclusion. This request is denied for the reasons discussed in the Rule.[51]

v. Bifurcation

AGD suggests, as a strategy to expedite pipeline rate case decisions, an early bifurcation of a given proceeding into two separate categories for decisionmaking. The Commission's suspension order in a pipeline rate case would divide the issues to be addressed by the ALJ and the parties in two categories, one of which would be subject to a final Commission decision deadline of 12 months from the filing date, while the other category could have a different Commission decision deadline. In the first, 12 months-to-decision category, the issues would include those concerning the pipeline's filed-for cost of service and its throughput and/or other issues which lend themselves to prompt decisions. The Commission's rules would provide that, in the absence of compelling reasons, all rate case issues concerning the pipeline's cost of service and its throughput volume, including rate of return, depreciation rate and other similar issues would be addressed by the ALJ and by the Commission within 12 months of the filing date.

The second category of issues would be those concerning the pipeline's rate design and/or its allocation of costs among functions and among customers according to their rate schedule. This latter category of issues may involve more complex questions and may require the use of expert testimony, exhibits and other evidence to frame the issues for Commission decision.

The Commission recognizes that the proposed procedure might have the effect of expediting pipeline rate case decisions. However, before implementation, the Commission would require more study as to the potential effects of such a procedure on the rate case as well as what further changes would have to be made to the filing requirements. The suggested change is simply beyond the scope of the purposes of this Rule and will not be adopted.

w. Electronic Pleading

NGC states that the Commission on rehearing should add to its list of goals the electronic service of pleadings. NGC states that, with the internet and world-wide web gaining such increased prominence in recent months, it is time the Commission implemented electronic service through the CIPS system.

Expanding electronic filing requirements to pleadings is outside the scope of this rulemaking.

x. Suspension of Electronic Filing

The Commission is suspending the requirement to submit filings under subpart D electronically until the new electronic filing requirements are fully developed.[52]

INGAA seeks clarification that after electronic filing requirements have been finalized, there would be a period of six months for pipelines to develop internal software and procedures that match their data to the newly developed electronic filing requirements. During this period, pipelines would continue to file rate cases on paper.

In accordance with the Rule, staff convened an informal conference on December 1, 1995, to discuss issues

[51] III FERC Stats. & Regs. ¶ 31,025 at 31,431.

[52] III FERC Stats. & Regs. ¶ 31.025 at 31,433.

relating to electronic filing which had not been resolved. Issues relating to the Index of Customers and discount rate filings have been resolved. The final specifications will be issued shortly. Two working groups were established—one to complete work on Form Nos. 2, 2A and 11 and one to complete work on rate case filings. The working groups met on December 12, 1995, February 7, 1996 and February 8, 1996.

The Commission expects to have work completed on Form No. 11 in time for the first filings due on May 15, 1996. Given the relative simplicity of the Form No. 11, there should be no difficulty meeting this timetable. A delay of six months is excessive for this filing.

The Form Nos. 2, and 2A, and rate case filings, however, are far more complex. Form Nos. 2 and 2A must be filed electronically on April 30, 1997. However, staff and the Working Group—Forms are urged to use due diligence to complete the filing specifications by October 31, 1996, in order to provide the six month preparation time INGAA seeks.

As regards electronic filing for rate cases, the Commission will not adopt INGAA's proposal that its implementation be delayed until six months after the Commission issues the electronic filing specifications. Several pipelines in the working group are providing test files of rate case data in the new file format. It is preferable to wait until the working group process is complete and staff has better information about the amount of time the test pipelines required to create files in the new file format before making a decision on the appropriate amount of delay between the issuance of file specifications and implementation of the electronic filing requirements for rate cases. Therefore, the Commission will defer making a ruling on this issue until staff issues the file specifications for the rate case.

y. Effective Date

The final rule became effective on November 13, 1995, 30 days after publication in the Federal Register.

The NOPR proposed that the revised regulations would be effective 90 days after publication in the Federal Register.[53] However, the Rule made the revisions effective 30 days after publication in the Federal Register.[54]

INGAA states that it would be impossible for pipelines who might be in the process of preparing a rate case to implement the Rule within 30 days. INGAA seeks clarification that the effective date will be 90 days after publication in the Federal Register. The Rule already is in effect. Thus, this request is denied as the issue is moot.

INGAA also seeks clarification that the order does not apply to pending rate cases. This request is granted.

ANR and CIG request clarification of when pipelines are required to make changes to their tariff to bring the tariff into compliance with the new Rule. In some instances, such as a filing for a rate change, it is clear that the next filing would trigger the Rule's requirements. However, it is not clear when pipelines will have to make other revisions to their present tariffs, such as conforming the title page of their tariff to the new Rule's requirements or providing explanations of policies on such issues as discounts.

The Commission clarifies that all filings and tariffs on file must be in compliance with the revised regulations no later than December 31, 1996.

List of Subjects in 18 CFR Part 154

Alaska, Natural Gas, Pipelines, Reporting and recordkeeping requirements.

The Commission Orders

(A) The requests for rehearing and clarification of Order No. 582, the final rule issued in this docket on September 28, 1995, are granted and denied as discussed in the text of this order.

(B) All filings and tariffs on file must be in compliance with the revised regulations promulgated by Orders No. 582 and 582–A, no later than December 31, 1996. By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission is amending part 154, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

2. Section 154.7 is amended by revising paragraph (a)(6) to read as follows:

§ 154.7 General requirements for the submission of a tariff filing or executed service agreement.

* * * * *

(a) * * *

(6) A statement of the nature, the reasons, and the basis for the filing. The statement must include a summary of the changes or additions made to the tariff or executed service agreement, as appropriate. The statement must include a quantified summary comparing the cost of service, rate base and throughput underlying each change in rate made to the tariff or executed service agreement compared to the same information underlying the last rate found by the Commission to be just and reasonable. A detailed explanation of the need for each change or addition to the tariff or executed service agreement must be included. The natural gas company also must note all relevant precedents relied upon to prepare its filing.

* * * * *

§ 154.101 [Amended]

3. In § 154.101, the words ''¼ inches'' are removed and the words ''1¼ inches'' are added in their place.

4. Section 154.208 is amended by revising paragraph (c) and adding paragraph (d) as follows:

§ 154.208 Service on customers and other parties.

* * * * *

(c) Within two business days of receiving a request for a complete copy from any customer or state commission that has not made a standing request, the company must serve a full copy of any filing.

(d) A customer or other party may designate a recipient of service. The filing company must serve the designated recipient, in accordance with paragraphs (a), (b) and (c) of this section, instead of the customer or other party. For the purposes of this section, service upon such designated recipient will be deemed service upon the customer or other party.

5. Section 154.301 is amended by revising paragraph (c) as follows:

§ 154.301 Changes in rates.

* * * * *

(c) A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's complete case-in-chief in the event that the change is suspended and the matter is set for hearing. If the change in rates or charges presented are not in full accord with any prior Commission decision directly involving the filing company, the company must include in its working

[53] IV FERC Stats. & Regs. ¶ 32,511 at 32,944.

[54] III FERC Stats. & Regs. ¶ 31,025 at 31,375.

papers alternate material reflecting the effect of such prior decision.

6. Section 154.303 is amended by revising paragraph (c)(2) to read as follows:

§ 154.303 Test periods.

* * * * *

(c) * * *

(2) When a pipeline files a motion to place the rates into effect, the filing must be revised to exclude the costs associated with any facilities that will not be in service as of the end of the test period, or for which certificate authorization is required but will not be granted as of the end of the test period. At the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.

* * * * *

7. Section 154.304 is amended by revising paragraphs (b) and (c) to read as follows:

§ 154.304 Format of statements, schedules, workpapers and supporting data.

* * * * *

(b) The data in support of the proposed rate change must include the required particulars of book data, adjustments, and other computations and information on which the company relies, including a detailed narrative explanation placed at the beginning of the specific statement or schedule to which they apply, explaining each proposed adjustment to base period actual volumes and costs.

(c) Book data included in statements and schedules required to be prepared or submitted as part of the filing must be reported in a separate column or columns. All adjustments to book data must also be reported in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed. All adjustments must be supported by a narrative explanation placed at the beginning of the specific statement or schedule to which they apply.

* * * * *

8. Section 154.311 is revised to read as follows:

§ 154.311 Updating of statements.

(a) Certain statements and schedules in § 154.312, that include test period data, must be updated with actual data by month and must be resubmitted in the same format and with consecutive monthly totals for each month of the adjustment period with a single set of updates encompassing a 12-month period. The updated statements or schedules must be filed 45 days after the end of the test period. The updated filing must be provided to parties specifically requesting them. The updated filing must reference the associated docket number and must be filed in the same format, form, and number as the original filing.

(b) The statements and schedules in § 154.312 to be updated are: Statements C, D and H–4; Schedules B–1, B–2, C–3, D–2, E–2, E–4, G–1, G–4, G–5, G–6, H–1 (1)(a), H–1 (1)(b), H–1 (1)(c), H–1 (2)(a) through H–1 (2)(k), H–2 (1), H–3 (3), I–4, and I–6.

(c) This requirement to file updates may be extended by the Secretary pursuant to § 375.302 of this chapter.

9. Section 154.312 is amended by revising paragraphs (d)(1), (k)(1), (k)(15)(iv) and (o)(1)(iv) as follows:

§ 154.312 Composition of Statements.

* * * * *

(d) * * *

(1) *Schedule D–1.* This schedule is part of the workpapers. Show the depreciation reserve book balance applicable to that portion of the depreciation rate not yet approved by the Commission, the depreciation rates, the docket number of the order approving such rate, and an explanation of any difference. Reflect actual end of base period depreciation reserve functionalized and test period depreciation reserve functionalized. Show accumulated depreciation and amortization, in columnar form, for the ending base and test period balances by functional classifications of Accumulated Depreciation reserve. (Examples are provided in Schedule C–1). For each functional plant classification, show depreciation reserve associated with offshore and onshore plant separately.

* * * * *

(k) * * *

(1) *Schedule H–1 (1).* This schedule is part of the workpapers. Show the labor costs, materials and other charges (excluding purchased gas costs) and expenses associated with Accounts 810, 811, and 812 recorded in each gas operation and maintenance expense account of the Uniform System of Accounts. Show these expenses, under the columnar headings, with subtotals for each functional classification, as follows: operation and maintenance expenses by months, as booked, for the 12 months of actual experience, and the 12-month total; adjustments, if any, to expenses as booked; and total adjusted operation and maintenance expenses. Disclose and explain all accrual on the books at the end of the base period or other normalizing accounting entries for internal purposes reflected in the monthly expenses presented per book. Explain any amounts not currently payable, except depreciation charged through clearing accounts, included in operation and maintenance expenses.

* * * * *

(15) * * *

(iv) The bases used in determining the amounts of the charges (credits). Explain and demonstrate the derivation of the allocation bases with underlying calculations used to allocate costs among affiliated companies, and identify (by account number) all costs paid to, or received from affiliated companies which are included in a pipeline's cost-of-service for both the base and test periods.

* * * * *

(o) * * *

(1) * * *

(iv) *Schedule I–1(d).* Show the method used to allocate common and joint costs to various functions including the allocation of A&G. Provide the factors underlying the allocation of general costs (e.g., miles of pipe, cost of plant, labor). Show the formulae used and explain the bases for the allocation of common and joint costs.

* * * * *

10. Section 154.501 is amended by revising paragraph (a)(1) to read as follows:

§ 154.501 Refunds.

(a) *Refund Obligation.* (1) Any natural gas company that collects rates or charges pursuant to this chapter must refund that portion of any increased rates or charges either found by the Commission not to be justified, or approved for refund by the Commission as part of a settlement, together with interest as required in paragraph (d) of this section. The refund plus interest must be distributed as specified in the Commission order requiring or approving the refund, or if no date is specified, within 60 days of a final order. For purposes of this paragraph, a final order is an order no longer subject to rehearing. The pipeline is not required to make any refund until it has collected the refundable money through its rates.

* * * * *

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

Appendix

Minor modifications are made to the electronic filing instructions for tariff sheets. The instructions for completing the ''TF07''

record have been corrected. In the previous version of these instructions, the position for the FERC Cite was erroneously given as character position 43–49. The correct character position is 5–11. The Commission's software, the FERC Automated System for Tariff Retrieval, FASTR, will recognize the FERC cite whether entered in positions 43–49 or 5–11. The Commission is allowing pipelines to file other electronic filings on CD-ROM. The Commission will extend this option to electronic tariff filings as well.

Natural Gas Pipeline Company Tariff Filings

Revised

Docket No. RM95–3–001

OMB Nos.	Expiration date
1902–0066	5/31/97
1902–0070	5/31/97
1902–0152	5/31/97
1902–0153	5/31/97
1902–0154	6/30/96
1902–0155	5/31/97

This document replaces the Tariff Filing Record Formats issued August 31, 1989.

General Information

I. Purpose

All companies which maintain a gas tariff with the Federal Energy Regulatory Commission (FERC) are required to submit, along with the paper copies, an electronic version of all tariff filings pursuant to section 385.2011 of the Commission's regulations. Companies are required to have an electronic version of their entire gas tariff (excluding Volume No. 2 contractual rate schedules) on file with FERC on or before January 26, 1996 This form does not modify the existing tariff sheet format required in section 154.102 or section 385.2003 for tariff sheets filed on paper. Nor does it modify the requirement in section 154.201(a) to file a marked paper version of the pages to be changed by showing additions and deletions using highlighting, background shading, bold text, or underlined text.

II. Who Must File

All companies who are required to maintain a FERC Gas Tariff on file with the FERC.

III. What To Submit

All proposed revisions to the FERC Gas Tariff will be submitted in conformance with this form. Such proposed revisions include, but are not limited to, rate changes pursuant to a Section 4 filing or changes in service pursuant to a certificate issued as a result of a section 7 proceeding. Upon request of the Secretary of the FERC, companies must submit such additional supporting and clarifying data and information as may be specified.

All data will be submitted on diskette(s), preferably 3.5″ High Density diskettes, and must conform to the specific instructions provided in Exhibit A. Optionally, data may be submitted on CD. Filings in this medium must conform to the specifications in Exhibit A. The diskette(s) or CD(s) must be accompanied by paper copies of the information submitted on the diskette. The paper copies must conform in all respects to the requirements of sections 154 and 157 and will consist of the required number of copies of the transmittal letter, the tariff sheets, the certification of service, and a form of notice suitable for publication in the Federal Register.

The letter of transmittal and the certification of service will be submitted on paper only. The letter of transmittal must include the subscription provided in section 385.2005(a). The subscription provided must state, in addition to the requirement in section 385.2005(a), that the paper copies contain the same information as the diskette(s) and that the signer has read and knows the contents of the paper copies and that the contents as stated in the paper copies are true to the best knowledge and belief of the signer.

Respondents claiming that information is privileged must file in accordance with section 385.1112; otherwise, all data submitted will be considered non-privileged and will be made available to the public upon request.

IV. When To Submit

The tariff sheets should be filed with the Commission at the time the company proposes a change in service or rate. The notice period should be consistent with the Commission's regulations.

V. Where To Submit

(1) Submit this report to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

(2) Hand deliveries may be made to the same address.

You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

General Instructions

(1) Schedule TF. Records TF01 through TF07 and the text line records are intended to capture all of the tariff elements which the pipeline has historically filed as part of its FERC Gas Tariff. Record TFO1 identifies the company and the filing date. Record TF02 captures information about the tariff volume; and Records TF03, TF04, TF05, TF06, and TF07 contain requisite marginal information for an individual tariff sheet. The actual tariff sheet text will follow Record TF07.

Each tariff sheet should be identified by the nature of the sheet, and assigned the appropriate ''Text ID'' from among those listed in the layout for Record TF03. For example, a tariff sheet which includes the table of contents must be assigned Text ID = ''1''. The text of a tariff sheet should include any footnotes applicable to the individual tariff sheet. When filing the tariff sheet on paper, footnotes should appear inside the ruled borders required by section 154.101.

All of the marginal information required under 18 CFR § 154.102(d) is to be included only in the tariff sheet header records. These header records will be utilized to print a hard copy with the appropriate marginal information.

If a tariff sheet is filed to be read vertically in hard copy, this is referred to hereinafter as ''Portrait'' orientation. If the sheet will be read horizontally, the orientation is referred to as ''Landscape.'' The requirements of section 154.101 imply that the length of a line of actual text is 6.75 inches in Portrait orientation, and 10.0 inches in Landscape. The pitch, the number of print characters per horizontal inch (cpi); the number of lines per vertical inch (lpi); and the page orientation for printing the tariff sheet must be given in the first Tariff Sheet Header Record, (Record TF03). The number of characters per horizontal inch (cpi) must not exceed 17. The acceptable lines per vertical inch are 6 or 8. The maximum line length and lines per page for Portrait and Landscape orientation are as follows:

Page orientation	Maximum line length (characters)				Maximum lines per page	
	10cpi	12cpi	15cpi	17cpi	6lpi	8lpi
Vertical (portrait)	65	79	98	112	50	70
Horizontal(landscape)	98	118	148	168	31	44

(2) Record Types. Records must be filed in the following order:

Company Header Record (TF01): One record per dataset.

Volume Header Record (TF02): One record per volume. All pages for the same volume will be grouped together. If more than one dataset is required for the filing of a volume, this record must appear in each dataset. Note: When more than one dataset is needed to accommodate a filing, name the datasets in accordance with the instructions in Exhibit A.

Note: The Appropriate Tariff Sheet Header Records Must Precede Each Tariff Sheet!

Sheet Header Record (TF03): One record per sheet.

Superseded Sheet Header Record (TF04): This record pertains to the superseded sheet information. One record per sheet unless there is no superseded sheet (e.g., Original and Substitute Original sheets). In that case, this record may be omitted.

Issuing Officer Header Record (TF05): One record per filing, unless the filing contains sheets that reference more than one issuing officer or the tariff sheets are submitted in more than one dataset. Optionally, this record may precede every tariff sheet filed.

Date and Docket Header Record (TF06): One record per filing, unless the effective date or other information in this record changes from sheet to sheet or the tariff sheets are submitted in more than one dataset. Optionally, this record may precede every tariff sheet filed.

FERC Cite (TF07): One record per sheet. This header record should only accompany tariff sheets filed in compliance with an order of the Commission.

Text Line Records: The actual tariff sheet text. Note: any special codes placed in the text (such as bold, italic, underline, etc.) are removed when converting to ASCII format.

(3) Numeric Fields. All numeric fields in Records TF01 through TF06 must not be left blank, and must be right justified unless indicated otherwise. The following conventions should be followed in preparing each header record in the filing:

(A) If a numeric data item is not applicable to the respondent, enter the numeric value ''0'' in the field provided for this data item.

(B) Do not include commas in reporting any numeric value.

(C) Report all dates as six digit numerics (month, day, year, MMDDYY).

(4) Pipeline Company ID. Use the code for the pipeline as contained in the Buyer Seller Code List, U.S. Department of Energy's publication DOE/EIA–0176. A code may be obtained by calling EIA at (202) 586–8841.

(5) Record Lengths. Do not pad the end of data records with blanks.

Specific Instructions

(1) Effective Date. The date, given as month, day, and year, on which the respondent expects the filing to be put into effect subject to the concurrence of the FERC.

(2) Tariff Volume Number. The number of the volume to which the tariff sheets belong. For example, if the volume is labeled ''Second Revised Volume No. 1,'' report a ''1'' in this field.

(3) Tariff Volume Revision Number. Report the number of the revision. For example, if the tariff volume is labelled ''Second Revised Volume No. 1,'' report a ''2'' in this field. If the tariff volume is an original volume, report a zero in this field.

(4) Tariff Volume ID. Report the full tariff volume name in this field. For example, if the volume is labelled ''First Revised Volume No. 1,'' report ''First Revised Volume No. 1'' in this field.

(5) Sheet Number. Report the number of the tariff sheet being filed. For example, if the sheet is numbered ''First Revised Sheet No. 3 superseding Original Sheet No. 3,'' report a ''3'' in this field.

(6) Sheet Revision Number. Report the number of the revision. For example, if the tariff sheet is numbered ''Second Substitute Third Revised Sheet No. 4 superseding Second Revised Sheet No. 4,'' report a ''3'' in this field. If this is an original tariff sheet, report a ''0'' in this field.

(7) Sheet ID. Report the full designation for the tariff sheet being reported. For example, if the sheet is designated ''First Revised Sheet No. 3 superseding Original Sheet No. 3,'' report ''First Revised Sheet No. 3'' in this field. If the Sheet ID exceeds the allowed 40 character positions for this item, use the ''Abbreviation Conventions List'' at Exhibit C.

(8) Superseded Sheet ID. Report the full designation for the tariff sheet being superseded. For example, if the tariff sheet being filed is designated ''First Revised Sheet No. 3 superseding Original Sheet No. 3,'' report ''Original Sheet No. 3'' in this field. If the Superseded Sheet ID exceeds the allowed 40 character positions for this item, use the ''Abbreviation Conventions List'' at Exhibit C.

(9) First Superseded Sheet Number. When a single sheet supersedes a range of sheets (such as canceling a rate schedule or reserving sheets for future use), report the number of the first sheet in the range. Otherwise this field may be left blank.

(10) Last Superseded Sheet Number. When a single sheet supersedes a range of sheets (such as canceling a rate schedule or reserving sheets for future use), report the number of the last sheet in the range. Otherwise this field may be left blank.

(11) Alternate Sheet ID. When filing primary and alternative tariff sheets, the sheets are uniquely identified by reporting ''00'' in this field for the primary sheet, ''01'' for the first alternate, ''02'' for the second alternate, and so on.

(12) Issuing Officer. Report the name and title of the person authorized to issue the tariff sheet.

(13) Issue Date. The date given as month, day, and year when the tariff sheet is issued.

(14) Order Reference. For tariff sheets which are filed to make rate schedules or provisions ordered by the Commission effective, report the Docket Number and the date of such order. (If more than one docket applies, report the lead docket relating to the filing company in the proceeding.)

(15) FERC Cite. In this field, enter the numbers of the cite to the FERC Reports for the order listed in ''Order Reference'' as follows: For a citation which appears as 12 FERC ¶ 34,567, enter all of the numbers but none of the letters, symbols, or commas. It will appear as 1234567. If the order has no FERC Reports citation, do not enter a TF07 record.

ELECTRONIC TARIFF FILE LAYOUT—SCHEDULE TF

Item	Character position	Data type	Comments
(1) Company Header Record:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=01.
Company ID	5–10	numeric	company code from buyer/seller code list, see general instruction 4.
Date Submitted	11–16	numeric	month, day and year report is filed (mmddyy).
Company Name	17–65	character	name of filing company.
(2) Volume Header Record:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=02.
Tariff Volume Number	5–8	character	see specific instruction 2.
Tariff Volume Revision Number	9–11	numeric	see specific instruction 3.
Tariff Volume ID	12–51	character	see specific instruction 4.
(3) Sheet Header Record:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=03.
Sheet Number	5–12	character	see specific instruction 5.
Sheet Revision Number	13–15	numeric	see specific instruction 6.
Alternate Sheet ID	16–17	numeric	see specific instruction 11.
Text ID	18–19	numeric	0=Title Page.
			1=Table of Contents.

ELECTRONIC TARIFF FILE LAYOUT—SCHEDULE TF—Continued

Item	Character position	Data type	Comments
	.....	.....	2=Preliminary Statement.
	.....	.....	3=Rate Sheets.
	.....	.....	4=Rate Schedule Text.
	.....	.....	5=General Terms and Conditions.
	.....	.....	6=Form of Service Agreements.
	.....	.....	7=Index of Customers.
	.....	.....	8=Other Indices.
	.....	.....	9=Other Tariff Sheets.
	.....	.....	10=Sheets Reserved for Future Use.
Orientation	20	character	P=Portrait.
	.....	.....	L=Landscape.
Pitch	21–22	numeric	Characters per Horizontal Inch=10, 12, 15, or 17.
Lines Per Inch	23	numeric	Lines per Vertical Inch=6 or 8.
Sheet ID	24–63	character	see specific instruction 7.
(4) Superseded Sheet Header Record:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=04.
First Superseded Sheet Number	5–12	character	see specific instruction 9.
Last Superseded Sheet Number	13–20	character	see specific instruction 10.
Superseded Sheet ID	21–60	character	see specific instruction 8.
(5) Issuing Officer Header Record:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=05.
Issued By	5–58	character	name and title of issuing official; see specific instruction 12.
(6) Date and Docket Header Record:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=06.
Date Issued	5–10	numeric	(mmddyy); see specific instruction 13.
Order Date	11–16	numeric	(mmddyy); see specific instruction 14.
Docket Number	17–36	character	see specific instruction 14.
Effective Date	37–42	numeric	(mmddyy); see specific instruction 1.
(7) FERC Cite:			
Schedule ID	1–2	character	sch=TF.
Record ID	3–4	numeric	code=07.
FERC Cite	5–11	numeric	see specific instruction 15.
(8) Sheet Text Line Records: Each entire record consists of the text of the corresponding line of the tariff sheet, without prefix of any kind.			

Exhibit A—Filing Procedures

Diskette(s) or CD(s) containing the information specified for each record ID of the tariff filing filed with the FERC must conform with the following requirements:

(1) The character code for representing all data should be the American National Standard Code for Information Interchange (ASCII) as defined in FIPS PUB 1–2. An exception will be made for the cents (¢) symbol, which should be coded as hexadecimal 8B, or decimal 155, as defined in the IBM-US (PC–8) symbol set. Note that there are symbol sets which define it differently.

(2) The definitions, instructions, and schedule ID/record ID data layouts for this form specify explicitly the data items to be reported and the sequence for recording the information on the diskette(s) or CD(s). The information required for a tariff filing should be recorded on the diskette(s) or CD(s) exactly as specified in the data layout for each schedule/record and in accordance with the general instructions.

(3) All tariff sheets filed under a given docket number should all be included in the same ''file'' or data set, if possible. (Large files may be split as a matter of convenience or diskette size limitation). The file should be named: ''TFMMDDYY.ASC'' where ''TF'' stands for ''Tariff Filing'', and ''MMDDYY'' is the two-digit month, day, and year the tariff filing is submitted. If more than one tariff filing is made on the same day, the subsequent filings should be given file names ''TFMMDDYY.BSC'', ''TFMMDDYY.CSC'', etc., where ''BSC'' indicates the second filing of the day, ''CSC'' the third filing, etc. The file name for each submission must be included in the transmittal letter accompanying the respondent's filing.

(4) Each logical record must be terminated by a CR (ASCII carriage return-13 decimal, OD hexadecimal). An ASCII line feed (LF) following a CR is accepted but not required as part of termination. Do Not pad the end of data records with spaces.

(5) Do not omit any numeric item. Numeric items do not require leading zeros unless specifically noted in the description of the data item. See the General Instructions of this form for detailed instructions for recording numeric data on the diskette(s).

(6) When refiling only to correct an electronic data error on the electronic version of a tariff sheet and not in the paper version, use the same file name, pagination and submittal date.

(7) Each diskette must have a label affixed to it stating the pipeline's name. The CD must be enclosed in an appropriate disc protector with a label affixed to the protector stating the pipeline's name. The label must also state that tariff sheets are enclosed. If more than one diskette is necessary to accommodate a filing, the diskettes should be numbered 1 of N, 2 of N, *etc.*, where N is the total number of diskettes.

CD Specifications

Filing on CD is an option for those respondents who wish to do so. However, all data filed on CD must adhere to the following two constraints:

1. All data submitted must be on CD-Recordable (CD-R) media or traditional CD-ROM media.

2. The file directory structure of the CD must adhere to the ISO 9660 Level One standard.

What is CD-R and how does it differ from traditional CD-ROM media?

CD-R is a technology that allows for creating CD-ROMs on the desktop more cheaply than traditional CD-ROM media. Traditional CD-ROMs are made by using a laser to ''burn'' pits in a thin metallic layer thus recording the binary data. By comparison CD-R uses special discs impregnated with an organic dye which serves the same function as the pits, but at a much lower cost. Both kinds of discs are readable with a traditional CD-ROM drive. Other kinds of discs, magneto optical, or floptical discs are not readable by the common CD-ROM drive and require a different system altogether.

What is Level One ISO 9660?

The ISO 9660 standard is for file directory systems on CD-ROMs. It is a non-proprietary standard and can be used on different platforms. It defines naming conventions, and directory depth. There are two main levels of ISO 9660: level one and level two. The major difference lies within the naming conventions. Level one ISO 9660 allows for MS-DOS style filenames (eight character and three character extensions). Level two ISO 9660 allows for thirty-two character filenames. Because the commission relies upon MS-DOS compatible personal computers, data submitted on CD-ROMs must be in compliance with Level One ISO 9660.

Exhibit B—Tariff Sheet Pagination Guidelines

Section 154.102(d)(2) of the Commission's regulations requires companies to number their tariff sheets as provided below.

(1) Original Sheets. Paginate a sheet as ''Original Sheet No. ____'' when the sheet number has not been used previously in the tariff volume. When filing an entire original or revised tariff volume, all sheets should be paginated as ''Original Sheet No. ____'' unless the sheet falls within the exception under Guideline (11).

(2) Revised Sheets. Designate a sheet as ''Revised'' if it is (a) filed in a different proceeding than the sheet it is superseding or (b) filed in the same proceeding but given a new proposed effective date. Each subsequent ''Revised'' pagination should be numbered sequentially. (See Examples 1 and 2.)

(3) Substitute Sheets. Designate a sheet as ''Substitute ____ Revised Sheet No. ____'' if it is filed to replace a sheet filed in the same proceeding with the same effective date. If a substitute sheet needs to be replaced, paginate the new sheet as ''Second Substitute,'' and so on. (See Example 1.)

(4) Superseded Sheets. Designate as the superseded sheet the most recent sheet filed in a different proceeding effective or proposed to be effective on the same day or on a day prior to the new sheet. This means when filing a substitute sheet the designated superseded sheet stays the same. Provided that the sheet does not fall under the exception in guideline (9). Never designate a rejected or suspended sheet as the superseded sheet. However, if a sheet designated as superseded is subsequently rejected, it is not necessary to refile solely to correct the superseded sheet designation. (See Example 1.)

(5) Rejected Sheets. If a sheet is rejected by order of the Commission, do not reuse the pagination of the rejected sheets. Designate a sheet ''Substitute'' if it is filed to replace a rejected sheet in the same proceeding, but do not designate a rejected sheet as the superseded sheet. Refer to Guidelines (3) and (4).

(6) Alternate Sheets. When filing two versions of a proposed tariff sheet, designate the sheets '' ____ Revised Sheet No. ____'' and ''Alternate ____ Revised Sheet No. ____.'' Paginate a replacement alternate sheet ''Sub Alternate.''

(7) Inserted Sheets. Designate sheets inserted between two consecutively numbered sheets using an uppercase letter following the first sheet number (*e.g.,* sheets inserted between sheets 8 and 9 would be 8A, 8B, etc.). For sheets inserted between two consecutively lettered sheets, add a ''.'' followed by a two digit number (*e.g.,* sheets inserted between sheets 8A and 8B would be 8A.01 through 8A.99). For further insertions, add a lowercase letter (*e.g.,* between sheets 8A.01 and 8A.02 would be 8A.01a, 8A.01b, etc.).

(8) Pre-dated Sheets. When a sheet is filed with a proposed effective date which pre-dates the effective date of a suspended or effective sheet with the same number filed in a different proceeding, designate the new sheet ''____ Rev ____ Revised Sheet No. ____'' where the second and third blanks are numbered the same as the sheet with the later effective date and the first blank contains ''1st,'' ''2nd,'' *etc.* Commonly, this situation occurs when a sheet is suspended for five months and subsequent sheets need to be made effective prior to the date the suspended sheet becomes effective. (See Example 3.) Note: When using the ''1st Rev'' pagination, drop extraneous words if the superseded sheet provides the same information. (See Example 4.)

(9) Retroactive Sheets. When filing a retroactive change back to a certain date, all sheets which are or were in effect from that date forward need to be changed. The first sheet should be designated either as ''Substitute'' in accordance with Guideline (3) above or ''____ Rev'' in accordance with Guideline (8), depending on whether the retroactive filing is in the same docket as or a different docket from the sheet being replaced. The rest of the sheets should be designated as a ''Substitute'' of each sheet already on file. For the first new sheet in the series of sheets, the superseded sheet shall be designated in accordance with Guideline (4) above. However, the remainder of the sheets in the series should supersede each other in order, even though they are all filed in the same docket. In this way, the ''superseded'' designation will reflect the last sheet in effect on each given effective date. (See Examples 5 and 6.)

(10) Canceled Sheets. When filing to cancel a rate schedule, file one sheet with a new revision number and the sheet number of the first canceled sheet. Designate as superseded ''Sheet Nos. ____–____'' where the blanks refer to the first and last canceled sheet numbers in a series. The specific pagination of each individual canceled sheet should be included in the body of the tariff sheet. When using the formerly canceled sheet numbers, refer to the pagination of the sheets listed in the body of the canceling sheet, and paginate each sheet with the next higher revision number. See Example 8.

(11) Sheets Reserved For Future Use. When reserving a number of sheets for future use, file one sheet paginated ''Sheet Nos. ____–____'', where the blanks refer to the first and last reserved sheet numbers in series. In the body of the sheet state ''Reserved for Future Use.'' (See Example 9.) Note: in the electronic tariff sheet records, report the first sheet number in the series in the ''Sheet No.'' field and the full pagination in the ''Sheet ID'' field.

(12) Abbreviations. *Pagination cannot exceed 40 characters.* Abbreviate from left to right using the Abbreviation Conventions List in Exhibit C. *Abbreviate only as needed* to reduce the pagination to 40 characters or less. (See Example 7.) Electronic and paper versions of a tariff sheet must be paginated *exactly* alike, including abbreviations.

BILLING CODE 6717–01–P

Example 1

"Original Sheet No. 4" is filed in Docket No. CP94-44-000 to be effective January 1, 1994. Subsequently, a sheet filed in Docket RP94-1-000 is to be effective February 1, 1994. Paginate that sheet "First Revised Sheet No. 4 superseding Original Sheet No. 4." A mistake is discovered and a corrected sheet needs to be filed in Docket No. RP94-1-001. Paginate that sheet "Substitute First Revised Sheet No. 4 superseding Original Sheet No. 4." Note the superseded sheet is from the prior proceeding.

Docket	Filed	Effective	Pagination	Superseded Sheet
CP94-44-000	11/30/93	1/1/94	Original	
RP94-1-000	12/31/93	2/1/94	First Revised	Original
RP94-1-001	2/15/94	2/1/94	Sub First Revised	Original

Example 2

"Second Revised Sheet No. 4" is filed in Docket No. TM94-1-77-000 to be effective April 1, 1994. Subsequently, a sheet is filed in Docket No. RS94-1-50-000 to be effective on the same date. Paginate that sheet with the next revision number, "Third Revised Sheet No. 4" even though it is to be effective on the same date.

Docket	Filed	Effective	Pagination	Superseded Sheet
TM94-1-77-000	2/28/94	4/1/94	Second Revised	Sub First Revised
RS94-1-50-000	3/31/94	4/1/94	Third Revised	Second Revised

Example No. 3

"Fourth Revised Sheet No. 4" is filed July 31, 1994, in Docket No. RP94-134-000 to be effective September 1, 1994. An order suspends this sheet until February 1, 1995. Subsequently two filings are to be made effective prior to February 1, 1995. Paginate these sheets as "1st Rev Third Revised Sheet No. 4" and "2nd Rev Third Revised Sheet No. 4." When filing to move the suspended tariff sheet into effect, paginate the revised tariff sheet as "Sub Fourth Revised Sheet No. 4". Note: using the alpha-numeric "1st, 2nd" for the additional revision number assists in keeping the pagination clear.

Docket	Filed	Effective	Pagination	Superseded Sheet
RP94-134-000	7/31/94	2/1/95	Fourth Revised	Third Revised
TM94-2-77-000	8/31/94	10/1/94	1st Rev Third Revised	Third Revised

TM94-3-77-000	10/31/94	11/1/94	2nd Rev Third	1st Rev Third
RP94-134-001	1/31/95	2/1/95	Sub Fourth Revised	2nd Rev Third

Example 4

When needing to insert a sheet between "Third Revised" and "Sub Alt Second Revised" with the designation 1st Rev Sub Alt Second Revised, paginate the new sheet "1st Rev Second Revised" (dropping "Sub Alt" from the name), and designate the superseded sheet "Sub Alt Second Revised." In the alternative, the abbreviations in Exhibit C may be used.

Example No. 5

The sheet given in Example No. 1, "Sub First Revised Sheet No. 4" filed in Docket No. RP94-1-001 is in effect February 1, 1994, subject to the resolution of issues. A year later, settlement is reached resulting in a restatement of base rates back to that date. The revised sheets filed under Docket No. RP94-1-002 (using prior examples):

Docket	Filed	Effective	Pagination	Superseded Sheet
RP94-1-002	4/15/95	2/1/94	2nd Sub First Revised	Original
		4/1/94	Sub Second Revised	2nd Sub First
		4/1/94	Sub Third Revised	Sub Second
		10/1/94	Sub 1st Rev Third Revised	Sub Third
		11/1/94	Sub 2nd Rev Third	1st Rev Third
		2/1/95	2nd Sub Fourth Revised	2nd Rev Third

Example No. 6

Continuing from Example 5, a subsequent tracker filing retroactive to November 1, 1994:

Docket	Filed	Effective	Pagination	Superseded Sheet
TM96-1-77-000	4/30/95	11/1/94	3rd Rev Third Revised	Sub 2nd Rev Third
		2/1/95	3rd Sub Fourth Revised	3rd Rev Third

Example No. 7

Abbreviate "Fourth Revised Twenty-Third Revised Sheet No. 4" as "4th Rev Twenty-Third Revised Sheet No. 4."

Example No. 8

To cancel Rate Schedule X-26 which consists of Original Sheet No. 10, First Revised Sheet Nos. 11 through 36, Substitute First Revised Sheet No. 37, and Second Revised Sheet Nos. 38 and 39, file "First Revised Sheet No. 10:"

My Pipeline Company
FERC Gas Tariff
Original Volume No. 1

First Revised Sheet No. 10
Superseding
Sheet Nos. 10 Through 39

Notice of Cancellation

Rate Schedule X-26
Exchange Agreement with YOUR Pipeline Company
Dated January 1, 1980

The following tariff sheets have been superseded:

Original Sheet No. 10
First Revised Sheet Nos. 11 through 36
Substitute First Revised Sheet No. 37
Second Revised Sheet Nos. 38 and 39

Example No. 9

Your general terms and conditions end on page 75 and you want to reserve sheets 76 through 99 for future use:

My Pipeline Company
FERC Gas Tariff
Original Volume No. 1

Sheet Nos. 76 through 99

Sheet Nos. 76 through 99 are reserved for future use.

Exhibit C
Abbreviation Conventions List

Substitute:	Sub
Alternate:	Alt
Revised:	/
First, Second, etc.:	1st, 2nd, etc.
Sheet No.:	(omit these words)

[FR Doc. 96–5165 Filed 3–8–96; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. 96–23]

Changes to Customs List of Designated Public International Organizations: INTERPOL

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the International Criminal Police Organization (INTERPOL) to Customs list of designated public international organizations entitled to certain free entry privileges provided for under provisions of the International Organizations Immunities Act.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Sequeira, Director, International Organizations & Agreements Division, Office of International Affairs (202) 927–1480.

SUPPLEMENTARY INFORMATION:

Background

The International Organizations Immunities Act, 22 U.S.C. 288, generally provides that certain international organizations, agencies, and committees, those in which the United States participates or otherwise has an interest and which have been designated by the President through appropriate Executive Order as public international organizations, are entitled to enjoy certain privileges, exemptions, and immunities conferred by the Act. The Department of State lists the public international organizations, designated by the President as entitled to enjoy any measure of the privileges, exemptions, and immunities conferred by the Act, in the notes following the provisions of Section 288.

One of the privileges provided for under the Act is that the baggage and effects of alien officers, employees, and representatives—and their families, suites, and servants—to the designated organization, are admitted free of duty and without entry. The list of designated organizations entitled to this duty-free entry privilege are delineated at § 148.87(b), Customs Regulations (19 CFR 148.87(b)). Thus, the list of public international organizations maintained by Customs is for the limited purpose of identifying those organizations entitled to the duty-free entry privilege; it does not necessarily include all of the international organizations that are on the list maintained by the Department of State, which delineates all of the international organizations designated by the President regardless of the extent of the privileges conferred.

Executive Order (EO) 12425 of June 16, 1983, 48 FR 28069, 3 CFR part 1983 Comp.p. 193, 19 Weekly Comp.Pres.Doc. 885, designated the International Criminal Police Organization (INTERPOL) as a public international organization with limited privileges; certain privileges, such as duty-free customs entry and exemption from federal internal-revenue importation taxes were not extended to INTERPOL. See T.D. 93–45. Thus, INTERPOL was listed on the Department of State's list of designated international organizations, but not Customs list. By EO 12971 of September 15, 1995, 60 FR 48617, 3 CFR part 1996 Comp.p. ____, 31 Weekly Comp.Pres.Doc. 1572, the President amended EO 12425 in order to extend some of the privileges, exemptions, and immunities to INTERPOL withheld by EO 12425; one being the privilege of duty-free Customs entry. Accordingly, Customs is amending its list of designated public international organizations at § 148.87(b) of the Customs Regulations (19 CFR 148.87(b)) to include INTERPOL.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment merely corrects the listing of designated organizations entitled by law to free entry privileges as public international organizations, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Executive orders, Foreign officials, Government employees, International organizations, Privileges and immunities, Taxes.

Amendment to the Regulations

For the reasons stated above, part 148, Customs Regulations (19 CFR part 148), is amended as set forth below:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority citation for part 148 and the specific authority citation for § 148.87 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States);

* * * * *

Section 148.87 also issued under 22 U.S.C. 288.

* * * * *

2. Section 148.87(b) is amended by adding the following, in appropriate alphabetical order, to the table, to read as follows:

§ 148.87 Officers and employees of, and representatives to, public international organizations.

* * * * *

(b) * * *

Organization	Executive order	Date
*	*	*
International Criminal Police Organization (INTERPOL)—Limited privileges.	12425	June 16, 1983.
	12971	Sep. 15, 1995.
*	*	*

George J. Weise,
Commissioner of Customs.

Approved: February 11, 1996.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–5683 Filed 3–8–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of May 19, 1995 (60 FR 26825). This document amended the regulations for delegations of authority covering the certification of true documents and the use of the Department seal. In the final rule, ''The Director, Office of Food Labeling (CFSAN).'' was inadvertently omitted from the regulation. This document corrects that error.

EFFECTIVE DATE: May 19, 1995.

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

In FR Doc. 95–12398, appearing on page 26825, in the Federal Register of Friday, May 19, 1995, the following correction is made:

§ 5.22 [Corrected]

On page 26826, in the second column, § 5.22 is corrected by adding paragraph (a)(9)(xiii) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(9) * * *

(xiii) The Director, Office of Food Labeling, CFSAN.

* * * * *

Dated: February 2, 1996.

William K. Hubbard,
Associate Commissioner for Policy Coordination.

[FR Doc. 96–5688 Filed 3–8–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8634]

RIN 1545–AT11

Withholding on Distributions of Indian Gaming Profits to Tribal Members; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8634] which were published in the Federal Register for Tuesday, December 19, 1995 (60 FR 65237). The final regulations relate to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes.

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject to this correction are under section 3402 of the Internal Revenue Code.

Need for Correction

As published, TD 8634 contains an error that is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations which are the subject of FR Doc. 95–30683, is corrected as follows:

On page 65237, column one, in the heading, the ''RIN'' ''1545–AT12'' is corrected to read ''1545–AT11''.

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–5728 Filed 3–8–96; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI64–01–7148a; FRL–5416–8]

Approval and Promulgation of State Implementation Plan; Wisconsin; Clean-Fuel Fleet Program

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action, U.S. Environmental Protection Agency (USEPA) is approving a revision to the Wisconsin State Implementation Plan (SIP) for the purpose of establishing a Clean-Fuel Fleet Program. Wisconsin submitted the SIP revision request to satisfy a federal mandate, found in the Clean Air Act, requiring certain states to establish Clean-Fuel Fleet Programs. This revision establishes and requires the implementation of a Clean-Fuel Fleet Program in the Milwaukee ozone nonattainment area.

DATES: This ''direct final'' rule is effective May 10, 1996, unless USEPA receives adverse or critical comments by April 10, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to: Carlton T. Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AP–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson at (312) 353–4779.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1977 Clean Air Act (CAA), codified at 42 U.S.C. 7401–7671q. The Clean-Fuel Fleet Program (CFFP) is contained under Part C, entitled ''Clean Fuel Vehicles,'' of Title II of the Clean Air Act. Part C was added to the CAA to establish two programs, a clean-fuel vehicle pilot program in the state of California (the California Pilot Test Program) and a federal CFFP in certain ozone and carbon monoxide (CO) nonattainment areas.

The CFFP will introduce lower pollution emitting vehicles, ''clean-fuel vehicles'' (CFVs), into centrally-fueled fleets by requiring covered fleet operators to include a percentage of CFVs in their new fleet purchases. The goal of the CFFP is to reduce emissions of non-methane organic gasses (NMOG), oxides of nitrogen (NOx), and CO through the introduction of CFVs into the covered areas. Both NMOG and NOx are precursors of ozone and, in most areas, their reduction will reduce the concentration of ozone in covered ozone nonattainment areas. Reductions of vehicular CO emissions will reduce the

concentration of CO in covered CO nonattainment areas.

Congress chose centrally-fueled fleets because operators of these fleets have more control over obtaining fuel than the general public. Additionally, the control that operators maintain over their fleets simplifies maintenance and refueling of these vehicles. Finally, because fleet vehicles typically travel more miles on an annual basis than do non-fleet vehicles, they provide greater opportunity to improve air quality on a per vehicle basis.

Section 182(c)(4) of the CAA allows states to opt-out of the CFFP by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emission reductions in ozone producing and toxic air emissions as the CFFP. The EPA may approve such a revision ''only if it consists exclusively of provisions other than those required under the [CAA] for the area.''

II. Program Requirements

Unless a state chooses to opt-out of the CFFP under section 182(c)(4) of the CAA, section 246 of the CAA directs a state containing covered areas to revise its SIP, within 42 months after enactment of the CAA, to establish a CFFP. The CFFP shall require a specified percentage of all newly acquired vehicles of covered fleets, beginning with model year (MY) 1998 and thereafter, to be CFVs and such vehicles shall use the fuel on which the vehicle was certified to be a CFV (or to use a fuel that will result in even fewer emissions than the fuel that was used for certification), when operating in the covered area.

III. State Submittal

The state of Wisconsin did not choose to opt-out of the CFFP pursuant to section 182(c)(4) of the CAA and, therefore, submitted a SIP revision on May 12, 1994, to implement a CFFP. However, because this submittal did not include a fully adopted rule establishing a CFFP, EPA deemed the submittal incomplete. On June 7, 1995, the state made a supplemental submittal that included a fully adopted CFFP rule. On July 20, EPA determined that the state's SIP submittal for a CFFP was complete.

IV. EPA's Analysis of the State's Clean Fuel Fleet Program

EPA has reviewed the state's submittal for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. More detailed support for approval of the state's submittal is contained in a Technical Support Document (TSD), dated September 6, 1995, which is available from the Region 5 Office, listed above.

A. Covered Areas

The SIP revision needs to list those areas where the CFFP will be implemented, as required by section 246(a)(2) of the CAA. In Wisconsin, the applicable areas defined by section 246(a)(2) include Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties.

Section NR 487.01(1) of the Wisconsin Administrative Code defines the covered area to include Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties. These are the same counties as required by the CAA.

B. Definitions

Sections 241(1) to (7) of the CAA, and 40 CFR 88.302–94, define specific terms that are to be used in the state regulations.

NR 487.02 contains definitions of the terms used by Wisconsin in the CFFP rule. The revision's definitions are consistent with section 241(1) to (7) of the CAA as well as 40 CFR 88.302–94.

C. Covered Fleets

Section 241(5) of the CAA defines a ''covered fleet'' as 10 or more motor vehicles that are owned or operated by a single person.

NR 487.01(1) and 487.02, taken together, identify the vehicles/fleets that are included in Wisconsin's CFFP, and are consistent with section 241(5) of the CAA.

D. Vehicles Classes Covered

Sections 242 and 243 of the CAA and 40 CFR part 88, subpart C, define the vehicle classes covered by the CFFP. Additionally, section 245(a) of the CAA exempts from the CFV standards vehicles having a Gross Vehicle Weight Rating (GVWR) of more than 26,000 pounds.

NR 487.02(6) and (7) define the vehicle classes covered by the Wisconsin CFFP. The classes of vehicles included in the Revision are identical to those set forth in sections 242 and 243 of the CAA and 40 CFR part 88, subpart C, including the 26,000 pound GVWR exemption.

E. Clean-Fuel Vehicles (CFVs)

Section 241(7) of the CAA defines a CFV to mean a vehicle in a class or category of vehicles that has been certified to meet for any model year the applicable CFV standards. 40 CFR 88.104–94 and 40 CFR 88.306–94 establish three categories of increasingly stringent CFV standards, which are referred to as low-emission vehicle (LEV) standards, ultra low-emission vehicle (ULEV) standards, and zero-emission vehicle (ZEV) standards. In addition, a vehicle certified by the EPA to meet the inherently low-emission vehicle (ILEV) standard, found in 40 CFR 88.311–93, is also considered a CFV.

NR 487.02(6) defines a CFV as a vehicle which has been certified to meet, for any model year, a set of emission standards, contained in Table I of the CFFP rule. The standards specified in the rule are the same as those established in 40 CFR 88.104–94, 40 CFR 88.311–93, and 40 CFR 88.306–944.

F. Percentage Requirements

Section 246(b) of the CAA establishes phase-in requirements for covered fleets applicable to new vehicle acquisitions.

NR 487.03 contains the CFV purchase requirements for the Wisconsin's CFFP. The phase-in schedule in Wisconsin's rule is identical to the schedule in the CAA.

G. Credit Program

Section 246(f) of the CAA and 40 CFR 88.304–94 require the state to implement a credit program as part of the CFFP. Briefly, the Clean-Fuel Fleet (CFF) credit program establishes a market-based mechanism that allows fleet owners some flexibility in complying with the CFF purchase requirement. Fleet owners may meet the purchase requirements in any of several ways: (1) By the purchase of more CFVs than the minimum required by a CFFP; (2) by the purchase of CFVs which meet more stringent emission standards than the minimum required by the CFFP; (3) by the purchase of CFVs otherwise exempt from the CFFP; and (4) by the purchase of CFVs before MY 1998.

The credits generated may be used by a covered fleet operator to satisfy the purchase requirements of a CFFP or may be traded by one covered fleet operator to another, provided the credits were generated and used in, and both operators are located in, the same nonattainment area. Certain restrictions on the trading of the credits between classes must be observed. The credits do not depreciate with time and are to be freely traded without interference by the state.

NR 487.09 establishes a credit program that provides credits for operators who: (1) acquire more CFVs than the Wisconsin CFFP requires in any year; (2) acquire CFVs which meet more stringent emission standards than the minimum requirements; (3) acquire

CFVs in exempted vehicle categories; or (4) acquire CFVs after November 15, 1990, but prior to MY 1998. These eligibility requirements are consistent with section 246(f) of the CAA.

NR 487 includes Tables 3, 4, 6, and 7, which set forth the amount of credit granted for the various ways of meeting the purchasing requirements explained above. These tables are identical to Tables C94–2, C94–2.2, C94–4, and C94–4.2 of 40 CFR part 88, subpart C.

The revision requires credits for LDV and HDV to be kept separate. Trading of credits between LDV and LDT is permitted. However, trading is not allowed between HDV and LDV or LDT or in an upward direction. These limitations and restrictions are consistent with those specified in section 246(f)(2) of the CAA.

H. Fuel Use

40 CFR 88.304–94(b)(3) requires that the fuel on which a dual fuel/flexible fuel CFV was certified to be used at all times when the vehicle is in the covered area.

NR 487.03(3) requires that for any dual-fuel/hybrid electric vehicle to be considered a CFV (and therefore capable of generating credit), the vehicle must be operated, while in the covered area, on the fuel or power source, for which it was certified to meet applicable emission standards.

I. Fuel Availability

Section 246(e) of the CAA requires the SIP revision to require fuel providers to make clean alternative fuel available to the covered fleets at central locations.

NR 487.12 requires fuel providers to make clean alternative fuels available to covered fleet operators at central locations where technically and economically feasible.

J. Consultation

Section 246(a)(4) of the CAA requires that the SIP revision must be developed in consultation with fleet operators, vehicle manufacturers, fuel producers, distributors of motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values, and other relevant factors.

The Wisconsin Department of Natural Resources (WDNR) organized a consultation committee, called the Clean-Fuel Fleet Committee. The Committee met several times and included representatives from fleet owners, fleet operators, fuel providers, and environmentalists. The Committee took into consideration the factors specified in section 246(a)(4) of the CAA.

K. Recordkeeping and Monitoring

No specific recordkeeping and monitoring requirements are found in section 246 of the CAA or 40 CFR 88.304–94. However, EPA ensures that a number of questions are answered in order to determine the adequacy of a CFFP. 60 FR 54305 (Oct. 23, 1995).

(1) Does the SIP revision provide a reasonable process for the state to determine which fleets should report data to the state, consistent with the state's approach to ''operated in the covered area''?

(2) Is there a process for updating this list of potentially covered fleet operators?

(3) Does the SIP revision include a process for the state agency to receive at least the following data from fleet operators:

(a) Numbers, categories, and fueling patterns of vehicles in the fleet?

(b) Numbers, engine family names, categories, and fueling patterns of new acquisitions?

(c) Numbers, engine family names, categories, and fueling patterns of CFV acquisitions?

(d) For dual-fuel/flexible-fuel vehicles, data on fuel usage sufficient to demonstrate that the proper fuel was used when the vehicle was operated in the covered area?

(4) Does the SIP revision describe how the data will be processed, maintained, updated, and used to confirm compliance by fleets?

(5) Does the SIP revision provide for oversight of the data acquisition process?

Information and actions responsive to these questions are provided as follows:

NR 487.05 requires any person who operates a fleet of 10 or more CFVs to register with the WDNR.

NR 487.05 also requires the registration to include some information responsive to the questions above. In addition, NR 487.06 requires covered fleet operators to submit annual compliance plans to WDNR. All information required in 3(a) to 3(d) above, as well as other information, is included in these requirements. The information is reported on balance sheets and item sheets which allows the WDNR to monitor the performance of the operators. WDNR will review the annual compliance plans for approval or disapproval in keeping with NR 487.08.

L. Enforcement

The state must be able to adequately enforce the requirements of the regulations adopted for implementation of the CFFP. 60 FR 54305 (Oct. 23, 1995).

NR 487.14 is the enforcement section of the Wisconsin CFFP. This section states that fleet operators are subject to WDNR enforcement procedures and penalties if they fail to comply with any requirement of NR 487.

M. Transportation Control Measure Exemptions

40 CFR 88.307–94(a) requires states to exempt any CFV, required by law to participate in a CFFP, from temporal-based (e.g., time-of-day or day-of-week) transportation control measures (TCM) existing for air quality reasons as long as the exemption does not create a clear and direct safety hazard. In the case of high occupancy vehicle (HOV) lanes, this exemption only applies to CFVs that are certified to be ILEVs pursuant to 40 CFR 88.313–93.

NR 487.10 exempts CFVs from temporal based TCMs as long as the CFV is in compliance with applicable emission standards. In addition, NR 487.10(3) specifically exempts ILEVs from HOV restrictions. These TCM restrictions are consistent with those provided for in 40 CFR 88.307–94 and 40 CFR 88.313–93.

N. Concluding Statement

The EPA has reviewed the Wisconsin CFFP SIP revision submitted to the EPA as described above. The materials contained in the SIP revision represent an acceptable approach to the CFFP requirements and meet all the criteria required for approvability.

V. Action

The EPA approves Wisconsin's CFFP SIP submittal. With this action, EPA incorporates Wisconsin's CFFP SIP revision into the SIP, making it federally enforceable.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on May 10, 1996. However, if we receive significant adverse comments by April 10, 1996, EPA will publish a document that modifies or withdraws this action.

VI. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of the regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of the state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector.

This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 17, 1996.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(87) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(87) The state of Wisconsin requested a revision to the Wisconsin State Implementation Plan (SIP). This revision is for the purpose of establishing and implementing a Clean-Fuel Fleet Program to satisfy the federal requirements for a Clean Fuel Fleet Program to be part of the SIP for Wisconsin.

(i) Incorporation by reference.

(A) Chapter 487 of the Wisconsin Administrative Code, effective June 1, 1995.

(B) Wisconsin Statutes, section 144.3714, enacted on April 30, 1992, by Wisconsin Act 302.

* * * * *

[FR Doc. 96–5735 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MO–30–1–7152a; FRL–5424–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives conditional approval to the State Implementation Plan (SIP) submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151.

DATES: This action will be effective May 10, 1996, unless by April 10, 1996, adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (CAA), as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and Part D of the Act. Conformity to an SIP is defined in the Act as meaning conformity to an SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. On November 30, 1993, EPA promulgated the final rule (hereafter referred to as the General Conformity rule), which establishes the criteria and

procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The St. Louis area was designated nonattainment for ozone and carbon monoxide (CO) in 1978. On November 6, 1991, EPA promulgated a rule which classified the St. Louis area as a moderate ozone nonattainment area, and as an unclassified nonattainment area for CO. In this same rulemaking, EPA promulgated nonattainment designations for three areas in Missouri which failed to achieve the NAAQS for lead. The nonattainment areas are identified as portions of Iron County, Missouri, in the vicinity of the Asarco primary lead smelting facility; the area surrounding the Doe Run primary/secondary lead smelter-refinery installation near Boss, Missouri; and the area in the vicinity of the Doe Run primary lead smelter in Herculaneum, Missouri. Kansas City was redesignated to attainment for ozone, and a maintenance plan was approved, in a June 23, 1992, Federal Register notice. Section 51.851 (93.151) of the General Conformity rule requires that states submit an SIP revision containing the criteria and procedures for assessing the conformity of Federal actions to the applicable SIP, within 12 months after November 30, 1993. As the rule applies to all nonattainment areas and maintenance areas, an SIP revision which addresses the requirements of the General Conformity rule became due on November 30, 1994.

II. Review of State Submittal

On February 14, 1995, the state of Missouri submitted a General Conformity SIP revision. The submission included Missouri rule 10 CSR 10–6.300 (10–6.300), which applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is an NAAQS. The General Conformity rule establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and nonfederal entities.

The state of Missouri chose to use the model General Conformity rule developed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO model rule added clarifying changes consistent with the intent of the Federal rule. The STAPPA/ALAPCO rule also contains ''more stringent'' and ''lateral'' options which change the substance of the Federal rule. Missouri did not adopt any of these options from the model rule.

Missouri rule 10 CSR 10–6.300 was adopted by the Missouri Air Conservation Commission, after proper notice and public hearing, on January 12, 1995, and became effective on May 28, 1995. The rule applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is an NAAQS.

III. Conditional Approval

EPA has determined that SIP revisions which use, verbatim, the model rule developed by STAPPA/ALAPCO are not approvable. Two sentences added by STAPPA/ALAPCO as clarifying language make the model rule more stringent than the Federal General Conformity rule. Missouri rules 10 CSR 10–6.300(3)(C)4 and (9)(B)2 include this language. EPA did not make a determination as to the approvability of the language in the STAPPA/ALAPCO rule until after the state of Missouri officially submitted the required SIP revision. However, in a letter dated December 7, 1995, from David Shorr, Director, Missouri Department of Natural Resources (MDNR), to Dennis Grams, Regional Administrator, EPA, the state has committed to change the unapprovable sections and resubmit the SIP revision, within one year from December 7, 1995.

Under section 110(k)(4) of the Act, EPA may grant a conditional approval of this revision based on the state's commitment to correct deficiencies by a date certain, but not later than one year after the date of approval of the plan revision. Furthermore, section 110(k)(4) of the Act states that, should the state fail to meet its commitment, this conditional approval will convert to a disapproval. As the state has committed to correct this SIP revision within one year from December 7, 1995, EPA grants a conditional approval of the state's submittal.

EPA ACTION

By this action, EPA grants conditional approval of Missouri's February 14, 1995, submittal. This SIP revision substantially meets the requirements set forth in 40 CFR 51.851 and 93.151, except as noted above.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's

disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities, because it does not remove existing state requirements or substitute a new Federal requirement.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. EPA has determined that these rules result in no additional costs to tribal government.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(93) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(93) On February 14, 1995, the Missouri Department of Natural Resources (MDNR) submitted a new rule which pertains to general conformity.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–6.300, entitled Conformity of General Federal Actions to State Implementation Plans, effective May 28, 1995.

3. Section 52.1323 is amended by adding paragraph (h) to read as follows:

§ 52.1323 Approval Status.

* * * * *

(h) The state of Missouri commits to revise 10 CSR 6.300 to remove language in paragraphs (3)(C)4. and (9)(B) which is more stringent than the language in the Federal General Conformity rule. In a letter to Mr. Dennis Grams, Regional Administrator, EPA, dated December 7, 1995, Mr. David Shorr, Director, MDNR, stated:

We commit to initiating a change in the wording in the above paragraphs [paragraphs (3)(C)4. and (9)(B)] of Missouri rule 10 CSR 10–6.300, and to submit the change to EPA within one year from the date of this letter [December 7, 1995]. We intend that the change will give our rule the same stringency as the General Conformity Rule.

[FR Doc. 96–5733 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH89–1–7254a; FRL–5434–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: This document approves a State Implementation Plan (SIP) revision for the State of Ohio for the general conformity rules. The general conformity SIP revisions enable the State of Ohio to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level. General Conformity assures that federal actions conform to the State plan to attain and maintain the public health based air quality standards. The rationale for the approval and other information is provided in this document.

DATES: This action is effective May 10, 1996 unless adverse comments are received by April 10, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision are available for inspection at the following address: (It is recommended that you telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the Clean Air Act (CAA) amendments of 1977 (Pub. L. 95–95). Although these provisions did not define the term conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment or maintenance areas.

The CAA Amendments of 1990 expanded the scope and content of the

conformity provisions by defining conformity to an implementation plan. Conformity is defined in Section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires USEPA to promulgate criteria and procedures for determining conformity of all other Federal actions in the nonattainment or maintenance areas (actions other than those under Title 23 U.S.C. or the Federal Transit Act) to a SIP. The criteria and procedures developed for this purpose are called ''general conformity'' rules. The actions under Title 23 U.S.C. or the Federal Transit Act will be addressed in a separate Federal Register document. The USEPA published the final general conformity rules in the November 30, 1993, Federal Register and codified them at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the USEPA not later than November 30, 1994.

II. Evaluation of State Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the CAA, as amended November 15, 1990, the Ohio Environmental Protection Agency (OEPA) submitted a State Implementation Plan (SIP) revision to the USEPA on August 17, 1995. The submittal was found complete on October 5, 1995. In its submittal, the State adopted rules (Ohio Administrative Code OAC 3745–102–01,-02,-03,-04,-05,-06,-07) which repeat verbatim the USEPA general conformity rule (40 CFR Part 93 Subpart B) with only minor clarifications. General conformity is required for all areas which are designated nonattainment or maintenance for any of the six National Ambient Air Quality Standard (NAAQS) criteria pollutants (ozone, carbon monoxide, sulfer dioxide, nitrogen dioxide, lead, and particulate matter).

The OEPA held a public hearing on the general conformity submittal on May 25, 1995. No comments were received by OEPA during the public comment period. Before the public comment period, the OEPA also mailed a copy of the rules to government agencies located in Ohio which would be affected by the rules and requested comments on the rules.

III. USEPA Action

The USEPA is approving the general conformity SIP revision for the State of Ohio. The EPA has evaluated this SIP revision and has determined that the State has fully adopted regulations which meet the provisions of the Federal general conformity rules in accordance with 40 CFR Part 93 Subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this rule by the OEPA. As stated earlier, the OEPA held a public hearing on the general conformity submittal on May 25, 1995. No comments were received by OEPA during the public comment period.

The USEPA considers this action noncontroversial and routine. Therefore, we are approving it without prior proposal. This action will become effective on May 10, 1996 unless USEPA receives adverse comments by April 10, 1996. However, if USEPA receives adverse comments by April 10, 1996, USEPA will publish a document that withdraws this action.

IV. Miscellaneous

A. *Applicability to Future SIP Decisions*

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. *Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. *Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

D. *Petitions for Judicial Review*

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, General conformity.

Dated: February 12, 1996.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c) (107) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(107) Approval—On August 17, 1995, the Ohio Environmental Protection Agency submitted a revision to the State Implementation Plan for general conformity rules. The general conformity rules enable the State of Ohio to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(i) *Incorporation by reference.* August 1, 1995, Ohio Administrative Code Chapter 3745–102, effective August 21, 1995.

[FR Doc. 96–5737 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 112, 114, and 117

[FRL–5432–9]

Oil Discharge Program; Removal of Legally Obsolete Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) rules pertaining to the oil and hazardous substances discharge program promulgated under the Clean Water Act (''CWA'') which apply only to violations that occurred prior to enactment of the Oil Pollution Act of 1990 (''OPA''). Because EPA is unaware of any on-going penalty actions for pre-OPA violations, it is deleting these rules from the CFR.

EFFECTIVE DATE: This final rule takes effect on March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Kevin Mould, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, mail code 5202G, phone (703) 603–8728; or the RCRA/Superfund Hotline, phone (800) 424–9346 or (703) 603–9232 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the CWA. 33 U.S.C. 1251 *et seq.* Based upon this review, EPA is today eliminating the following obsolete CWA rules from the CFR: 40 CFR section 112.6, Part 114, and section 117.22.

II. Obsolete Rules

Civil Penalties for Violation of the Oil Pollution Prevention Regulations (Section 112.6 and Part 114)

The civil penalty provision of the oil pollution prevention regulations (40 CFR 112.6), and the related civil penalty provisions and procedures at 40 CFR part 114 were promulgated in 1974 pursuant to section 311(j) of the CWA. 39 FR 31602, August 29, 1974. Part 112 sets out, for onshore and offshore non-transportation-related facilities, requirements designed to prevent discharges of oil into or upon ''navigable waters and adjoining shorelines.'' 40 CFR 112.6 and 114.1 each provide that violations of the oil pollution prevention regulations may result in the assessment of an administrative penalty of not more than $5,000 per day of violation. 40 CFR 112.6 and 114.1 are based on authority in CWA section 311(j)(2), which, before its amendment by the Oil Pollution Act of 1990 (OPA), limited civil penalties assessed for violations of regulations issued under section 311(j) to ''not more than $5,000 for each such violation.''

OPA repealed CWA section 311(j)(2) and amended CWA section 311(b)(6) to provide that violators of CWA section 311(j) may be assessed a Class I penalty of up to $10,000 per violation (up to a maximum assessment of $25,000), or a Class II penalty of up to $10,000 per day of violation (up to a maximum assessment of $125,000). Further, section 311(b)(6) now provides for different administrative proceedings for these two classes of penalties. Respondents in Class I cases are given a reasonable opportunity to be heard and to present evidence, but the hearing need not meet the requirements of the Administrative Procedure Act (APA) for formal adjudications (5 U.S.C. 554). Class II hearings, however, are on the record and subject to 5 U.S.C. 554.

As a result of these OPA-enacted changes in both the penalty amounts and the procedures needed to be followed in issuing penalties, EPA amended section 112.6 and Part 114 to ensure that the provisions would be applicable only to violations of the Oil Pollution Prevention regulations contained in 40 CFR Part 112 which occurred prior to enactment of OPA (August 18, 1990). 57 FR 52704 (Nov. 4, 1992). At the present time—more than five years after enactment of OPA—EPA is unaware on any on-going penalty actions for violations of the Part 112 regulations which occurred prior to August 18, 1990. EPA is therefore deleting section 112.6 and Part 114 from the CFR.

As explained in a prior Federal Register notice, EPA will use two sets of procedures for assessing administrative penalties for violations of CWA section 311(b)(3) occurring after August 18, 1990. 57 FR 52704 (Nov. 4, 1992). For Class I penalties, the Agency follows generally the procedures set forth in the proposed 40 CFR 28, Non-APA Consolidated Rules of Practice for Administrative Assessment of Civil Penalties. 56 FR 29996 (July 1, 1991). For the assessment of CWA section 311 Class II penalties, the Agency uses as guidance the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits at 40 CFR 22.

Notification of Hazardous Substances Discharge(s) and Prohibition Against Unauthorized Discharges

40 CFR 117 generally establishes the reportable quantities for CWA hazardous substances designated under 40 CFR 116 for purposes of CWA section 311. 40 CFR 117.21 sets out the notification requirement for discharges of designated hazardous substances pursuant to CWA section 311(b)(5). 40 CFR 117.22(b) provides that violation(s) of the notification requirement may result in a fine of not more than $10,000

or imprisonment for not more than one year, or both. However, 40 CFR 117.22(b) is based on language in former CWA section 311(b)(5), which was amended by OPA. Section 4301 of OPA amended CWA section 311(b)(5) to provide that any person convicted of violation of the notification requirement in CWA section 311(b)(5) be ''fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.'' 33 U.S.C. 1321(b)(5). As a result of this change in the penalty provision enacted by OPA, EPA amended section 117.22 by making it applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act. 40 CFR 117.22(a); see 57 FR 52704 (Nov. 4, 1992).

40 CFR 117.22(c) provides that an owner, operator or a person in charge of a vessel or facility that has discharged a designated hazardous substance exceeding the reportable quantity may be subject to a civil administrative penalty assessment of up to $5,000 per violation. The regulation also states that the Agency may pursue a judicial civil penalty action, seeking up to $50,000 per violation; where the discharge resulted from willful negligence or willful misconduct, the maximum judicial civil penalty is $250,000. 40 CFR 117.22(c) is based on language in former CWA section 311(b)(6)(A), which was amended by OPA.

As indicated above, section 4301 of OPA repealed CWA section 311(b)(6) and replaced it with a new penalty assessment framework. CWA section 311(b)(6) now provides that violators of the prohibition against unauthorized discharges in section 311(b)(3) may be assessed a Class I penalty of up to $10,000 per violation (up to a maximum assessment of $25,000) or a Class II penalty of up to $10,000 per day of violation (up to a maximum assessment of $125,000). 33 U.S.C. 1321(b)(6)(B). Section 4301 of OPA also added CWA section 311(b)(7), which provides for the judicial assessment of civil penalties for violations of CWA section 311(b)(3) of up to ''$25,000 per day of violation'' or up to ''$1,000 per barrel of oil or unit of reportable quantity of hazardous substances.'' For violations of section 311(b)(3) that are a result of gross negligence or willful misconduct, the violator now is subject to a civil penalty of ''not less than $100,000 and not more than $3,000 per barrel or oil or unit of reportable quantity or hazardous substance discharged.''

As a result of the changes in penalties for prohibited discharges of CWA hazardous substances as enacted by the OPA, EPA amended section 117.22(c) to make it applicable only to violations of the discharge prohibition which occurred prior to August 18, 1990, the date of enactment of the Oil Pollution Act. 40 CFR 117.22(a); see 57 FR 52704 (Nov. 4, 1992). At the present time, EPA is unaware of any on-going administrative penalty actions for violations of the notification requirements in CWA section 311(b)(5) or the discharge prohibitions for hazardous substances in CWA section 311(b)(3) which occurred prior to August 18, 1990. All violations of the notification requirements and discharge prohibitions which have occurred or will occur since enactment of OPA will be subject to the different penalty provisions contained in CWA sections 311(b)(6) and 311(b)(7), as amended by OPA. Furthermore, CWA section 311, as amended by OPA, itself provides all the necessary legal authorities establishing penalties for the violation of section 311(b)(5) notification requirements and section 311(b)(3) discharge prohibitions. EPA is therefore deleting 40 CFR section 117.22 from the Code of Federal Regulations.

III. Good Cause Exemption From Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. § 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. § 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. As discussed in Sections I and II, EPA is unaware of any proceedings pending under these rules. Withdrawing them will affect only the few, if any, future proceedings that may be initiated for pre-OPA violations.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. § 553(d).

IV. Differentiation between Classes of Oil

The Edible Oil Regulatory Reform Act, Public Law 104–55, requires most federal agencies to differentiate between and establish separate classes for (1) animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin and (2) other greases and oils, including petroleum, when issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil or grease. EPA has determined that no differentiation between these classes of oil is necessary for the portions of this rule that relate to the discharge of oil (Part 114 and section 112.6). This rule imposes no substantive requirements; instead the rule merely deletes provisions of the oil pollution prevention program that are legally obsolete for the reasons stated above.

V. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

For the above reasons, this action is not a ''significant'' regulatory action within the meaning of E.O. 12866. It also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, this action would not impose any requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 112

Environmental protection, Oil pollution penalties, Reporting and recordkeeping requirements.

40 CFR Part 114

Administrative practice and procedure, Oil pollution, Penalties.

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

Dated: February 15, 1996.

Elliott P. Laws,

Assistant Administrator Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, under the authority at 33 U.S.C. 1361(a), title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 112—[AMENDED]

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

§ 112.6 [Removed]

2. Section 112.6 is removed.

PART 114—[REMOVED]

3. Part 114 is removed.

PART 117—[AMENDED]

4. The authority citation for part 117 continues to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S. C. 1251 et seq.), (''the Act'') and E.O. 11735 superseded by E.O. 12777 56 FR 54757.

§ 117.22 [Removed]

5. Section 117.22 is removed.

[FR Doc. 96–5710 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–433; RM–5994 and RM–6181]

Radio Broadcasting Services; Barnesboro, Brookville, Indiana, Johnsonburg, Punxsutawney, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Strattan Broadcasting, licensee of Station WMKX(FM), Channel 240A, Brookville, Pennsylvania, grants Strattan's rule making petition (RM–5994) seeking the upgrade of its Class A channel in Brookville on non-adjacent Channel 288B1. *See Notice of Proposed Rule Making,* 52 FR 39254 (October 21, 1987). The Commission dismisses the counterproposal (RM–6181) of Renda Radio, Inc., licensee of Station WPXZ-FM, Channel 288A, Punxsutawney, Pennsylvania. The Commission also allots Channel 277B1 as an alternative equivalent channel at Brookville, as requested by Strattan in its comments. To accommodate these allotments to Brookville, we also order four channel substitutions: Channel 281A in lieu of Channel 288A at Punxsutawney, Pennsylvania, and the modification of the authorization of Station WPXZ-FM accordingly; Channel 263A in lieu of Channel 277A at Johnsonburg, Pennsylvania; Channel 223A in lieu of Channel 276A at Indiana, Pennsylvania; and Channel 228A for Channel 223A at Barnesboro, Pennsylvania. *See* Supplemental Information, *infra*.

DATES: Effective April 18, 1996. The window period for filing applications will open on April 18, 1996 and close on May 20, 1996.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 87–433, adopted February 16, 1996 and released March 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

The Commission orders modification of the licenses of Station WMKX(FM), Brookville, to specify operation on Channel 288B1; of Station WPXZ-FM, Punxsutawney, to specify operation on Channel 281A; and of Station WQMU, Indiana, to specify operation on Channel 223A. Channel 288B1 can be allotted to Brookville in compliance with the Commission's spacing requirements at coordinates North Latitude 41–09–36 and West Longitude 79–04–54. Channel 277B1 can also be allotted to Brookville in compliance with the Commission's spacing requirements at coordinates North Latitude 41–02–12 and West Longitude 79–06–06. Channel 263A can be allotted to Johnsonburg in compliance with the Commission's spacing requirements at either a site located at coordinates North Latitude 41–29–24 and West Longtitude 78–40–36. With this action, the proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 288B1 and Channel 277B1 and removing Channel 240A at Brookville; by adding Channel 281A and removing Channel 288A at Punxsutawney; by adding Channel 263A and removing Channel 277A at Johnsonburg; adding Channel 223A and removing Channel 276A at Indiana; and by adding Channel 228A and removing Channel 223A at Barnesboro.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–5429 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[CS Docket No. 96–40; FCC 96–84]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: This Order establishes interim rules to implement Section 641 of the Communications Act, including establishing the hours of the day when a significant number of children are likely to view sexually explicit adult programming or other indecent programming on any channel of the service of a multichannel video programming distributor primarily dedicated to sexually-oriented programming if such programming is not fully blocked or fully scrambled. Section 505 of the Telecommunications Act directs the Commission to establish these hours. In this Order, the Commission determines that the hours of 6 a.m. to 10 p.m. are the hours when such programming may not be shown if not fully scrambled or fully blocked.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION, CONTACT: Meryl S. Icove, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order in CS Docket No. 96–40, FCC 96–84, adopted March 4, 1996 and released March 5, 1996. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

Synopsis of Order

1. On February 8, 1996, the Telecommunications Act of 1996 (''1996 Act''), Pub. L. No. 104–104, 110 Stat. 56 (1996), was enacted. Section 505 of the 1996 Act amends the Communications Act by adding a new Section 641, entitled ''Scrambling of Sexually Explicit Adult Video Service

Programming.'' Section 641(a) requires that multichannel video programming distributors (''MVPDs'') fully scramble or fully block sexually explicit adult programming or other indecent programming on any channel of its service primarily dedicated to sexually-oriented programming so that a nonsubscriber does not receive such programming. Section 641(b) provides that, until the MVPD fully scrambles such programming, it may not provide such programming during the hours of the day when a significant number of children are likely to view such programming. Section 641(b) further requires that the Commission determine those hours. Section 641(c) also provides a definition of ''scramble:'' ''to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.'' These provisions take effect 30 days after the date of enactment of the 1996 Act, i.e., March 9, 1996. In this Order the Commission adopts a rule incorporating Section 641(a). The Commission also establishes an interim rule implementing Section 641(b), providing that the programming described in subsection (a) may not be provided between the hours of 6 a.m. and 10 p.m. if not fully scrambled or fully blocked. The NPRM adopted with this Order on March 4, 1996, requests comment on whether the interim rule should be adopted as a final rule. Finally, the NPRM requests comment on other issues regarding implementation and enforcement of these rules.

2. We herein establish a rule incorporating the self-effectuating language of Section 641(a). We are adding this rule without providing prior public notice and comment because the rule simply incorporates a provision of the 1996 Act. The Commission's action involves no discretion. Accordingly, notice and comment would serve no purpose and is thus unnecessary, and this action falls within the ''good cause'' exception of the Administrative Procedure Act (''APA''). See 5 U.S.C. 553(b)(B).

3. We establish an interim rule implementing Section 641(b) regarding the hours during which MVPDs may not provide sexually explicit adult programming or other indecent programming on any channel primarily dedicated to sexually-oriented programming if it is not fully scrambled or fully blocked. We find that good cause exists to establish an interim rule without notice and comment because Section 641 takes effect 30 days after enactment of the 1996 Act, making it impracticable to engage in notice and comment procedures.

4. This interim rule is based on a closely analogous, existing Commission rule. The Commission's current rule regarding broadcast indecency prohibits the licensee of a radio or television broadcast station from broadcasting between 6 a.m. and 10 p.m. any material which is indecent. 47 CFR 73.3999. This rule is based on an extensive administrative record and judicial review of the regulation of indecent programming. The United States Court of Appeals for the District of Columbia Circuit upheld a 10 p.m. to 6 a.m. safe harbor in *Action for Children's Television* v. *FCC*, and the United States Supreme Court denied certiorari. 58 F.3d 654 (D.C. Cir. 1995) (en banc), *cert. denied*, 64 USLW 3465 (Jan. 8, 1996). We are aware of no relevant differences here that would justify a different interim rule. Accordingly, based upon that closely related proceeding, we adopt an interim rule requiring that, until an MVPD complies with the scrambling/blocking requirement in new Section 641(a), the MVPD may not provide sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming between the hours of 6 a.m. and 10 p.m.

5. We define ''indecent'' programming here on an interim basis the same as in other video programming contexts: any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable or other MVPD medium. *See Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987); 47 CFR §§ 76.701(g). We believe it is clear that the term ''sexually explicit adult programming'' in Section 641(a) is merely a subset of the term ''programming that is indecent.'' To the extent that this language could be viewed as ambiguous, we interpret it to include only indecent programming. As to the applicability of Section 641(a) only to channels ''primarily dedicated to sexually-oriented programming,'' we believe the statute is clear regarding what channels Section 641(a) applies to, but unless and until we adopt a definition of that term we will rely on the good faith judgment of MVPDs regarding its definition. We note that Section 641 only requires that MVPDs fully scramble or otherwise fully block the video and audio portion of channels primarily dedicated to sexually-oriented programming ''[i]n providing sexually explicit adult programming or other programming that is indecent.'' Thus, we interpret the provision as not requiring the scrambling of programming that is not indecent even if provided on a channel primarily dedicated to sexually-oriented programming.

6. To the extent that compliance with Section 641 conflicts with any Commission rules requiring cable operators to give advance written notice to subscribers or local franchising authorities of certain changes in their service, those rules are waived. See 47 CFR §§ 76.309(c)(3)(i)(B), 76.964. To the extent that compliance with Section 641 conflicts with any state or local notice requirements, those requirements are preempted by Section 641 itself, which requires that MVPDs make the programming changes within 30 days of the Section's enactment. Cable operators should, however, give notice as soon as is reasonably practicable. We understand that in some instances such notice may not be given until after the change has been made.

Ordering Clauses

7. It is ordered that, pursuant to Sections 4(i) and 641 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Section 505 of the Telecommunications Act of 1996, that the Commission's rules ARE AMENDED as set forth below. These rules are effective upon publication in the Federal Register. We find good cause for making these rules effective upon publication in the Federal Register because Section 641 becomes effective 30 days after enactment of the Telecommunications Act of 1996.

8. It is further ordered that 47 CFR 76.309(c)(3)(i)(B) IS WAIVED to the extent indicated herein.

9. It is further ordered that 47 CFR § 76.964 IS WAIVED to the extent indicated herein.

Lists of Subjects in 47 CFR Part 76

Cable television.

Amendatory Text

Part 76 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76—[AMENDED]

1. The authority citation of Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. A new § 76.227 is added to Subpart G to read as follows:

§ 76.227 Blocking of indecent sexually-oriented programming channels.

(a) In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) Until a multichannel video programming distributor complies with the requirement set forth in paragraph (a) of this section, the multichannel video programming distributor shall not provide the programming referred to in paragraph (a) of this section between the hours of 6 a.m. and 10 p.m.

(c) Scramble means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

(d) Sexually explicit adult programming or other programming that is indecent means any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable or other multichannel video programming distribution medium.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5869 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket 93–A]

RIN 2132–AA49

Temporary Local Match Waiver; Removal

AGENCY: Federal Transit Administration, DOT.

ACTION: Final Rule.

SUMMARY: Because the supporting statutory authority has expired, the Federal Transit Administration (FTA) is removing the Temporary Local Match Waiver for sections 9 and 18 from the Code of Federal Regulations. FTA made this determination as part of the President's ''reinventing government'' initiative.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek, Attorney-Advisor, Office of the Chief Counsel, (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Introduction

On August 11, 1993, FTA published an Interim Final Rule announcing a temporary change in how it finances capital projects for certain FTA-funded programs, specifically allowing for a ''waiver'' of the local match requirements under two FTA-funded programs. 58 FR 42690. The underlying statutory authority for that policy change has expired, thus prompting FTA to remove 49 CFR 671 from the Code of Federal Regulations. The Federal Highway Administration (FHWA) published a final rule on February 2, 1993 at 58 FR 6713, subsequently codified at 23 CFR 140, waiving the State matching requirements to fund certain kinds of construction projects under the Federal-aid highway program. Because FTA and FHWA were authorized by the same statute to waive the local or State matching requirements, FTA and FHWA adopted similar approaches to implementing the temporary waiver program.

The Temporary Waiver Program

As explained in the interim final rule, under section 9 of the Federal Transit Act, as amended (FT Act) now codified at 49 U.S.C. § 5336 and called ''urbanized area formula program,'' and under section 18 of the FT Act, now codified at 49 U.S.C. § 5311 and called ''non-urbanized area formula program,'' FTA and a recipient of its funds share the costs of financing local mass transit capital projects. Specifically, FTA pays eighty percent of a capital project's eligible costs (the Federal share), and a recipient pays the remaining twenty percent (the local match or local share). To ensure the sufficiency of local financing for a project, 49 U.S.C. § 5307 requires a recipient to certify that it can pay its share of the project's cost. A similar requirement applies to grants made under FTA's ''non-urbanized area formula program.''

During fiscal years 1992 and 1993, however, an alternative approach to these Federal and local share requirements was available. Specifically, the Dire Emergency Supplemental Appropriations Act, 1992, P.L. 102–302, and the Department of Transportation Appropriations Act, 1993, P.L. 102–388, (the Acts) permitted FTA, under limited circumstances, to waive in fiscal years 1992 and 1993 part or all of the local share required for capital projects under 49 U.S.C. §§ 5311 and 5336, thereby increasing the proportion of Federal money used to pay for a project, which Part 671 called the ''increased Federal share.'' In short, in fiscal years 1992 and 1993 a recipient could have funded a project's costs using only Federal money.

The rule specified the circumstances under which FTA would grant a waiver, described the application process, and detailed procedures for the repayment of the ''increased Federal share.'' The waiver applied only to funds obligated by FTA and drawn down by the recipient before October 1, 1993.

Analysis of the Comment

FTA received only one comment to the interim final rule. That comment, from a State Department of Transportation (DOT), raised concerns about how the ''increased Federal share'' would be repaid by a recipient. The ''increased Federal share'' equals the amount of the local share waived by FTA.

The rule specified that recipients must repay the ''increased Federal share'' before March 31, 1994. Should a recipient fail to meet this deadline, the rule provided that FTA would deduct fifty percent of the amount waived in fiscal year 1995 and fifty percent in fiscal year 1996 from the recipient's apportionment. If, however, the funds were transferred from the Surface Transportation Program or the Congestion Mitigation and Air Quality program to formula programs for urbanized or non-urbanized areas and the recipient did not repay those funds before March 31, 1994, the Federal Highway Administration (FHWA) would deduct fifty percent of the amount waived from the originating apportionment under the appropriate highway program in FY 1995 and the remaining portion in FY 1996.

The State DOT objected to the latter alternative and recommended that State DOTs be given a formal role in approving any waiver requested by a recipient, and that any waiver of the local share for a transit project be repaid from a recipient's transit apportionment regardless of the original source of the funding.

This State DOT was the only commenter who raised this particular concern and therefore FTA concluded that virtually all FTA recipients and State DOTs did not see this particular repayment provision as burdensome or objectionable. Moreover, the Acts did not give State DOTs a role in approving waiver requests. Consequently, FTA did not change this particular provision.

Regulatory Analysis

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties; it merely removes a Part that has become obsolete and whose underlying statutory authority has lapsed. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 671

Grant programs-transportation, Mass Transportation.

Accordingly, for the reasons set forth above, and under the Authority 49 U.S.C. 5334 (b)(2), part 671 is hereby removed.

Issued: March 5, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–5670 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Interim Listing Priority Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of interim listing priority guidance.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adopts interim guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act). Congress enacted a moratorium on final listings and critical habitat designations in April 1995 which, combined with severe funding constraints, essentially shut down the Service's listing program beginning in October 1995. During this shutdown, a large backlog of listing actions, particularly unresolved proposed listings, is accruing. When the moratorium is lifted and adequate funding is restored to operate a listing program, the Service will need to act expeditiously to resolve the status of outstanding proposed listings. This guidance supplements, but does not replace, the current listing priority guidelines, which are silent on the matter of prioritizing among different types of listing activities. While the backlog exists, and in order to focus conservation benefits on those species in greatest need, the Service believes that processing the outstanding proposed listings should receive higher priority than other actions authorized by section 4 (such as petition findings, new proposed listings, and critical habitat determinations).

DATES: This guidance takes effect March 11, 1996. Comments on this guidance will be accepted until April 10, 1996. This interim guidance will remain in effect until September 30, 1996, unless extended by further notice.

ADDRESSES: Comments on this interim guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street NW., Mailstop ARLSQ–452, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098–43105) that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates).

The enactment of Public Law 104–6 in April, 1995 rescinded $1.5 million from the Service's budget for carrying out listing activities through the remainder of Fiscal Year 1995. Public Law 104–6 also contained a prohibition on the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities.

Since the end of Fiscal Year 1995, funding for the Service's endangered species programs, including listing of endangered and threatened species, has been provided through a series of continuing resolutions, each of which has maintained in force the moratorium against issuing final listings or critical habitat designations. The continuing resolutions also severely reduced or eliminated the funding available for the Service's listing program. Consequently, the Service reassigned listing program personnel to other duties. The net effect of these legislative and administrative actions is that the Service's listing program has been essentially shut down since October 1995, and will remain so until adequate funding is restored. The moratorium and severe funding restrictions have created problems that require additional guidance.

When adequate appropriations are provided by the Congress for the administration of a listing program and when the listing program is no longer restricted by moratoria or similar conditions, the Service will face the considerable task of restaffing its listing program and allocating the available resources to the following listing activities that have accrued significant backlogs. First, the Service has issued proposed listings for 243 species, which require final decisions. Second, although the moratorium imposed by Pub. L. 104–6 does not specifically extend to petition processing or the development of new proposed listings, the extremely limited funding available to the Service for listing activities has generally precluded these actions since October 1, 1995. However, during this period the Service has continued to receive new petitions and now has a backlog of petitions that request the listing or delisting of 41 species under section 4(b)(3) of the Act. Third, the Service is required by numerous court orders or settlement agreements to process a variety of actions under section 4 of the Act. Fourth, the Service also needs to make expeditious progress on determining the conservation status of the 182 species designated by the Service as candidates for listing in the recently published Candidate Notice of Review (61 FR 7596; February 28, 1996). These backlogs and court orders illustrate the need for program-wide priorities to guide the allocation of resources once the listing program is revived. For the above reasons, good cause exists to make this guidance effective immediately.

Section 4(b)(1) of the Act requires the Service to use the ''best available scientific and commercial information'' to determine those species in need of the Act's protections. It has been long-standing Service policy that the order in

which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. Given the large backlogs of proposed species, petitions, and candidate species awaiting proposal, it will be extremely important for the Service to focus its efforts on actions that will provide the greatest conservation benefits to imperiled species in the most expeditious manner.

The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. These decisions will be implemented by the Regional Office designated with lead responsibility for the particular species. The Service allocates its listing appropriation among the Regional Offices based primarily on the number of proposed and candidate species for which the Region has lead responsibility. This ensures that those areas of the country with the largest percentage of known imperiled biota will receive a correspondingly high level of listing resources. The 1983 listing priority guidelines and this guidance will be applied at the National, Regional, and local levels.

While funding for listing activities is allocated based on expected workload, the types of activities composing each Region's listing workload vary greatly. As a result, Regions with few outstanding proposed listings may be able to process new proposed listings or petition findings before all of the outstanding proposed listings have been processed in Regions with large numbers of outstanding proposed listings.

To address the biological, budgetary, and administrative issues noted above, the Service therefore adopts the following interim listing priority guidance.

Interim Listing Priority Guidance

The Headquarters Office will promptly process any draft petition findings, draft proposed rules or final rules (once the moratorium is lifted) to add species to the lists, draft proposed or final critical habitat determinations (once the moratorium is lifted), or draft withdrawal notices that could not be processed because of the funding constraints or the moratorium. This will only apply to draft documents already approved by the Field and Regional Offices but for which final action could not be completed per guidance issued by the Director.

The following sections describe a multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act. The various types of actions within each tier (such as new proposed listings, administrative petition findings, etc.) will be accorded roughly equal priority, but the 1983 listing priority guidelines should be used as applicable. The Service emphasizes that this guidance is effective until September 30, 1996 (unless extended by future notice) and the agency fully anticipates returning to a more balanced implementation of the Act's listing responsibilities to concurrently process petition findings and proposed and final listings and critical habitat determinations, after funding has been restored and the backlogs reduced.

Tier 1—Emergency Listing Actions

Once the moratorium is lifted, the Service will immediately process emergency listings for species that face an imminent risk of extinction under the emergency listing provisions of section 4(b)(7) of the Act and will prepare a proposed listing immediately upon learning of the need to emergency list. This provision will also apply to any petitioned species for which the Service deems an emergency situation exists.

Tier 2—Processing Final Decisions on Proposed Listings (Applies After the Moratorium is Lifted)

In issuing the outstanding proposed listings, the Service deemed that the vast majority of the proposed species faced high-magnitude threats. The Service believes that focusing efforts on making final decisions relative to these proposed species will provide maximum conservation benefits to those species that are in greatest need of the Act's protections.

Tier 3—Processing New Proposed Listings for Species Facing High-Magnitude Threats (Listing Priority Numbers 1 through 6) and Initial Screening of Petitions

While the backlog of candidate species has been reduced substantially since 1992, the Service has determined that 182 species warrant issuance of proposed listings. The Act directs the Service to make ''expeditious progress'' in adding new species to the lists and thereby necessitates steady work in reducing the number of outstanding candidate species. Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. Many candidate species face high-magnitude threats and the need to start the regulatory process justifies placement of this activity in Tier 3.

The Service will conduct a preliminary review of any petition to list a species or change a threatened species to endangered status to determine if an emergency situation exists or if the species would probably be assigned a high listing priority upon completion of a status review. If the initial screening indicates an emergency situation the action will be elevated to Tier 1. If the initial screening indicates a species that probably faces high-magnitude threats, processing of the petition will be assigned to Tier 3.

Tier 4—Processing new Proposed Rules for Species Facing Moderate- or Low-Magnitude Threats; Processing Administrative Findings on Petitions not Assigned to Tiers 1 or 3; and Processing Final Decisions on Proposed Delistings or Reclassifications

Processing of new proposed rules for species facing moderate- or low-magnitude threats would provide less conservation benefit than actions described in Tiers 1 through 3, so the Service is assigning this activity to Tier 4.

Administrative findings for petitions that are not assigned to Tiers 1 or 3 after initial screening will be processed as a Tier 4 priority but only to the extent that such action does not substantially deter from the Service's ability to deal with the backlog of proposed listings.

Processing of final decisions for previously proposed delistings and reclassifications provides relief from unnecessary regulations. The Service believes that providing such regulatory relief is an appropriate Tier 4 activity.

Tier 5— Processing Critical Habitat Determinations and Processing new Proposed Delistings or Reclassifications

Designation of critical habitat consumes large amounts of the Service's listing appropriation and generally provides only limited conservation benefits beyond those achieved when a species is listed as endangered or threatened. Because critical habitat protections are restricted to Federal actions, situations where designating critical habitat provides additional protection beyond the protections included in section 7 are rare. It is critical during this interim period to maximize the conservation benefit of every dollar spent in the listing activity. The small amount of additional protection that is gained by designating critical habitat for species that are already on the lists is greatly outweighed by providing the protections included in sections 7 and 9 to newly-listed species. Therefore, the Service will place higher priority on

addressing species that presently have no protection under the Act rather than devoting limited resources to the expensive process of designating critical habitat for species already protected by the Act.

Issuing new proposed delistings and downlistings can provide regulatory relief but will be accorded Tier 5 priority due to limited listing resources and the fact that such actions will not become effective in the immediate future.

Setting Priorities Within Tier 2

Most of the outstanding proposed listings deal with species that face high-magnitude threats, such that additional guidance is needed to clarify the relative priorities within Tier 2. Proposed rules dealing with taxa deemed to face imminent, high-magnitude threats will have the highest priority within Tier 2. The Service will promptly review the backlog of 243 proposed species and each Region will reevaluate the immediacy and magnitude of threats facing all species that have been proposed for listing and revise the species' listing priority assignments accordingly. Those with the highest listing priority will be processed first.

Proposed listings that cover multiple species facing high-magnitude threats will have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed to avoid possible extinction.

Due to unresolved questions or to the length of time since proposal, the Service may determine that additional public comment or hearings are necessary before issuing a final decision for Tier 2 actions. Proposed listings for species facing high-magnitude threats that can be quickly completed (based on factors such as few public comments to address or final decisions that were almost complete prior to the moratorium) will have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete.

Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue should be processed first.

Notifying the Courts on Matters in Litigation

The Service will assess the status and the relative priority of all section 4 petition and rule-making activities that are the subject of active litigation using this interim guidance and the 1983 listing priority guidelines. The Service, through the Office of the Solicitor, will then notify the Justice Department of its priority determination and request that appropriate relief be requested from each district court to allow those species with the highest biological priority to be addressed first. The Service will provide periodic updates to each district court on the progress that it is making in addressing high priority proposed and candidate species. However, to the extent that these efforts to uphold the Service's interim priority guidance and the 1983 listing priority guidelines do not receive deference in the Courts, the Service will need to comply with court orders despite any conservation disruption that may result.

The Service will not elevate the priority of proposed listings for species under active litigation. To do so would let litigants, rather than expert biological judgments, control the setting of listing priorities. The Regional Office with responsibility for processing such packages will need to determine the relative priority of such cases based upon this guidance and the 1983 listing priority guidelines and furnish supporting documentation that can be submitted to the relevant Court to indicate where such species fall in the overall priority scheme.

Public Comments Solicited

The Service intends that any action resulting from this guidance be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, commercial trade entities, or any other interested party concerning any aspect of this guidance are hereby solicited. While the guidance will be used immediately, the Service will take into consideration the comments and any additional information received. Such communications may lead to the adoption of additional or revised guidance that differs from this interim guidance.

Authority

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

Dated: March 1, 1996.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–5646 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 61, No. 48
Monday, March 11, 1996

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 52

[FV–96–326]

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

AGENCY : Agricultural Marketing Service, USDA.

ACTION : Proposed rule.

SUMMARY: This document would revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products [1] by increasing the lot inspection and less than year round fees charged for the inspection of processed fruits and vegetables and certain other products. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946.

DATES: Comments must be received on or before April 10, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, D.C. 20090–6456. Comments should note 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 Branch Chief during regular business hours.

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96–354 (5 U.S.C. 601).

The proposed rule reflects certain fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. The inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the schedule for fees and charges for lot inspection and less than year round inspection services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Employee salary and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, has materially affected program costs. Another general and locality salary increase, ranging from 2.39 to 2.87 percent depending upon locality (amounting to approximately $625,000), was effective January 1996; further standardization program costs, previously funded by appropriated funds, must be paid for by user fees.

While a concerted effort to cut costs resulted in overhead savings of $623,926 in FY95 over FY94, the last fee increase in August 1994 did not result in collection of enough revenue to cover all these increases and still maintain an adequate reserve balance (four months of costs) called for by Agency policy and prudent financial management. Currently the Processed Products Branch (PPB) trust fund reserve balance for all programs is approximately $1.480 mil. under the desirable level of $11.031. Further action is necessary to meet rising costs and maintain adequate reserve balances. This action will assist in moving the PPB trust fund toward a more adequate level and will result in an estimated $368,000 in additional revenues. Projected FY96 revenues for the lot inspection and less than year round inspection programs are $8.291 mil. with costs projected at $8.194 and a reserve of $2.682.

Based on the Agency's analysis of increased costs since 1994, AMS proposes to increase the fees relating to such services as shown in the following table. The table compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42–52.51. For inspection services charged under section 52.42, overtime and holiday work would continue to be charged as provided in that section. For inspection services charged on a contract basis under section 52.51 overtime work would also continue to be charged as provided in that section. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in section 52.42 are:

Current	Proposed
$39.50/hr.	$41.00/hr.

Charges for travel and other expenses as found in section 52.50:

Current	Proposed
$39.50/hr.	$41.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in section 52.51 (c):

(2) For personnel assigned on less than a year-round basis:

Current	Proposed
Each inspector: $39.50/hr.	$42.00/hr.
In-plant sampler: $22.00/hr.	$22.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in section 52.51 (d):

Current	Proposed
(1) Each inspector: $39.50/hr.	$42.00/hr.
(2) In-plant sampler: $22.00/hr.	$22.00/hr.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 52 is proposed to be amended as follows:

PART 52—REGULATIONS GOVERNING INSPECTION AND CERTIFICATION OF PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS [1]

1. The authority citation for 7 CFR Part 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 52.42 [Amended]

2. In § 52.42, the figure ''$39.50'' is removed and the figure ''$41.00'' is added in its place.

§ 52.50 [Amended]

3. In § 52.50, the figure ''$39.50'' is removed and the figure ''$41.00'' is added in its place.

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

§ 52.51 [Amended]

4. In § 52.51, paragraph (c)(2) is amended by removing the figure ''$39.50'' and adding in its place ''$42.00'' and paragraph (d)(1) is amended by removing the figure ''$39.50'' and adding the figure ''$42.00'' in its place.

Dated: February 29, 1996.

David N. Lewis,

Acting Administrator.

[FR Doc. 96–5715 Filed 3–8–96; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 301, 304, 305, 306, 307, 318, 325, and 381

[Docket No. 95–008E]

FSIS Agenda for Change: Regulatory Review; Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the advance notice of proposed rulemaking, ''FSIS Agenda for Change: Regulatory Review'' (60 FR 67469), published in the Federal Register on December 29, 1995, in response to a request for additional time to submit comments. The comment period will reopen for 60 days.

DATES: Comments must be received on or before May 10, 1996.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95–008A, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Dr. Paula Cohen, Director, Regulations Development, at (202) 720–7164.

Done at Washington, DC on March 5, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–5707 Filed 3–8–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–13]

Proposed Establishment of Class E Airspace; Hollister, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice amends a previous proposal to establish a Class E airspace area at Hollister, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has made this proposal necessary. The intended effect of this supplemental notice is to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at Hollister Municipal Airport, Hollister, CA.

DATES: Comments must be received on or before April 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–13, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

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

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this supplemental notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (SNPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Hollister, CA. The FAA published an earlier notice proposing to establish Class E airspace area at Hollister, CA, on January 8, 1996 (60 FR 549). Comments received in response to the NPRM and this SNPRM will be addressed in the final disposition of the rule. This supplemental notice proposes to amend the Class E airspace area at Hollister, CA, as proposed in the original notice by providing additional controlled airspace for IFR operations at Hollister Municipal Airport, Hollister, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. the authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Hollister, CA [New]

Hollister Municipal Airport, CA
(Lat. 36°53′36″N, long. 121°24′37″W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of Hollister Municipal Airport and within 2 miles each side of the 142° bearing from the Hollister Municipal Airport extending from the 4.2-mile radius to 10 miles southeast of the Hollister Municipal Airport and within 2 miles each side of the 320° bearing from the Hollister Municipal Airport extending from the 4.2-mile radius to 5.4 miles northwest of the Hollister Municipal Airport.

* * * * *

Issued in Los Angeles, California, on February 27, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–5725 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–5]

Amendment of Class E Airspace; Ely, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Ely, NV. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 has made this proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at ELY Airport (Yelland Field), Ely, NV.

DATES: Comments must be received on or before April 12, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 96–AWP–5, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

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

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comment swill be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Ely, NV. The establishment of a GPS SIAP to Ely Airport-Yelland Field has made this proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Ely Airport-Yelland Field, Ely, NV. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Ely, NV [Revised]

Ely VOR/DME
(Lat. 39°17′53″N, long. 114°50′54″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Ely VOR and within 4.3-miles northeast and 8.3 miles southwest of the Ely VOR 303° radial, extending from the Ely VOR to 16.1 miles northwest and within 3 miles each side of the Ely VOR 014° radial, extending from the Ely VOR to 12.6 miles northeast and within 3 miles each side of the Ely VOR 167° radial, extending from the Ely VOR to 7.7 miles south of the Ely VOR. That airspace extending upward from 1,200 feet above the surface within a 19.1-mile radius of Ely VOR and within 6.1 miles northeast and 8.7 miles southwest of the Ely VOR 335° radial, extending from the 19.1-mile radius area to 33 miles northwest of the Ely VOR and within 4.3 miles east and 6.5 miles west of the Ely VOR 014° radial, extending from the 19.1 mile radius to 21.3 miles north of the Ely VOR, and within 14 miles west and 12.5 miles east of the Ely VOR 169° radial, extending from the 19.1-mile radius to 30 miles south of the Ely VOR.

* * * * *

Issued in Los Angeles, California, on February 22, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–5723 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–7]

Proposed Amendment of Class E Airspace; Jackson, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Jackson, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 1 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Westover Field Amador County, Jackson, CA.

DATES: Comments must be received on or before April 12, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 96–AWP–7, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

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

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Jackson, CA. The development of GPS SIAP at Westover Field Amador County has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 1 SIAP at Westover Field Amador County, Jackson, CA. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Jackson, CA [Revised]

Jackson, Westover Field Amador Field, CA (Lat. 38°22′36″ N, long. 120°47′38″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Westover Field Amador County.

* * * * *

Issued in Los Angeles, California, on February 23, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–5722 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–6]

Amendment of Class E Airspace; Visalia, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Visalia, CA due to the abandonment of Ianni Strip, CA. The intended effect of this proposal is to remove the reference to Ianni Strip from the Class E airspace description.

DATES: Comments must be received on or before April 12, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–6, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

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

FOR FURTHER INFORMATION CONTACT:

William Buck, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace area at Visalia Municipal Airport, CA due to the abandonment of Ianni Strip, CA. The intended effect of this proposal is to remove the reference to Ianni Strip from the Class E airspace description. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposal regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

Visalia Municipal Airport, CA
(Lat. 36°19′07″N, long. 119°23′34″W)
Visalia VOR/DME
(Lat. 36°22′02″N, long. 119°28′56″W)
Swanson Ranch NR1 Airport, CA
(Lat. 36°24′00″N, long. 119°37′03″W)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Visalia Municipal Airport and within 1.8 miles each side of the Visalia VOR 302° radial, extending from the 5-mile radius to 7 miles northwest of the VOR and within 4 miles each side of the Visalia VOR 150° radial, extending from 1.7 miles southeast to 17.4 miles southeast of the Visalia VOR and within 2.3 miles each side of the 245° bearing from the Visalia Municipal Airport, extending from the 5-mile radius to 8 miles southwest of the airport; excluding the airspace within 1-mile radius of Swanson Ranch NR1 Airport.

* * * * *

Issued in Los Angeles, California, on February 22, 1996.

Leonard A. Mobley,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–5721 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–24–93]

RIN 1545–AU05

Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements of section 417.

DATES: The public hearing will be held Wednesday, April 24, 1996, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, April 3, 1996.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, third floor, Room 3313, Internal

Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [EE–24–93], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is proposed amendments to the Income Tax Regulations under sections 411 and 417 of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for Friday, September 22, 1995 (60 FR 49236).

The rules of § 601.601(a)(3) of the ''Statement of Procedural Rules'' (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, April 3, 1996, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

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

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

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

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–5674 Filed 3–8–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[EE–24–93]

RIN 1545–AU05

Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to proposed regulations by cross-reference to temporary regulations which were published in the Federal Register for Friday, September 22, 1995 (60 FR 49236). The proposed regulations provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements of section 417.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622–6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that is the subject of this correction is under sections 411 and 417 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations contains an error that is in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations which is the subject of FR Doc. 95–23264, is corrected as follows:

On page 49236, in the heading, the ''RIN'' ''1545–AT75'' is corrected to read ''1545–AU05''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–5730 Filed 3–8–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 301

[DL–40–95]

RIN 1545–AT48

Disclosure of Returns and Return Information to Procure Property or Services for Tax Administration Purposes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking which was published in the Federal Register for Friday, December 15, 1995 (60 FR 64402). The proposed regulations relate to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes.

FOR FURTHER INFORMATION CONTACT: Donald Squires, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 6103 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 95–30505, is corrected as follows:

1. On page 64402, column three, in the heading, the ''Agency number'' ''[DL–01–95]'' is corrected to read ''[DL–40–95]''.

2. On page 64402, column three, in the preamble following the **ADDRESSES:** caption, lines 2 and 8, the language ''(DL–01–95)'' is corrected to read ''(DL–40–95)''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–5729 Filed 3–8–96; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI64–01–7148b; FRL–5416–9]

Approval and Promulgation of State Implementation Plan; Wisconsin; Clean Fuel Fleet Program

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) for the purpose of establishing a Clean-Fuel Fleet Program. Wisconsin submitted the SIP revision request to satisfy a federal mandate, found in the Clean Air Act, requiring certain states to establish Clean-Fuel Fleet Programs. This revision establishes and requires the implementation of a Clean-Fuel Fleet Program in the Milwaukee ozone nonattainment area.

DATES: Comments on this proposed action must be received by April 10, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AP–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register. Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Brad Beeson at (312) 353–4779 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S. C. 7401–7671q.

Dated: January 17, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–5736 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–30–1–7152b; FRL–5424–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant conditional approval of the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151. In the final rules section of the Federal Register, the EPA is granting conditional approval the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by April 10, 1996.

ADDRESSES: Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Dated: February 6, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–5734 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH89–1–7254b; FRL–5434–8]

Approval and Promulgation of Implementation Plan; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Ohio State Implementation Plan (SIP) for the general conformity rules. The general conformity SIP revisions enable the State of Ohio to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State or local level in accordance with regulations on Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

DATES: Comments on this proposed action must be received by April 10, 1996.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 12, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–5738 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[TN–96–01; TN-MEMP–96–01; FRL–5439–2]

Clean Air Act Proposed Interim Approval of Title V Operating Permit Programs; State of Tennessee and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit programs submitted by the Tennessee Department of Environment and Conservation and by the Memphis-Shelby County Health Department for the purpose of complying with Federal requirements which mandate that authorized permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by April 10, 1996.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the State of Tennessee and Memphis-Shelby County submittals, and other supporting information used in developing this proposed interim approval, are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365. Interested persons wanting to examine these documents, contained in the EPA dockets numbered TN–96–01 and TN-MEMP–96–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kim Gates, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4146.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act (''the Act''), as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250) that define the minimum elements of an approvable operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state and local operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that authorized permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires permitting authorities to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within one year after receiving the submittal. If the program submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. EPA received the State of Tennessee's title V operating permit program submittal on November 10, 1994. The State supplemented the original program submittal with additional materials on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, and February 13, 1996. Because the August 8, 1995 supplement materially changed the State's title V program submittal, EPA extended the one-year review period. EPA received Memphis-Shelby County's title V program submittal on June 26, 1995. Supplemental materials dated August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, and February 14, 1996 were submitted by the County to complete the title V program submittal.

EPA reviews title V operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline the criteria for approval and disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of the interim program approval period, it must establish and implement a Federal operating permit program for that state or local agency.

B. Federal Oversight and Sanctions

If EPA grants interim approval to the State of Tennessee and Memphis-Shelby County programs, the interim approvals will extend for two years following the effective date of the final interim approvals, and cannot be renewed. During the interim approval period, the State and the County will not be subject to sanctions and EPA will not be obligated to promulgate, administer, and enforce a Federal operating permit program for the State or the County. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if the State of Tennessee or Memphis-Shelby County fail to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the State or the County then fail to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State or the County has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State of Tennessee or Memphis-Shelby County, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State or the County has come into compliance. In any case, if, six months after application of the first sanction, the State or the County still has not submitted a corrective program that EPA determines to be complete, a second sanction will be required.

If, following final interim approval, EPA disapproves the State of Tennessee's or Memphis-Shelby County's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State or the County has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State or the County, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State or the County has come into compliance. In all cases, if six months after EPA applies the first sanction, the State of Tennessee or Memphis-Shelby County has not submitted a revised program that EPA determines to have corrected the deficiencies that prompted disapproval, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state or local agency has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state or local program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that state or local agency upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State and County Submittals

EPA has concluded that the operating permit programs submitted by the State of Tennessee and Memphis-Shelby County substantially meet the requirements of title V and part 70, and proposes to interimly approve the programs. For detailed information on the analyses of the State and County submittals, please refer to the Technical

Support Documents (TSDs) contained in the dockets at the address noted above. The TSDs describe the manner in which the programs satisfy the operating permit program requirements of part 70.

1. Support Materials

Pursuant to section 502(d) of the Act, each permitting authority must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact that meets the requirements of title V of the Act. On November 10, 1994, EPA received the title V operating permit program submitted by the Tennessee Department of Environment and Conservation. The State requested, under the signature of the Tennessee Governor's designee, approval of its operating permit program with full authority to administer the program in ninety-one of the State's ninety-five counties. Four of the State's counties (Shelby, Davidson, Hamilton, and Knox) are regulated by local air pollution control agencies operating under certificates of exemption issued pursuant to Tennessee Code Annotated (T.C.A.) Section 68–201–115. The State's jurisdiction also does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The State of Tennessee supplemented its initial title V program submittal on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, and February 13, 1996.

On June 26, 1995, EPA received the Memphis-Shelby County title V operating permit program submittal. The State requested, under the signature of the Tennessee Governor's designee, approval of the County's program on behalf of the Memphis-Shelby County Health Department. The Memphis-Shelby County Health Department has authority to administer the operating permit program in all areas of Shelby County, Tennessee, including the incorporated municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, Memphis, and Millington. The County's jurisdiction does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The County supplemented its initial program on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, and February 14, 1996.

The State of Tennessee and Memphis-Shelby County submittals address, in the Workload Analyses contained therein, the requirement of 40 CFR 70.4(b)(1) by describing how the State and County intend to carry out their responsibilities under part 70. EPA has deemed the program descriptions to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), each permitting authority is required to submit a legal opinion from the Attorney General (or the attorney for the air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permit program. The State of Tennessee submitted an Attorney General's Opinion demonstrating adequate legal authority as required by Federal law and regulation. The Memphis-Shelby County submittal contains an Opinion Letter by the County Attorney. This letter, with the supplements dated August 24, 1995 and January 29, 1995, adequately demonstrate the required legal authority.

The program submittals also contain supporting documentation, such as evidence of the procedurally correct adoption of the permitting rules, permit application forms, and copies of the enforcement agreements with EPA. The State's submittal was determined by EPA to be administratively complete on January 24, 1995. The County's submittal was determined to be administratively complete on September 5, 1995.

2. Program Implementation

The State of Tennessee developed Paragraph 1200–3–9–.02(11), entitled ''Major Stationary Source Operating Permits'', of the Tennessee Air Pollution Control Regulations to implement the substantive requirements of part 70. The State also developed Rule 1200–3–10–.04 entitled ''Enhanced and Periodic Monitoring for Title V Sources'' and Chapter 1200–3–30 entitled ''Control of Acidic Precipitation'' to implement other title V requirements. These rules, and several other rules and statutes providing for administrative actions and the assessment of fees, were submitted by the State with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

The County's operating permit program is implemented and enforced through the Shelby County Air Pollution Control Code, which was amended on April 24, 1995 to incorporate by reference in entirety the State's Paragraph 1200–3–9–.02(11) entitled ''Major Stationary Source Operating Permits'', Rule 1200–3–10–.04 entitled ''Enhanced and Periodic Monitoring for Title V Sources'', and Chapter 1200–3–30 entitled ''Control of Acidic Precipitation''.[1] These regulations, and several other rules and statutes providing for administrative actions and the assessment of fees, were submitted by Memphis-Shelby County with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

3. Regulations

a. Applicability. The State of Tennessee and Memphis-Shelby County title V program submittals, in Subparagraphs 1200–3–9–.02(11) (b) and (c), substantially meet the requirements of 40 CFR 70.2 and 70.3 with regards to applicability.

The State of Tennessee and Memphis-Shelby County title V programs provide for the treatment of research and development (R&D) facilities as sources that are separate from other stationary sources that are located on contiguous and adjacent properties and that are under common control. Neither program, however, requires a ''support facility test'' (see 60 FR 45556, August 31, 1995) before R&D is treated as a separate source when it is co-located with an industrial activity. EPA does not consider the lack of the support facility test as an issue for program approval because the definition of ''Research and Development Facility'' found in Subparagraph 1200–3–9–.02(11)(b)24. requires that the facility not be ''engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner''. Therefore, it is EPA's understanding that if co-located R&D facilities contribute to industrial activities in material rather than de minimis capacities, the State and the County will consider them as support facilities and thus not separable. This interpretation is consistent with the support facility test, which treats co-located and commonly owned sources as one source (with aggregated emissions) if the output of one source is more than 50 percent devoted to the support of the other source.

The State of Tennessee and Memphis-Shelby County programs, in Subparagraph 1200–3–9–.02(11)(b)14.(iv), provide that ''* * * all activities claimed by an applicant to be

[1] The current Memphis-Shelby County codifications make reference to the entire Tennessee Chapter 1200–3–9, which was adopted and incorporated by reference into Section 16–77 of the City's code and into Section 3–5 of the County's code. In addition, Tennessee Chapter 1200–3–10 was adopted into Sections 16–85 and 3–7, and Tennessee Chapter 1200–3–30 was adopted into Sections 16–91.2 and 3–36. Since the City and the County have not yet codified subsections, all references in this notice will be to applicable parts of Tennessee regulations.

research and development at the contiguous or adjacent property shall have their emissions aggregated as a single source for the purposes of determining whether or not the research and development activities constitute a major source.'' It is EPA's understanding that the term ''activities'' in this provision is intended to address the R&D activities at the R&D facility, as referenced in the preceding sentence of Subparagraph 1200–3–9–.02(11)(b)14.(iv) and defined in Subparagraph 1200–3–9–.02(11)(b)24., and is not intended to apply to any activities occurring within a stationary source that is not considered to be a R&D facility. Given this understanding, EPA does not consider this provision to be a title V program approval issue for the State or the County.

Neither the State or the County addressed 40 CFR 70.3(b)(3), which allows exempted sources to apply for a permit, in their program submittals. Justification of this omission of a part 70 provision is requested from the State and the County as a condition of full program approval.

b. Permit Applications. The State of Tennessee and Memphis-Shelby County title V programs, in Subparagraph 1200–3–9–.02(11)(d) and in the permit application forms, substantially meet the requirements of 40 CFR 70.5 for complete permit application forms. However, the regulatory provisions in both programs do not specifically require the permit applications to contain the information described in 40 CFR 70.5(c), including the compliance certification requirements of 40 CFR 70.5(c)(9).

The State's and County's application forms, which were submitted for approval as part of both title V programs, do require all the information referred to in 40 CFR 70.5(c), including a certification of compliance status with respect to all applicable requirements. EPA is concerned in particular that the compliance certification be a binding, regulatory requirement upon the source. The State asserts that, because its regulations require sources to provide the information specified in the application form, and because the application form submitted for approval as part of the State's title V program requires a compliance certification, the compliance certification is a regulatory requirement that is binding upon the source. EPA finds this explanation plausible, but seeks confirmation in the form of a legal opinion from the State.

Therefore, as a condition of full approval for both programs, EPA is requesting that the State and the County clarify in supplemental legal opinions that their permitting regulations require a source submitting an application for a title V permit to certify its compliance status with regards to all applicable requirements. Alternatively, the State and the County could revise their regulations to directly incorporate this requirement.

In addition, because neither the State nor the County have regulatory provisions for permit applications to contain the information described in 40 CFR 70.5(c), EPA is reminding the State and the County that any revisions to their forms must be submitted as title V program revisions for EPA review and approval pursuant to 40 CFR 70.4(i).

c. Insignificant Activities. Pursuant to part 70, a permitting authority must request and EPA may approve as part of that program, a list of insignificant activities and emission levels which need not be included in the permit applications. Although part 70 does not define appropriate emission levels for insignificant activities, 40 CFR 70.4(b)(2) requires permitting authorities to include in their title V program submittals any criteria used to determine insignificant activities or emission levels. Based on the information provided in the submittal, EPA determines whether the insignificant emission levels for the particular program under review are approvable.

For other title V program submittals, EPA has accepted ''generic'' (that is, not keyed to a specific type of activity) emission thresholds of no more than five tons per year for regulated air pollutants and 1000 pounds per year for hazardous air pollutants (HAPs) as insignificant. EPA believes that these levels are sufficiently below applicability thresholds for many applicable requirements to ensure, in combination with appropriate ''gatekeepers'', that units potentially subject to applicable requirements are included in permit applications. In addition to insignificant activity lists or threshold levels with appropriate emissions limitations, a State's program must provide, as required in 40 CFR 70.5(c), that an application may not omit information needed to determine the applicability of and to impose applicable requirements, and to collect fees. If a state or local agency's permitting regulations include this ''gatekeeper'' language, and the insignificant activities list and generic threshold levels are reasonable (that is, if they are not on their face likely to interfere with the determination and imposition of applicable requirements), then EPA will approve the insignificant activities provisions.

The initial State of Tennessee and Memphis-Shelby County title V program submittals contained the version of Rule 1200–3–9–.04 entitled ''Exemptions'' that became state-effective on November 21, 1993. Rule 1200–3–9–.04 identifies over 50 different insignificant activities and emission units that are exempt from permitting requirements. Because Rule 1200–3–9–.04 purports to exempt the listed activities from ''permitting'', rather than from description in the permit application, it is broader than the exemption contemplated by 40 CFR 70.5(c).

Activities and emission units deemed ''insignificant'' for purposes of title V permitting are not exemptions from the obligation to consider all emissions from the source in determining whether the source is major, nor are they exemptions from the requirement to comply with the permit content provisions of 40 CFR 70.6 for all applicable requirements. Rather, provisions for insignificant activities and emission units allow sources subject to title V to avoid description of EPA-approved insignificant activities in the application, or to include only limited information in the application (as in the case of activities deemed insignificant based on size or production rate). Therefore, the exemption from ''permitting'' requirements contained in Rule 1200–3–9–.04 must be removed as a condition of full approval for both programs.

Moreover, neither the State nor the County submitted information regarding the estimated levels of emissions from the activities and units listed in Rule 1200–3–9–.04, nor has a demonstration been made that these activities are not likely to be subject to applicable requirements or to have emissions that affect major source status. EPA has examined the list of excluded activities and believes that exclusion of these items would unduly hamper a reviewer's ability to verify whether the source has correctly identified all applicable requirements in its application.

Therefore, as a condition of full approval for both programs, the State and the County must provide a demonstration that adequately quantifies the potential emissions (based on maximum capacity or on specified size/operational limitations) from each of the activities and emission units listed in Paragraphs 1200–3–9–.04 (1) and (4) sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements. In the

alternative, the State and the County could specifically limit the emissions from each listed activity and emissions unit to the recommended 5 tpy for regulated air pollutants and 1000 pounds per year for HAPs. In addition, Rule 1200–3–9–.04 must be revised to include ''gatekeeper'' language consistent with that in 40 CFR 70.5(c), as discussed above, and to remove any language implying that insignificant activities may be excluded from major source applicability determinations.

On August 8, 1995, the State of Tennessee supplemented Rule 1200–3–9–.04 in its title V program with Paragraph 1200–3–9–.04(5) entitled ''Major Source Operating Permits Insignificant Emission Units'', which became state-effective on August 26, 1995. Memphis-Shelby County has not yet formally supplemented its title V program with Paragraph 1200–3–9–.04(5), but the County is in the process of amending its code to include this paragraph. The County has informed EPA that it will supplement its title V program with Paragraph 1200–3–9–.04(5) when the amended code is local-effective.

Paragraph 1200–3–9–.04(5) contains two lists of insignificant emission units and activities. The list in Subparagraph 1200–3–9–.04(5)(f) includes more than 120 emission units and activities that are categorically exempt from permitting requirements and allowed to be omitted from the permit application. The list in Subparagraph 1200–3–9–.04(5)(g) contains more than 23 emission units and activities that are defined as insignificant based on size or production rate. The units and activities in the second list are required to be included in the permit application.

Based on EPA's review of Paragraph 1200–3–9–.04(5), a number of the activities and emission units contained in the two lists either directly or potentially conflict with applicable requirements as defined in part 70, or are so vaguely or broadly articulated that EPA cannot determine whether a conflict or potential conflict exists. Obvious conflicts that were noted by EPA are discussed in the aforementioned TSDs. However, EPA could not adequately evaluate the two lists because neither the State or the County submitted information quantifying the potential emissions from the listed activities and units, or the criteria that were used to determine the insignificant activities and emission units. And, because the rule purports to exclude activities and emission units listed in Subparagraph 1200–3–9–.04(5)(f) from permitting requirements, EPA has the same concerns as discussed above with regards to the initially submitted Rule 1200–3–9–.04, namely that the rule would authorize excluding insignificant activities from major source applicability determinations or from other requirements of part 70 for units that are listed as insignificant but that are in fact subject to applicable requirements.

Therefore, as conditions of full approval for both programs, the State and the County must complete the following:

(1) Provide a demonstration that adequately quantifies the potential emissions (based on maximum capacity or on specified size/operational limitations) from each of the activities and emission units listed in Subparagraphs 1200–3–9–.04(5) (f) and (g) sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements. In the alternative, the State and County could specifically limit the emissions from each listed activity and emissions unit to the recommended 5 tpy for regulated air pollutants and 1000 pounds per year for HAPs.

(2) Address the conflicts with applicable requirements that are discussed in the TSDs.

(3) Remove the exemption from permitting requirements contained in Subparagraph 1200–3–9–.04(5)(f) to ensure that the insignificant activities provisions are not broader than that allowed under 40 CFR 70.5(c), and include ''gatekeeper'' language consistent with that in 40 CFR 70.5(c).

In addition to the exemption from permitting in Subparagraph 1200–3–9–.04(5)(f), the provisions of Subparagraph 1200–3–9–.04(5)(c)3. exempt sources subject to generally applicable SIP requirements from the monitoring, recordkeeping, reporting, and certification requirements of 40 CFR 70.6 (a)(3) and (c). However, part 70 does not exempt insignificant activities and emission units subject to applicable requirements from the permit content requirements of 40 CFR 70.6. That is to say, although insignificant activities may be omitted from description in the permit application, nothing in part 70 allows the permitting authority to issue permits that exempt the source from compliance certification or (as appropriate) monitoring, recordkeeping, and reporting required under 40 CFR 70.6 for all emissions units subject to applicable requirements. Part 70 does, however, allow permitting authorities the flexibility to tailor the amount and quality of information required in the permit application, and the rigor of compliance requirements contained in the permit, to the type of emission unit and applicable requirement in question.

EPA has discussed this issue previously in the interim approval notices on the State of Washington's title V program (see 60 FR 50166 (September 28, 1995) and 60 FR 62992 (December 8, 1995)). This issue is also addressed in the July 10, 1995 guidance memorandum entitled ''White Paper for Streamlined Development of Part 70 Permit Applications'' from Lydia Wegman, Deputy Director of EPA's Office of Air Quality Planning and Standards, to the EPA Regional Air Directors. EPA is committed to issuing additional guidance to aid state and local permitting authorities in drafting permits which comply with the permit content requirements of 40 CFR 70.6 for insignificant activities, and intends to issue such guidance in the very near future.

Therefore, as a condition of full approval for both programs, Subparagraph 1200–3–9–.04(5)(c)3. must be revised to eliminate the exemption from the monitoring, recordkeeping, reporting, and certification requirements of 40 CFR 70.6 (a)(3) and (c) for sources subject to generally applicable SIP requirements.

In addition, Subparagraph 1200–3–9–.04(5)(h) exempts increases in regulated air pollutant emissions from permit amendment and modification procedures. Because this provision conflicts with the requirements of 40 CFR 70.7, it must be revised to be consistent with the part 70 criteria for administrative permit amendments and permit modifications as a condition of full approval for both programs.

d. Permit Content. The State of Tennessee and Memphis-Shelby County title V programs, in Subparagraphs 1200–3–9–.02(11) (a) and (e), substantially meet the requirements of 40 CFR 70.4 and 70.6 for permit content, including operational flexibility and off-permit changes. However, Subparagraph 1200–3–9–.02(11)(b) entitled ''Definitions'' contains the following restriction:

> ''All references in this paragraph to the Federal Act or to federal regulations or requirements shall be to (i) that Act and those regulations and requirements as in effect on December 15, 1993, and (ii) any other federal regulations or requirements to the extent that they are adopted and are effective as Rules of the State of Tennessee.

This restriction applies to all Federal requirements referenced in Paragraph 1200–3–9–.02(11), including the definition of ''Applicable requirement'' in Subparagraph 1200–3–9–.02(11)(b). The State's and County's definition of

''Applicable requirement'' is, therefore, not equivalent to the part 70 definition because it restricts the domain of applicable requirements to those in effect before a certain date. As a result, neither program ensures that issued permits will address all applicable requirements in accordance with 40 CFR 70.6(a). Subparagraph 1200–3–9–.02(11)(b) must be revised for consistency with part 70 as a condition of full approval for both programs.

The State and County program submittals, in Subparagraph 1200–3–9–.02(11)(e)4., provide for the issuance of general permits. However, this provision allows a source to operate without an appropriate title V permit and not be subject to enforcement action. Subparagraph 1200–3–9–.02(11)(e)4. initially indicates that a source shall be subject to enforcement action if it operates under a general permit but is later found not to qualify for a general permit. However, the next sentence states that if the source is required to have an individual permit, the permit shield will apply until the individual permit becomes effective, which relieves the source from liability. Because this provision conflicts with 40 CFR 70.6(d)(1), it must be changed as a condition of full approval of the State and County programs.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define ''prompt'' in each individual permit. EPA believes that ''prompt'' should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

The State of Tennessee and Memphis-Shelby County have not defined ''prompt'' in their title V programs with respect to the reporting of deviations. Instead, Subparagraph 1200–3–9–.02(11)(e)1.(iii)(III)II. references the provisions of Rule 1200–3–20–.03 to define ''prompt reporting''. Rule 1200–3–20–.03 specifies that in the event of a malfunction, a source shall notify the State and the County by telephone within 24 hours of the malfunction. The notification must contain a statement giving all pertinent facts, including the estimated duration of the malfunction. Chapter 1200–3–20, which contains Rule 1200–3–20–.03, was included in the State's title V program submittal, but not in the County's submittal. The County clarified, in a letter dated February 7, 1996, that the prompt reporting provision of Rule 1200–3–20–.03 is effective in all of the County's jurisdictions.

Subparagraph 1200–3–9-.02(11)(e)1.(iii)(III)II. also references Chapter 1200–3–20 to define deviations from permit conditions, such as upset, malfunction, or emergency conditions. However, Paragraph 1200–3–20-.06(5) identifies a number of different exceedances that will not be considered by the State as violations. This provision conflicts with part 70, which requires that any emissions not permitted at a source be in violation of permit terms and conditions. Specifically, 40 CFR 70.6(g) classifies excess emissions due to emergency situations as a violation of an existing permit, and allows the State to provide an affirmative defense in certain circumstances.

If a regulation such as Chapter 1200–3–20 is approved into the SIP, it becomes a part of an applicable requirement and therefore may function with respect to that requirement or requirements of which it is a part. This would be true even after the applicable requirement is incorporated into the permit. However, the version of Chapter 1200–3–20 contained in the State's title V program submittal is not approved into the Tennessee SIP. More importantly, from the standpoint of part 70, Chapter 1200–3–20 is on its face limited to SIP requirements. It would, therefore, affect the definition of violations for any applicable requirement incorporated into the permit, including those that the State has no authority to change, such as Federal standards. To remedy this inconsistency with part 70, and as a condition of full program approval, the State must revise Chapter 1200–3–20 to clarify that it applies only with respect to requirements in the SIP. Furthermore, the revised rule must be submitted to EPA for approval into the Tennessee SIP.

The State of Tennessee and Memphis-Shelby County have the authority to issue variances from the requirements imposed by State and County law. The State has discretion, pursuant to T.C.A. Section 68–201–118, to grant relief from compliance with State statutes and rules. The County has discretion, pursuant to Section 3–10 of the Shelby County Code, to grant relief from compliance with County statutes and rules. EPA regards these provisions as wholly external to the programs submitted for approval under part 70, and consequently proposes to take no action on these provisions of State and County law.

EPA has no authority to approve provisions of state and local law, such as the variance provisions referred to above, that are inconsistent with title V. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable title V operating permit, except where such relief is granted through the procedures allowed by part 70. A title V permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A title V permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This interpretation is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

The State of Tennessee and Memphis-Shelby County title V program submittals contain provisions for the issuance of Federally enforceable state and local minor source operating permits to limit an air pollution source's potential to emit. Limiting a source's potential to emit through Federally enforceable minor source operating permits can affect the applicability of Federal regulations to a source, including the regulations governing title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants, and Federal air toxics requirements mandated under section 112 of the CAA.

EPA promulgated the criteria for Federal enforceability of minor source

operating permits in the Federal Register on June 28, 1989 (see 54 FR 22274). One of the criteria is EPA's approval of the minor source operating permit program into the State Implementation Plan (SIP). Both the State of Tennessee and Memphis-Shelby County have submitted the provisions for issuing Federal enforceable minor source operating permits as SIP revisions. Therefore, EPA is not taking action in this notice on the ''opt out'' provisions contained in Paragraph 1200–3–9-.02(11)(1) as part of either the State or the County title V program.

Both program submittals contain Paragraph 1200–3–9-.02(4) entitled ''Permits for Non-Complying Sources'', which is an approved SIP rule that does not address any part 70 requirements. Moreover, the version of the rule included in the submittals contains revisions that have not yet been submitted for incorporation in either the State of Tennessee's or Memphis-Shelby County's SIP. EPA has provided comments to the State on the revised version of the rule, but the comments have not yet been addressed by the State. EPA is, therefore, not taking action on Paragraph 1200–3–9-.02(4) as part of either the State or the County title V program.

e. Permit Processing and Review. The State of Tennessee and Memphis-Shelby County title V programs, in Subparagraph 1200–3–9-.02(11)(f) and (g), substantially meet the permit processing and review requirements of 40 CFR 70.7 (including minor permit modifications and public participation) and 70.8. However, the State's and County's permit reopenings provisions for HAP sources are not consistent with part 70 requirements.

According to Subparagraph 1200–3–31-.04(1)(a), the State and the County will call applications for permit revisions when EPA promulgates new maximum achievable control technology (MACT) standards. Sources will have 360 days to submit applications, and the permitting authority shall issue the permit revision within 18 months of the date the application is deemed complete. This provision conflicts with 40 CFR 70.7(f)(1)(i), which requires completion of permit reopenings not later than 18 months after promulgation of a new applicable requirement in cases of permits with remaining terms of three or more years. As a result, Subparagraph 1200–3–31-.04(1)(a) must be revised for consistency with part 70 requirements as a condition of full approval for both programs.

f. Enforcement Authority. The State of Tennessee and Memphis-Shelby County title V programs, in T.C.A. Sections 68–201–101 et seq., address the requirements of 40 CFR 70.11 with respect to enforcement authority.

4. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum''.

Both the State of Tennessee and Memphis-Shelby County have elected to assess title V operating permit fees below the Federal presumptive minimum fee amount, and both program submittals contained Workload Analyses satisfying the 40 CFR 70.9(b)(5) requirement for detailed fee demonstrations. The fee demonstrations showed that the fees collected will adequately cover the anticipated costs of the State and the County operating permit programs for the years 1995 through 1999.

The specified activities that constitute the State's program are consistent with 40 CFR 70.9(b)(1), but the County's fee provisions allow use of the operating permit fees for any purpose rather than solely for the funding of title V program activities in accordance with 40 CFR 70.9(a). Moreover, the County's program does not specify that the fees used to cover the direct and indirect costs of the operating permit program will be collected only from part 70 sources, as required by 40 CFR 70.9(a). Memphis-Shelby County, therefore, must revise its fee provisions to be consistent with the part 70 requirements as a condition of full program approval.

5. Provisions Implementing Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. In the title V program submittals, the State of Tennessee and Memphis-Shelby County demonstrate adequate legal authority to implement and enforce all section 112 requirements through title V permits. This legal authority is contained in T.C.A. Sections 68–201–101 et seq., and in Subparagraphs 1200–3–9–.02(11)(b)5. and 1200–3–9–.02(11)(c)(iii) of the Tennessee Air Pollution Control Regulations. EPA has determined that this legal authority is sufficient to allow the State and the County to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that the State of Tennessee and Memphis-Shelby County are able to carry out all section 112 activities with respect to part 70 and non-part 70 sources. For further rationale on this interpretation, please refer to the aforementioned TSDs.

Both program submittals contain Chapter 1200–3–32 entitled ''Prevention of Accidental Releases'', which was promulgated by the State and adopted by the County to implement the provisions of section 112(r) of the Act. However, EPA has not yet promulgated a Federal rule to implement the provisions of section 112(r), so the State and County rules may not be equivalent to the final Federal rule. Therefore, EPA is not taking action in this notice on Chapter 1200–3–32 as part of either the State or the County title V program.

b. Implementation of Section 112(g) During Transition Period EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines the Agency's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow permitting authorities time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. A detailed discussion of the rationale for the revised interpretation is included in the February 14, 1995 notice.

Unless and until EPA provides for an additional postponement of the section 112(g) effective date, the State of Tennessee and Memphis-Shelby County must have Federally enforceable mechanisms for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State and County regulations. Both program submittals contain Chapter 1200–3–31 entitled ''Case by Case Determinations of Hazardous Air Pollutant Control Requirements'', which will serve as an adequate implementation vehicle during the transition period. Chapter 1200–3–31 became state-effective on September 18, 1994, and the County adopted and

incorporated it by reference on April 24, 1995.

However, Chapter 1200–3–31 contains several discrepancies with respect to the provisions of section 112(g) of the Act. As a condition of full program approval, the State and the County must correct the following discrepancies in order to use this chapter to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and the adoption of equivalent State and County regulations:

(1) The definition of ''modification'' in Paragraph 1200–3–31–.02(10) conflicts with the section 112(g) definition regarding offsets. The State/County definition indicates that increased emissions of one HAP may be offset by an equal or greater decrease of another HAP that is deemed by the permitting authority to be equal to or more hazardous. However, according to section 112(g)(1)(A), the offset must be by a HAP which is deemed to be more hazardous, and the determination must be based on guidance issued by the Administrator under section 112(g)(1)(B).

(2) According to Subparagraph 1200–3–31–.05(1), the State and the County shall only make case-by-case determinations for new sources in a source category scheduled for action under sections 112(e)(1) and (3). However, section 112(g) applies to all major sources of HAPs, regardless of whether or not they have been included in a scheduled source category.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for title V program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of an operating permit program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that operating permit programs contain adequate authorities, adequate resources for implementation, and expeditious compliance schedules, which are also requirements under part 70. Therefore, EPA also proposes to approve, under section 112(l)(5) and 40 CFR 63.91, the State of Tennessee and Memphis-Shelby County programs for receiving delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. In addition, EPA proposes to delegate to the State and the County all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[2]

The State of Tennessee has informed EPA that it intends to accept the delegation of section 112 standards under part 61 on a case-by-case basis and the delegation of section 112 standards under part 63 on an automatic basis. The details of the State's use of these delegation mechanisms are set forth in letters dated November 4, 1994, January 30, 1996, and February 13, 1996.

Memphis-Shelby County has informed EPA that it too intends to accept delegation of section 112 standards under part 61 on a case-by-case basis and the delegation of section 112 standards under part 63 on an automatic basis. The details of the County's use of these delegation mechanisms are set forth in letters dated June 14, 1995, February 7, 1996, and February 14, 1996.

d. Title IV Acid Rain Program Requirements. The State of Tennessee promulgated Chapter 1200–3–30 to implement the Phase II acid rain permitting requirements of 40 CFR part 72. This chapter became state-effective on September 13, 1994, and has been determined by EPA to be acceptable for the purposes of administering an acid rain program. Memphis-Shelby County adopted and incorporated the State's Chapter 1200–3–30 by reference on April 24, 1995. The County's acid rain program has also been determined by EPA to be acceptable for the purposes of administering an acid rain program.

B. Proposed Actions

EPA proposes interim approval of the title V operating permit program submitted by the Tennessee Department of Environment and Conservation on November 10, 1994, and as supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, and February 13, 1996. EPA also proposes interim approval of the title V program submitted by the Memphis-Shelby County Health Department on June 26, 1995, and as supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, and February 14, 1996. If this interim approval is finalized, the changes identified below must be made for full approval of the State and County programs.

1. Opt-in Provision for Exempted Sources

Neither the State or the County program addressed 40 CFR 70.3(b)(3), which allows exempted sources to apply for a permit. Justification of the omission of this part 70 provision is requested from the State and the County.

2. Certification of Compliance With Applicable Requirements

Neither the State or the County program contains regulatory provisions that require sources to certify compliance with all applicable requirements. EPA is, therefore, requesting the State and the County to clarify in supplemental legal opinions that their permitting regulations require a source submitting an application for a title V permit to certify its compliance status with regards to all applicable requirements. In the alternative, the State and the County could revise their regulations to directly incorporate this requirement.

3. Insignificant Activities

As discussed above in section II.A.3.c., the State and the County must complete the following:

a. Remove the exemptions from permitting requirements contained in Paragraphs 1200–3–9–.04(1) and (4), and in Subparagraph 1200–3–9–.04(5)(f), and include ''gatekeeper'' language consistent with that in 40 CFR 70.5(c).

b. Revise Subparagraph 1200–3–9–.04(5)(c)3. to eliminate the exemption from the monitoring, recordkeeping, reporting, and certification requirements of 40 CFR 70.6(a)(3) and (c) for sources subject to generally applicable SIP requirements.

c. Provide a demonstration that adequately quantifies the potential emissions (based on maximum capacity or on specified size/operational limitations) from each of the activities and emission units listed in Paragraphs 1200–3–9–.04(1) and (4), and Subparagraphs 1200–3–9–.04(5)(f) and (g), sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements. In the alternative, the State and the County could specifically limit the emissions from each listed activity and

[2] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

emissions unit to the recommended 5 tpy for regulated air pollutants and 1000 pounds per year for HAPs.

d. Address EPA's concerns, as discussed in the TSDs, about potential conflicts of certain activities and emission units listed in Paragraph 1200–3–9-.04(5) with applicable requirements.

e. Revise Subparagraph 1200–3–9-.04(5)(h) to be consistent with the criteria in 40 CFR 70.7 for administrative permit amendments and permit modifications.

4. Applicable Federal Requirements

Subparagraph 1200–3–9-.02(11)(b) in the State and County programs restricts the domain of Federal requirements referenced in Paragraph 1200–3–9-.02(11) to those in effect on December 15, 1993. As a result, neither program ensures that issued permits will address all applicable requirements in accordance with 40 CFR 70.6(a). Subparagraph 1200–3–9-.02(11)(b) must therefore be revised for consistency with part 70.

5. General Permits

Subparagraph 1200–3–9-.02(11)(e)4. in both programs provides for the issuance of general permits. However, this provision allows a source to operate without an appropriate title V permit and not be subject to enforcement action. This provision must be revised for consistency with the requirements of 40 CFR 70.6(d)(1).

6. Excess Emissions Due to Malfunction, Startup, and Shutdown

The State must revise Chapter 1200–3–20 to make clear that it applies only with respect to the requirements in the Tennessee SIP, and the revised rule must be submitted to EPA for approval in the SIP.

7. Permit Reopenings

Subparagraph 1200–3–31-.04(1)(a) must be revised in both programs for consistency with the permit reopening requirements in 40 CFR 70.7(f)(1)(i), which requires completion of permit reopenings not later than 18 months after promulgation of a new applicable requirement in cases of permits with remaining permit terms of three or more years.

8. Use of Title V Fees

Memphis-Shelby County's fee provisions allow for use of operating permit fees for any purpose rather than solely for the funding of title V program activities, as required by 40 CFR 70.9(a). Moreover, the County's program does not specify that the fees used to cover the direct and indirect costs of the operating permit program will be collected only from part 70 sources, as required by 40 CFR 70.9(a). Memphis-Shelby County, therefore, must revise its fee provisions to be consistent with the part 70 requirements.

9. Implementation of Section 112(g) During Transition Period

Both the State and the County title V program submittals contain Chapter 1200–3–31 entitled ''Case by Case Determinations of Hazardous Air Pollutant Control Requirements''. As discussed above in section II.A.4.b., the discrepancies between Chapter 1200–3–31 and Federal requirements must be addressed for EPA to approve this mechanism of implementing section 112(g) during the transition period between Federal 112(g) rule promulgation and adoption of appropriate State and County rules.

In addition, as discussed above in section II.A.4.c., EPA proposes approval under section 112(l)(5) and 40 CFR 63.91 to the State of Tennessee and Memphis-Shelby County programs for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. EPA also proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State of Tennessee and Memphis-Shelby County are protected from sanctions for failure to have programs, and EPA is not obligated to promulgate Federal operating permit programs in the State or the County. Permits issued under a program with interim approval are fully effective with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

The scope of the State of Tennessee and Memphis-Shelby County title V programs that EPA proposes to interimly approve in this notice applies to all part 70 sources (as defined in the approved program) within the ninety-one counties under the State's jurisdiction and in Shelby County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See,* e.g., 59 FR 55813, 55815–18 (November 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed interim approval. Copies of the State of Tennessee and Memphis-Shelby County title V program submittals, and other information relied upon for the proposed interim approval, are contained in the dockets numbered TN–96–01 and TN-MEMP–96–01, which are maintained at the EPA Region 4 office. These dockets are organized and complete files of all the information submitted to, or otherwise considered by, EPA in the development of this notice. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. EPA will consider any comments received by April 10, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203

requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 26, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

[FR Doc. 96–5720 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. R–165]

RIN 2133–AB25

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Transportation.

ACTION: Proposed rule.

SUMMARY: This amendment to the cargo preference regulations of the Maritime Administration (MARAD) would provide that during the five year period beginning with the 1996 Great Lakes shipping season when the St. Lawrence Seaway is in use, MARAD will consider the legal requirement for the carriage of bulk agricultural commodity preference cargoes on privately-owned ''available'' U.S.-flag commercial vessels to have been satisfied where the cargo is initially loaded at a Great Lakes port on one or more U.S.-flag or foreign-flag vessels, transferred to a U.S.-flag commercial vessel at a Canadian transshipment point outside the St. Lawrence Seaway, and carried on that U.S.-flag vessel to a foreign destination. This provision would allow U.S. Great Lakes ports to compete for certain bulk agricultural commodity preference cargoes under agricultural assistance programs administered by the U.S. Department of Agriculture (USDA) and the U.S. Agency for International Development (USAID). MARAD issued substantially identical rules in 1994 and 1995 related to the Great Lakes Shipping season for each of those years, respectively. This rule would extend the provision for an additional five years, after which the Agency would assess the merits of making the rule permanent.

DATES: Comments must be received on or before April 10, 1996.

ADDRESSES: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590. To expedite review of comments, MARAD requests, but does not require submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC, 20590, Telephone (202) 366–1718.

SUPPLEMENTARY INFORMATION: United States law at sections 901(b) and 901b, Merchant Marine Act, 1936, as amended (the ''Act''), 46 App. U.S.C. 1241(b) and 1241f, requires that at least 75 percent of certain agricultural product cargoes ''impelled'' by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels ''are available at fair and reasonable rates.'' The Secretary of Transportation wishes to administer that program so that all ports and port ranges, including U.S. Great Lakes ports, may participate in the carriage of preference cargoes under five programs administered by the United States Department of Agriculture (USDA) and United States Agency for International Development (USAID), pursuant to Titles I, II and III of the Agricultural Trade Development and Assistance Act of 1954, as amended, P.L. 480 (7 U.S.C. 1701–1727), the Agricultural Act of 1949, as amended (7 U.S.C. 2791(c)) and the Food for Progress Act of 1985, as amended (7 U.S.C. 1736).

Prior Rulemaking

On August 8, 1994, MARAD published a final rule on this subject in the Federal Register (59 FR 40261). That rule stated that it was intended to allow U.S. Great Lakes ports to participate with ports in other U.S. port ranges in the carriage of bulk agricultural commodity preference cargoes. Dramatic changes in shipping conditions have occurred since 1960, including the disappearance of any all-U.S.-flag commercial ocean-going bulk cargo service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels contributed to the disappearance of any all-U.S.-flag service.

No bulk grain preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of one trial shipment in 1993. Under the Food Security Act of 1985, Public Law 99–198, codified at 46 App. U.S.C. 1241f(c)(2), a certain minimum amount of Government-impelled cargo was required to be allocated to Great Lakes ports during the Great Lakes shipping seasons of 1986, 1987, 1988 and 1989. That ''set-aside'' expired in 1989, and was not renewed by the Congress. The disappearance of Government-impelled agricultural cargo flowing from the Great Lakes coincided with the expiration of the Great Lakes ''set aside.''

At the time of the opening of the 1994 Great Lakes shipping season on April 5, 1994, the Great Lakes did not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. In contrast, the total export nationwide by non-liner vessels of USDA and USAID agricultural assistance program cargoes subject to cargo preference in the 1994–1995 cargo preference year (the latest program year for which figures are available) amounted to 6.2 million metric tons, of which 4.9 million (78 percent) was transported on U.S.-flag vessels.

Extension of Trial Period

MARAD initially issued that rule for the purpose of allowing Great Lakes ports the opportunity to compete for agricultural commodity preference cargoes for only the 1994 Great Lakes shipping season cargoes, and to assess the results. As predicted by numerous commenters, the timing of the final rule, which was not published until August 18, 1994, did not allow for a true trial period since it actually extended for less than one-half of the 1994 Great Lakes Shipping season. Because of the long

lead time required for arranging shipments of bulk agriculture commodity preference cargoes, there apparently was no real opportunity for U.S.-flag vessel operators to make the necessary arrangements and bid on preference cargoes. Accordingly, MARAD proposed to extend this policy to the 1995 Great Lakes shipping season and issued a final rule that was published in the Federal Register on May 9, 1995 (60 FR 24560).

Great Lakes participation in cargo preference shipments under these five programs administered by the USDA and USAID could be improved if foreign-flag feeder vessels were authorized to transport bulk grain commodities from Great Lakes ports to Canadian transshipment points for export on oceangoing U.S.-flag bulk carriers to the final destination port. MARAD issued its 1994 and 1995 final rules to authorize the use of foreign-flag feeder vessels for the transportation of bulk agricultural commodities cargoes from the Great Lakes ports to Canadian transshipment ports outside the St. Lawrence Seaway during the 1994–95 Great Lakes shipping season. Outside the St. Lawrence Seaway, the cargo would be transferred to a U.S.-flag vessel for delivery to its foreign destination.

Subsequently, USDA indicated that provisions in Pub. L. 480 regulating the payment of freight by USDA for the Title II and Title III shipments, as well as in the Food For Progress Act of 1985, negatively impacted on suppliers that bid on Great Lakes cargoes to be transshipped to Canadian shipping points. USDA indicated that these provisions prevent them from paying for the foreign-flag Great Lakes transit leg, even if the freight is billed separately. The Pub. L. 480 Title I program is not affected by this provision. Due to these statutory provisions, the Great Lakes region has been, in effect, prohibited from utilizing the rule and participating in 54 percent, or 7.9 millon metric tons, of the bulk cargo shipped during the past two years under Titles II and III of Pub. L. 480, the Agricultural Act of 1949 and the Food for Progress Act of 1985 programs.

USDA has proposed an amendment to the 1995 Farm Bill which would allow USDA to pay the cost of the foreign-flag Great Lakes transit leg for transshipment in Canadian ports. Consistent with the legislation proposed by the USDA provision in the 1995 Farm Bill, MARAD recommends that the rule be extended for an additional five years, after which it would reassess the merits of making the rule permanent.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of Executive Order 12866, or a significant rule under the Department's Regulatory Policies and Procedures. Accordingly, it has not been reviewed by the Office of Management and Budget.

MARAD projects that this rule would allow the annual movement of up to 300,000 metric tons of agricultural commodities from Great Lakes ports, with a reduction in the shipping cost to sponsoring Federal agencies of up to $3 per metric ton ($900,000).

If this rule is finalized, MARAD will evaluate the results over that trial period before determining whether to issue a rule to make this provision permanent.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*)

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers.

Accordingly, MARAD hereby proposes to amend 46 CFR part 381 as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 46 App. U.S.C. 1101, 1114(b), 1122(d) and 1241; 49 CFR 1.66.

2. Section 381.9 would be revised to read as follows:

§ 381.9 Available U.S.-flag service.

For purposes of shipping bulk agricultural commodities under programs administered by sponsoring Federal agencies from U.S. Great Lakes ports during the 1996–2000 Great Lakes shipping seasons, if direct U.S.-flag service, at fair and reasonable rates, is not available at U.S. Great Lakes ports, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) or other point(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately owned commercial vessel to the ultimate foreign destination, will be deemed to comply with the requirement of ''available'' commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates (if offered) to a Canadian port or other point on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The ''fair and reasonable'' rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR Part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag ''fair and reasonable'' rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters. Alternatively, the supplier of the commodity may offer the Cargo FOB Canadian transshipment point, and MARAD will determine fair and reasonable rates accordingly.

Dated: March 6, 1996.

By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

[FR Doc. 96–5727 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–40; FCC 96–84]

Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking in order to solicit comment on the proper

implementation of Section 641 of the Communications Act. This NPRM is necessary to fulfill the statutory requirement in Section 505 of the Telecommunications Act of 1996 that the Commission determine the hours of the day when a significant number of children are likely to view sexually explicit adult programming or other indecent programming on any channel of the service of a multichannel video programming distributor primarily dedicated to sexually oriented programming if such programming is not fully blocked or fully scrambled. This proceeding will permit the Commission to issue final rules.

DATES: Comments are due on April 26, 1996. Replies are due on May 24, 1996.

FOR FURTHER INFORMATION, CONTACT: Meryl S. Icove, Cable Services Bureau, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Notice of Proposed Rulemaking in CS Docket No. 96–40, FCC 96–84, adopted March 4, 1996 and released March 5, 1996. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS Inc.'') at (202) 587–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

Synopsis of Notice of Proposed Rulemaking

1. On February 8, 1996, the Telecommunications Act of 1996 (''1996 Act''), Pub. L. No. 104–104, 110 Stat. 56 (1996), was enacted. Section 505 of the 1996 Act amends the Communications Act by adding a new Section 641, entitled ''Scrambling of Sexually Explicit Adult Video Service Programming.'' Section 641(a) requires that multichannel video programming distributors (''MVPDs'') fully scramble or fully block sexually explicit adult programming or other indecent programming on any channel of its service primarily dedicated to sexually-oriented programming so that a nonsubscriber does not receive such programming. Section 641(b) provides that, until the MVPD fully scrambles such programming, it may not provide such programming during the hours of the day when a significant number of children are likely to view such programming. Section 641(b) further requires that the Commission determine those hours. Section 641(c) also provides a definition of ''scramble:'' ''to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.'' These provisions take effect 30 days after the date of enactment of the 1996 Act, i.e., March 9, 1996. In an Order adopted with this NPRM on March 4, 1996, the Commission adopted a rule incorporating Section 641(a). We also established an interim rule implementing Section 641(b), providing that the programming described in subsection (a) may not be provided between the hours of 6 a.m. and 10 p.m. if not fully scrambled or fully blocked. This NPRM requests comment on whether the interim rule should be adopted as a final rule. Finally, we request comment on other issues regarding implementation and enforcement of these rules.

2. We propose to adopt a final rule establishing the hours between 6 a.m. and 10 p.m. as the hours when sexually explicit adult programming or other programming that is indecent on any channel primarily dedicated to sexually-oriented programming is prohibited if not fully scrambled for nonsubscribers. We tentatively conclude there are no relevant differences between broadcast and nonbroadcast delivery of programming that justify adoption of a different rule. Commenters on this issue are asked to provide specific data in support of any assertions regarding the hours when children are likely to be viewing this programming.

3. We note that the definition of indecent programming in the video programming context is well established. The Commission defines broadcast indecency as ''language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs.'' Infinity Broadcasting Corporation of Pennsylvania, 2 FCC Rcd 2705 (1987). The Commission has also defined indecency with respect to the use of channel capacity on cable systems for leased access and public, educational and governmental access—indecent programming is any programming that describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards for the cable medium. See 47 CFR 76.701(g), 76.702. We propose to use the same definition for purposes of this statutory provision. Because we read the term ''sexually explicit adult programming'' to be a subset of indecent programming, we do not believe that further definition is necessary. As noted above, we believe the statute is clear regarding the channels to which Section 641(a) applies, however, to the extent parties disagree, they may comment on the appropriate definition of ''channel * * * primarily dedicated to sexually oriented programming.''

4. Finally, we seek comment on any other issues relevant to proper implementation of Section 641. In particular, with respect to the requirement to ''fully scramble or otherwise fully block'' sexually explicit adult programming or other programming that is indecent, are there differences in technology between MVPDs that would require different rules?

Initial Regulatory Flexibility Act Analysis

5. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of the NPRM, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

6. The Commission issues this NPRM pursuant to Section 505, Pub. L. No. 104–104, and seeks public comment on the implementation of that statutory provision. Objectives. Our goal in this proceeding is to gather information to implement Congress' directive that multichannel video programming distributors fully scramble or fully block sexually explicit adult programming or other programming that is indecent on any channel primarily dedicated to sexually oriented programming so that nonsubscribers do not receive it. We also must gather information so we can determine the hours when significant numbers of children are likely to view such programming if not fully scrambled or fully blocked. Legal Basis. Authority for this proposed rulemaking is contained in Sections 4(i) and 641 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and in Section 505 of the Telecommunications Act of 1996, Pub. L. No. 104–104 (1996).

Description, Potential Impact and Number of Small Entities Affected. The

rules proposed could affect certain small entities including multichannel video programming distributors who choose to provide sexually explicit adult programming or other programming that is indecent on a channel primarily dedicated to sexually-oriented programming without fully scrambling or fully blocking such programming during hours when it is prohibited from doing so by the Commission.

Reporting, Recordkeeping and Other Compliance Requirements. None.

Federal Rules which Overlap, Duplicate or Conflict with these Rules. None. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objectives. None.

7. It is ordered that, pursuant to Sections 4(i) and 641 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Section 505 of the Telecommunications Act of 1996, notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussions, and statement of issues.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5870 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 61, No. 48
Monday, March 11, 1996

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

Forest Service

Beaverhead Forest Plan Amendment; Beaverhead-Deerlodge National Forests; Beaverhead, Madison, Gallatin, Silver Bow, and Deer Lodge Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Revised Notice; intent to prepare environmental impact statement.

SUMMARY: This is a revision of a Notice of Intent originally published in the Federal Register by the Forest Service (60 FR 49393), September 25, 1995. The original notice stated the Forest Service will prepare an environmental impact statement (EIS) to amend both the Beaverhead and Deerlodge Forest Plans to include further riparian direction. This revision proposes amending only the Beaverland Forest Plan. The purpose is to determine what combination of goals, objectives and standards will restore and/or maintain riparian function.

DATES: The scoping period for this analysis ran from September 25 through November 15, 1995.

ADDRESSES: Written comments were sent to Deborah L.R. Austin, Forest Supervisor, Beaverhead-Deerlodge National Forests, 420 Barrett Street, Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Diane Petroni, Environmental Analysis Team Leader, Madison Ranger District, 5 Forest Service Road, Ennis, MT 59729, or phone: (406) 682–4253.

SUPPLEMENTARY INFORMATION: Further information about the proposed action, issues, and how comments are used can be found in the original notice of intent. The only change is the deletion of the Deerlodge portion of the Beaverhead-Deerlodge National Forests from the analysis.

Another formal opportunity for response will be provided following completion of a DEIS. The draft EIS should be available for review in November, 1996. The final EIS is scheduled for completion in August, 1997.

The Forest Supervisor of the Beaverhead-Deerlodge National Forests is the responsible official who will make the decision. She will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: February 26, 1996.

Deborah L.R. Austin,

Forest Supervisor, Beaverhead-Deerlodge National Forests.

[FR Doc. 96–5473 Filed 3–8–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
AR 118 Harrison Stockyard Auction, Inc., Harrison, Arkansas	June 12, 1957.
MD 108 Harry Rudnick & Sons, Inc., Galena, Maryland	October 21, 1959.
MO 144 Kennett Sales Co., Inc., Kennett, Missouri	May 8, 1959.
NC 142 Albemarle Marketing Association, Inc., Edenton, North Carolina	April 30, 1973.
NC 166 Mountain Livestock Auction, Murphy, North Carolina	January 6, 1994.
TN 180 M. L. Hickerson's Livestock Market, Manchester, Tennessee	April 19, 1982.
VA 134 South Boston Livestock Market, Inc., South Boston, Virginia	March 10, 1959.
VA 135 Lunenburg County Livestock Market, Inc., South Hill, Virginia	March 9, 1959.
VA 139 Tappahanock Livestock Market, Inc., Tappahanock, Virginia	March 19, 1959.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the Federal Register without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the Federal Register.

Done at Washington, D.C., this 4th day of March 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 96–5708 Filed 3–8–96; 8:45 am]

BILLING CODE 3210–KD–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–96]

Foreign-Trade Zone 75—Phoenix, Arizona; Application for Subzone; PETsMART, Inc.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Phoenix, Arizona, grantee of FTZ 75, requesting special-purpose subzone status for the

warehouse/distribution facility of PETsMART, Inc. (PETsMART), in Phoenix, Arizona. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 22, 1996.

PETsMART operates over 250 retail stores in the U.S. that specialize in pet food, pet supplies and pet services (1995 sales—$1 bil.). It is planning to open stores in Canada, Europe and Latin America in 1996.

The proposal calls for subzone status at PETsMART's new regional warehouse/distribution center (614,000 sq. ft. on 34.4 acres, currently under construction) at 7600 West Latham Street, Phoenix. The facility (100 employees) will be used to warehouse and distribute a variety of pet supplies including: dog and cat toys, collars and leashes, cages, books, vitamins, and aquatic and equestrian supplies. No requests for manufacturing authority are being made at this time. The distribution facility will serve company retail stores in the U.S. and abroad.

Zone procedures would exempt PETsMART from Customs duty payments on the foreign items that are reexported. On domestic sales, the company would be able to defer Customs duty payments until the items are shipped from the facility. The application indicates that the zone savings would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 28, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Phoenix Plaza, Suite 970, 2901 N. Central Avenue, Phoenix, Arizona 85012

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: February 29, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–5598 Filed 3–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 16–96]

Proposed Foreign-Trade Zone—Mesa, Arizona; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mesa, Arizona, to establish a general-purpose foreign-trade zone in Mesa, Arizona, adjacent to the Phoenix Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 28, 1996. The applicant is authorized to make the proposal under Section 44–6501 of the Arizona Revised Statutes.

The proposed zone would be the second general-purpose zone in the Phoenix Customs port of entry area. The existing zone, FTZ 75, is located at the Phoenix Sky Harbor Center at Squaw Peak Freeway and I–10 in Phoenix, adjacent to Sky Harbor International Airport (Grantee: City of Phoenix, Board Order 185, 47 FR 14931, 4/7/82).

The proposed foreign-trade zone would be located at Williams Gateway Airport (3,020 acres), formerly Williams Air Force Base, 6001 South Power Road, Mesa, some 22 miles east of the Sky Harbor site. Approximately half of the site involves existing airfield infrastructure, and the remaining area (approximately 1,400 acres) is available for industrial development. The site is currently leased to Williams Gateway Airport Authority (WGAA) by the U.S. Air Force, but the Air Force is in the process of conveying title to the property to WGAA.

The application contains evidence of the need for additional zone services in the Mesa area. In addition to aerospace/aviation related manufacturing, aircraft maintenance and refurbishing, WGAA plans to market the project as an international aerospace and aviation center. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 4, 1996, 9:00 a.m., at Williams Gateway Airport, Administration Building (Bldg. #41) Conference Room, 6001 South Power Road, Mesa, Arizona.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 28, 1996).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

MEGACORP, City of Mesa Economic Development, 100 North Center Street, Mesa, AZ 85201

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 1, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–5599 Filed 3–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 17–96]

Foreign-Trade Zone 119—Minneapolis, MN; Application for Subzone Status; Plastic Products Company, Inc., Facilities (Plastic In-Line Skates); Lindstrom and Princeton, Minnesota

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119, requesting special-purpose subzone status for the plastic in-line skate manufacturing facilities of Plastic Products Company, Inc. (PPCI), located in Lindstrom and Princeton, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 29, 1996.

The proposed subzone would consist of PPCI's two manufacturing facilities in east-central Minnesota: Site 1 (102,000 sq.ft./6 acres)—30355 Akerson Street, Lindstrom (Chisago County), Minnesota; and, Site 2 (168,000 sq.ft./8 acres)—610 Old South Highway 18, Princeton (Mille Lacs County), Minnesota. The facilities (350 employees) are used to produce plastic in-line skates for export and the

domestic market. The production process involves injection molding and final assembly. Components purchased from abroad (about 50% of total, by value) include: textile and vinyl liners (parts of footwear), footbeds, fasteners, bearings, laces, wheels and wheel/bearing assemblies, buckle assemblies, strap assemblies (duty rate range: free—10.6%).

Zone procedures would exempt PPCI from Customs duty payments on the foreign components used in the export production. On its domestic sales, the company would be able to choose the duty rate that applies to finished in-line skates (duty free) for the foreign inputs noted above. The application indicates that subzone status would help improve the plants' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 10, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 28, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 108 Federal Building, 110 South 4th Street, Minneapolis, MN 55401

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230–0002.

Dated: March 1, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–5600 Filed 3–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 804]

Expansion of Foreign-Trade Zone 15, Kansas City, Missouri, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, for authority to expand its general-purpose zone in the Kansas City, Missouri, area was filed by the Board on April 14, 1995 (FTZ Docket 15–95, 60 FR 19720, 4/20/95); and,

Whereas, notice inviting public comment was given in the Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 15 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of February 1996.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–5597 Filed 3–8–96; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

[A–122–506]

Oil Country Tubular Goods From Canada; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of the second antidumping duty administrative review of oil country tubular goods (OCTG) from Canada. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: David M. Genovese, 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) 482–4697.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limits for completion of the preliminary results until July 12, 1996. We will issue our final results for this review by November 12, 1996.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: February 22, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–5595 Filed 3–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–821–803]

Titanium Sponge From Russia; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 26, 1995, the Department of Commerce (the Department) published the preliminary results of review of the antidumping finding on titanium sponge from Russia (33 FR 12138, August 28, 1968). The review covers one manufacturer, Berezniki Titanium-Magnesium Works (AVISMA), and exports of the subject merchandise to the United States for the period August 1, 1993 through July 31, 1994.

We gave interested parties an opportunity to comment on the preliminary results of review. Based on our analysis of the comments received, we have not changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1994, Titanium Metals Corporation (TIMET) a U.S. producer of titanium sponge, AVISMA a Russian producer of titanium sponge, Interlink Metals and Chemicals, Inc., (Interlink) an unrelated third country reseller of titanium sponge, and RMI Titanium Company (RMI), a U.S. importer of titanium sponge, requested an administrative review of AVISMA's sales of subject merchandise. The Department initiated the review on September 16, 1994 (59 FR 47609), covering the period August 1, 1993, through July 31, 1994. On September 26, 1995, the Department published the preliminary results of review (60 FR 49576). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in the construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines.

Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes; our written description of the scope of this finding is dispositive.

This review covers one manufacturer, AVISMA, and the period August 1, 1993 through July 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent and the petitioner. At the request of AVISMA, Interlink, and RMI, we held a public hearing on December 7, 1995.

Comment 1

AVISMA argues that it had sufficient knowledge at the time of sale that at least a portion of its sales were destined for resale in the United States. AVISMA argues that there is sufficient and detailed evidence on the record in the form of affidavits and letters of correspondence to support its contention that while it did not know the final destination of each of its sales at the time of sale, it did know that a substantial portion of its sales to Interlink, an international trader, were destined for the United States. Citing to *Certain Stainless Steel Sheet and Strip Products From the Federal Republic of Germany; Final Determination of Sales at Less Than Fair Value,* 48 FR 20459 (May 6, 1983) (*Stainless Steel*), AVISMA states that the Department has based the United States price on the purchase price when a foreign producer selling through a trading company knows that part of the merchandise was destined for the United States at the time of purchase.

AVISMA contends that its inability to identify particular shipments that were resold in the United States is irrelevant and unnecessary to the Department's final determination. AVISMA argues that the Department's requirement, as described in *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 11211 (February 24, 1993), that there be knowledge of the destination of specific shipments is wrong. AVISMA states that general knowledge of the destination of sales should be enough under the antidumping law.

Petitioner, citing to *Chrome-Plated Lug Nuts from Taiwan,* (56 FR 36130, July 31, 1991) and *Urea from the U.S.S.R.,* (52 FR 19557, May 26, 1987), respectively, argues that: (1) it is the Department's longstanding practice to base U.S. price on sales by a producer to an unrelated trading company outside the United States only when the producer knows at the time of sale that the merchandise is destined for the United States; and, (2) the Department does not base U.S. price on sales to an unrelated trading company when the producer does not know at the time of sale that the merchandise is destined for the United States. Petitioner states that in this case, AVISMA's export sales were to unrelated companies for shipment to places outside the United States and that AVISMA was not aware of the final destination of the merchandise it sold for export at the time of sale. Petitioner states that under these circumstances, the U.S. price must be based on the sale from the trading company to the U.S. purchaser, i.e., the sale for export to the United States.

Petitioner, citing to *Pure Magnesium and Alloy Magnesium from the Russian Federation,* (60 FR 16440, March 30, 1995), further argues that even if AVISMA had a general knowledge that some unknown portion of the merchandise it exported might be entered for consumption in the United States, such knowledge is insufficient to transform AVISMA's export sales into sales of merchandise subject to the antidumping duty order.

Petitioner further challenges Interlink's suggestion that it is ''irrelevant and unnecessary'' for the Department to identify the particular shipments that were resold to the United States in order to make a final determination. Petitioner states that section 751(a)(2) of the Act explicitly requires that assessments and deposits of estimated antidumping duties be based on entries of merchandise subject to an antidumping duty order and that merchandise sold for export to destinations outside the United States is not subject to a U.S. antidumping duty order.

Department's Position

We disagree with respondents. Section 772(b) of the Act defines purchase price as ''the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise for exportation to the United States.'' The Department has consistently defined a U.S. sale as a sale in which a manufacturer is informed in advance that the merchandise is destined for the United States, or has reason to know of the ultimate destination of the merchandise at the time of sale, through special markings, market-specific specifications, or shipping instructions. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, et al.; Final Results of Antidumping Duty Administrative Review,* (57 FR 28360, 28423, June 24, 1992); *Ferrovanadium and Nitride Vanadium From the Russian Federation; Notice of Final Determination of Sales at Less Than Fair Value,* (60 FR 27957, May 26, 1995); *Natural Bristle Paint Brush and Brush Heads From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* (55 FR 42599, October 22, 1990); *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review,* (58 FR 11211, February 24, 1993); *Oil Country Tubular Goods From Canada; Final Results of Antidumping Duty Administrative Review,* (55 FR 50739, December 10, 1990); *Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value,* (52 FR 19557, May 26, 1987); and, *Pure Magnesium and Alloy Magnesium from the Russian Federation; Final*

Determination of Sales at Less Than Fair Value, (60 FR 16440, March 30, 1995).

Furthermore, the *Stainless Steel* case cited by AVISMA does not contradict the Department's practice. While AVISMA suggests that it knew or should have known that part of the merchandise was destined for the United States, the record demonstrates that AVISMA was not informed in advance of the destination of the merchandise that it sold to Interlink nor did it have reason to know of the ultimate destination of the merchandise at the time of sale. Interlink, as an international trader of metals, sells titanium sponge to other countries as well as to the United States and titanium sponge specifications are based on world-wide standards in accordance with its expected applications rather than the ultimate destination of the merchandise.

Comment 2

Respondent argues that the Department should review Interlink's sales to the United States because the request for review submitted on behalf of AVISMA, Interlink, and RMI clearly was intended to cover Interlink's sales to the United States during the period of review. Respondent states that the submission on behalf of the three companies requested the Department to conduct a review of ''AVISMA's U.S. sales subject to the antidumping duty order on titanium sponge from Russia.'' Respondent states that since AVISMA is a producer of titanium sponge, Interlink is an exporter of titanium sponge, and RMI is an importer of titanium sponge, the clear intent of the request for review was to seek a review of AVISMA's sales to the United States through the only exporter identified, Interlink. Respondent argues that Interlink, in seeking a review of AVISMA's sales, clearly intended for the Department to review Interlink's shipments and that the Department cannot rationally construe the request for review in any other manner.

Petitioner argues that since AVISMA was the only party for which a review was requested it is the only party the Department is authorized by law to review. Petitioner states that 19 CFR 353.22(a) authorizes the Department to review only those producers or resellers for which it has received a timely request for review. Petitioner states that, pursuant to 19 CFR 353.22(e)(2), if the Department does not receive a timely request for review of a producer or resellers, antidumping duties are automatically assessed on entries of merchandise not covered by the review request in the amount of the antidumping duties deposited at the time the merchandise entered the United States.

Petitioner states that in this case, the Department received a timely request for review of a specified producer, AVISMA and that therefore, the assessment and deposit rates for all other producers and resellers, including Interlink, are determined by operation of law. Petitioner, citing to *Chrome-Plated Lug Nuts from Taiwan*, (56 FR 36130, July 31, 1991), argues that the Department does not, and in the context of an administrative review, it cannot review sales by an unrelated trading company unless it is asked to do so.

Department's Position

We disagree with the respondent. With respect to requests for review, section 353.22(a) of the Department's regulations states that, ''(e)ach year during the anniversary month of the publication of an order * * * an interested party * * * may request * * * an administrative review of *specified* individual producers or *resellers* covered by an order (emphasis added)'.' For those producers or resellers for whom no review is specifically requested, the Department ''will instruct the Customs Service to assess antidumping duties * * * on the merchandise not covered by the request.'' 19 C.F.R. § 353.22(e)(2)(1995).

In the instant case, interested parties (*i.e.*, AVISMA, Interlink, RMI, and TIMET) only requested an administrative review of AVISMA's sales, not Interlink's sales. Accordingly, since a review of Interlink's sales was not requested by interested parties, such sales are not covered by this administrative review.

Final Results of Review

Based on our analysis of the comments received, we have not changed the final results from those presented in the preliminary results of review. Accordingly, we have determined that, consistent with the preliminary results, the margin for Russian titanium sponge that entered the United States during the period of review will continue to be the rate from the most recent review, which is 83.96 percent. The Department will issue appraisement instruction directly to the U.S. Customs Service.

Furthermore, as provided by section 751(a)(1) of the Act, the cash deposit rate for all shipments of titanium sponge from Russia, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, will be 83.96 percent. These deposit requirements, when imposed, 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 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 Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 29, 1996.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 96–5596 Filed 3–8–96; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule Amendments To Establish a Globex Foreign Exchange Facility

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule amendments of the Chicago Mercantile Exchange to establish a Globex Foreign Exchange Facility.

SUMMARY: The Chicago Mercantile Exchange (''CME'' or ''Exchange'') has submitted proposed rule amendments and other materials which would establish a wholly-owned subsidiary of the Exchange which would function as a market maker for certain CME foreign currency futures contracts traded

through the Globex system.[1] Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the CME proposal for public comment. The Division believes that publication of the CME proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before April 10, 1996.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Telephone: (202) 418–5484.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule Amendments

A. Purpose

By letters dated January 22, and February 1, 1996, the CME submitted proposed rule amendments pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act (''Act'') and Commission Regulation 1.41(b). The proposed amendments would establish a Globex Foreign Exchange Facility (''GFF''). Under the proposal, the GFF would function as a market maker for certain CME foreign currency futures contracts traded through the Globex system.[2] The objective of the GFF would be to augment the liquidity of certain Globex foreign currency futures contracts. In so doing, the CME believes that the GFF would help to ensure the presence of relatively liquid markets and narrower bid/ask spread quotations for trading in foreign currency futures contracts through the Globex system.

B. Operation

The GFF would be organized as a wholly-owned subsidiary of the CME. The Exchange would independently capitalize the GFF, thereby providing the GFF with separate financial resources. GFF employees who operate Globex terminals would be subject to all applicable CME rules governing Globex trading. The GFF would be subject to the rules and regulations of the Exchange in the same manner as any other participant conducting transactions on the Exchange.

Operations of the Exchange, as a self-regulatory organization, and the GFF, as a subsidiary entity, would be separated. The GFF would have neither direct nor indirect access to Exchange information on market positions or market exposures of clearing firms and individuals.

The GFF would operate as a market maker during the electronic trading hours (''ETH'') session of the Globex system. GFF trading activities would be confined to trading solely for the account of the GFF. GFF market making operations would be available during two 8¼ hour shifts during the Globex ETH session.

At inception, the GFF would be authorized to make markets in futures contracts for Deutsche marks, Japanese yen, Swiss francs, and British pounds traded through Globex. After a period of time, however, the GFF also would be authorized to make markets in futures contracts in Australian dollars and Canadian dollars traded through Globex.

As a market maker, the GFF would (i) maintain a two-sided market in the form of current bid and ask price quotations and (ii) satisfy bids or offers of other market participants at the GFF's current bid and ask prices. The GFF also would execute transactions through Globex on a Request for Quote (''RFQ'') basis.[3] The GFF would undertake to hedge its Globex-originated positions by executing offsetting transactions in the spot or forward interbank foreign currency market.

Market positions of the GFF would be carried on the books of a CME clearing member firm. Under such an arrangement, the GFF would be a customer of the carrying clearing member firm. The GFF intends to liquidate its Globex-originated futures positions, along with any corresponding interbank positions, during regular trading hours (''RTH''). However, if the GFF did not liquidate all or part of its Globex-originated futures position during RTH, then the GFF would be required to meet performance bond margin requirements at its carrying clearing member firm.

C. Oversight

The CME would establish risk management controls, including the establishment of a GFF Oversight Committee and the appointment of a GFF Risk Manager, to oversee GFF operations. Risk management controls established by the CME would incorporate automated support systems, including systems to track GFF audit trails and performance.

The GFF Oversight Committee would have authority to establish and maintain trading limits, internal controls, and risk management safeguards. The GFF Oversight Committee also would have authority to halt trading operations of the GFF or order liquidation of GFF positions at any time. The GFF Oversight Committee would periodically report to the CME Board of Directors.

The GFF Risk Manager, the CME clearing member firm carrying GFF positions, and CME Clearing House staff would review GFF trading on a daily basis. Other CME staff would have oversight authority to review books, records, systems, and facilities of the GFF. CME staff also would have authority to review GFF trading activity for potential regulatory violations or fraud.

II. Request for Comments

The Commission requests comments on any aspect of the CME's proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations. In particular, the Commission requests comments regarding the impact on competitive trading conditions; the adequacy of safeguards designed to limit the Exchange's exposure to financial risk; the implications for financial integrity and any consequent need for the segregation of, or limitations on access to, information at the CME and the GFF; the need for safeguards to address potential or actual conflicts of interest arising out of the Exchange's operation of the GFF; the need for restrictions on the personal trading activities of GFF employees; the desirability of segregating GFF positions from the positions of other customers at the clearing member firm carrying the GFF's positions; the determination of appropriate means for assuring that a loss experienced by the GFF would not affect other customers of the clearing member firm carrying the GFF's positions; and whether any other conditions or requirements should be imposed on the proposal.

Copies of the proposed rule amendments and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential

[1] The CME proposal includes newly proposed Rule 586.

[2] Globex is an electronic trade execution system for trading in certain of the Exchange's futures and options contracts outside of the CME's regular trading hours. Additionally, certain contracts of the Marché A Terme International de France are listed for trading through Globex.

[3] An RFQ is a Globex system alert by which a Globex user may broadcast a message to all other users requesting a quotation.

treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, by the specified date.

Issued in Washington, DC, on February 4, 1996.

Alan L. Seifert,

Deputy Director.

[FR Doc. 96–5606 Filed 3–8–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the BRAC Parcel at Tooele Army Depot, Tooele, Utah

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this FEIS is the disposal of the 1700 acre BRAC parcel at Tooele Army Depot, Tooele, Utah in accordance with the Defense Base Closure and realignment Act of 1990, Public Law 101–510, as amended.

The FEIS addresses the environmental consequences of the disposal and subsequent reuse of the 1700 acres. Three alternative methods of disposal are analyzed: Encumbered Disposal, Unencumbered Disposal and retention of the property in a caretaker status (i.e., the No Action Alternative). The Encumbered Disposal Alternative addresses natural or man-made encumbrances to the future reuse. The Unencumbered Disposal Alternative evaluates the potential to remove encumbrances, thereby allowing the property to be disposed of with fewer or no Army imposed restrictions on future use. The impacts of reuse are evaluated in terms of land use intensities.

No significant adverse environmental impacts associated with the no action alternative or other disposal alternatives have been identified. The Tooele County Base Reuse Committee submitted a plan for reuse of the BRAC Parcel at Tooele Army Depot. The FEIS acknowledges the Tooele County Base Reuse Committee Reuse Plan as the preferred local reuse plan, and the impacts of that plan are analyzed in the FEIS. Actions associated with realignment of Tooele Army Depot missions are discussed but not analyzed. Reuse of the parcel is analyzed as an indirect or secondary effect of facility disposal. This environmental Impact Statement analyzes potential environmental and socioeconomic consequences of three reuse scenarios. In contradistinction to our finding of no significant impacts with respect to *disposal alternatives*, added demands on limited water resources, traffic, utility system deficiencies and traffic related air pollutant emissions have been identified as potentially significant impacts under one or more of the *reuse alternatives.*

DATES: The public review period for this document ends 30 days after the date of publication of the EPA notice in the Federal Register.

ADDRESSES: Copies of the Final Environmental Impact Statement can be obtained by writing to Mr. Glenn Coffee, U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, 109 St. Joseph Street, P.O. Box 2288, Mobile, Alabama 36628–000, telephone (334) 690–2729, telefax (334) 690–2424.1.

Dated: March 5, 1996.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 96–5706 Filed 3–8–96; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the Defense Manpower Data Center of the Department of Defense.

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Department of Veterans Affairs (VA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between VA and DoD that their records are being matched by computer. The purpose of this match is to identify disability compensation recipients who return to active duty to insure benefits are adjusted or terminated, if appropriate, and steps taken to collect any resulting overpayment.

DATES: This proposed action will become effective April 10, 1996, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify disability compensation recipients who have returned to active duty and are therefore ineligible to receive VA compensation.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the VA to identify ineligible VA disability compensation recipients who have returned to active duty. Using the computer matching program, information on successful matches (hits) can be provided to VA within 90 days of receipt of a magnetic tape of VA benefits record data. A computer match is the most efficient method, other than a manual search of all active duty military personnel records, to identify such cases if an individual does not report his/her own return to active duty.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching

published in the Federal Register at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 28, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: March 6, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Debt Collection

A. *Participating Agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* Upon the execution of an agreement, the VA will provide identifying information on disability compensation recipients to DMDC to match against active duty, including full-time National Guard and Reserve personnel, to identify those recipients who have returned to active duty and are ineligible to receive VA compensation so that benefits can then be adjusted or terminated, if in order, and steps taken to collect any resulting overpayment.

C. *Authority for Conducting the Match:* The legal authority for conducting the matching program for use in the administration of the VA's Compensation and Pension Benefits Program is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide such information as requested by the VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information which respect thereto under 38 U.S.C. 5106.

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

The VA will use the system of records identified as 58 VA 21/22, 'Compensation, Pension, Education and Rehabilitation Records-VA,' as set forth on pages 967–971, Volume II of the Federal Register publication Privacy Act Issuances, 1991 Compilation, as amended on April 9, 1992 at 57 FR 12374, and on September 23, 1992 at 57 FR 44007.

DoD will use personal data from the record systems identified as S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base,' last published in the Federal Register on April 20, 1995, at 60 FR 19738.

E. *Description of Computer Matching Program:* The VA, as the source agency, will provide DMDC with a magnetic tape which contains the VA benefit record data of individual VA disability compensation recipients. Upon receipt of the computer tape file of recipient accounts, DMDC will perform a computer match using all nine digits of the SSNs in the VA file against a DMDC computer database. The DMDC database will consist of employment records of active duty military members. Matching records, 'hits' based on the SSN, will produce the member's name, branch of service, and unit designation. The hits will be furnished to the Veterans Benefits Administration which is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the source file and for resolving any discrepancies or inconsistencies on an individual basis. The Veterans Benefits Administration will also be responsible for making final determinations as to eligibility for benefits or verifying any other information with respect thereto.

The magnetic computer tape provided by VA will contain information on approximately 2.2 million disability compensation recipients.

The DMDC computer database file contains approximately 2 million records of active duty military members, including full time Reserve and National Guard.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated quarterly. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between VA and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 96–5703 Filed 3–8–96; 8:45 am]

BILLING CODE 5000–04–F

Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Bluestone Dam Safety Assurance Program, Hinton, West Virginia

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: Under the Policy for Evaluating Modifications of Existing Dams Related to Hydrologic and seismic adequacy, the Huntington District proposes to evaluate alternative measures necessary to modify the Bluestone Dam consistent with state-of-the-art design criteria. The proposed action is being conducted through the Corps' Dam Safety Assurance Program for the evaluation of existing dams. The Huntington District has determined that an Environmental Impact Statement is required for the proposed study.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action and Environmental Impact Statement should be addressed to: Mr. C. Barry Passmore, PD–B, Phone: (304) 529–5712, Huntington District, Corps of

Engineers, 502 Eighth Street, Huntington, West Virginia 25701–2070.

SUPPLEMENTARY INFORMATION:

Proposed Action

The purpose of the study is to identify the preferred alternative to modify the existing dam to meet current hydrologic and seismic criteria.

Reasonable Alternatives

Several alternatives will be considered for modifying the project. It has been determined that improvements to the project will be necessary to accommodate the Probable Maximum Flood (PMF). Three alternatives have been identified. Alternative 1 consists of raising the dam. Alternative 2 consists of an auxiliary spillway. Alternative 3 consists of partial overtopping of the dam.

Scoping process

a. The scoping process for the Bluestone DSA study and DEIS will include a series of public involvement meetings and workshops so that the proposed actions and alternative corrective measures can receive widespread public awareness. Through the public involvement program and media announcements, the Federal, state and local agencies as well as other affected and concerned organizations will be kept abreast of the study by the Corps of Engineers.

b. Potentially significant issues for NEPA consideration have been identified. (1) The capability of the 50-year-old project to adequately and safely provide needed services will be reviewed by evaluating the design of the project through application of current modern engineering design criteria. (2) Potential adjustments to the project will be considered and screened to identify a suitable modernization plan for the project, and associated operation and construction impacts will be assessed with and without adjustment. (3) It is anticipated that the potential improvement of the project to increase the capability for adequately and safely accommodating extreme events may be regarded as a significant Federal action.

c. The DEIS will be developed under the guidance, requirements, and format in 40 CFR 1502.9c and 1502.10. Consultation will be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the NEPA process, pursuant to the requirements of the Fish and Wildlife Coordination Act, the Endangered Species Act, the Heritage Conservation and Recreation Service and State Historic Preservation Act, and the Preservation of Historic and Archeological Data and EO 11593.

Deis Availability

It is anticipated that the DEIS will be available for public review by June 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

FR Doc. 96–5605 Filed 3–8–96; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Correction notice.

PURPOSE: On February 2, 1996, the Secretary published in the Federal Register two notices relating to grant programs under the Individuals with Disabilities Education Act: a notice of final priorities (page 4168); and a notice inviting applications for new awards for fiscal year 1996 (page 4178). The purpose of this notice is to make one correction to the final priority for Closed Captioned Television Programs (CFDA 84.026U); to add information regarding the range of awards for each television program category under this same program (CFDA 84.026U); to correct terminology in the title and program purpose section of the Absolute Priority titled Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities (CFDA 84.078C); and to make other minor technical changes in the notice of final priorities.

The following corrections should be made:

1. In the notice of final priorities, on page 4174 under the Absolute Priority—Closed Captioned Television Programs, the last sentence in the paragraph entitled ''Movies, Mini-Series and Special Programs'' is deleted, and the following sentence added:

''Funds provided under this category may be used to support no more than one-half of the captioning costs of movies, mini-series, and specials.''

2. In the notice inviting applications, on page 4180, under Absolute Priority—Closed Captioned Television Programs, the following information is added:

''*Estimated Range of Awards:* The Secretary anticipates making at least one award in each category of television programs. For each 12-month period, the anticipated range of awards for National News and Public Information is $500,000 to $1,500,000, for a total of $2,500,000; for Movies, Mini-Series and Special Programs, the anticipated range is $400,000 to $450,000; for Children's Programs the anticipated range is $250,000 to $500,000; and for Syndicated Television Programming the anticipated range is $350,000 to $500,000.''

3. In the notice inviting applications, under *Postsecondary Education Programs for Individuals With Disabilities*, beginning on page 4180, the following corrections are made:

In the title of the Absolute Priority, and in the sentence following the title of the Absolute Priority, change ''Secondary Education'' to ''Postsecondary Education''.

4. In the notice of final priorities, on page 4169, in the Analysis of Comments and Changes section, in the title of the first priority in the second column, change ''Secondary Education'' to ''Postsecondary Education'' and delete ''services''.

5. In the notice of final priorities, on page 4169, in the Analysis of Comments and Changes section, in the title of the second priority in the second column, add the word ''services'' after ''Secondary Education''.

FOR FURTHER INFORMATION CONTACT: Jo Ann McCann, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4631, Switzer Building, Washington, D.C., 20202–2731. Telephone (202) 205–8475. Fax: (202) 205–8971. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169. Internet: Jo__Ann__McCann@ed.gov.

Dated: March 6, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–5713 Filed 3–8–96; 8:45 am]

BILLING CODE 4000–01–P

Projects With Industry; Waiver

AGENCY: Department of Education.

ACTION: Notice of Waiver.

SUMMARY: The Secretary waives the requirement in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.261(a)(2) that prohibits project extensions that involve the obligation of additional Federal funds. The Secretary waives this EDGAR requirement for fiscal year (FY) 1996 only for the Projects With Industry (PWI) program. The Secretary will issue continuation awards in FY 1996 to all grantees under this program that are in the fifth and final year of the project period in order

to ensure the most efficient and effective use of Federal funds.

EFFECTIVE DATE: This waiver takes effect on April 10, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3038, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: A total of 95 grantees, which were first funded in FY 1991, received their fifth and final year of project support in FY 1995.

The Department had planned to conduct a competition for new five-year awards later this fiscal year in accordance with revised program regulations that would strengthen certain statutory requirements and enhance project accountability. The revised regulations would contain new application content requirements and new selection criteria for evaluating grant applications.

The Department had planned to publish a notice of proposed rulemaking (NPRM) proposing revisions to the existing program regulations in mid-December 1995, but, because of the closure of the Department for a number of weeks in December and early January due to lapsed funding and inclement weather, the Department was unable to meet this schedule. The NPRM was published on January 22, 1996 (60 FR 1672) and provides for a comment period ending March 22, 1996. The Department has now determined that it is unable to publish final regulations in time to have them apply to a competition for new awards in FY 1996.

The program statute (section 621(e)(1)(A) of the Rehabilitation Act of 1973, as amended) specifies that a grant may be made for a period of up to five years and may be renewed. The Department has interpreted this authority to mean that it can extend non-competitively PWI grants beyond the five-year project period. The Department has decided to exercise this renewal authority because of the unique circumstances affecting this program this fiscal year and to make continuation awards for an additional year rather than conduct a new competition under the existing program regulations.

The Department has, therefore, determined that to make continuation awards under the circumstances previously described makes the most programmatic sense and is the most efficient and effective use of Federal funds. However, to do so, the Department must waive the requirement in EDGAR in 34 CFR 75.261(a)(2) that prohibits the extension of project periods that involve the obligation of additional Federal funds.

Waiver of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act (20 U.S.C. 1232) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment is impracticable because of the time constraints discussed in the Supplementary Information section of this notice. Just as there is insufficient time to change the program regulations for purposes of making new awards in fiscal year 1996, there is not enough time to take public comment on waiving the EDGAR requirement prohibiting cost extensions and make the continuation awards.

Regulatory Flexibility Act Certification

The Secretary certifies that this waiver would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by this waiver are program grantees currently receiving Federal funds to complete the fifth and final year of the project period. However, the waiver would not have a significant economic impact on these grantees because the waiver would not impose excessive regulatory burdens or require unnecessary Federal supervision. The waiver would impose minimal requirements to ensure the proper expenditure of program funds—requirements that are standard to continuation awards.

Paperwork Reduction Act of 1995

This waiver has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry.)

Dated: March 4, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–5593 Filed 3–8–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Availability of the Stockpile Stewardship and Management Draft Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Stockpile Stewardship and Management Draft Programmatic Environmental Impact Statement (PEIS), and the dates and locations for public hearings to receive comments on the Draft PEIS. DOE prepared the Stockpile Stewardship and Management PEIS pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) The Stockpile Stewardship and Management PEIS analyzes the consequences to the environment associated with alternative ways of maintaining the safety and reliability of the nuclear weapons stockpile in the absence of underground nuclear testing.

DATES: The public comment period on the Draft PEIS will extend until May 7, 1996. The dates, times and locations of the public hearings on the Draft PEIS are identified in the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on the Draft PEIS, as well as requests for copies of the Draft PEIS or its Summary may be submitted to the Office of Reconfiguration, DP–25, U.S. Department of Energy, P.O. Box 3417, Alexandria, Virginia 22302. Requests for copies may also be made by calling 1–800–776–2765.

FOR FURTHER INFORMATION CONTACT: For general information on the Department's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington,

D.C. 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at 1–800–472–2756.

Specific information regarding the public hearings, including registration information, can also be obtained by calling 1–800–776–2765, writing to the address above, or electronically via computer as follows: Federal Information Exchange Bulletin Board, InterNet Address: http://web.fie.com/fedix/doeoor.html, Modem Toll-Free: 1–800–783–3349, D.C. Metro Modem: 301–258–0953.

SUPPLEMENTARY INFORMATION: In response to the end of the Cold War and changes in the world political situation, the United States is no longer producing new nuclear weapons. Instead, the emphasis of the United States' nuclear weapons program is on reducing the size of the Nation's nuclear stockpile by dismantling existing nuclear weapons. DOE has been directed by the President and Congress to maintain the safety and reliability of the reduced nuclear weapons stockpile in the absence of underground nuclear testing. In order to fulfill that responsibility, DOE has developed the Stockpile Stewardship and Management Program to provide a single, highly integrated technical program for maintaining the continued safety and reliability of the nuclear stockpile. The Stockpile Stewardship and Management PEIS describes and analyzes alternative ways to implement the Stockpile Stewardship and Management Program.

Stockpile stewardship refers to activities associated with the research, design, development, and testing of nuclear weapons, and the assessment and certification of their safety and reliability of the weapons. The stockpile stewardship portion of the PEIS evaluates the potential environmental impacts of three proposed facilities: the National Ignition Facility (NIF), the Contained Firing Facility, and the Atlas Facility. Four sites are potentially affected by the Stockpile Stewardship alternatives: Los Alamos National Laboratory (LANL), Lawrence Livermore National Laboratory (LLNL), Sandia National Laboratories (SNL), and the Nevada Test Site (NTS).

Stockpile management refers to activities associated with the production, maintenance, surveillance, refurbishment, and dismantlement of the nuclear weapons stockpile. The stockpile management portion of the PEIS evaluates the potential environmental impacts of reasonable alternatives for carrying out the stockpile management functions. Alternative sites are assessed for nuclear weapons assembly/disassembly, and for fabrication of plutonium, uranium, high explosives, and nonnuclear components. Eight sites are potentially affected: Savannah River Site (SRS), Oak Ridge Reservation (ORR), Pantex Plant (Pantex), Kansas City Plant (KCP), LANL, LLNL, SNL, and NTS. The PEIS also evaluates the No Action alternative of relying on existing facilities in their current configuration and continuing the missions at current sites to achieve both stockpile stewardship and stockpile management missions.

As of February 9, 1996, the date when the Stockpile Stewardship and Management Draft PEIS was sent to the printer, the Department had identified only one preferred alternative: to construct and operate the NIF at LLNL. Since that date, DOE has identified additional preferred alternatives. The complete list of preferred alternatives is as follows:

Stockpile Stewardship

- Construct and operate the NIF at Lawrence Livermore National Laboratory, at Livermore CA.
- Construct and operate the Contained Firing Facility at Lawrence Livermore National Laboratory, at Livermore CA.
- Construct and operate the Atlas Facility at Los Alamos National Laboratory, at Los Alamos NM.

Stockpile Management

- Secondary and Case Component Fabrication—downsize the Y–12 Plant at Oak Ridge Reservation, at Oak Ridge TN.
- Pit Component Fabrication—re-establish pit component fabrication capability at the Los Alamos National Laboratory, at Los Alamos NM.
- Assembly/Disassembly—downsize the Pantex Plant, at Amarillo TX.
- Nonnuclear Component Fabrication—downsize the Kansas City Plant, Kansas City MO.

Ten public hearings to receive comments on the Draft Stockpile Stewardship and Management PEIS will be held. A workshop-type format will be used for each hearing, including: a program overview; interactive discussions; and a summary session. For the four sites which are being considered as alternative locations for both the Stockpile Stewardship and Management Draft PEIS and the Storage and Disposition of Weapons-Usable Fissile Materials Draft PEIS (Nevada Test Site at Las Vegas, NV, Oak Ridge Reservation at Oak Ridge, TN, the Pantex Plant at Amarillo, TX, and Savannah River Site at North Augusta, SC), joint public hearings will be held to receive comments on both documents. The Pantex Site-Wide PEIS is also scheduled to be discussed at the public hearings in Amarillo, TX, and North Augusta, SC. The public hearing to be held in Washington, D.C. will also be a joint hearing. These joint hearings are scheduled to explain the interrelationship between the programs and to facilitate comments by persons interested in the proposals. These public hearings have been scheduled as follows:

Location	Date	Time
Los Alamos, New Mexico, Fuller Lodge, 2132 Central Avenue, Los Alamos, NM 87544	March 26, 1996	1:00 p.m.–5:00 p.m.
	March 26, 1996	6:00 p.m.–10:00 p.m.
Albuquerque, New Mexico, Albuquerque Convention Center, 401 Second Street, N.W., Albuquerque, NM 87102.	March 28, 1996	6:00 p.m.–10:00 p.m.
Las Vegas, Nevada, The Sands Expo and Convention Center, 201 East Sands Avenue, Las Vegas, NV 89109.	March 28, 1996	6:00 p.m.–11:00 p.m.
	March 29, 1996	8:00 a.m.–1:00 p.m.
Oak Ridge, Tennessee, Garden Plaza Hotel, 215 S. Illinois Avenue, Oak Ridge, TN 37830.	April 1, 1996	6:00 p.m.–10:00 p.m.
	(Stockpile Stewardship and Management only)	
	April 2, 1996	8:30 a.m.–1:30 p.m.
	(Both Programs)	
	April 2, 1996	6:00 p.m.–10:00 p.m.
	(Storage and Disposition only)	
Kansas City, Missouri, Rockhurst College, 1100 Rockhurst Roadway, Kansas City, MO 64110.	April 9, 1996	12:00 p.m.–4:00 p.m.

Location	Date	Time
Livermore, California, LLNL Research Drive Training Center, 2140 Research Drive, Livermore, CA 94550.	April 9, 1996	6:00 p.m.–10:00 p.m.
	April 11, 1996	12:00 p.m.–4:00 p.m.
Washington, D.C., Forrestal Bldg., Rm. 1E–245, 1000 Independence Avenue, SW., Washington, D.C. 20585.	April 11, 1996	6:00 p.m.–10:00 p.m.
	April 18, 1996	9:00 a.m.–12:30 p.m.
Amarillo, Texas, Radisson Inn Airport, 7909 I–40 East, at Lakeside, Amarillo, TX 79102 ...	April 22, 1996	6:00 p.m.–11:00 p.m.
	April 23, 1996	8:30 a.m.–5:30 p.m.
	(An evening meeting may be held April 23, 1996 if there is sufficient interest)	
Santa Fe, New Mexico, High Mesa Inn, 3347 Cerrillos Road, Santa Fe, NM 87505	April 25, 1996	6:00 p.m.–10:00 p.m.
North Augusta, SC, North Augusta Community Center, 101 Brookside Drive, North Augusta, SC 29841.	April 30, 1996	8:00 a.m.–1:00 p.m.
	April 30, 1996	6:00 p.m.–11:00 p.m.

Details regarding the format and procedures for the public hearings will be published locally. Hearing times will be extended, as appropriate, to accommodate public interest.

The public comment period will extend until May 7, 1996. Written or oral comments on the Draft EIS are invited from the general public, other government agencies, and all other interested parties. Comments received or postmarked by May, 7, 1996, whether written or oral, submitted directly to the Department, or presented during a public hearing, will be given equal consideration in preparation of the Final EIS. Comments received after that date will be considered to the extent practicable. DOE will use the comments received to help prepare the Final version of the EIS. A Final PEIS for Stockpile Stewardship and Management is expected to be completed by July 1996. A Record of Decision would be completed no sooner than 30 days after the Final PEIS is issued.

Signed in Washington, D.C. this 6th day of March, 1996.

Eldon W. Joersz,

Major General, USAF, Principal Deputy Assistant Secretary For Military Application, Defense Programs.

[FR Doc. 96–5699 Filed 3–8–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–153–000]

ANR Pipeline Company; Notice of request for Suspension of FERC Gas Tariff Requirement

March 5, 1996.

Take notice that on February 29, 1996, ANR Pipeline Company (ANR) filed, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.207, a request for suspension of its tariff provisions regarding the filing of the annual redetermination of the monthly charge for services provided to High Island Offshore System (HIOS) under ANR's Rate Schedule X–64.

ANR states that HIOS gave ANR notice of its intent to terminate its existing service agreement with ANR effective May 22, 1995, and that on February 28, 1996, ANR and HIOS entered into an agreement in principle for new rates and charges for the service provided under Rate Schedule X–64 which agreement eliminates the need to determine annually the rate through the end of calendar year 2000. Thereafter, unless the parties agree otherwise, the annual redetermination requirement may be reactivated. Accordingly, ANR requests that the tariff provision which requires an annual rate redetermination filing by ANR be suspended.

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, 888 First 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 or 385.211). All such motions or protests should be filed on or before March 12, 1996. 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 application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5623 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–161–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on February 29, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, proposed to become effective March 1, 1996:

Sixteenth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed to implement an annual true-up of the recovery of its Above-Market Dakota Costs, as required by its recovery tariff mechanism. ANR advises that the filing proposes a negative reservation surcharge adjustment of ($0.076) applicable to its currently effective, firm service Rate Schedules. ANR states that this negative surcharge is proposed to return to ANR's customers, over the twelve month period of March 1, 1996 to February 28, 1997, the $3.4 million of above-market Dakota cost overcollections, inclusive of interest, which is reflected in the true-up filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commissions Rules and Regulations. All such motions or protests must be filed as provided in Sections 154.210 of the Commission's Regulations. 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. 96–5630 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–154–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on February 29, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective March 1, 1996:

Eleventh Revised Sheet No. 8
Thirteenth Revised Sheet No. 9
Thirteenth Revised Sheet No. 13
Thirteenth Revised Sheet No. 16
Fifteenth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $6.8 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Dakota Above-Market cost recoveries from $9.7 million to $6.8 million, based upon costs incurred from November 1995 to January 1996.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5663 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–155–000]

CNG Transmission Corporation; Notice of Termination of Service

March 5, 1996.

Take notice that on February 29, 1996, CNG Transmission Corporation (CNGT), tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of service on pipeline facilities which CNG will abandon by sale to Eastern States Oil & Gas, Inc. CNG states that no contract for transportation of service with CNG will be terminated because delivery of gas will occur further downstream of the current delivery points. CNG proposes a March 29, 1996 effective date.

CNG states that copies of the filing are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed on or before March 12, 1996. 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 proceedings. Any person wishing to become a party to the proceeding or to participate as a part in any hearing therein 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. 96–5624 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–5–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on February 29, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Tenth Revised Sheet No. 31
Seventeenth Revised Sheet No. 32
Seventeenth Revised Sheet No. 33
Eigth Revised Sheet No. 34
Tenth Revised Sheet No. 35
Tenth Revised Sheet No. 36

CNG requests an effective date of April 1, 1996, for these proposed tariff sheets.

CNG states that the purpose of this filing is to update CNG's effective Transportation Cost Rate Adjustment (TCRA). The effect of the proposed TCRA on each element on CNG's rates is summarized on Workpaper 4, which is attached to the filing. CNG further states that it has computed its TCRA in accordance with the methods prescribed by section 15.3 of the General Terms; this calculation is set forth in detail on Workpaper 1.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. 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 filed 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. 96–5641 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–165–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below:

4th Sub Eleventh Revised Sheet No. 25
3rd Sub Eleventh Revised Sheet No. 26
3rd Sub Eleventh Revised Sheet No. 27
3rd Sub Twelfth Revised Sheet No. 28
2nd Sub Seventh Revised Sheet No. 29

3rd Sub Seventh Revised Sheet No. 30

The proposed Effective Date of these revised tariff sheets is April 1, 1996.

Columbia states that this filing constitutes its annual filing pursuant to Section 36.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. GTC Section 36, (''Transportation Costs Rate Adjustment (TCRA)'', enables Columbia to adjust its TCRA rates prospectively to reflect estimated current costs and unrecovered amounts for the deferral period. In this filing, Columbia states that its TCRA rate consists of a current operational TCRA rate, a current stranded TCRA rate, an unrecovered operational 858 rate, and an unrecovered stranded 858 rate.

Columbia states that its filing includes projected costs in the amount of $15,317,083 for the Operational Account No. 858 contracts based upon the rates of the applicable pipeline companies at April 1, 1996, and the respective determinants associated with these contracts. According to Columbia, the Operational Account No. 858 contracts are those upstream pipeline contracts retained by Columbia during restructuring under Order No. 636 to meet its operational needs.

Columbia further states that in accordance with Article VIII, Section G of the Customer Settlement in Docket No. GP94–2, et al., it is maintaining the stranded TCRA demand rates filed in Docket No. RP95–196 as accepted by the Commission by order dated March 30, 1995, 70 FERC ¶ 61,364 (1995), in order to levelize Columbia's recovery of costs.

Columbia also states that in this filing it is eliminating the stranded commodity rate of ($0.0048)/Dth, effective April 1, 1996. The stranded commodity rate was designed on a credit balance which included a rate refund in Tennessee Gas Pipeline Company's Docket No. RP91–203. Columbia has fully flowed back to its customers the credit balance of the commodity costs. Columbia further anticipates that its stranded Account No. 858 costs will be fully recovered by September of 1996.

Columbia, by this filing, also proposes to reconcile actual activity for the deferral period to reflect a net under recovery of $1,175,764. Columbia proposes to flow back an over recovery of $837,141 in demand costs, and $769,183 in commodity costs applicable to its Operational Account No. 186 deferral period of January 1, 1995, through December 31, 1995.

Finally, Columbia proposes to recover through a commodity surcharge an under recovery of $2,782,088 in commodity costs applicable to its Stranded Account No. 186 deferral period of January 1, 1995, through March 31, 1996.

Columbia states that copies of this filing have been served upon all of its firm customers, and interested State Commissions. Moreover, all interruptible customers having submitted a standing request for such filings were also served.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5633 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective April 1, 1996:

Third Revised Sheet No. 44

Columbia states that the proposed changes constitute Columbia's annual filing pursuant to the provisions of Section 35, ''Retainage Adjustment Mechanism'', of the General Terms and Conditions (GTC) of its tariff. The revised sheet listed above sets forth the retainage percentages as a result of this filing, and reflects adjustments for both the current and unrecovered components within each of the retainage percentages for company-use, lost and unaccounted for quantities. Columbia states that it has also implemented a separate gathering retainage percentage applicable to gathering quantities in accordance with this Commission's order issued on February 16, 1996, at 74 FERC ¶ 61,160 in Docket No. RP95–408–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5637 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1996:

Eleventh Revised Sheet No. 018
Eleventh Revised Sheet No. 019

Columbia Gulf states that the instant filing represents Columbia Gulf's annual filing pursuant to Section 33, ''Transportation Retainage Adjustment (TRA)'', of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Columbia Gulf states that it currently has retainage factors for each of its three zones. Each factor consists of a current and an unrecovered component for company-use, lost, and unaccounted for quantities. In this filing, Columbia Gulf is adjusting the current component of each retainage factor to reflect a change in the estimate for company-use, lost, and unaccounted for quantities. The unrecovered component for each of the retainage factors is also being adjusted in this filing to account for an under-recovery of these quantities during the deferral period.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5640 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–33–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective April 1, 1996.

Second Revised Volume No. 1–A

Sixth Revised Sheet Nos. 20 and 23
Seventh Revised Sheet No. 24
Sixth Revised Sheet No. 26
Fifth Revised Sheet Nos. 27–28

Third Revised Volume No. 1

Fourth Revised Sheet No. 101

Third Revised Volume No. 2

Thirty-Seventh Revised Sheet No. 1–D.2
Thirtieth Revised Sheet No. 1–D.3

El Paso is also tendering for filing as part of its FERC Gas Tariff, Volume Nos. 1–A, 1, and 2, the following tariff sheets, to become effective May 1, 1996.

Second Revised Volume No. 1–A

Seventh Revised Sheet Nos. 20 and 23
Eighth Revised Sheet No. 24
Seventh Revised Sheet No. 26
Sixth Revised Sheet Nos. 27–28

Third Revised Volume No. 2

Thirty-Eighth Revised Sheet No. 1–D.2
Thirty-First Revised Sheet No. 1–D.3

El Paso states that the tendered tariff sheets proposed to become effective April 1, 1996, reflect an adjustment to its take-or-pay Throughput Surcharge to reflect an adjustment for the difference between previously estimated interest and actual interest and to add actual interest for February and March 1996.

As a result, the Throughput Surcharge has decreased $0.0439 per dth, from $0.0461 to $ 0.0022 per dth.

El Paso states that the tendered tariff sheets proposed to become effective May 1, 1996, will remove the Throughput Surcharge from the applicable Statement of Rates sheets in its Tariff after the completion of the take-or-pay cost recovery on April 30, 1996. El Paso has requested waiver of the requirements of Section 154.207 of the Commission's Regulations to accept the tendered tariff sheets with a proposed May 1, 1996, effective date and permit them to become effective on that date, which is 61 days following the date of the filing.

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, 888 First 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 must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5636 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–24–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Equitrans, L.P. (Equitrans) tendered for filing a part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheet:

Sixth Revised Sheet No. 6

The proposed tariff sheet contains an effective date of April 1, 1996.

Equitrans states that this filing constitutes its first annual products extraction rate adjustment filing under section 32 of the General Terms and Conditions of its FERC Gas Tariff. By this filing, Equitrans proposes an adjusted extraction rate of $0.2015/Dth for the prospective 12-month period beginning April 1, 1996. Equitrans states that this represents a significant reduction from the $0.2450/Dth rate which was approved by the Commission in 1995. In calculating the current rate, Equitrans states that it utilizes actual extraction billings and actual plant throughput for the 12 months ended December 31, 1995, adjusted for anticipated activity during 1996, all as more fully set forth in the filing.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5635 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–8–000]

Michigan Gas Storage Company; Notice of Filing

March 5, 1996.

Take notice that on February 28, 1996, Michigan Gas Storage Company (Michigan Gas) filed revised standards

of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2]

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 20, 1996. 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. 96–5621 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. CP96–85–000]

National Fuel Gas Supply Corporation; Notice of Amendment

March 5, 1996.

Take notice that on January 4, 1996, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, requested that its abandonment application, filed on November 24, 1995, in Docket No. CP96–85–000, pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations be amended to include authorization to abandon Wells 5448 and 5447 located in National Fuel's St. Mary's Storage Field, Elk County, Pennsylvania. National Fuel states that Well 5448 was plugged in 1974 and Well 5447 was plugged in 1976.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 12, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this amendment if no motion to intervene is filed within the time required herein, if the Commission of its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5620 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–159–000]

National Fuel Gas Supply Corporation; Notice of Termination of Services

March 5, 1996.

Take notice that on February 29, 1996, National Fuel Gas Supply Corporation (National Fuel) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services provided through various pipelines and metering and regulating stations which National Fuel will transfer to its affiliate, National Fuel Gas Distribution Corporation. National Fuel proposes an April 1, 1996 effective date.

National Fuel states that no transportation agreement will be abandoned as a result of these transfers and service to customers served off these facilities will not be adversely affected by the transfer.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulation. 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. 96–5628 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–130–001]

Northern Natural Gas Company; Notice of Petition to Amend

March 5, 1996.

Take notice that on February 27, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP95–130–001 a petition pursuant to Section 7(c) of the Natural Gas Act to amend its certificate issued in Docket No. CP95–130–000 on June 30, 1995,[1] authorizing the construction and operation of certain compressor and town border station facilities, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Northern proposes to install three refurbished 1,100 horsepower iso-rated compressor units in lieu of the two 1,600 horsepower units authorized in its original certificate for its Belleville Compressor Station, Green County, Wisconsin. Northern states that this modification would allow more

[1] 71 FERC ¶ 61,418 (1995).

operational flexibility as well as reducing construction and installation costs. Northern estimates that the reduction in construction costs would amount to more than one million dollars. Northern asserts that this modification would not change the design flow or capacity from that proposed in its original application.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 15, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5619 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–163–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

Take notice that on March 1, 1996, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858-Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Twenty First Revised Sheet Nos. 50 and 51 to be effective April 1, 1996.

Northern states that copies of this filing were served upon the Company'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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–5631 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–164–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR surcharge which is designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed the Twentieth Revised Sheet Nos. 50 and 51 to revise the GSR surcharge, effective April 1, 1996.

Northern states that copies of this filing were served upon the Company'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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5632 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–37–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective April 1, 1996:

Third Revised Volume No. 1

Fifth Revised Sheet No. 14

Original Volume No. 2

Seventeenth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose new fuel use requirements factors (''Factors'') for Northwest's transportation and storage rate schedules. The Factors are determined each year to become effective April 1 pursuant to Section 14.12 of the General Terms and Conditions contained in Northwest's FERC Gas Tariff, Third Revised Volume No. 1, and pursuant to section 5 of Sheet No. 2.1 in Northwest's FERC Gas Tariff, Original Volume No. 2.

Northwest states that Fifth Revised Sheet No. 14 of Third Revised Volume No. 1 and Seventeenth Revised Sheet No. 2.1. of Original Volume No. 2 propose a Factor of 1.58% for transportation service rate schedules TF–1, TF–2, TI–1, T–1 and for all transportation service rate schedules contained in Original Volume No. 2 of Northwest's FERC Gas Tariff.

Northwest also states that Fifth Revised Sheet No. 14 proposes a Factor of 1.51% for service at the Jackson Prairie Storage Project under Rate Schedules SGS–1, SGS–2F and SGS–2I. This tariff sheet also revises the Factor for the Plymouth LNG Facility storage service to 1.88% for Rate Schedules LS–1, LS–2F and LS–2I.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5638 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–166–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 1996.

Panhandle states that this filing removes from Panhandle's currently effective rates the Additional Take-or-Pay Volumetric Surcharge established by Section 18.10 of the General Terms and Conditions of Panhandle's tariff which was the subject of Panhandle's filing in Docket No. RP94–153–000. The current volumetric surcharge and the provisions of Section 18.10 were established in a Stipulation and Agreement (Settlement) dated July 19, 1994 which the Commission approved in orders dated September 22, 1994, 68 FERC ¶ 61,353 (1994), and December 22, 1994, 69 FERC ¶ 61,383 (1994). Section 18.10(b)(4) provides for an initial Recovery Period which commenced on April 1, 1994 and will terminate on March 31, 1996. Accordingly, Panhandle is now proposing to remove 0.19¢ from the current 1.19¢ TOP Volumetric Surcharge, thus reducing the surcharge to 1.00¢.

Panhandle further states that Section 18.10 (g) of the General Terms and Conditions provides for a Reconciliation Recovery Period if it is determined that Panhandle has not fully recovered the Additional Take-or-Pay Settlement Costs at the conclusion of the initial 24-month recovery period. A Volumetric Surcharge is to be re-established during the Reconciliation Recovery Period to recover any such deficiency. Currently, Panhandle projects that an unrecovered balance will exist at March 31, 1996. Accordingly, pursuant to Section 18.10 (b)(4) of the General Terms and Conditions of Panhandle's tariff, Panhandle expects to file on or before May 1, 1996, supporting workpapers and tariff sheets to implement a new surcharge to be effective June 1, 1996 for the twelve month Reconciliation Recovery Period.

Panhandle states that in accordance with Section 154.2(d) of the Commission's regulations a copy of this filing. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–4634 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective April 1, 1996.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages:

(1) a 0.07% increase in the Gathering Fuel Reimbursement Percentage;

(2) A (0.44%) decrease in the Field Zone Fuel Reimbursement Percentage;

(3) a (0.01%) decrease in the Market Zone Fuel Reimbursement Percentage;

(4) No change in the Field Area Storage Reimbursement Percentages; and

(5) No change in the Market Area Storage Fuel Reimbursement Percentages.

Panhandle further states that it has included detailed computations which show the projected amount of fuel usage and lost and unaccounted for gas that will be required for the projected transportation and storage volumes provided for under Panhandle's transportation and storage Rate Schedules effective April 1, 1996.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5639 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–152–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

March 5, 1996.

Take notice that on February 27, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 1996.

Tariff Sheets Applicable to Contesting Parties

Eighth Revised Sheet No. 14
Thirtieth Revised Sheet No. 15
Eighth Revised Sheet No. 16
Thirtieth Revised Sheet No. 17
Eighteenth Revised Sheet No. 18
Nineteenth Revised Sheet No. 29
Nineteenth Revised Sheet No. 30
Nineteenth Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties

Second Revised Sheet No. 14A
Ninth Revised Sheet No. 15A
Second Revised Sheet No. 16A
Ninth Revised Sheet No. 17A

Southern sets forth in the filing its revised demand surcharges and revised

interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout costs associated with continuing realignment efforts as well as sales function costs during the period November 1, 1995 through January 31, 1996. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern states that copies of the filing were served upon Southern'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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5622 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–158–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

March 5, 1996.

Take notice that on February 29, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of March 1, 1996:

Tariff Sheets Applicable to Contesting Parties

Seventh Revised Sheet No. 14
Twenty-ninth Revised Sheet No. 15
Seventh Revised Sheet No. 16
Twenty-ninth Revised Sheet No. 17

Southern states that the proposed tariff sheets reflect a slight increase in Southern's March 1, 1996 FT and FT–NN surcharge as a result of the removal of a credit to the GSR surcharge for February 1996.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5627 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–160–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on February 29, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of April 1, 1996:

Third Revised Sheet No. 206
Substitute Original Sheet No. 209B
Substitute Original Sheet No. 209C
Substitute Original Sheet No. 209D
Original Sheet No. 209E
Fourth Revised Sheet No. 212

Tennessee states that the proposed filing allows an OBA holder to group two FS contracts for SSO purposes, implements a fuel treatment option for the SSO, and modifies the SSO Transportation Component crediting mechanism of the SSO as well as the charge for mid-month interzonal trades under the cash out mechanism.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5629 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–156–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on February 29, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets with a proposed effective date of April 1, 1996:

Third Revised Sheet No. 143
Third Revised Sheet No. 144
Third Revised Sheet Nos. 145–155

Texas Eastern states that the filing is submitted pursuant to Section 15.2(G), Transition Cost Tracker, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder.

Texas Eastern states that the purpose of the filing is to continue its recovery of Order No. 636 transition costs incurred by upstream pipelines and flowed through to Texas Eastern as initially approved by the Commission by order dated March 31, 1995 in Docket No. RP95–174–000. Texas Eastern states that this filing covers approximately $3.3 million of net upstream transition costs for the period January 1, 1995 through December 31, 1995, which is a reduction of approximately 30% from the last filing.

Texas Eastern states that the costs included in this filing have been partially offset by refund amounts received from upstream suppliers and that carrying charges calculated

pursuant to the Commission's Regulations are included from the date of payment of the costs or receipt of the refund amount to the projected date of payment by the customers.

Texas Eastern states that copies of the filing were served on all firm customers of Texas Eastern and applicable 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, 888 First 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 must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5625 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–10–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

March 5, 1996.

Take notice that on March 1, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff enumerated in Appendix A attached to the filing, to be effective April 1, 1996.

Transco states that the instant filing is submitted pursuant to Section 38 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file, to be effective each April 1, a redetermination of its fuel retention percentages applicable to transportation and storage rate schedules. The derivations of the revised fuel retention percentages included herein are based on Transco's estimate of gas required for operations (GRO) for the forthcoming annual period April 1996 through March 1997 plus the balance accumulated in the Deferred GRO Account at January 31, 1996.

Transco is serving copies of the instant filing to its customers, State Commissions and other interested parties.

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, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5643 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–11–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing, to be effective April 1, 1996.

Transco the instant filing is submitted pursuant to Section 41 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to reflect net changes in the Transmission Electric Power (TEP) rates 30 days prior to each TEP Annual Period beginning April 1. Attached in Appendix B to the filing are workpapers supporting the derivation of the revised TEP rates reflected on the tariff sheet included therein.

The TEP rates are designed to recover Transco's transmission electric power costs for its electric compressor stations (Stations 100, 120, 145, and 205). The costs underlying the revised TEP rates consist of two components—the Estimated TEP Costs for the period April 1, 1996 through March 31, 1997 plus the balance in the TEP Deferred Account including accumulated interest as of January 31, 1996. Appendix C contains schedules detailing the Estimated TEP Costs for the period April 1, 1996 through March 31, 1997 and Appendix D contains workpapers supporting the calculation of the TEP Deferred Account.

Transco states that it is serving copies of the instant filing to its customers, State Commissions, and other interested parties.

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, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 or public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–5644 Filed 3–8–96; 8:45 am]

BILLING CODE 4717–01–M

[Docket No. TM96–5–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective April 1, 1996:

1st Rev Fourteenth Revised Sheet No. 6
1st Rev Fourteenth Revised Sheet No. 7
1st Rev Fourteenth Revised Sheet No. 8
1st Rev Fourteenth Revised Sheet No. 9
1st Rev Fourteenth Revised Sheet No. 10

Trunkine states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline also states that on January 29, 1996 Trunkline proposed, in Docket No. RP96–129–000, to base the calculation and application of its fuel reimbursement percentage on the quantity of gas received for, instead of delivered to the account of its shippers. On February 29, 1996, the Commission accepted Trunkline's proposal, subject to Trunkline moving such change into effect at least one day prior to April 1, 1996. Because Trunkline intends to

move into effect the referenced tariff change prior to April 1, 1996, the information contained in this filing reflects fuel retention calculated on a received volume basis, thus conforming to the tariff revisions accepted in Docket No. RP96–129–000.

Trunkline further states that the revised tariff sheets filed herewith reflect: (1) a (0.58)% decrease (Field Zone to Zone 2), a (0.61)% decrease (Zone 1A to Zone 2), a (0.37)% decrease (Zone 1B to Zone 2), a (0.15)% decrease (Zone 2 only), a (0.52)% decrease (Field Zone to Zone 1B), a (0.55)% decrease (Zone 1A to Zone 1B), a (0.31)% decrease (Zone 1B only), a (0.30)% decrease (Field Zone to Zone 1A), a (0.33)% decrease (Zone 1A only), and a (0.06)% decrease (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that a copy of this filing was mailed to affected shippers and interested 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5642 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ96–2–35–000]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 5, 1996.

Take notice that on March 1, 1996, West Texas Gas, Inc. (WTG), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. WTG submitted Eighteenth Revised Sheet No. 4 to be effective April 1, 1996. This tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly 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 persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–5645 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–157–000 and TM96–2–76–000]

Wyoming Interstate Company, Ltd.; Notice of Filing

March 5, 1996.

Take notice that on February 29, 1996, Wyoming Interstate Company (WIC), tendered for filing its first annual Recomputation of Fuel, Lost and Unaccounted-for Percentage (FL&U) Filing with the Federal Energy Regulatory Commission. WIC proposes a December 1, 1995 effective date. WIC states that the FL&U percentage of 0% to .07% was based on the actual FL&U usage adjusted for a measurement error caused by pulsation at WIC's Dull Knife meter site, actual system throughput and actual customer retention to date since the inception of WIC's FL&U tariff mechanism through December 31, 1995.

On October 3, 1995, WIC states that it filed a motion for an extension of time within which to submit its annual FL&U filing, in accordance with Section 24 of the General terms and Conditions in WIC's First Revised Volume No. 1 and Article 31 in WIC's Second Revised Volume No. 2. On October 20, 1995, the Commission granted WIC an extension of time until February 29, 1996 to file its first annual FL&U filing so that accurate measured volumes could be reflected in its filing.

WIC is also proposing a change in its tariff to accommodate an FL&U percentage of no less than zero.

WIC states that copies of the filing were served upon the company's intervening jurisdictional 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, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 12, 1996. 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. 96–5626 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1167–000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 5, 1996.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1167–000]

Take notice that on February 26, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with LG&E Power Marketing, Inc. (LPM) to provide for the sale of energy and capacity. For energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour. Energy and capacity sold by LPM will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon LPM.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER96–1168–000]

Take notice that on February 26, 1996, Arizona Public Service Company (APS),

tendered for filing an Amendment No. 2 (Amendment) to the O&M Agreement (Agreement) between APS and the City of Williams. This Amendment No. 2 provides for APS to administer certain billing functions on behalf of the City of Williams.

Copies of this filing have been served upon the City of Williams and the Arizona Corporation Commission.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER96–1169–000]

Take notice that on February 26, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light company, and Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Company Services, Inc. (Southern Companies). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Southern Companies non-firm transmission service under its Transmission Service Tariff.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–1170–000]

Take notice that on February 26, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Cleveland Electric Illuminating Company (CEI) dated February 20, 1996. This Service Agreement specifies that CEI has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–791–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good causes shown and an effective date December 29, 1995 for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on CEI.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–1171–000]

Take notice that on February 26, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Toledo Edison Company (TEC) dated February 20, 1996. This Service Agreement specifies that TEC has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–791–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good causes shown and an effective date February 20, 1996 for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on TEC.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–1172–000]

Take notice that on February 26, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and Aquila Power Corporation (AQUILA) dated December 29, 1995. This Service Agreement specifies that AQUILA has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995 in Docket No. ER95–791–000 and designated as FERC Electric Tariff Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good causes shown and an effective date December 29, 1995, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on AQUILA.

Comment date: March 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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. 96–5681 Filed 3–8–96; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

March 6, 1996.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 13, 1996, 10:00 a.m.

PLACE: 888 First Street, NE., Room 2C, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro; 648th Meeting—March 13, 1996; Regular Meeting (10:00 a.m.)

CAH–1.

Docket No. P–2288–009, Public Service Company of New Hampshire

Other Nos. P–2311–008, James River-New Hampshire Electric, Inc.
CAH–2.
Docket No. P–2406–004, Duke Power Company
CAH–3.
Docket No. P–2459–007, West Penn Power Company
CAH–4.
Docket No. P–2465–004, Duke Power Company
CAH–5.
Docket No. P–7481–085, NYSD Ltd. Partnership
CAH–6.
Omitted
CAH–7.
Docket No. P–2614–021, City of Hamilton, Ohio

Consent Agenda—Electric

CAE–1.
Docket No. ER96–373–000, MP Energy, Inc.
CAE–2.
Docket No. ER96–553–000, QST Energy Trading, Inc.
CAE–3.
Docket No. ER96–894–000, Baltimore Gas and Electric Company
Other Nos. ER96–929–000, Potomac Electric Power Company
CAE–4.
Omitted
CAE–5.
Docket No. ER94–1402–002, Cenergy, Inc.
CAE–6.
Omitted
CAE–7.
Docket No. ER96–200–001, New England Power Company
Other Nos. ER96–233–001, New England Power Company; ER96–234–001, New England Power Company; ER96–235–001, New England Power Company; ER96–236–001, New England Power Company; ER96–237–001, New England Power Company; ER96–238–001, New England Power Company

Consent Agenda—Gas and Oil

CAG–1.
Docket No. RP96–142–000, Texas Eastern Transmission Corporation
CAG–2.
Docket No. TM96–9–29–000, Transcontinental Gas Pipe Line Corporation
CAG–3.
Docket No. RP96–66–000, Mississippi River Transmission Corporation
CAG–4.
Docket No. PR96–1–000, Equitable Storage Company
CAG–5.
Docket No. RP95–314–001, Tennessee Gas Pipeline Company
CAG–6.
Docket No. RP96–116–000, South Georgia Natural Gas Company
CAG–7.
Docket No. RP95–65–000, Northern Natural Gas Company
Other Nos. RP95–69–000, Northern Natural Gas Company
CAG–8.
Omitted
CAG–9.
Docket No. RP95–409–002, Northwest Pipeline Corporation
CAG–10.
Docket No. RP95–349–001, The Brooklyn Union Gas Company v. CNG Transmission Corporation
CAG–11.
Docket No. FA90–65–002, Northern Border Pipeline Company
CAG–12.
Docket No. RP95–19–001, Trunkline Gas Company
CAG–13. OMITTED
CAG–14. OMITTED
CAG–15.
Docket No. RP95–197–009, Transcontinental Gas Pipe Line Corporation
CAG–16.
Docket No. MG96–6–000, Transcontinental Gas Pipe Line Corporation
CAG–17.
Docket No. MG95–4–000, Northwest Pipeline Corporation
CAG–18.
Docket No. RM96–9–000, Editorial changes to various regulations to conform references to revised part 154
CAG–19.
Docket No. IS96–12–000, Seaway Pipeline Company
CAG–20.
Docket No. CP91–50–003, Sumas Cogeneration Company, L.P.
CAG–21.
Docket No. CP96–140–000, Tenneco Baja California Corporation
CAG–22.
Docket No. CP94–227–001, Trunkline Gas Company
CAG–23.
Docket No. CP95–668–000, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Other Nos. CP95–668–001, CNG Transmission Corporation and Texas Eastern Transmission Corporation
CAG–24.
Docket No. CP95–689–000, Conoco, Inc.
Other Nos. CP95–687–000, Northern Natural Gas Company
CAG–25.
Docket No. CP96–113–000, Shell Gas Pipeline Company
CAG–26.
Docket No. MT95–18–000, Alabama-Tennessee Natural Gas Company
CAG–27.
Docket No. CP94–172–002, Mojave Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I.
Pipeline Rate Matters
PR–1.
Reserved
II.
Pipeline Certificate Matters
PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 96–5827 Filed 3–7–96; 11:22 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5438–8]

Performance Partnership Grants for State and Tribal Environmental Programs: Interim Guidance

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The ''Performance Partnership Grants for State and Tribal Environmental Programs: Interim Guidance'' provides information for: States and Tribes that apply for and receive Performance Partnership Grants (PPGs); States applying for PPGs and entrance into the National Environmental Performance Partnership System (NEPPS); and EPA Regions that approve and award PPGs.

PPGs are intended to provide States and Tribes with greater flexibility to address their highest environmental priorities, improve environmental performance, achieve administrative savings, and strengthen partnerships between EPA and the States or Tribes.

FOR FURTHER INFORMATION CONTACT: Anne Robertson, Office of Water (4102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Telephone: (202) 260–5034, FAX: (202) 260–5711, or Jack Bowles, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, Telephone: (303) 312–6315, FAX: (303) 312–6067.

SUPPLEMENTARY INFORMATION: EPA is offering PPGs to eligible States and Tribes in Fiscal Year 1996 (FY96). A PPG is a multi-program grant made to a State or Tribal agency from funds otherwise available for categorical grant programs. A State or Tribe can combine funds from 2 or more of 16 eligible grant programs into 1 or more PPGs. Recipients may then use PPGs to fund activities that are within the cumulative eligibilities of the 16 eligible grant programs.

As of the date of this Federal Register Notice, EPA does not yet have authorization to award PPGs. Congress included authority for awarding PPGs in

its FY96 EPA Appropriations Bill, but this bill did not become law. EPA can begin to award PPGs only after the enactment of this language.

Additional contacts for information on PPGs are:

Headquarters:

Bruce Feldman, Chief, Grants Policy, Information and Training, or Ellen Haffa, Grants Administration Division, U.S. EPA (3901F), 401 M Street, SW, Washington, DC 20460, (202) 260–2523.

Region 1:

Robert Goetzl, Chief, Strategic Planning Office, CSP, U.S. EPA—Region I, John F. Kennedy Federal Building, One Congress Street, Boston, Massachusetts 02203, (617) 565–3378.

Peter Connell, Manager, Grants Management Unit, AGM, U.S. EPA—Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3378.

Region 2:

Tierre Jeanne, Chief, Grants Administration Branch, U.S. EPA—Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–3402.

John Malleck, Chief, Water Quality Management Section, Water Management Division, U.S. EPA—Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–3720.

Region 3:

Grants and Audit Management Branch, U.S. EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–7805.

Region 4:

Michelle Glenn, U.S. EPA—Region IV, 345 Courtland Street, Atlanta, GA 30365, (404) 347–7109 ext. 6878.

Region 5:

Tom Jackson, Acquisition and Assistance Branch (MC–10J), U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, Illinois 60604, (312) 886–7523.

Region 6:

Brenda Durden, Chief, Program Planning and Grants Branch, U.S. EPA—Region VI, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6510.

Joe Massey, Grants Management Office, U.S. EPA—Region VI, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7408.

Region 7:

Carol Rompage, Grants Management Officer, U.S. EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.

Region 8:

Tony Medrano, Director, Office of Grants, Audit and Procurement, U.S. EPA—Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6336.

Jack Bowles, U.S. EPA—Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6315.

Region 9:

Melinda Taplin, Chief, Grants Management Section (P–4–4), U.S. EPA—Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1693.

Region 10:

Denise Baker, U.S. EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

Dated: March 5, 1996.

Dana Minerva,

Deputy Assistant Administrator, Office of Water.

Kerrigan Clough,

Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII.

Performance Partnership Grants Guidance

Executive Summary

Performance Partnership Grants (PPGs)

A PPG is a multi-program grant made to a State or Tribal agency by the U.S. Environmental Protection Agency (EPA) from funds allocated and otherwise available for categorical grant programs. PPGs provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPGs.

Purpose

- Flexibility. States and Tribes will have the flexibility to address their highest environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core program commitments.
- Improved Environmental Performance. States and Tribes can: (1) More effectively link program activities with environmental goals and program outcomes; and (2) develop innovative pollution prevention, ecosystem, and community-based strategies.
- Administrative Savings. Recipients and EPA can reduce administrative burdens and costs by greatly reducing the numbers of grant applications, budgets, workplans, and reports.
- Strengthened Partnerships. EPA will develop partnerships with States and Tribes where both parties share the same environmental and program goals and deploy their unique resources and abilities to jointly accomplish those goals.

Authority

- The House and the Senate have included the necessary appropriations language.
- It appears likely that authority will exist when EPA's appropriations act becomes law.
- EPA cannot award PPGs until the necessary appropriations language becomes law.
- Authority would apply to funds from sixteen grants funded from EPA's proposed Program and Infrastructure Assistance (PIA) appropriation.

Eligibility

- All States and federally recognized Indian Tribes (including environmental, health, agriculture, and other State/Tribal agencies) eligible to receive more than one categorical grant in Fiscal Year (FY) 1996 are eligible to receive PPGs.
- Local agencies are eligible if they: (1) Are a State agency; and (2) receive direct funding from EPA for two or more of the eligible grant programs.
- PPGs do not affect State or Tribal agency ''pass-through'' grants to local or other agencies.
- State/Tribal agency eligibility is subject to the authority of the governor or State legislature, or Tribal authorities, as appropriate.

Application

- States and Tribes may apply for PPGs for any period after enactment of statutory authority for the program and may convert FY 1996 categorical grants to a PPG during the year.
- Applicants should apply for FY 1996 categorical grants in the event that EPA does not receive PPG authority. Applicants may use most of the same elements (e.g. workplans or program plans) of the categorical application package for the PPG application package. EPA will eliminate any unnecessary or duplicative documentation.
- PPG program commitments are the programmatic basis for the PPG award and grant accountability. Commitments may consist of environmental indicators, performance measures (including measures of activity), and narrative descriptions of program activities or program elements. PPG program commitments must have core program elements and performance measures, as defined by appropriate environmental statutes, regulations and EPA or State policy. PPG program commitments may be contained in categorical workplans, in an Environmental Performance Agreement (EnPA) or in a Tribal Environmental Agreement (TEA).

Funding and State/Tribal Cost Share

• EPA's allocation of grant funds to States will be the same whether the funds are awarded as PPGs or categorically. PPGs do not adversely affect a Tribe's ability to compete for any grant.

• PPGs may fund any activities eligible to be funded under sixteen specified EPA grant authorities.

• FY 1995 federal grant funds must be expended as categorical grants and may not be carried over into FY 1996 PPGs, because authority for PPGs begins with FY 1996 federal funds.

• EPA's policy and goal is that States and Tribes should continue to spend, in effect, the same amount of funds for environmental programs under PPGs as under categorical grants. Although, under PPGs, recipients will have the flexibility to realign those resources among environmental programs based on negotiated priorities in the EnPA/TEA, the total resources in the State or Tribe, both Federal and non-Federal, targeted to environmental programs should not be reduced, except in exceptional circumstances, for example, where a State or Tribe reduces funds across all State or Tribal agencies. Thus, the required cost share (based on the match or maintenance of effort requirements of the categorical grants included in the PPG) will be the same under PPGs as under categorical grants, unless EPA determines that there are exceptional circumstances justifying a reduction in cost share for a PPG for the year that the PPG is awarded.

• Applicants may have a single PPG budget for accounting and reporting purposes.

State/Tribal Options

• The content of each PPG depends on its purpose and the extent to which a recipient would like to deviate from traditional categorical workplans or pilot the National Environmental Performance Partnership System (NEPPS). Below are the four major categories of PPGs defined in this guidance (applicants may suggest other options):

• Administrative flexibility and savings only (with categorical workplans);

• Administrative and programmatic flexibility (with categorical workplans and a supplemental EnPA or TEA that explains the rationale and benefits of the PPG);

• Administrative and programmatic flexibility; single/multimedia EnPA/TEA in place of categorical workplans; and

• Any of the above PPG options and piloting the NEPPS.

EPA Regional Implementation

• EPA's Regional Administrators will be the designated approval and award officials for PPGs, with the ability to redelegate authority within their Regions.

• EPA Regions will designate a single grant Project Officer for each PPG.

• When State/Tribal PPG proposals present significant national policy issues, EPA Regions will consult with EPA's national program managers.

Table of Contents

Section 1. Overview of EPA's Performance Partnership Grant Program
Section 2. Authority
Section 3. Eligibility
Section 4. PPG Application Options in FY 1996
Section 5. EPA and Recipient Roles and Responsibilities
Section 6. Funding
Section 7. Administrative Information
Section 8. Post-Award Requirements
Attachment 1. Sample Performance Measures

Section 1. Overview of the U.S. Environmental Protection Agency's Performance Partnership Grant Program

Section 1.1 Scope of Guidance

A Performance Partnership Grant (PPG) is a single grant made to a State or Tribe from grant funds allocated and otherwise available for existing categorical grant programs. PPGs are voluntary and provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPGs. Recipients may receive their financial assistance as one or more PPG(s), or continue receiving funds as categorical grants. States and Tribes may apply for these grants for any period after enactment of statutory authority for the PPG program.

This Guidance provides direction for: (1) States and Tribes that apply for and receive PPGs; (2) States applying for PPGs and piloting the National Environmental Performance Partnership System (NEPPS); and (3) EPA Regions that approve and award PPGs. This document remains in effect until superseded by statute, federal regulation, or amended guidance. EPA expects to develop and issue regulations governing PPGs during FY 1996/1997. The Agency expects extensive stakeholder involvement in the development of the regulation.

Section 1.2 Organization

The guidance is divided into two parts. Sections 1–3 present an overview of the new program, explaining the purpose and expected benefits of PPGs, and identifying eligible grants, recipients, and activities. Sections 4–8 provide more specific guidance to Federal, State, and Tribal officials responsible for implementing the grant program. States and Tribes are presented a variety of options for how to apply for and manage PPGs. Section 4, in particular, helps applicants identify reasons for applying for a PPG and provides application criteria. Each section includes a checklist of steps and options.

Section 1.3 Purpose and Goals

President Clinton announced Performance Partnership Grants on March 16, 1995, as part of the Administration's program to ''Reinvent Environmental Regulation.'' PPGs are a part of EPA's continuing effort to reinvent government and build State and Tribal environmental protection capacity. This voluntary program is a response to recommendations from various internal and external stakeholders [1] to:

• Increase State and Tribal flexibility,

• Help States and Tribes improve environmental performance,

• Achieve administrative savings by streamlining the grants process, and

• Strengthen EPA partnerships with State and Tribal governments.

These previous recommendations have formed the basis for the purposes and goals of the PPG program, as described below:

Flexibility. PPGs will provide States and Tribes with flexibility to address their most pressing environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core program commitments. They will allow recipients to more effectively administer core statutory, regulatory and non-regulatory programs. Recipients will also be able to develop innovative multimedia programs and activities that are difficult to fund with separate categorical grants. Moreover, recipients will have the option of developing multi-year planning.

Improved Environmental Performance. PPGs will encourage States and Tribes to improve environmental performance and more effectively link program goals with program outcomes. Recipients will be

[1] The National Performance Review (''Creating a Government That Works Better and Costs Less''), September 1992; EPA's State-EPA Capacity Steering Committee recommendations in ''Strengthening Environmental Management in the United States, Report of the Task Force to Enhance State Capacity,'' Environmental Protection Agency, Office of the Administrator, EPA–270–R–93–001, July 1993; and the National Academy of Public Administration Report (''Setting Priorities, Getting Results: A New Direction for EPA''), April 1995.

able to establish priorities across all environmental programs, and integrate strategic goals such as pollution prevention and community-based environmental protection into their program planning. States and Tribes will be able to achieve these objectives by:

- Coordinating and integrating activities which are now fragmented under many statutes, regulations, and programs,
- Conducting assessments to define environmental problems and set priorities with the public,
- Targeting the most significant environmental problems,
- Building environmental protection capacity through training, technical assistance and other appropriate means, and
- Using common sense and multimedia environmental protection strategies such as pollution prevention, ecosystem protection, community-based protection and environmental justice.

The emphasis on improved environmental performance will be achieved by increasing the use of environmental indicators and program performance measures, and decreasing the reporting of inputs and activities. Performance measures, to be developed jointly by EPA and each State or Tribe, will gauge progress toward agreed upon goals (see Section 1.7). Improved performance measures will provide the foundation for better reporting, monitoring, and assessment of State, Tribal and national environmental conditions. EPA expects that targeted strategic approaches and improved performance measures, when implemented together, will accelerate long-term systematic improvements in environmental conditions.

Administrative Savings. EPA, States, and Tribes expect PPGs to reduce administrative burdens and costs by reducing the overall number of grant applications, workplans, reports and certifications associated with traditional, single media federal grants. Multi-year planning may also contribute to reduced administrative costs.

Strengthened Partnerships. EPA will develop partnerships with States and Tribes where both parties share the same environmental and program goals and jointly deploy their unique resources and abilities to accomplish those goals.

Section 1.4 Summary of State and Tribal Options

The PPG program is designed to provide maximum flexibility to States and Tribes. Potential recipients may apply for a PPG to replace all sixteen eligible categorical grants, some of the sixteen (e.g., water media PPG), or portions of some of them (e.g., an enforcement PPG). As summarized below and explained in Section 4, application options are streamlined and tailored to the specific goals of the PPG. States and Tribes may apply for a PPG using any of the following four options. EPA will also work with States and Tribes on any other options they would like to propose.

I. Administrative flexibility and savings based on FY 1996 categorical workplans (see Section 4.3).

II. Administrative and programmatic flexibility with an Environmental Performance Agreement (EnPA)/Tribal Environmental Agreement (TEA) that includes FY 1996 categorical workplans. In this case, the categorical workplans still establish most of the PPG program commitments. The EnPA/TEA also explains the rationale for the PPG and identifies any additional PPG program commitments (see Section 4.4).

III. Administrative and Programmatic flexibility based on an EnPA/TEA that replaces categorical workplans. In this case, the EnPA/TEA establishes all of the PPG program commitments (see Section 4.5).

IV. Application for a PPG under any of the three previous options and piloting the National Environmental Performance Partnership System (NEPPS). Currently, this option is available for States, although interested Tribes could explore applicability with their Regional Administrator (see Section 4.6).

Section 1.5 Relationship to Oversight Reform and the National Environmental Performance Partnership System

On May 17, 1995, State and EPA leaders signed a ''Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System'' (NEPPS). The objective of signing this agreement was to accelerate the transition to a new working relationship between EPA and the States—one which reflects the advancement made in environmental protection over the preceding two decades by both the States and EPA.

Key goals that this new partnership agreement share with PPGs are: to allow States and EPA to achieve improved environmental results by directing scarce public resources toward the highest priority, highest value activities; to provide States with greater flexibility to achieve those results; to improve public understanding of environmental conditions and choices; and to enhance accountability to the public and taxpayers. Other key goals of the NEPPS partnership agreement are increased reliance on self-management by State programs and a differential approach to oversight that serves as an incentive for State programs to perform well, rewarding strong programs and freeing up federal resources to address problems where State programs need assistance.

NEPPS and PPGs share many of the same objectives. Of course, States may apply for PPGs without piloting NEPPS (and vice-versa) in FY 1996. But where States wish to apply for PPGs and enter NEPPS, the processes and documentation are integrated and, where appropriate, identical. The Environmental Performance Agreement (EnPA) is a document that is common to both PPGs and NEPPS. For States doing both, the EnPA will allow the processes and documentation to be integrated (see Section 4.6 for more details).

Section 1.6 Relationship to Tribal Environmental Agreements

On July 14, 1994, Administrator Browner issued a nine-point Action Memorandum on Strengthening Tribal Operations which called for the development of Tribal-EPA Workplans (now called Tribal Environmental Agreements) to be jointly developed by EPA Regions and Tribes. In consultation with the Agency's Tribal Operations Committee, the American Indian Environmental Office and the National Indian Work Group developed guidance for the Tribal Environmental Agreements (TEAs). Currently, EPA Regions and Tribes are developing TEAs, many of which will be signed within the next year.

The TEAs (signed by the EPA Regional Administrator and the Tribal leadership) are a planning tool which clearly identifies the Tribe's environmental objectives, expected outcomes and resource needs, and implementation and management assistance needed from EPA. The Agreements establish the Tribe's environmental objectives over 3–4 years, but are flexible documents that can be changed to meet Tribal needs.

For Tribal PPGs, the TEAs will substitute for the State EnPAs. In order for the TEAs to also compare with the EnPAs as commitment documents (PPG Options II–IV) where Tribes/States are shifting funds, Tribes wanting to enter a PPG will have to include a specific section on the anticipated PPG funds and program commitments in addition to the other elements of the TEA or as an amendment to an already signed TEA. By using the TEA instead of the EnPA, the Tribes will not have to

conduct two planning processes. The addition of a commitment section to the TEA should ensure that PPG funding shifts, commitments, and expectations are clearly defined in one document signed by both the Tribe and EPA. TEAs will be required for Tribes wherever EnPAs are required for States.

Section 1.7 PPG Accountability and Performance Measures

All PPGs will be required to contain a legally binding set of program commitments. These program commitments will be the primary basis for evaluating the success of a PPG. Some program commitments will be required in all PPGs because they are required by statute, regulation, standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements), or National Program Manager program guidance. Others will be optional.

For the purposes of this PPG guidance, program commitments are ''a description of the PPG program goals and objectives, results and benefits expected, a plan of action, and quantifiable projections of the program and environmental accomplishments to be achieved and the performance measures to be used. Where accomplishments cannot be quantified, activities can be listed to show the schedule of accomplishments. PPG program commitments are the legal basis for the expenditure of federal grant funds and the recipient's matching requirement'' (see Section 1.8).

During FY 1996, EPA will continue to work with States and Tribes to define the elements of program commitments, including national environmental goals and performance measures.

As EPA and States/Tribes negotiate program commitments under PPGs, they are encouraged to use performance measures that measure program and environmental outcomes and outputs more often than they now do. Performance measures that are PPG program commitments must be quantifiable, measurable, and verifiable. Specifically, EPA encourages all States and Tribes to adopt outcome and output-oriented performance measures that track program performance, environmental conditions and trends, and business environmental performance.

State/Tribal Program Performance measures suggest how effectively or reliably a State/Tribal Program is achieving its objectives. Measures may be outcome or output oriented. They may include, where appropriate and necessary, activity measures traditionally used to evaluate environmental programs.

Business Environmental Performance measures assess environmental behavior in the private sector.

Environmental Indicators are measures of actual changes in air and water quality, land use, and changes in living resources and human health.

Appropriate accountability provisions are essential in designing the new PPG program. A fundamental goal of EPA's efforts to design accountability provisions into PPGs is to begin moving Federal, State, and Tribal programs toward the use of results-oriented measures of environmental and program performance that are understandable and meaningful to the public. In recent years, EPA, States, and Tribes, with input from the stakeholders and the public, have embarked on new and innovative strategic directions and developed or tested innovative performance measures that are a natural fit to incorporate into PPGs. EPA believes that PPG performance measures should be consistent with ongoing EPA and State or Tribal initiatives, such as ''The New Generation of Environmental Protection: EPA's Five-Year Strategic Plan,'' [2] the National Environmental Goals Project, and EPA National Program performance measures (developed under the NEPPS initiative). Examples of some potential performance measures are included in Attachment 1. A more comprehensive list of optional environmental indicators may be found in ''Prospective Indicators for State Use in Performance Agreements'' prepared under a cooperative agreement with the Florida Center for Public Management, Florida State University. This report provides a preliminary list of national environmental indicators that may be helpful to States, Tribes and EPA looking for good ideas about available environmental indicators.[3]

For FY 1996, performance measures are required only if they are required by statute, regulation or standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements), or if EPA National Program Managers or Regions have required them in guidance or policy.

Section 1.8 Definitions

Agency—United States Environmental Protection Agency (EPA).

Categorical Grant—Media-specific or multimedia grant for a particular program or narrowly defined activities.

Environmental Performance Agreement (EnPA)—Broad strategic document containing negotiated environmental priorities and goals. The EnPA may also include specific program commitments that are incorporated by reference in the Performance Partnership Grant Agreement. A State may use this document as a means to implement NEPPS, even if the State does not apply for a PPG.

National Environmental Performance Partnership System (NEPPS)—A new approach to developing and implementing the State-EPA oversight relationship agreed to by the States and EPA. It contains seven principal components: (1) Increased use of environmental indicators; (2) a new approach to program assessments by States; (3) environmental performance agreements; (4) differential oversight; (5) performance leadership programs; (6) public outreach and involvement; and (7) joint system evaluation.

National Program Manager—Individual responsible for setting the direction and policy for the management of an EPA media or enforcement program on a National level.

Oversight Reform—Same as National Environmental Performance Partnership System (see above).

Performance Partnership Grant (PPG)—A PPG is a single grant made to a State or Tribe from grant funds allocated and otherwise available for more than one existing categorical grant program. PPGs are voluntary and will provide States and Tribes with the option to combine funds from two or more of their categorical grants into one or more PPGs. Recipients must be eligible to receive the categorical grants included in a PPG. However, the unique administrative requirements and limitations set forth in 40 CFR Part 35 Subpart A for each categorical program will not apply after the funding is approved for a PPG. Only those requirements that pertain to PPGs will be applicable.

Performance Partnership Grant Agreement—The legal instrument by which EPA will transfer money, property, services or anything of value to an eligible PPG grant recipient. The agreement will specify:

- Budget and project periods,
- Federal share of eligible program costs,
- Combined budget,
- PPG program commitments (see definition below), and
- Any terms and conditions.

[2] EPA 200–B–94–002.

[3] To obtain a copy of the document, contact EPA's Office of Policy, Planning and Evaluation, at (202) 260–4909, or Florida State University at (904) 921–0423.

Performance Partnership Grant Program Commitments—A description of the PPG program goals and objectives, results and benefits expected, a plan of action, and quantifiable projections of the program and environmental accomplishments to be achieved and the performance measures to be used. Where accomplishments cannot be quantified, activities can be listed to show the schedule of accomplishments. PPG program commitments are the legal basis for the expenditure of federal grant funds and the recipient's matching requirement. This guidance will commonly refer to PPG program commitments as consisting of goals, objectives, performance measures and program activities. A set of core program commitments must be included in the PPG Program Commitments. These core program commitments are based on requirements in statutes, regulations, standing legal agreements between EPA and States/Tribes (e.g. Delegation Agreements), and National Program Manager guidance.

Program Flexibility—Reduction of effort or elimination of a program element in order to invest in another media-specific or multimedia program element.

Tribal Environmental Agreement (TEA)—A planning tool (signed by the EPA Regional Administrator and the Tribal leadership) which clearly identifies the Tribe's environmental objectives, expected outcomes and resource needs, as well as implementation and management assistance needed from EPA. The Agreements establish the Tribe's environmental objectives over 3–4 years, but are flexible documents that can be changed to meet Tribal needs.

Section 2. Authority

Section 2.1 Statutory Authority

As of the date of this document, there is not yet Federal authority providing for the award of PPGs by the Administrator of EPA. The President proposed the necessary legislative authority with the FY 1996 Budget, and the House of Representatives and the Senate have included the necessary authority in EPA's appropriations bill. However, the Agency cannot award PPGs until EPA's appropriations statute is enacted, and the Office of Management and Budget and Congress have approved the Agency's Operating Plan. The Agency will keep potential recipients informed as to the status of the necessary legislative authority.

The authorizing language included by the House and Senate reads as follows:

That beginning in fiscal year 1996 and each fiscal year thereafter, and notwithstanding any other provision of law, the Administrator is authorized to make grants annually, from funds appropriated under this heading subject to such terms and conditions as the Administrator shall establish, to any State or federally recognized Indian Tribe for multimedia or single media pollution prevention, control, and abatement and related environmental activities, at the request of the Governor or other appropriate State official, or the Tribe.

Section 2.2 Other Authorities

The requirements of 40 CFR Part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' will apply to a PPG as they do to a categorical grant. Some limited exceptions to 40 CFR Part 31 may be necessary to accommodate these grants. EPA will manage such exceptions for FY 1996 awards through the grant deviation process. Additional requirements are included in substantive program regulations, OMB Circulars A–87 and A–102, the EPA Assistance Administration Manual, EPA-State/Tribal Memoranda of Agreement (MOA), NPM-Regional Guidance and MOA, the NEPPS agreement signed on May 17, 1995 (for States piloting NEPPS), and E.O. 12372, ''Intergovernmental Review of Federal Programs.''

Section 3. Eligibility

Section 3.1 Eligible Applicants

All States, territories, and Federally recognized Indian Tribes eligible to receive more than one of the categorical grants referred to in Section 3.2 in FY 1996 are eligible to receive a PPG(s). Any duly authorized State or Tribal entity that currently receives or is eligible to receive EPA categorical program grants may request a PPG for the funds it administers. This may include agencies other than environmental agencies (e.g., agricultural and health agencies), where authorized by State/Tribal law. Agencies that now receive pass-through funding from a State or Tribe may continue to receive such funding subject to applicable State, Tribal or Federal law. For any agency that now receives direct Federal funding, but is not eligible for a PPG (e.g., local air districts), EPA will continue to make Federal funding available pursuant to existing categorical grant authorities. Eligibility for PPGs is subject to the appropriate State, Tribal, or Territorial executive or legislative authorities.

In the case of proposals which combine funds currently awarded to separate, duly authorized State or Tribal agencies—such as combining funds from an environmental department with funds from program grants to an agriculture or health department—a joint proposal signed by the appropriate officials should indicate a method for sharing funds in addition to demonstrating the eligibility, planning, accountability and evaluation elements of PPGs described in this guidance.

If program eligibility, formerly referred to as Treatment as State (TAS), is required for a Tribal applicant to be eligible to receive categorical funding for a specific program, the Agency will require the same eligibility if the Tribal applicant intends to include funds for that categorical grant in the PPG or to use PPG funds for activities under that program.

EPA encourages applicants to combine funds from as many categorical program grants as possible into a PPG to achieve maximum flexibility.

Section 3.2 Eligible Grant Programs

Funds available for the following sixteen grants identified in EPA's FY 1996 Program and Infrastructure Assistance appropriation[4] are eligible to be combined into a PPG in FY 1996:

1. air pollution control (CAA section 105),
2. water pollution control (CWA section 106),
3. nonpoint source management (CWA section 319),
4. water quality cooperative agreements (CWA section 104(b)(3)),
5. wetlands program development (CWA section 104(b)(3)),
6. public water system supervision (SDWA sections 1443(a) and 1451(a)(3)),
7. underground water source protection (SDWA section 1443(b)),
8. hazardous waste management (Solid Waste Disposal Act section 3011(a)),
9. underground storage tank (Solid Waste Disposal Act section 2007(f)(2)),
10. radon assessment and mitigation (TSCA section 306),
11. lead-based paint activities (TSCA section 404(g)),
12. toxics compliance and monitoring (TSCA section 28)
13. pollution prevention incentives for States (PPA section 6605)
14. pesticide enforcement (FIFRA section 23(a)(1)),
15. pesticide applicator certification and training (FIFRA section 23(a)(2)), and

[4] There has been some discussion of changing the name of the Program and Infrastructure Assistance appropriation to the State and Tribal Assistance Grants appropriation. As of the date of issuance of this document, no final decision had been made, and no name change had occurred.

16. General Assistance Grants to Indian Tribes (Indian Environmental General Assistance Program Act of 1992). Only eligible Tribes can propose to include these funds in a PPG application.

Generally, grant funds that States combine into PPGs are those that provide for continuing, ongoing, environmental programs. Because all EPA grants to Tribes are awarded through a competitive or discretionary process, Tribes will be allowed to include these grants in a PPG without adverse affects to their ability to compete for any grant. For competitive grants on the above list (e.g., pollution prevention incentives for States, nonpoint source, wetlands program development, water quality cooperative agreements, general assistance program grants to Tribes) to be combined in a PPG, the State or Tribe must first be awarded the competitive grant, and must identify specific output measures as a condition for adding the funds to a PPG. EPA will add the funds to the PPG by a grant amendment.

Section 3.3 Eligible Activities

Recipients may use PPGs to fund activities that are within the cumulative eligibilities of the grants listed in Section 3.2. Within these eligibilities, a PPG may fund multimedia regulatory and non-regulatory activities that could be difficult to fund under any individual categorical grant. EPA, in consultation with the States and Tribes, has developed a list of activities indicative of those it hopes PPGs will encourage. The list does not indicate pre-approval of activities and is not intended to be exhaustive. It merely illustrates the kind of activities which States, Tribes, the Agency and other stakeholders have identified as difficult to conduct with categorical grants and for which PPGs would be appropriate.

Activities that PPGs may support, but are not limited to:

- Pollution prevention oriented multi-media rules, permitting, compliance assistance, inspections, enforcement, training, and facility planning (e.g., one industry/one rule, one stop emission reporting, permitting and compliance assistance),
- Non regulatory pollution prevention technical assistance, technology development and diffusion, and partnerships with accountants, financiers, insurers, risk managers, urban planners, chemists, product designers and marketers, and other professions,
- Ecosystem, community, sector, watershed, or airshed environmental protection strategies (e.g., watershed targeted NPDES permits, empowerment zones),
- Support of Agency initiatives including Common Sense Initiative & Regulatory Reinvention (e.g., XL strategy implementation, market based strategies, local community risk assessment, negotiated rulemaking, third-party auditing, self certification for compliance),
- Environmental justice,
- Public outreach and involvement,
- Information clearinghouses,
- Environmental monitoring,
- Capacity building and environmental code development, and
- Integration of regulatory and non regulatory strategies.

Section 4. PPG Application Options

Section 4.1 Introduction

This chapter presents the application options for States and Tribes applying for a PPG(s). For FY 1996, all eligible PPG applicants should apply for a categorical grant(s) in the event that EPA's appropriations statute is not enacted with the necessary PPG authority. As an alternative to submitting separate categorical workplans and budgets, applicants may submit, in accordance with 40 CFR 35.145, a consolidated workplan and budget. The consolidated budget should identify funds from each categorical grant program. The consolidated workplan should identify how funds from each categorical grant program will support particular activities.

Applicants choosing to apply only for categorical grants for FY 1996 will continue to follow the current process and schedule for categorical grants. (For program grants with budget periods ending on 9/30/95, applications were due by 8/1/95. Reimbursement for pre-award costs from 10/1/95 until the date of award are only available if EPA has received the application by 9/30/95).

Section 4.2 PPG Options

Given the uncertainty of EPA's Congressional appropriations in FY 1996 and the fact that many States and Tribes have completed or nearly completed their categorical grant applications, EPA is providing PPG applicants with the following four application options:

I. Administrative flexibility and savings based on FY 1996 categorical workplans (see Section 4.3).

II. Administrative and programmatic flexibility with an Environmental Performance Agreement (EnPA)/Tribal Environmental Agreement (TEA) that includes FY 1996 categorical workplans. In this case, the categorical workplans still establish most of the PPG program commitments. The EnPA/TEA also explains the rationale for the PPG and identifies any additional PPG program commitments (see Section 4.4).

III. Administrative and Programmatic flexibility based on an EnPA/TEA that replaces categorical workplans. In this case, the EnPA/TEA establishes all of the PPG program commitments (see Section 4.5).

IV. Application for a PPG under any of the three previous options and piloting the National Environmental Performance Partnership System (NEPPS).

Currently, this option is available for States, although interested Tribes could explore applicability with their Regional Administrator (see Section 4.6). In addition to these options, EPA will continue working with States and Tribes to identify other application options for implementing PPGs in FY 1996.

PPG applicants, like all State, local, and Tribal federal grant applicants, will continue to use the ''Application for Federal Assistance: State and Local Non-Construction Programs'' (Standard Form 424), including the required supporting documents. Submittal of this application by a Governor or other appropriate State or Tribal official will serve as the State's or Tribe's official request for a PPG.

Section 4.3 Option I. Applicants Seeking a PPG for Administrative Flexibility and Savings Based on FY 1996 Categorical Workplans

When an applicant has either completed, or plans to complete, negotiation of its categorical grant workplans for FY 1996, the PPG program commitments will consist of those grant workplans. The PPG application should contain:

- First page of Standard Form 424—''Application for Federal Assistance,''
- Consolidated budget (separate categorical budgets totaled for funding in the PPG),
- A list of the grant programs (or portions thereof) from which funds will be reprogrammed to a PPG(s),
- A narrative statement explaining the rationale and expected benefits of the PPG (i.e., improved performance of the combined grant, administrative savings, reinvestments), and
- Categorical workplans proposed for inclusion in the PPG (same workplans submitted with categorical applications can be used).

Section 4.4 Option II. Applicants Seeking a PPG for Administrative and Programmatic Flexibility, Based on an EnPA/TEA that Includes Categorical Workplans

This section applies to applicants who will use PPGs to implement a new strategic direction, programmatic flexibility, or innovative environmental protection strategies, not already explained in categorical grant workplans. In this case, an EnPA/TEA will contain: the goals and rationale for the PPG; the FY 1996 categorical workplans that establish most of the PPG program commitments; and any additional PPG program commitments not contained in categorical workplans. The PPG Agreement would reference the categorical workplans and any other sections of the EnPA/TEA that contain PPG program commitments. The intent is to develop the EnPA in two phases. In the first phase, EPA and the applicant negotiate and agree on environmental priorities and goals. In the second phase, EPA and the applicant negotiate PPG program commitments to achieve these goals.

The PPG application should contain the following:

- First Page of Standard Form 424—''Application for Federal Assistance,''
- Single budget supporting the PPG, and
- An EnPA/TEA that includes:
- A list of grants (or portions thereof) from which funds will be reprogrammed to a PPG(s),
- Negotiated environmental priorities and goals,
- A narrative statement explaining the rationale and expected benefits (i.e., improved performance of the combined grant, administrative savings, disinvestments, reinvestments),
- Identification of EPA Roles and Responsibilities,
- PPG program commitments consisting of:
- Categorical workplans proposed for inclusion in the PPG (workplans submitted with categorical applications can be used), and
- Any additional multimedia or strategic PPG program commitments and performance measures,
- A description of public participation efforts (optional), and
- Evaluation criteria and procedure.

Section 4.5 Option III. Administrative and Programmatic Flexibility Based on an EnPA that Replaces Categorical Workplans

This section describes the elements of a PPG application based entirely on an EnPA/TEA that establishes PPG program commitments. The EnPA/TEA replaces the FY 1996 categorical workplans. The PPG Agreement would reference the sections of the EnPA/TEA that are PPG program commitments. In this case, a State or Tribe could: (1) Continue to make media or program the primary basis for organizing its PPG program commitments; or (2) organize PPG program commitments on some other primary basis (e.g., community-based environmental protection).

The PPG application should contain the following:

- First Page of Standard Form 424—''Application for Federal Assistance,''
- Single budget supporting the PPG, and
- An EnPA/TEA that includes:
- A list of grants (or portions thereof) from which funds will be reprogrammed to a PPG(s),
- Negotiated environmental priorities and goals,
- A narrative statement explaining the rationale and expected benefits (i.e., improved performance of the combined grant, administrative savings, disinvestments, reinvestments),
- Identification of EPA roles and responsibilities,
- PPG program commitments that include:
- Core program commitments, and
- Multimedia and additional media-specific program commitments,
- A description of Public Participation efforts (optional), and
- Evaluation.

The following explains in more detail some of the elements of the EnPA/TEA not previously addressed:

- Negotiated Environmental Priorities and Goals. This part of the EnPA/TEA is the product of negotiation between senior Regional officials and State or Tribal officials in positions to negotiate across grant programs, where this is appropriate. This part identifies the applicant's most significant environmental problems and the goals the applicant expects to achieve with the PPG. This strategic planning process reflects the applicant's priorities (as contained in any State or Tribal strategic plans or self-assessments), comparative risk studies or other risk-based approaches, and national priorities (enumerated in EPA's 5-year strategic plan [5], the National Environmental Goals Project and National program priorities specified in EPA HQ/Regional Memorandums of Agreement). Major new strategic or program directions or investments/ disinvestments should be identified here.
- EPA Roles and Responsibilities in Supporting State or Tribal Efforts. To strengthen the federal partnership with States and Tribes, the EnPA/TEA should describe how EPA will carry out its federal responsibilities and how it will support the State's or Tribe's environmental protection efforts. The negotiated agreement should include the program commitments (goals, performance measures, and/or program activities) the recipient expects to achieve under the PPG. The agreement should also set forth procedures (e.g., mid-year and end-of-year reviews, reporting requirements, joint activities) that EPA and the recipient will use for evaluating accomplishments, discussing progress, and making adjustments to meet milestones.
- Core Program Commitments. The EnPA/TEA must include core program commitments (goals, performance measures, program activities) derived from statutes, regulations, and standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements). As appropriate and negotiated between EPA Regions and recipients, core program commitments and performance measures should reflect National Program Manager guidance, EPA Headquarters-Regional MOA, Regional-State/Tribal MOA, and other EPA or State/Tribal policies. EPA should work with States and Tribes to balance the need to maintain core program requirements with the need to incorporate program flexibility and move toward program performance measures and environmental indicators. An EnPA/TEA may also include measures for which data sources are not yet available if there is a commitment to develop reliable data sources.
- Public Participation. For FY 1996, States and Tribes should continue to use their current public participation processes in conjunction with PPGs. EPA believes that it is critical to involve all stakeholders in the process of determining environmental priorities and goals, and therefore strongly encourages States and Tribes to involve stakeholders in identifying priority environmental problems. Recognizing the role and contribution of general purpose and special purpose local governments in the Nation's overall protection of the environment, EPA strongly encourages States to engage local jurisdictions which would be affected by a PPG. EPA also encourages recipients to share with stakeholders the results of their FY 1996 activities defined in the EnPA/TEA. Effective public participation will establish the

[5] ''The New Generation of Environmental Protection: EPA's Five-Year Strategic Plan,'' (EPA 200–B–94–002)

foundation for greater program flexibility and the achievement of better environmental results.

• PPG Evaluation. The recipient should prepare a PPG annual report (as described in 40 CFR 31.40(b)) as well as satisfy any other reporting requirements required in the PPG agreement. In addition to evaluating performance based on PPG program commitments, the recipient should identify any problems, delays or conditions which materially affected the recipient's ability to meet the PPG objectives, and any benefits that enabled the recipient to perform better than expected. EPA and the States/Tribes are also interested in knowing whether the work undertaken under the grant: (1) Addressed the stated strategic priorities and goals; (2) achieved administrative cost savings; (3) where appropriate, improved environmental results (to the extent environmental performance measures were part of the PPG program commitments); and (4) improved EPA/grantee working relationships.[6] After reviewing the annual report, the EPA Project Officer will provide evaluation findings to the recipient and will include such findings in the official PPG file.

• Evaluating the National PPG Program. EPA will request the assistance of PPG recipients to evaluate the overall PPG process. Lessons learned from the FY 1996 experience will be used to modify the program in subsequent years. The overall PPG grant process will be evaluated by EPA and program participants in order to understand how well it is being implemented as a national program. In addition to the criteria used to evaluate individual PPGs, national criteria will address whether PPGs: (1) Led to greater State and Tribal flexibility; (2) resulted in States and Tribes adopting innovative environmental protection strategies; (3) changed polluter behavior; and (4) improved public health and the environment.

Section 4.6 Applicants Seeking a PPG and Piloting the National Environmental Performance Partnership System (NEPPS) in FY 1996[7]

This section applies to States interested in applying for a PPG and piloting NEPPS. A State may choose to pilot NEPPS in combination with any of the PPG options described above. In addition to providing the information for PPGs described in either Sections 4.3, 4.4, or 4.5, a NEPPS pilot State would have to consult the May 17, 1995 NEPPS agreement for details of the NEPPS system.

SUMMARY OF PPG APPLICATION REQUIREMENTS[1]

PPG Application Elements	Applicants For a PPG Seeking Administrative Flexibility Only Based on Categorical Grant Workplans. Most Elements Already in Categorical Workplans	Applicants For a PPG Seeking Administrative & Programmatic Flexibility Based on Categorical Grant Workplans. EnPA/TEA Addresses Differences From Categorical Workplans	Applicants Seeking Admin. & Program Flexibility Based on an EnPA/TEA that Replaces Categorical Grant Workplans
Standard Form 424—"Application for Federal Assistance" (1st page).	Required	Required	Required.
EnPA/TEA	Optional	Required	Required.
Budget	Required	Required	Required.
Grant Selection	Required	Required	Required.
Rationale and expected benefits	Required	Required	Required.
Negotiated Environmental Goals and Priorities	N/A	Required	Required.
EPA Roles and Responsibilities to Support State and Tribal Efforts.	Optional	Required	Required.
PPG Program Commitments	Required	Required	Required.
Categorical Workplans	Required	Required	N/A.
Core Program Commitments	Required	Required	Required.
Multimedia/strategic Program Commitments	Optional	Encouraged	Encouraged.
Environmental Indicators	Optional	Optional	Optional.
Evaluation of PPG	Required	Required	Required.
Public Participation	Optional	Optional	Optional.

[1] As noted in Section 4.1, due to the uncertainty of PPG legislation, all application options assume the submission of separate categorical workplans or a consolidated workplan.

Key: N/A=Not Applicable. Note: States piloting NEPPS also reference May 17 NEPPS Agreement.

Section 4.7 Converting Categorical Grants to a PPG during FY 1996

The following procedures apply to those applicants who receive a categorical grant for FY 1996 and desire to convert from a categorical grant(s) to a PPG(s).

The State or Tribe should submit applications for all FY 1996 categorical grants according to the current categorical application schedule. EPA will award the applicant's categorical grants for FY 1996. If an applicant then decides to convert to a PPG, the applicant must submit a PPG application and consult with the Regional Administrator to select a start date for the PPG. The Regional Administrator will arrange for the necessary deobligation and reprogramming of funds. The Regional Administrator will then award the PPG. The FY 1996 categorical grant should be closed when appropriate and upon receipt of a final financial status report and funds reprogrammed into the PPG. To facilitate the applicant's receipt of its total annual grant funding the applicant should be prepared to indicate at the time of its categorical award whether it anticipates participation in a PPG in FY 1996. If so, the applicant should provide an estimated start date for the PPG. Applicants should refer to Section 4 for additional instructions.

There is no deadline for submitting a PPG application to convert specified categorical grants during FY 1996. However, the sooner such an

[6] The FY 1995 grant flexibility demonstration projects in New Hampshire, Massachusetts and North Dakota provide some useful lessons in evaluating combined grants. Updates on these projects are available from Regions I and VIII.

[7] Currently, this option is available for States, although interested Tribes could explore applicability with their Regional Administrator.

application is submitted, the more advantages of the PPG the recipient will realize in FY 1996.

Section 5. EPA and Recipient Roles and Responsibilities

Section 5.1 EPA Headquarters

National Program Manager (NPM). The NPMs set national strategic direction and core program requirements and priorities for all environmental programs. In any circumstance where a State or Tribe proposes activities that will lead it to significantly deviate from NPM priorities or regulatory requirements, or raise issues of national consistency, the Regions will consult with the appropriate NPM. In many cases, NPMs also allocate national categorical grant funds to EPA's Regions based on an established allocation criteria.

Grants Administration Division (GAD). GAD responsibilities include: (1) Sponsoring Office for the Performance Partnership Grant Delegation of authority; (2) approving Office for deviations to 40 CFR Part 31 required to implement PPGs in FY 1996; and (3) sponsoring office for proposed PPG regulations (FY 1997).

Office of the Comptroller (OC). OC's responsibilities include: (1) Establish and secure Congressional approval of PPG program element; (2) propose Congressional approval to exempt new PPG program element from the reprogramming limit; (3) distribute categorical grant funds to the Regions; and (4) approve requests by the Regions to reprogram categorical grant funds into the PPG program element.

Section 5.2 EPA Regions

Regional Administrator (RA). The RA is the designated approval and award official for PPGs with re-delegation authority to the Deputy Regional Administrator or the Division Director or equivalent level (See Section 7.1). The RA, or a senior regional official(s) designated by the RA, should conduct the initial negotiations with the applicant to establish environmental priorities and goals (See Section 4.5). The RA should notify NPMs when their programs are being incorporated into a PPG and should keep the NPMs informed of activities carried out under PPGs that affect the NPMs' programs.

The RA should also designate a single point of contact to serve as the Performance Partnership Grant Project Officer (PO) on each award. Because PPGs cross programs, the PO should coordinate negotiations with the recipient on behalf of all the relevant EPA programs. The RA may wish to designate a team of sub-project officers to support the designated Project Officer, or set additional criteria for designating the PO.

Regional Program Manager. The managers of all programs included in the PPG will jointly be the program managers of the PPG, as will other appropriate Regional management officials. Regional Program Managers: (1) Will at a minimum be consulted about/participate in negotiations with States and Tribes; (2) articulate Agency, NPM and Regional goals and priorities and work with the States and Tribes to incorporate them into the EnPA/TEA; (3) serve as the principal source for technical program assistance to States and Tribes; and (4) participate in State and Tribal program evaluation as defined by the EnPA/TEA. In any circumstance where a State or Tribe proposes activities that will lead it to significantly deviate from NPM priorities or regulatory requirements, or raise issues of national consistency, the Regions will consult with the appropriate NPM.

Regional Project Officer. As designated by the RA, the Performance Partnership Grant Project Officer (PO) will be the primary point of contact for the grant recipient. This individual will be responsible for coordinating all programmatic and technical aspects of the EnPA/TEA and PPG program commitments and the PPG agreement. All POs must have successfully completed the EPA training course ''Managing Your Financial Assistance Agreement—Project Officer Responsibilities.'' The POs should coordinate closely with the Regional Indian Coordinator/Regional Indian Office for Tribal PPGs.

Regional Grants Management Office (GMO). Regional GMOs are responsible for carrying out all administrative functions associated with the receipt of the PPG application, processing of the PPG award, and post-award administrative management of the PPG grants. (These functions are the same as those for the award and management of categorical grants.)

Regional Budget Offices. Regional Budget Offices are responsible for submitting approval requests to Headquarters Budget Division for Regional reprogramming of funds from categorical program elements to the PPG program element and, upon approval, completing the reprogramming of the funds. Both the PPG award and obligation must include the State identifier code on transactions in IFMS.

Section 5.3 Recipients

Recipients may wish to designate a single point of contact for each PPG to serve as the counterpart to the EPA Project Officer. This individual would be responsible for coordinating all programmatic and technical aspects of the PPG as well as for all intra-State or intra-Tribal agreements. Recipients should identify these points of contact in their PPG application.

Section 6. Funding

Section 6.1 Project Period and Availability of Funds

In consultation with the Regional Administrator, the applicant may choose to submit either annual or multi-year EnPAs/TEAs or workplans. Budget periods for PPGs will be for 12 months, but the applicant has the flexibility to select, in consultation with the Regional Administrator, the specific start and end dates for the budget period. Project periods may remain open to reflect the continuing nature of PPGs. Project and budget periods may not begin before the date of enactment of PPG statutory authority.

Section 6.2 Award Amounts and Distribution of Funds

National and Regional allocation of grant funds to State and Tribal recipients will be the same whether the funds are awarded as PPGs or categorically.

Section 6.3 Reprogramming of Funds

EPA is proposing the establishment of a specific PPG program element. Pending Congressional approval, EPA's Budget Division will continue to allocate grant funds in the current categorical program elements. Regional Budget Officers will request the reprogramming of funds into the PPG program element. Reprogramming requests will be made only after the PPG project officer, EPA approval official and the Grants Management Office find the PPG application and PPG program commitments acceptable. (Currently, reprogramming requests over $500,000 require Congressional approval. EPA will seek a Congressional exemption for PPG reprogramming.) The purpose statement/justification that should be included in the reprogramming request is:

Purpose: This action reprograms resources ($) from existing categorical grants, air ($), water ($), etc. to support the implementation of the Performance Partnership Grant for the State/Tribe of _____. This transfer is authorized by the decision memorandum dated _____ and signed by _____.

Person to contact: _____
Phone: _____ (inc. area code)

Section 6.4 FY 1995 Carryover and Unexpended Prior Year Funds

Unexpended State funds from FY 1995 awards may not legally be used to fund first-year (FY 1996) PPGs. The recipient, in consultation with the Regional Administrator, may choose to maintain FY 1995 unexpended balances by extending the existing categorical grants, consistent with limits established on carry-over by the Comptroller General, or by applying for a partial FY 1996 categorical grant to cover the unexpended funds. Project officers should inform recipients proposing to apply or to convert to a PPG for FY 1996 of the need to maintain prior year accounts through extensions until FY 1995 funds are expended.

Funds recovered from an applicant's FY 1996 categorical grants will be available to fund PPGs awarded in FY 1997 and beyond, provided there is consistency with the appropriation and/or the underlying categorical program statutes and Comptroller Policy No.88–09 ''Disposition of Unobligated Balances of Assistance Awards.'' FY 1997 carryover of unobligated balances will be allowed provided that the recipient uses the carryover award amount to support either ongoing programmatic goals, a multi-year PPG workplan, or those activities contemplated for the next PPG award cycle's goals.

If the PPG program commitments includes activities that cannot be fully funded at the time of award, additional funding can be added as it becomes available. The Regions may also forward-fund PPG awards.

Section 6.5 Cost Share Requirements

EPA's policy and goal is that States and Tribes should continue to spend, in effect, the same amount of funds for environmental programs under PPGs as under categorical grants. Although, under PPGs, recipients will have the flexibility to realign those resources among environmental programs based on negotiated priorities in the EnPA/TEA, the total resources in the State or Tribe, both Federal and non-Federal, targeted to environmental programs should not be reduced. Thus, the required cost share (based on the match or maintenance of effort requirements of the categorical grants included in the PPG) will be the same under PPGs as under categorical grants, unless EPA determines that there are exceptional circumstances justifying a reduction in cost share for a PPG for the year that the PPG is awarded. The primary exception is where a State or Tribe reduces funds across all State or Tribal agencies. When the reduction is due to a non-selective reduction in the expenditures related to all programs and entities of the executive branch of the State or Tribal government, EPA also will allow reductions in environmental program resources.

It is also important to recognize that, when the categorical funds are reprogrammed into the PPG program element and the PPG is awarded, those funds lose their categorical nature. The recipient's minimum cost share requirement applies to the entire grant. The recipient cost share must be expended for performance of the approved PPG program commitments as reflected in the approved PPG budget of total estimated program costs, i.e., without regard to the original categorical source of federal funds and categorical activities. As the costs of performing PPG work are incurred, the recipient will be reimbursed the federal share of total expenditures based on the federal/recipient share ratios stated on the PPG grant award. While recipients must maintain adequate financial records of their cost share, EPA may not require categorical financial reporting by recipients or track categorical match shares or maintenance of effort (MOE) expenditures for those grant funds included in a PPG.

Recipients should calculate a single, composite minimum cost share for each of their PPGs. To calculate the minimum cost share for a 1996 PPG, start with the amount of federal dollars from each program (source of funds) going into the PPG. The minimum required cost share for each portion is determined by following the cost share requirements of the relevant categorical grant program (based on the source of funds). The minimum recipient cost share for the PPG is the sum of the minimum cost shares of the contributed components shown in the fourth column of the following example.

Example. A State applies for a PPG combining its Water-106, Nonpoint Source, UIC, UST, RCRA and Air-105 categorical grants. The portion of the federal categorical grant funding from each program designated by the recipient to be reprogrammed to the PPG is listed in the third column below. (This amount does not necessarily reflect all the Federal dollars available to the recipient for that specific categorical program. The recipient may choose to continue to receive some of the program's funding categorically.) The fourth column illustrates the minimum recipient cost share for each piece (based on the cost share requirements of the program that is the source of the funds). The fifth column notes the basis for the requirement. The total amount of federal money awarded in the PPG is the sum of the contributed portions dollars in the third column. The minimum recipient PPG cost share is the sum of the minimum recipient cost shares for each of the contributed portions shown in the fourth column.

Funding source	PPG total	Federal share	Recipient cost Share	Basis of cost share
Water-106	1,239,064	1,087,995	151,069 [1]	MOE.
Nonpoint Source	924,333	554,600	369,733 [2]	MOE or 40% match.
UIC	78,796	59,097	19,699	25% match.
UST	216,667	162,500	54,167	25% match.
RCRA	465,989	349,492	116,497	25% match.
Air-105	2,290,230	1,374,198	916,132 [2,3]	MOE or 40% match.
PPG	5,215,079	3,587,882	1,627,297	PPG guidance.

[1] The Water 106 program has no match requirement. However, it has a MOE requirement based on recurrent expenditures in the FY year ending (1) June 30, 1971 or (2) October 1, 1977, if the State is expending funds awarded in any fiscal year for construction grants management under section 205(g). This requirement obligates a State to spend at least the base year amount of money each year without regard to the amount of the federal award. EPA will continue to use this MOE requirement amount to calculate recipient minimum cost share when the Water 106 program is part of a PPG.

[2] The Air 105 and the Nonpoint Source programs have both a match and an MOE requirement. The greater of the MOE or the match requirements of these two programs will be used to calculate the minimum cost share requirement for a PPG, when the programs are part of a PPG.

[3] Revenue generated by the collection of Clean Air Act Title V fees can only be used for the Title V Operating Permit program and cannot be used to meet cost share requirements for any grants, including PPGs as well as section 105 grants.

The minimum composite cost share for the PPG in this example is $1,627,297, which is 31.2% of the PPG total of $5,215,079. The percentage is based on the ratio between the total dollar value (Federal and non-Federal) of each program, activity, etc., included in the PPG(s) and the dollar value of its respective cost sharing requirement. EPA uses this percentage to determine the recipient's share of each dollar expended for the PPG(s).

If a recipient chooses to split federal categorical funding between a PPG and a categorical grant, the minimum required cost share for the PPG will be directly related to the portion of the categorical grant funds moving to the PPG. The following is an example of how this would apply to the UST funding cited above. If half of the funding was maintained in a categorical grant ($81,250 went to both the PPG and the categorical grant), the minimum cost share for the PPG would be half of $54,167 or $27,083.50.

If the cost share requirement for a categorical grant is a minimum percentage of the total grant program (combined federal and recipient contributions), the minimum allowable recipient contribution can be calculated using a two step process. Following is an example of how this would apply to the RCRA funding above:

(1) Divide the available federal funding by the maximum federal share ($349,492 divided by 75%) The result is the minimum total program amount (federal and State shares combined) for the grant ($465,989). (2) Subtract the federal contribution from the minimum total program amount to determine the minimum required recipient contribution. ($465,989 − $349,492 = $116,497. $116,497 represents 25% of the total.)

Section 7. Administrative Information

Section 7.1 Delegation of Authority

The Regional Administrator is the designated approval and award official for PPGs with approval redelegation authority to the Deputy Regional Administrator or the Division Director level. References: Delegation #1–14-Assistance Agreements; Performance Partnership Grants Delegation. (Number to be assigned. The Performance Partnership Grant Delegation will be put in place upon approval of authorizing legislation.)

Section 7.2 Grant Budget Information

Applicants may merge funding for all PPG programs and activities into a single budget for accounting and reporting purposes. This budget must display a breakdown of costs by object class categories on Standard Form 424B. For applicants proposing multi-year PPG program commitments, the applicant need only reflect object class costs for FY 1996. However, the budget information must accurately reflect the grant agreement and be able to be tracked to support the performance measures cited in that grant agreement. The Regional Administrator may also require the applicant to submit a level of supplemental budget detail necessary to allow for adequate determination of the allowability, allocability, necessity, and reasonableness of each element of program costs. Required budget detail should not exceed levels supplied under previous EPA categorical grant awards.

Section 7.3 Certifications

States/Tribes may submit one set of grant certifications (i.e., anti-lobbying, debarment/suspension, SF424B—assurances and procurement) with the PPG application on an annual basis—bundled certifications.

Section 7.4 Standard Terms and Conditions

EPA will add standard terms and conditions to the PPG agreement as required by the authorities set forth in sections 2.1 and 2.2. The PPG agreement must cite the PPG program commitments as terms and conditions of the agreement. The Region may add any additional State or Tribal specific terms and conditions deemed appropriate and necessary on a case by case basis.

Section 7.5 Grants Information and Control System (GICS) Data

The following GICS codes for PPGs will be established when authorizing legislation for these grants is in place.

—Program Code
—Statutory Authority Code
—Regulatory Code
—CFDA number

Section 8. Post-Award Requirements

Section 8.1 Pre-Award Costs

Consistent with 40 CFR 35.141 and subject to the availability of funds, EPA will reimburse applicants for allowable costs incurred from the beginning of the approved budget period.

Section 8.2 Financial Management and Reporting

PPG recipients will continue to follow the regulations for Standards for Financial Management Systems contained in 40 CFR Part 31.20. Fiscal control and accounting procedures of the recipient applicant must be sufficient to permit preparation of Financial Status Reports for PPG awards.

PPG recipients must maintain accounting and financial records which adequately identify the source (i.e., Federal funds and match) and application of funds provided for PPG activities. These records should contain relevant information such as obligations, unobligated balances, outlays, expenditures and program income.

Recipients will track PPG funds to the total effort or costs incurred for the PPG work. EPA will reimburse the recipient for the federal share of the costs from the PPG budgetary program element. PPG costs will not be tracked to each of the original individual categorical source(s) of grant funding.

Section 8.3 Payment

To reduce paperwork and facilitate payment, EPA will encourage PPG recipients to receive electronic payments via the Automated Clearinghouse (ACH) System. Inability to qualify for an ACH method of payment will not preclude an otherwise eligible recipient from receiving a PPG award.

Section 8.4 Allowable Costs

OMB Circular A–87 (cost principles) and EPA regulations in 40 CFR Part 31 will apply to PPGs to determine the reasonableness, allowability, necessity and allocability of costs.

Section 8.5 Additions/Deletions of Programs From Existing PPGS

States/Tribes may elect which categorical program(s) or project grants will be included in its established PPG award(s), consistent with Section 3.2. In general, once an annual PPG is awarded for a given fiscal year, EPA will authorize no programmatic deletions until the beginning of the next award cycle. Once PPG program commitments are approved and funds have been reprogrammed by EPA, the funds lose their categorical identity and cannot be pulled out by an applicant.

Funds for grants approved in the middle of the fiscal year and appropriate competitive grants may be added to the PPG subject to PO approval. The PO and recipient will renegotiate the approved environmental performance agreement goals and revise the PPG program commitments and budgets. EPA will reprogram the funds to be added to a PPG. The recipient must submit a formal amendment to add funding to the PPG. EPA will process the amendments as expeditiously as possible, while maintaining fiduciary responsibility, to accommodate the recipient.

If a recipient chooses to add a categorical grant program to a two-year PPG, the match requirements of that program will then be calculated as part of the overall PPG composite match (see Section 6.5).

If the recipient drops a program at the end of a cycle, based on the recipient's

decision to redirect its efforts and with the prior approval of the PPG PO, the PPG recipient shall be reimbursed for allowable costs incurred during the PPG project period.

Section 8.6 Enforcement

If a recipient materially fails to comply with a term or condition in the PPG award, EPA may impose sanctions in accordance with 40 CFR 31.43, including the conversion of a PPG back to individual categorical grants during the next award cycle.

Section 8.7 Disputes

The dispute process set forth in 40 CFR 31.70 will apply to PPGs. Disagreements between the recipient and EPA regarding PPG applications, including PPG program commitments, priorities and/or related performance indicators, or PPGs themselves, including disallowances or enforcement actions, are to be resolved at the lowest level possible, i.e., the project officer.

The Regional Administrator designates the Dispute Decision Official—the next level of appeal after the project officer. Because of the multi-media nature of the PPG program, it is suggested that the Regional Administrator select a multi-media Division Director in Regions where applicable, or the Region's Senior Resource Official/Assistant Regional Administrator as the Disputes Decision Official to resolve disputes arising under the PPG assistance agreements.

The Regional Administrator will continue to be the final level of appeal at the Regional level. The Deputy Administrator or his/her designee will serve as the Headquarters Disputes Review Official to resolve disputes arising under PPG assistance agreements appealed to Headquarters.

Attachment 1—Sample Performance Measures

Below are examples of performance measures that fall into three categories:

- program performance measures,
- business environmental performance measures, and
- environmental indicators.

State/Tribal Program Performance Measures suggest how effectively or reliably a State/Tribal program is operating, and are the ones we have traditionally relied on to judge State and Tribal programs. While these kinds of measures will still be required for PPGs, the States', Tribes' and EPA's goals are to reduce these to a minimum, make the ones we use more meaningful, and develop useful measures of cross-program activities such as multi-media pollution prevention, ecosystem management, etc. Measures could include:

—percentage of NPDES permit holders in significant non-compliance,
—percentage of enforcement actions taken within timely and appropriate guidelines,
—percentage of permits up-to-date,
—percentage of river, lake and estuary miles monitored,
—percentage of falsification rates in drinking water data,
—percentage of enforcement actions leading to supplement projects,
—number of permits avoided by helping companies reduce emissions below permit thresholds,
—number of multi-media inspections or permits,
—percentage of State or Tribal program personnel trained in pollution prevention, ecosystem management, or environmental justice, and
—number of innovative pilot programs (e.g., voluntary programs).

Business Environmental Performance Measures assess environmental behavior in the private sector. These measures can complement or substitute for environmental indicators that may be difficult or expensive to measure. Measures could include:

—compliance rates for particular sectors,
—percentage reductions in water generation rates (per unit product),
—percentage reduction in total emissions,
—percentage of facilities participating in voluntary pollution prevention programs and meeting their publicly stated pollution prevention goals,
—number of significant changes at any entity (public or private) that have been made as a result of compliance assistance in three categories: (1) notification, (2) regulatory requirements, and (3) environmental improvements,
—change in the compliance profile of a particular sector, regulated population, or community that is the focus of a compliance assistance initiative,
—percent of entities (public or private) within a particular sector, regulated population, or community that have received compliance assistance, and
—percent of facilities that participate in voluntary compliance assistance programs and come in to compliance within the requisite correction period.

Environmental Indicators measure changes in air, water and land quality parameters and human health. Measures could include:

—the percentage of population exposed to substandard air,
—the percentage of population exposed to substandard water,
—percentage of stream miles meeting designated uses,
—percentage reductions in air pollution such as VOCs, Sox, etc., and
—percentage reductions in dangerous blood-lead levels in children.

[FR Doc. 96–5711 Filed 3–8–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

March 4, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 10, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0303.

Title: Section 97.5 Station license required.

Form No.: N/A.

Type of Review: Reinstatement, without change of a previously approved collection.

Respondents: Individuals or households.

Number of Respondents: 40,000 respondents.

Estimated Time Per Response: 3 seconds per response.

Total Annual Burden: 40 hours.

Total Annualized Cost per respondent: $0.10 This is the estimated costs for photocopying the license.

Needs and Uses: The recordkeeping requirement in section 97.5 requires that an original or photocopy of each amateur station license be retained at the station. This requirement is necessary so field personnel can quickly determine whether the station is licensed and is being operated in conformance with the terms of the station license. This record should be retained for 10 years in order to coincide with the operator license term.

OMB Approval No.: 3060–0302.

Title: Section 97.9 Operator license.

Form No.: N/A.

Type of Review: Reinstatement, without change of a previously approved collection.

Respondents: Individuals or households.

Number of Respondents: 40,000 respondents.

Estimated Time Per Response: 3 seconds per response.

Total Annual Burden: 40 hours.

Total Annualized Cost per respondent: $0.10 This is the estimated costs for photocopying the license.

Needs and Uses: The recordkeeping requirement in section 97.9 requires that an amateur radio operator keep an original or photocopy of his or her amateur operator license in their personal possession when serving as the control operator of an amateur station. This requirement is necessary so field personnel can quickly determine whether an operator is licensed in conformance with the Communications Act of 1934, as amended as well as the International Telecommunications Union Radio Regulations. This record should be retained for 10 years in order to coincide with the license term.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–5594 Filed 3–8–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, 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 standards enumerated in the BHC Act (12 U.S.C. § 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. § 1843). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

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 April 4, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Compass Bancshares, Inc., Birmingham, Alabama; Compass Banks of Texas, Inc., Birmingham, Alabama; and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to merge with Royall Financial Corporation, Palestine, Texas, and thereby indirectly acquire The Royall National Bank of Palestine, Palestine, Texas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwest Bancorporation, Inc., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Bancorporation of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Southwest Bank of Texas, N.A., Houston, Texas.

In connection with this application Southwest Bancorporation of Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Bank of Texas, N.A., Houston, Texas.

Board of Governors of the Federal Reserve System, March 5, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–5671 Filed 3–8–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. § 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. § 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to engage *de novo* through its subsidiary, Mid Am Credit Corp., Columbus, Ohio, in lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y; and in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Capital City Bank Group, Inc., Tallahassee, Florida; to acquire First Financial Bancorp, Inc., Tallahassee, Florida, and First Federal Bank, Tallahassee, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago NBD Corporation, Chicago, Illinois; to acquire First Federal Savings Bank of Barrington, Barrington, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire Community Insurance, Inc., Fargo, North Dakota, and thereby engage in operating an insurance agency in a town of less than 5,000 in population pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will take place in Wheaton, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Shickley State Company, Shickley, Nebraska; to engage *de novo* through its subsidiary, Campbell Apartments, Inc., Shickley, Nebraska, 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, March 5, 1996

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–5672 Filed 3–8–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HT (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 59 FR 29815, dated June 9, 1994) is amended to reflect the transfer of the Public Health Practice Coordination Group from the Office of the Assistant Administrator to the Division of Health Education, Agency for Toxic Substances and Disease Registry. Is amended to reflect recently approved organizational changes. Delete the title and functional statement for the *Public Health Practice Coordination Group (HTBD).*

Delete the functional statement for the *Division of Health Education (HTC7)* and insert the following:

(1) Coordinates health communication and education, developmental and educational activities for emergency response, and hazardous waste worker safety and health with Federal, State, and local agencies and private organizations; (2) develops and disseminates to physicians and other health care providers materials on the health effects of toxic substances; (3) establishes and maintains a list of areas closed or restricted to the public because of contamination with toxic substances; (4) initiates research related to its mandates that will help prevent adverse health effects from hazardous substances; (5) coordinates follow-up actions at sites evaluated by the Division of Health Assessment and Consultation (public health assessments), Division of Health Studies (health investigations), Division of Health Education (community health education), and other parts and programs of ATSDR as appropriate; (6) coordinates inter-divisional community involvement plans for sites where more than one division is conducting site activities; (7) coordinates ATSDR's Minority Health Program; (8) coordinates other special projects as required.

Dated: March 1, 1996.

David Satcher,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–5712 Filed 3–8–96; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering Laboratory Health Effects Subcommittee (INEL).

Times and Dates: 8 a.m.–4 p.m., March 26, 1996. 8 a.m.–12 noon, March 27, 1996.

Place: Owyhee Plaza Hotel, 1109 Main Street, Boise, Idaho 83702, telephone 208/343–4611, FAX 208/381–0695.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR updates on the progress of current studies; discussion of the State oversight program; INEL Dose Evaluation Report; and updates on the technical workshop on ''Calculating and Interpreting Radiological Doses and Risks for Individuals Exposed to Radionuclides Due to Historical Releases from the Hanford Nuclear Reservation'' and a public involvement activities.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: February 6, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 96–5804 Filed 3–8–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94N–0033]

John D. Copanos; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denies John D. Copanos' request for a hearing and issues a final order under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)) permanently debarring John D. Copanos, 6504 Montrose Ave., Baltimore, MD 21212, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on its finding that Mr. Copanos was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

EFFECTIVE DATE: March 11, 1996

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., Rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

John D. Copanos was the owner and president of John D. Copanos and Sons, Inc., and Kanasco, Ltd., when, on November 13, 1989, he agreed to plead guilty to one count of distributing misbranded drugs with intent to mislead, a Federal felony offense under sections 301(a) of the act (21 U.S.C. 331(a)) and 303(a)(2)(previously 303(b)) of the act (21 U.S.C. 333(a)(2)) (previously 21 U.S.C. 333(b)), and one count of causing the adulteration of drugs with intent to mislead, a Federal felony offense under sections 301(k) and 303(a)(2) of the act. On February 16, 1990, the United States District Court for the District of Maryland accepted Mr. Copanos' plea of guilty and entered judgment against him for these felonies. The bases for these convictions were as follows.

Mr. Copanos distributed a drug that was misbranded because its labeling failed to bear adequate directions for use and because it failed to warn of the presence of phenylalanine, a component of aspartame. In fact, adequate testing had not been conducted to determine the effect of aspartame on the stability, potency, and effectiveness of this drug. This drug was also misbranded because it failed to reveal the presence and amount of phenylalanine.

In addition, Mr. Copanos pled guilty to causing the adulteration of a drug with intent to mislead by failing to comply with current good manufacturing practice.

In a notice published in the Federal Register of November 9, 1994 (59 FR 55846), FDA offered Mr. Copanos an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Mr. Copanos from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Mr. Copanos on its finding that he had been convicted of felonies under Federal law for conduct relating to the regulation of a drug product.

In the Federal Register notice of November 9, 1994, FDA informed Mr. Copanos that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. FDA also informed Mr. Copanos that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated December 8, 1994, Mr. Copanos requested a hearing, and in a letter dated January 6, 1995, Mr. Copanos submitted arguments and information in support of his hearing request. In his request for a hearing, Mr. Copanos does not dispute that he was convicted of a felony under Federal law as alleged by FDA. However, Mr. Copanos argues that: (1) He did not receive proper notice; (2) he is entitled to a hearing to contest or explain the facts underlying his plea; (3) some factual statements in the agency's proposal are inaccurate; (4) the agency's reliance on portions of the indictment is inappropriate; (5) and the agency's proposal to debar him is unconstitutional.

The Deputy Commissioner for Operations has considered Mr. Copanos' arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. Moreover, the legal arguments that Mr. Copanos offers do not create the bases for a hearing (see 21 CFR 12.24(b)(1)). Mr. Copanos' arguments are discussed below.

II. Mr. Copanos' Arguments in Support of a Hearing

A. Notice

Mr. Copanos objects to being notified of his proposed debarment through publication in the Federal Register. It is the policy of the agency to send a notice of proposed debarment by certified mail. If certified mail delivery is unsuccessful, the agency attempts to deliver the notice to the individual personally. If this attempt fails also,

notice is given through publication in the Federal Register. FDA attempted to serve Mr. Copanos by certified mail but was unable to do so. In September 1994, FDA's Baltimore District Office learned that Mr. Copanos was out of the country. Agents from FDA's Baltimore District Office visited Mr. Copanos' home weekly to determine if he had returned. FDA's Office of Criminal Investigation arranged with U.S. Customs to be notified if Mr. Copanos returned to the country. When Mr. Copanos did not return to the country, the debarment notice was published in the Federal Register on November 9, 1994.

Mr. Copanos requested a hearing on his proposed debarment and made arguments in support of that request. Thus, it is clear that Mr. Copanos received actual notice of the agency's proposed action and has not been deprived of any procedural rights by virtue of publication of the debarment notice in the Federal Register.

B. Facts Underlying the Plea

Mr. Copanos makes the following statements relating to the facts underlying his plea. He states that he held a management position and did not personally misbrand or manufacture adulterated drugs, that none of the drugs or products involved were put into commerce, and that the first count of the plea related to a facility that was not under his full control at the time. Mr. Copanos also states that the agency's proposal sets forth areas of indictment information and factual statements of allegations rather than actual proof.

Mr. Copanos is correct that the agency's proposal contained some inaccuracies. Although Mr. Copanos pled guilty to counts four and six of the indictment against him, he did not plead guilty to all the particulars listed in the indictment. In its debarment proposal, the agency mistakenly referred to parts of the indictment to which Mr. Copanos did not plead. The agency very much regrets this error. However, this misplaced reliance does not raise a genuine and substantial issue of fact requiring a hearing.

The act requires FDA to mandatorily debar an individual who has been convicted of certain Federal felonies. The only relevant factual issue is whether Mr. Copanos was, in fact, convicted. Mr. Copanos does not dispute that he pled guilty to two Federal felony counts for actions that relate to the regulation of a drug product. Section 306(l) of the act includes in its definition of a conviction, a guilty plea. Accordingly, Mr. Copanos' statements regarding the factual circumstances underlying his plea fail to raise a genuine and substantial issue of fact justifying a hearing.

C. Ex Post Facto Argument

Mr. Copanos argues that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Mr. Copanos' criminal conduct. The Generic Drug Enforcement Act (GDEA) of 1992, including section 306(a)(2), was enacted on May 13, 1992, and Mr. Copanos was convicted on February 16, 1990.

An ex post facto law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed. (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866); *Collins* v. *Youngblood*, 497 U.S. 37 (1990).)

Mr. Copanos' claim that application of the mandatory debarment provisions of the act is prohibited by the ex post facto clause is unpersuasive, because the intent of debarment is remedial, not punitive. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is ''to restore and ensure the integrity of the abbreviated new drug application (ANDA) approval process and to protect the public health.'' (See section 1, Pub. L. 102–282, GDEA of 1992.)

In a suit challenging a debarment order issued by FDA (58 FR 69368, December 30, 1993), the constitutionality of the debarment provision was upheld against a similar challenge under the ex post facto clause. The reviewing court affirmed the remedial character of debarment:

> Without question, the GDEA serves compelling governmental interests unrelated to punishment. The punitive effects of the GDEA are merely incidental to its overriding purpose to safeguard the integrity of the generic drug industry while protecting public health.

Bae v. *Shalala*, 44 F.3d 489, 493 (7th Cir. 1995). Because the intent of the GDEA is remedial rather than punitive, Mr. Copanos' argument that the GDEA violates the ex post facto clause must fail. *See id.* at 496–97.

D. Miscellaneous Arguments

Mr. Copanos argues that his debarment would be ''an unconstitutional taking of the right to earn a living in the United States.'' It appears that Mr. Copanos is referring to a ''taking'' of property under the Fifth Amendment. Mr. Copanos further states that he has sold his company, including all of its approved applications, and that to debar him now ''1would be a malicious act'' on the part of the agency. Mr. Copanos also argues that he should not be debarred because his guilty plea was made at an emotional and stressful time.

None of these arguments raise a genuine and substantial issue of fact requiring resolution at a hearing. Mr. Copanos has not established that his debarment affects any property interest protected by the Fifth Amendment. The expectation of employment is not recognized as a protected property interest under the Fifth Amendment. *Hoopa Valley Tribe* v. *Christie*, 812 F.2d 1097, 1102 (9th Cir. 1986); *Chang* v. *United States*, 859 F.2d 893, 896–97 (Fed. Cir. 1988). Loss of potential profit is not a sufficient basis for a ''takings'' claim. *Andrus* v. *Allard*, 444 U.S. 51, 66 (1979). To have a protected property interest, one must have a ''legitimate claim of entitlement'' to that interest. *Erikson* v. *United States*, 67 F.3d 858 (9th Cir. 1995). One who voluntarily enters a pervasively regulated industry, such as the pharmaceutical industry, and then violates its regulations, cannot successfully claim that he has a protected property interest when he is no longer entitled to the benefits of that industry. *Id.*

Mr. Copanos does not dispute that he was convicted as alleged by FDA. Under section 306(l)(1)(B) of the act a conviction includes a guilty plea. The facts underlying Mr. Copanos' conviction are not at issue. Moreover, the act does not permit consideration of factors such as emotional stress; rather, the act is clear that an individual shall be debarred if convicted of a felony under Federal law for conduct relating to the regulation of any drug product (see section 306(a)(2)(B) of the act). Mr. Copanos has been convicted of such a felony. Accordingly, the Deputy Commissioner for Operations denies Mr. Copanos' request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act and under authority delegated to him (21 CFR 5.20), finds that John D. Copanos has been convicted of felonies under Federal law for conduct relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, John D. Copanos is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application

under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (*insert date of publication in the* Federal Register), (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Copanos, in any capacity, during his period of debarment, will be subject to a civil money penalty (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Copanos, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to a civil penalty (section 307(a)(7) of the act). In addition, FDA will not accept or review any ANDA or abbreviated antibiotic drug application submitted by or with Mr. Copanos' assistance during his period of debarment.

Mr. Copanos may file an application to attempt to terminate his debarment pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 94N–0033 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 22, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–5687 Filed 3–8–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 19, 1996.

Time: 1 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

This notice is being published less than fifteen days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 26, 1996.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 27, 1996.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: March 5, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5667 Filed 3–8–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: March 14, 1996.

Time: 10 a.m.

Place: Days Inn, 2000 Jefferson Davis Hwy., Crystal City, VA 22202.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: March 5, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 96–5668 Filed 3–8–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: March 19, 1996.

Time: 12:00 p.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 25, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4184, Telephone Conference.

Contact Person: Dr. Martin Slater, Scientific Review Administrator, 6701 Rockledge Drive, Room 4184, Bethesda, Maryland 20892, (301) 435–1149.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 26, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Biological and Physiological Sciences.

Date: March 26, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Conf. Room 9116.

Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1780.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 27, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4182, Telephone Conference.
Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 27, 1996.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Behavioral and Neurosciences.
Date: April 1, 1996.
Time: 10:00 a.m.
Place: Embassy Suites, Chevy Chase, MD.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 2, 1996.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 2, 1996.
Time: 2:30 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892. (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 9, 1996.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892. (301) 435–1150.

Name of SEP: Biological and Physiological Sciences.
Date: April 10, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892. (301) 435–1257.

Name of SEP: Clinical Sciences.
Date: April 12, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4106, Telephone Conference.
Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892. (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: April 12, 1996.
Time: 8:30 a.m.
Place: Key Bridge Marriott, Rossyln, VA.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892. (301) 435–1173.

Name of SEP: Biological and Physiological Sciences.
Date: April 23, 1996.
Time: 8:30 a.m.
Place: Holiday Inn, Silver Spring, MD.
Contact Person: Dr. Peggy McCardle, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892. (301) 435–1258.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: March 28, 1996.
Time: 8:30 a.m.
Place: Ramda Inn, Rockville, Maryland.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5179, Bethesda, Maryland 20892. (301) 435–1246.

Name of SEP: Biological and Physiological Sciences.
Date: April 8, 1996.
Time: 8:30 a.m.
Place: Double Tree Hotel, Rockville, MD.
Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892. (301) 435–1169.

Name of SEP: Clinical Sciences.
Date: April 9, 1996.
Time: 8:00 a.m.
Place: NIH, Rockledge 2, Room 4218, Telephone Conference.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892. (301) 435–1198.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance program Nos. 93.306, 93.333, 93.337, 93.393–93,396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: March 5, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–5666 Filed 3–8–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4004–N–03]

Office of the Assistant Secretary for Community Planning and Development; Notice of Funding Availability for: The HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1996; and the Section 108 Loan Guarantee Program for Small Communities in New York State; Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1996; Extension of application deadline.

SUMMARY: This notice extends the application deadline for the FY 1996 NOFA for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program for Small Communities in New York State, published in the Federal Register on December 28, 1995 (60 FR 67260). This notice establishes the application deadline to be April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. D'Agosta, Director, Office of Community Planning and Development, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278–0068; telephone (212) 264–0771. (This is not a toll-free number.) Hearing- or speech-impaired persons may call (212) 264–0927 (TDD).

SUPPLEMENTARY INFORMATION: The Notice of Funding Availability (NOFA) for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year (FY) 1996, and the Section 108 Loan Guarantee Program for Small Communities in New York State was published in the Federal Register on December 28, 1995 (60 FR 67260), and amended on February 28, 1996 (61 FR 7533).

The FY 1996 NOFA established March 13, 1996 as the application deadline, stating that the application kits may be obtained from HUD's New York or Buffalo offices. However, due to a number of factors, HUD has been unable to provide the application kits as early as it planned. Therefore, this notice establishes that the application deadline is extended from March 13, 1996 to April 3, 1996. All other instructions in the FY 1996 NOFA with regard to submitting applications remain in effect.

Accordingly, FR Doc. 95–31383, the NOFA for the HUD-Administered Small

Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1996, and the Section 108 Loan Guarantee Program for Small Communities in New York State, published in the Federal Register on December 28, 1995 (60 FR 67260), is amended as follows:

1. On page 67260, in column 2, the two paragraphs under the heading **DATES** are amended to read as follows:

DATES: Applications are due by April 3, 1996. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. Applications, if mailed, must be postmarked no later than midnight on April 3, 1996. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. on the deadline date. Application kits will be made available by a date that affords applicants no fewer than 30 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received by 4:00 p.m. on, or postmarked by, April 3, 1996. Applicants should take this procedure 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.

2. On page 67278, in column 1, section II.B., under the heading ''Submitting Applications'', is amended to read as follows:

II. Application and Funding Award Process

* * * * *

B. Submitting Applications

A final application must be submitted to HUD no later than April 3, 1996. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, April 3, 1996. Applicants in New York, in the counties of Sullivan, Ulster, Putnam, and in non-participating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the address listed above in Section A.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on, or postmarked by, April 3, 1996. 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.

* * * * *

3. On page 67278, in column 2, section II.C.2., under the heading ''Streamlined Application Requirements for Certain Applicants'', is amended to read as follows:

II. Application and Funding Award Process

* * * * *

C. The Application

* * * * *

2. Streamlined Application Requirements for Certain Applicants

An eligible applicant that submitted an application under the Fiscal Year 1995 NOFA, but whose application was not selected for funding, may notify HUD in writing by the application deadline date, April 3, 1996, that it wishes its FY 1995 application to be reactivated for consideration under this NOFA. Applications that are reactivated may be updated, amended, or supplemented by the applicant, provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location, or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

Applicants with activities approved for funding under the Fiscal Year 1995 NOFA are eligible for additional funding for those activities under this NOFA. Applicants seeking additional funding for activities selected for funding under the Fiscal Year 1995 NOFA may notify the Department in writing by April 3, 1996 that they wish to seek additional funding for those activities. Such applicants may incorporate by reference the application materials in the applicant's Fiscal Year 1995 application, and may provide material to update or supplement the prior application.

All applicants are free to submit an entirely new application in place of a previous application should they so desire.

* * * * *

4. On page 67279, in column 1, in section III., under the heading ''Technical Assistance'', the second paragraph is amended to read as follows:

III. Technical Assistance

* * * * *

In order to be considered for funding, complete applications (an original and two photocopies of the entire application) must be physically received by the appropriate HUD office on April 3, 1996 by 4:00 p.m. or, if mailed, postmarked no later than midnight, April 3, 1996. Applications must be delivered or mailed to the appropriate HUD office at the address indicated in Section II.

Dated: March 6, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–5731 Filed 3–6–96; 2:15 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–811314

Applicant: Don R. Helms, Helms & Associates, Bellevue, Iowa.

The applicant requests a permit to take (capture, handle and release, and translocate specimens) Higgins' eye pearly mussel (*Lampsilis higginsi*) throughout the Upper Mississippi River basin above river mile 360. Proposed activities are expected to result in population status information that will be useful in recovery of the species and in avoiding impacts to species when completing projects that impact the riverine habitat.

Correction is made to the following announcement previously published in

the Federal Register, Vol. 61, No. 13, page 1399, dated January 19, 1996.

PRT–809630

Applicant: Dr. Allen Kurta, Eastern Michigan University, Ypsilanti, Michigan.

The applicant requests a permit to take (capture and release, handle, radio-tag) Indiana Bats (*Myotis sodalis*) in Michigan *and Indiana.*

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Endangered Species, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated February 26, 1996.

John A. Blankenship,

Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–5592 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Five Species of Sea Turtles (Loggerhead Sea Turtle, Caretta Caretta, Green Sea Turtle, Chelonia Mydas, Leatherback Sea Turtle, Dermochelys Coriacea, Hawksbill Sea Turtle Eretmochelys Imbricata, and Kemp's Ridley Sea Turtle, Lepidochelys Kempii), and Piping Plovers (Charadrius Melodus), in Volusia County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The county of Volusia (Applicant) is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10 (a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The incidental take permit would authorize the take of five species of sea turtles (loggerhead sea turtle, *Caretta caretta,* green sea turtle, *Chelonia mydas,* leatherback sea turtle, *Dermochelys coriacea,* hawksbill sea turtle (*Eretmochelys imbricata*), and Kemp's ridley sea turtle, *Lepidochelys kempii*), and piping plovers (*Charadrius melodus*) resulting from public beach-driving activity and lighting controlled and operated by Volusia County, to the extent that minimization and mitigation measures proposed in the habitat conservation plan (HCP) are not successful. The incidental take permit would cover the Defined Area of the HCP, bounded on the north by the Volusia-Flagler County line, on the south by the Volusia-Brevard County line (49.08 miles of coastline), on the east by the mean low water line, and on the west by the line of permanent vegetation, or the seawall, whichever is closer to the ocean.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Jacksonville, Florida, Field Office address below. Requests for the documents must be submitted in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102 (2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before April 10, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Jacksonville, Florida, Field Office. Documents will also be available for public inspection by appointment during normal business hours at the Service's Southeast Regional Office, Atlanta, Georgia, or the Jacksonville, Florida, Field Office. In addition, copies of the application, the HCP, and EA are available for public inspection at all Volusia County Public Libraries, during their normal operating hours. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference the permit under PRT–811813 in such comments.

Endangered/Threatened Species Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081)

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: The beaches in Volusia County are well known throughout the United States as a recreational attraction and are a major component of the local Volusia County economy. Driving on the beach has been a tradition since before the turn of the century. Driving on the beach has the potential to harm federally listed wildlife species that also use the beach.

Four sea turtle species have been documented as nesting in Volusia County. The nesting and hatching season extends from about April 15 through October 31. However, some nests may be laid prior to April 15, and some hatchlings may emerge from nests after October 31. Between 1988 and 1994, the number of sea turtles nests within the Defined Area ranged from 1,360 nests to 2,247 nests; between 74 to 87 percent of the nests occurred at Canaveral National Seashore (11.78 miles of coastline) and North Peninsula State Recreation Area (2.70 miles of coastline), areas where no public driving is allowed. The number of nests reported in the area under the jurisdiction of Volusia County (34.60 miles of coastline) ranged from 204 to 495 between 1992 and 1994. Loggerhead sea turtles averaged about 97 percent of this nesting activity, while green and leatherback sea turtles averaged 2.7 and 0.1 percent, respectively. Only one hawksbill sea turtle nest has ever been documented in the Defined Area. Kemp's ridley sea turtles are not known to nest in the Defined Area, but strandings have occurred there.

The piping plover is a small, beach-dwelling bird that feeds primarily during daylight hours on sandy shores searching for prey at or near the sand/water interface or in the seaweed or other flotsam that has washed ashore. Piping plovers are migratory and are observed in Florida during the non-nesting season, typically from September through March. Piping plovers along the Atlantic coast appear to be observed most often at the accreting ends of barrier island, along

sandy peninsulas, and near coastal inlets. During a 1991 census, in which 32 miles of Volusia County beachfront were surveyed, a total of four piping plovers were observed, all in the immediate vicinity of Ponce Inlet.

On Volusia County beaches, sea turtles and other protected species may be affected by artificial lighting, vehicular and pedestrian traffic, erosion control structures, beach maintenance practices, stormwater runoff, and recreational equipment. Volusia County is seeking an incidental take permit for vehicular traffic and county-owned and operated artificial lighting on the beach.

The presence of vehicles on the beach has the potential to take sea turtles by hitting or running over nesting females, hatchlings, juvenile turtles that have washed up on the beach (as often happens during storms), and turtle nests. Vehicle traffic and vehicle lights may deter female sea turtles during their nesting attempts, and vehicle lights may also disorient newly hatched sea turtles. Tire ruts in the sand may trap, misdirect, or otherwise detain hatchlings from reaching the ocean. Equipment allowed on the beach for moving sand may run over sea turtle nests, as well as place sand on top of nests, which could interfere with the incubation process and hatchlings emergence.

Artificial lighting can be detrimental to sea turtles in several ways. Studies have shown that light pollution can deter female sea turtles from coming onto the beach to nest. Also, females attempting to return to sea after nesting can be disoriented by beach lighting and have difficulty making it back to the ocean. In some cases, nesting females have ended up on coastal highways and been struck by vehicles. Artificial beach lighting is even more detrimental to sea turtle hatchlings, which emerge from nests at night. Under natural conditions, hatchlings move toward the brightest, most open horizon, which is over the ocean. However, when bright light sources are present on the beach, they become the brightest spot on the horizon and attract hatchlings in the wrong direction, making them more vulnerable to predators, desiccation, exhaustion, and automobiles on highways and in parking lots.

The EA considers the consequences of four alternatives. The no action alternative would continue to implement a beach management program as required by existing Volusia County regulations and ordinances and may result in take of sea turtles and piping plovers. Without an exemption provided by Section 10 of the Act, the Applicant will risk exposure to the enforcement provisions of Section 9 of the Act. One alternative would continue the requirements of a Court Order issued in 1995 nesting season for sea turtles. It may result in take of sea turtles and piping plovers and, as with the no action alternative, continue to expose the Applicant to the enforcement provisions of Section 9 of the Act. A third alternative examines removing all public vehicles from the county beaches; it would have an immediate adverse impact to segments of the tourist economy and to beach revenues. In addition, because of lack of adequate off-beach parking, a large number of people would be kept off the beach. The proposed action alternative is issuance of the incidental take permit. This provides for establishment of zones of the beach where public driving would not be allowed (an additional 9 miles of no-driving beach established), and coincides with areas of highest use by sea turtles. Transitional Areas would be established, where public driving would be allowed with the exception of a 30-foot Conservation Zone, as measured from the toe of the dunes or seawall, whichever is closest to the sea. Urban Areas would be established, where public driving would be allowed, with the exception of a 30-foot Conservation Zone, the seaward 15 feet of which could be used for parking. There would be no nighttime public driving or parking allowed on the beach. The HCP also includes monitoring of protected species, increased enforcement of the county lighting ordinance, and increased educational activities for protected species. It would also provide for an economic development plan for off-beach parking, diversification of beach uses and experiences, and increased cooperation between volunteer turtle patrols, State and Federal agencies, and the county. The HCP provides a funding mechanism for these minimization and mitigation measures.

As stated above, the Service has made a preliminary determination that the proposed action, e.g., issuance of the incidental take permit, is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. This preliminary information may be adjusted due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of the incidental take permit will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild or result in the adverse modification of designated critical habitat. This decision is based upon and considers the cumulative impacts of past, present and future issuance of incidental take permits within the historic and current range of each species affected in the permit action.

2. Issuance of an incidental take permit would not have significant effects on the human environment in the project area.

3. The proposed take is incidental to an otherwise lawful activity.

4. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

5. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the incidental take permit are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's incidental take permit is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

Dated: March 5, 1996.

Sam D. Hamilton,

Acting Regional Director.

[FR Doc. 96–5690 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Parkside Homes Planned Unit Development, South San Francisco, San Mateo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that Parkside Homes Planned Unit Development has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number 811259. The proposed permit would authorize the incidental take of the endangered mission blue butterfly *(Icaricia icaroides*

missionensis) and San Bruno elfin butterfly (*Callophrys mossii bayensis*) and/or their habitat during the construction of a housing development. The permit would become effective for the Callippe silverspot butterfly (*Speyeria callippe callippe*), currently proposed for endangered status, if it is listed under the Act. The permit would be in effect for 10 years.

The Service also announces the availability of an environmental assessment (EA) for the incidental take permit application, which includes the proposed Habitat Conservation Plan (HCP) fully describing the proposed project and mitigation, and the accompanying Implementing Agreement (IA). This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, EA and IA should be received on or before April 10, 1996.

ADDRESSES: Comments regarding the application or adequacy of the EA and IA should be addressed to Mr. Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825. Please refer to permit number PRT–811259 when submitting comments. Individuals wishing copies of the application, EA or IA for review should immediately contact the above office (916–979–2725).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton or Ms. Tiki Baron, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916–979–2725).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Sacramento Field Office at the above referenced address, or by telephone at (916) 979–2725. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act prohibits the ''taking'' of a species listed as threatened or endangered. However, the Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Parkside Homes proposes to construct 156 units of moderate-cost housing on a 25.4-acre parcel in South San Francisco, San Mateo County, California. The site is located on the north side of Sign Hill and faces the south side of San Bruno Mountain. Parkside Homes seeks coverage for the removal of habitat for the mission blue butterfly, San Bruno Elfin butterfly, and Callippe silverspot butterfly on 19.53 acres of the site. Though the proposed project would remove suitable habitat for these butterfiles, the HCP involves the establishment of a 12.11-acre butterfly conservation area onsite to be maintained in perpetuity. The conservation area would include 5.87 acres of ungraded land and 6.24 acres of graded land, restored as butterfly habitat. All *Sedum spathulifolium* and *Viola pedunculata,* host plants for the San Bruno elfin butterfly and Callippe silverspot, respectively, within the grading plan would be transplanted to the conservation area. In addition, approximately 250 lupine (host plant for the mission blue butterfly) and 100 *Sedum* (host plant for the San Bruno elfin butterfly) would be planted in the conservation area. Other measures are specified in the HCP to minimize to potential for take during construction activities.

The EA considers the environmental consequences of three alternatives. The no project alternative would result in no immediate environmental impacts. However, under this alternative a butterfly conservation area would not be established and maintained in perpetuity, and the quality of the existing habitat may decline over time as a result of invasive exotic vegetation which exists on the site. This alternative was rejected because it would deny the landowner the opportunity to develop housing on the property and no enhancement of the site for listed species would occur. Alternative 1, the proposed action, was selected because: (1) It best satisfies the needs and purpose of the proposed project; (2) it is likely to result in a relatively low level of incidental take; and (3) impacts are minimized and mitigated through the establishment of a butterfly conservation area. The third alternative involves the development of 25 single family homes on one-acre lots over the entire 25.4-acre parcel. This alternative was not selected because: (1) The level of incidental take would likely be greater than under the Preferred Alternative 1; and (2) and conservation areas established on site would be relatively small and fragmented.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: March 1, 1996.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–5692 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of document availability.

SUMMARY: This notice announces the availability for public comment two documents produced by the Risk Assessment and Management Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The documents are as follows: (1) Final Draft—Generic Nonindigenous Aquatic Organisms Risk Analysis Review Process; and, (2) Final Draft—Risk Assessment on the black carp (Pisces: Cyprinidae). The Aquatic Nuisance Species Task Force was established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

DATES: Comment period ends on May 10, 1996.

ADDRESSES: Written responses and requests for copies of the documents should be mailed to: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service—PPD, 4700 River Road, Unit 117, Riverdale, Maryland, 20737–1238.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman at (301) 734–8939.

SUPPLEMENTARY INFORMATION: The Generic Nonindigenous Aquatic

Organisms Risk Analysis Review Process is the risk process developed through the Risk Assessment and Management Committee to help meet the requirements of the Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 et seq., November 29, 1990). The objective of the Review Process is to provide a standardized process for evaluating the risk of introducing nonindigneous organisms into a new environment and, if needed, determining the correct risk management steps needed to mitigate the risk. The Review Process provides a framework where scientific, technical, and other relevant information can be organized into a format that is understandable and useful to managers and decision makers. The process was developed to function as an open process with early and continuous input from all identified interested parties and designed to be flexible and dynamic enough to accommodate a variety of approaches to nonindigneous organisms risk depending on the available resources, accessibility of the biological information, and the risk assessment methods available at the time of the assessment. The black carp was chosen as the test organism for the Review Process because it demonstrated: (1) A real issue in which the potential for positive gain (biological control of yellow grub and zebra mussel) has to be balanced with the potential of becoming established and causing economic and/or environmental damage on a new environment; (2) a real issue in which political, economic, and environmental concern were already present; and, (3) a situation in which there still exists time to correctly manage this issue to the benefit of the American people. This assessment is specific organism assessment and does not attempt to evaluate the black carp as a pathway.

Dated: February 29, 1996.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 96–5398 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WO–320–1990–2–24 1A]

Notice of Proposed Information Collection, OMB Approval Number 1004–0110

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval to collect certain information from owners of unpatented mining claims. This information is needed for BLM to implement the Multiple Surface Use Act of 1955; the Multiple Mineral Development Act of 1954; the Act of April 8, 1948; and the general mining laws.

DATES: Comments on the proposed information collection must be received by May 10, 1996, to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WO140@attmail.com. Please include ''ATTN: 1004–0110'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Roger A. Haskins, (202) 452–0355.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the Federal Register concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

To guard against use of mining claims for purposes unrelated to mining, Congress passed the Multiple Surface Use Act of 1955 (69 Stat. 368, 30 U.S.C. 601–615), which is also known as Public Law 167, the Common Varieties Act, or the Surface Resources Act. Under the Act, mining claims located *after* the date of the Act (July 23, 1955) must only be used for prospecting, mining or processing operations and reasonably incident uses. Mining claims located *prior* to the date of the Act will be subject to the Act where, after notice and hearing, BLM determines the locator's surface rights are similarly limited. To defend against a Government inquiry as to the ownership of vegetal or mineral rights to locations made prior to July 23, 1955, an owner of an unpatented mining claim must submit the information required by the implementing regulations at 43 CFR 3712.2–3, including the date of location of the claim, the book and page of recordation of the notice or certificate of location, the section or sections of public land surveys which embrace the claim, whether the claimant is a locator or purchaser under the location, and the name and address of the claimant and of any other person with an interest in the claim.

BLM uses the information provided by the mining claimant to determine the applicability of the use restrictions of the Multiple Surface Use Act to pre-Act claims. If BLM did not collect this information, mining claims located prior to the Act could be used for purposes unrelated to mining, which frequently cause adverse environmental impacts or create health and safety hazards on the public lands. See *Unauthorized Activities on Hardrock Claims,* GAO-RCED–90–111.

In 1954, Congress passed the Multiple Mineral Development Act (68 Stat. 708, 30 U.S.C. 521–531) to eliminate conflicts between claimants of locatable minerals and permittees and lessees of leasable minerals, such as coal, oil and gas. The Act permits development of the same tract of public land under both systems of mineral disposal, that is, both mining claims under the general mining law and permits and leases under the Mineral Leasing Act of 1920 can cover the same piece of public domain.

To assert a right to Mineral Leasing Act deposits that lie under mining claims located prior to the date of the Act (August 13, 1954), a permittee or lessee may submit to BLM a request for publication under the implementing regulations at 43 CFR 3742.3–1. The request for publication must include a certified copy of the notice of application, offer, permit, or lease; an affidavit stating that the lands involved

have been examined and giving the name and address of anyone found working the land; and a certificate setting forth the name of anyone found to have an interest in any pre-Act unpatented mining claim, based on an examination of records.

Subsequently, BLM publishes a notice, to which an owner of an unpatented mining claim must submit the information required by the implementing regulations at 43 CFR 3742.3–2, including the date of location of the claim, the book and page of recordation of the notice or certificate of location, the section or sections of public land surveys which embrace the claim, whether the claimant is a locator or purchaser under the location, and the name and address of the claimant and of any other person with an interest in the claim.

BLM uses the information provided by both the permittee or lessee and the mining claimant to determine whether the mining claimant has any right to or interest in Leasing Act minerals under the mining claim. If BLM did not collect this information, the rights of mining claimants to Leasing Act minerals located under their claims could be adversely affected.

The Act of April 23, 1932 (47 Stat. 136, 43 U.S.C. 154) authorizes the Secretary of the Interior to open to location, entry and patent under the general mining laws public lands which are withdrawn from development under the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 416). Under the implementing regulations at 43 CFR 3816.2, anyone wishing to open these lands may file an application with BLM. The application must include a description of the land and the factual basis for the belief that the land contains valuable mineral deposits.

BLM uses the information provided by the applicant to determine if it is in the public interest to open land in reclamation withdrawals to mineral development. If BLM did not collect this information, the development of valuable mineral deposits on reclamation withdrawals would be precluded.

The Act of April 8, 1948 (62 Stat. 162) reopened the revested Oregon and California Railroad and reconveyed Coos Bay Wagon road grant lands (the O&C lands) to exploration, location, entry and patent under the general mining laws. The Act also validated mineral claims located on the O&C lands during the period from August 28, 1937 to April 8, 1948. The O&C lands comprise about 2 million acres of public forestlands in western Oregon that are managed by BLM. Under the Act, the owner of an unpatented mining claim must seek BLM approval to cut any timber located on the claim. Under the implementing regulations at 43 CFR 3821.4, the claim owner must file a written application with the local BLM office. The application must identify the amount and kind of timber desired and the use to which it will be put.

BLM uses the information to ensure that the cutting of timber on a valid mining claim located on the O&C lands is limited to that which corresponds to the amount and kind needed for the development and operation of the mine and does not conflict with multiple-use and resource management goals. If BLM did not collect this information, mining claimants would be precluded from cutting timber necessary for their mining operations.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collections is estimated to average one hour per response. The respondents are owners of unpatented mining claims, mill sites, and tunnel sites located upon the public lands, reserved mineral estates of the United States, restricted lands of the United States, National Forests, and National Parks. The frequency of response is one per demand or assertion of right. The number of responses per year is estimated to be about ten. The estimated total annual burden on new respondents is collectively ten hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: March 5, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–5673 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–84–P

National Park Service

Availability of Plan of Operations, Mining Operations CIMA Cinder Mine, Mojave National Preserve, San Bernardino County, California

Notice is hereby given in accordance with Section 9.17 (a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from J. Lorene Caffee, the Cima Cinder Mine, a Plan of Operations to conduct mining operations on the Cinder No. 2, Cinder No. 3, Cinder 2 M 12—M 14, Cinder 2 M 16—M 21, Cinder 2 M 30—M 31, and Cinder 3 M 1—M 7 claims, in the Mojave National Preserve, located within San Bernardino County, California.

The Plan of Operations is available for public review and comment for a period of 30 days from the publication date of this notice. Analysis of the proposal will be conducted in accordance with the California Desert Protection Act, Section 509. The document can be viewed during normal business hours at the Office of the Superintendent, Mojave National Preserve, 222 East Main Street, Suite 202, Barstow, CA 92311.

Dated: February 27, 1996.

Stephen Crabtree,

Field Director, Pacific West Area.

[FR Doc. 96–5739 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–70–P

Availability of Plan of Operations for Mining Operations; ZZYZX Production Company, Mojave National Preserve, San Bernardino County, California

Notice is hereby given in accordance with Section 9.17(a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from James Orr, ZZYZX Production Company a Plan of Operations to conduct mining operations on the Soda Lake 72 and Soda Lake 88 claims in the Soda Lake claim group, in the Mojave National Preserve, located within San Bernardino County, California.

The Plan of Operations is available for public review and comment for a period of 30 days from the publication date of this notice. Analysis of the proposal will not be conducted until a validity study is conducted in accordance with the California Desert Protection Act, Section 509. The document can be viewed during normal business hours at the Office of the Superintendent, Mojave National Preserve, 222 East Main Street, Suite 202, Barstow, CA 92311.

Dated: February 27, 1996.

Stephen Crabtree,

Field Director, Pacific West Area.

[FR Doc. 96–5740 Filed 3–8–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice of information collection under review; Adjudication of claims of U.S. survivors of the Holocaust.

This proposed information collection is published to obtain comments from

the public. Comments and suggestions are encouraged and will be accepted for sixty (60) days from the date of publication of this notice.

Comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Foreign Claims Settlement Commission (FCSC), including whether the information will have practical utility;

2. Evaluate the accuracy of the FCSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Suggest ways in which the quality, utility and clarity of information proposed to be collected might be enhanced; and

4. Suggest ways in which the FCSC could minimize the burden of the proposed collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical or other collection techniques or other forms of information technology, such as permitting electronic submission of responses.

A complete copy of this notice is available in the following alternative format: electronic file on computer diskette.

Please address comments, suggestions and requests for additional information to: Mr. David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E St., NW., Room 6002, Washington, DC 20579. Tel. 202–616–6975, FAX 202–616–6993.

Supplementary information: This proposed collection of information will enable the FCSC to adjudicate the claims of U.S. survivors of the Holocaust against the Federal Republic of Germany for loss of liberty or damage to body or health as a result of Nazi persecution while interned during World War II.

Overview of this proposed information collection:

1. Type of information collection: New Collection.

2. Title of the form/collection: Statement of Claim for Filing of Claims by Holocaust Survivors Against the Government of the Federal Republic of Germany.

3. Agency Form number, and name of component of the Department of Justice sponsoring the collection: FCSC Form 2–96; Foreign Claims Settlement Commission of the United States.

4. Affected public who will be asked to respond, as well as a brief abstract: Primary: Individuals. Other: none.

The information collected will be used to adjudicate the claims of U.S. survivors of the Holocaust and to negotiate a sum to be paid by the Federal Republic of Germany for reparations for Nazi persecution of U.S. nationals.

5. Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100 responses at an average of 2 hours per response.

6. Estimate of the total public burden (in hours) associated with the collection: 200 annual burden hours at $10 per hour for a total burden cost of $2,000.

If additional information is required concerning this overview, please contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G St., NW., Washington, DC 20530.

Dated: March 5, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–5665 Filed 3–8–96; 8:45 am]

BILLING CODE 4410–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 4–96]

Sunshine Act Meetings; Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and time	Subject Matter
Tues., May 7, 1996 at 10:00 a.m..	Consideration of Proposed Decisions on claims against Albania.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on March 7, 1996.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 96–5886 Filed 3–7–96; 2:38 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the Federal Register.

The following individual is hereby appointed to a three-year term on the Department's Performance Review Board: Patricia W. Lattimore.

FOR FURTHER INFORMATION CONTACT:

Mr. Larry K. Goodwin, Director of Human Resources Center, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–6551.

Signed at Washington, DC, this 5th day of March, 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–5717 Filed 3–8–96; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–31,857]

Douglas County, Inc. dba Douglas County Forest Products, Winchester, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 5, 1996 in response to a worker petition which was filed on February in behalf of workers at Douglas County, Inc., dba Douglas County Forest Products, Winchester, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of February, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–5541 Filed 3–8–96; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act, Title III, Demonstration Program: High Wage Job Opportunities for Dislocated Workers Project

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the concept of the direct involvement of business associations and labor organizations as an avenue for dislocated workers to secure high wage jobs, to be funded with Secretary's National Reserve funds appropriated through Title III of the Job Training Partnership Act (JTPA). This notices describes the process that eligible entities must use to apply for demonstration funds, how grantees are to be selected, and the responsibilities of grantees. It is anticipated that up to $7 million will be available for funding demonstration projects covered by this solicitation with no project being awarded more than $750,000. Funds cannot be used to duplicate services provided under another DOL agreement.

DATES: Applications for grant awards will be accepted commencing March 11, 1996. The closing date for receipt of proposals is April 30, 1996 at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: Division of Acquisition and Assistance, Attention: Brenda Banks, Reference: SGA/DAA 96–003, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Division of Acquisition and Assistance, Telephone: (202) 219–7300 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of four parts. Part I describes the authorities and purpose of the demonstration program and identifies the oversight policy. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV identifies and defines the selection criteria which will be used in reviewing and evaluating applications.

Part I. Background

A. Authorities

Section 324 of the Job Training Partnership Act authorizes the use of funds reserved under Title III, Part B for demonstration programs of up to three years in length.

Applicants for grants must comply with all Federal and State laws in setting up their programs. For example, grantees must comply with requirements for licensing, funds may only be used for activities which are in addition to those which would otherwise be available, and they must obtain union concurrence when working within a labor agreement.

In order to assure long-term high wage opportunities, grant participants receiving training prior to placement must qualify for the appropriate national or State occupational certifications/licenses indicating that a recognized level of occupational competency has been achieved.

B. Purpose of the Demonstration

As authorized under Title III of JTPA, the Dislocated Worker Program provides a wide range of employment and training services to eligible dislocated workers to help them find and qualify for new jobs through an established service delivery network of States and substate grantees. This demonstration will look at how private-sector mechanisms and systems that have access to high wage job opportunities can offer an alternative response to the needs of the dislocated worker population.

A continuing concern of workers facing dislocation is the erosion of earnings resulting from starting over in a new career. By identifying high wage job opportunities, and effective methods of accessing those opportunities, this project can provide alternative approaches to that concern. Projects funded through this solicitation are to provide reemployment and/or retraining services—as described in Sections 314(c) and 314(d) of JTPA—to dislocated workers. Participants must be eligible dislocated workers under Section 301(a) of JTPA. Possible target populations served under the grant could include dislocated workers who have previously received high wages and are seeking to maintain that wage level in their new job, or dislocated workers who have not had the skills or training necessary to earn high wages in their previous employment.

The purpose of this demonstration is to test an alternative response to the needs of dislocated workers by utilizing the services of entities, other than States and Substate Grantees (SSGs), that have access to jobs at wages greater than the average placement wage for JTPA Substate areas (SSAs) as calculated for the 1994 JTPA Program Year. The direct involvement of private sector applicants that are eligible under this demonstration will promote the identification of high wage job opportunities and the provision of the necessary services including recruitment, eligibility determination, basic readjustment and retraining services to enable dislocated workers to be placed in the identified job opportunities.

The following demonstration program goals will be required of the grantees: (1) the wage paid to the dislocated worker at placement must at a minimum exceed the SSA average wage at placement by 20 percent; (2) at least 80 percent of project participants must be employed at the targeted wage within 90 days after completing services under the project; and (3) at least 70 percent of the project participants will rate the services received as ''very'' or ''extremely'' helpful.

In order to obtain high-wage jobs, a greater investment in training and program services for each worker may be necessary. Therefore, with appropriate documentation, the cost per participant may be higher than under Title III formula programs operated in the same local area.

C. Technical Assistance and Oversight

DOL will provide technical assistance to grantees in establishing appropriate data collection methods and processes. In addition, DOL will establish, for each demonstration project site, an oversight group made up of Federal, State and other appropriate interested parties.

D. Definitions

Unless otherwise indicated in this announcement, definitions of terms used herein shall be those definitions found in the Job Training Partnership Act, as amended, particularly at Section 4 and Section 301.

E. Contact With State JTPA Substate Grantees

In order to ascertain the average wage at placement of the JTPA Title III Substate area where the grant applicant proposes to operate a demonstration, the

grant applicant may contact the State Dislocated Worker Unit (DWU) which administers the JTPA Title III program. A list of the phone numbers of the State DWUs can be found in Appendix C.

Part II. Application Process

A. Eligible Applicants

Eligible applicants for demonstration projects are employer associations, unions, trade associations and other organizations and institutions that can document: (1) Their access to employment opportunities in occupations for which there is a demand and at wages at least 20 percent greater than the average placement wage for the local JTPA Title III program; (2) the ability to deliver the services proposed; and (3) the management structure necessary to ensure the integrity of the funds requested (by meeting the standards for financial management and participant data systems as outlined in 20 CFR 627.425).

Individual employers, and current JTPA State and substate formula program grantees are not eligible grantees for this demonstration program (although they may participate).

Entities described in section 501(c)(4) of the Internal Revenue Code who engage in lobbying activities are not eligible to receive funds under this SGA. The new Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, which became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities.

B. Contents

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts—Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Proposal

The Financial Proposal, Part I, shall contain the SF–424, ''Application for Federal Assistance'' (Appendix A). The applicant shall indicate on the SF 424 the type of organization for which it qualifies under the eligibility criteria in part II.A, paragraph one. The Federal Domestic Assistance Catalog number is 17.246. The Project Line Item Budget Estimates (Appendix B, pages 1 and 2) are provided to assist applicants in the preparation of their cost proposal. The budget shall include on separate pages detailed breakout of each budget line item, including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services [Section 314(c)(1–14, 16–18) of JTPA], supportive services [Section 314(c)(15)], and retraining services [Section 314(d)] requested through this grant. For each budget line item, identify the source and amount of funds (if applicable) other than those requested by this application and include any restrictions that may apply to the use on these funds. (A suggested format is provided in Attachment 2).

Grant funds may cover only those costs which are appropriate and reasonable determined by OMB Circular A–122, Cost Principles for Nonprofit Organizations and Title III of the JTPA Regulations. Federal funds cannot be used to provide training which an employer is in a position to, and would otherwise, provide, nor can they be used to provide salaries for program participants. They can however be used for employer reimbursement of the extraordinary costs associated with on-the-job training (see 20 CFR 627.240 of the Job Training Partnership Act Regulations regarding used of JTPA grant funds for on-the-job training).

Federal funds may not be used for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical expert(s)/consultants to provide advice and develop more complete project plans. However, the level of detail regarding the project plan may affect the amount of funding provided.

2. Technical Proposal

The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

C. Hand-Delivered Proposals

Proposals should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if proposals are hand-delivered, they shall be received at the designated place by 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Proposals that fail to adhere to the above instructions will not be considered.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it—

(1) Was sent by the U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of the application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by the U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by ''Express Mail Next Day Service—Post Office to Addressee'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmark on both the envelope and wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

F. Period of Performance

The Period of Performance shall be 18 months from the date of execution by the Government. Delivery of services to participants will begin within 90 days of execution. Justification for later operation start date must be provided in the proposal.

G. Option to Extend

The Department may elect to add funds to the Grant for an additional year of operation, based on the availability of funds, successful program operation, and the needs of the Department.

H. Page Count Limit

Applications are to be limited to 25 single-side pages 8.5 in. x 11 in., single-spaced, with a maximum of 10 pages of attachments.

I. Cost Limitations

These demonstration grants are not subject to the cost limitations at Section 315 of JTPA. However, any offeror proposing administrative cost that exceed 15 percent of the budget and/or supportive services that exceed 25 percent of the funds requested in the application must provide a narrative justification.

J. Support of appropriate labor organization(s)

Documentation of consultation and support for the project concept from applicable labor organizations must be provided in accordance with Part III., Item F. Below.

Part III. Statement of Work

Each application should follow the format outlined below. For sections, A through G, the application should include: (1) information that responds to the requirements in this part; (2) information that indicates adherence to the provisions described in Parts I and II of this solicitation; and (3) other information the offeror believes will address the selection criteria identified in Part IV.

Note: If the offeror intends to serve dislocated workers in more than one labor market area, information required under A and B below should be provided for each area. Similarly to the extent that the program design differs for different geographic areas, information must be provided relative to each geographic area to be served.

A. Description of the Target Population

All project participants must be eligible dislocated workers as defined in Section 301(a) of the Job Training Partnership Act. Projects may target either or both of the two following groups of dislocated workers: (1) Low wage earners who are to trained for and placed high wage jobs, or (2) high wage dislocated workers who are to be trained and placed in jobs that maintain their earning levels. Describe the dislocated worker target population, including the size, location(s), and the documented needs of this population relative to services to be provided in order to ensure placement in proposed high wage jobs. Explain the basis for the selection of high or low wage dislocated workers as the demonstration's target population. If the workers represent a particular industry or occupation, it should be noted in the application.

B. Description of the Targeted High Wage Jobs

1. Labor market condition—Documentation using labor market information appropriate to the geographic area to be served indicating that (a) the availability of a substantial number of job openings in targeted high wage occupations and that (b) a shortage of qualified workers exist to fill these documented openings.

2. Supply of competing job applicants—Assurance that the number of individuals receiving training (from all source—JTPA, secondary and post secondary vocational schools, proprietary schools, union apprenticeship programs, etc.) for these occupations are not in excess of the number of job openings projected within the next 12 months.

3. Identification of specific job openings—Applicants may document their access to firm job commitments by specific employers, or they may delineate a cogent job development strategy based on the characteristics of their organization and an analysis of the local labor market area. The degree to which this information is explicit will be taken into account in review of the proposal.

If all jobs that are projected to be filled are not available at the onset of the project, and explanation of how new job openings will identified and developed must be included. Note: Special credit will be given to opportunities for jobs in nontraditional occupations.

C. Project Design for the High Wage Job Opportunities for Dislocated Workers Demonstration

Describe the major project components listed below:

1. Outreach and recruitment of project participants: A description of how eligible dislocated workers will be identified and recruited for the targeted high wage jobs. Recruitment efforts may address public service communications and announcements, use of media, staffing for this task, use of the Service Delivery Area and Community Based Organizations, etc., but must demonstrate successful experience in reaching the target population.

2. Eligibility determination: The name of the entity responsible for determination of Title III eligibility for participants entering the program. If the entity to determine eligibility will not be the local title III substate grantee, describe steps that will be taken to ensure proper documentation of the participants' eligibility.

3. Selection Criteria: A description of the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project.

4. Services to be Provided: A description of the services to be provided from the time of selection for the project through placement in the high wage job. The description must indicate a clear understanding of what services and support will be necessary for the participants to successfully be placed in the high wage jobs, including services not funded under the grant, and ways to address participant financial needs during periods of training. Grant funded activities can include any activities listed in Section 314 (c) and (d) of the Job Training Partnership Act and should include at a minimum, assessment, retraining, job placement, and supportive services as well as relocation assistance, if applicable. A description of the provisions made for referral of participants who are unsuccessful in the project to other appropriate employment and training service providers should be provided.

Information must demonstrate that proposed training provider(s) are qualified to deliver training that meets appropriate employment standards and/or certification and licensing requirements. Such issues as past performance, qualifications of instructors, accreditation of certification of training curricula should be addressed where appropriate. In addition, describe how training will be customized to account for transferable skills and previous education. Costs of proposed retraining relative to the costs of similar training through other providers should be addressed.

5. Participant flow: A flowchart and timeliness to illustrate how the project will assure access to the necessary and appropriate reemployment and retraining services required to place recipients in the targeted high wage jobs. A description of the sequence of services and the criteria used to

determine the appropriateness of specific services for specific participants should accompany the flowchart. Please note if service choice options will be available to the participant.

D. Project Management

1. Structure—Describe the management structure for the project including a staffing plan which describes each position and the percentage of time assigned to this project.

2. Program Integrity—Describe the mechanisms to ensure financial accountability of grant funds, and performance accountability relative to job placements.

Specific references should be made to collecting information needed to: 1) determine the achievement of project outcomes as indicated in section F (including follow-ups of participants 90 days after leaving the program) and 2) the reporting of participants, outcomes, and expenditures.

3. Monitoring—

a. *Establishment of Project Implementation and Progress Benchmarks:* Describe how the project will keep records of its activities as required in 29 CFR Parts 95 and 97 and 20 CFR 631.63 as appropriate, including benchmarks to indicate the planned implementation of the project which will provide:

—Quarterly implementation schedule of participant activity and quarterly cumulative expenditure projections (see Attachment 3).

—Start-up implementation events for each month that are necessary to achieve a fully operational project status (assume accomplishments by the end of the month specified).

b. *Participant progress:* A description of how a participant's continuing participation in the project will be monitored.

c. *Project performance:* Provide the information on project performance that will be collected on a short-term basis (weekly, monthly, etc.) by program managers for internal project management to determine if the project is accomplishing its objectives as planned or if project adjustments are necessary.

d. *Customer satisfaction:* A description of the process and procedures to be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided. The description should include an identification of the types of information to be obtained, the method(s) and frequency of data collection, and how the information will be used in implementing and managing the project. It is expected that grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information.

Technical assistance in the design and implementation of customer satisfaction data collection may be provided by the Department of Labor.

4. Previous project management experience.—Provide an objective demonstration of the applicant's ability to manage the project, ensure the integrity of the funds, and deliver the proposed performance. Indicate the applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

E. Outcomes

Provide the following information for the project:

1. Planned number of participants.

2. Average Cost per participant (derived by dividing the amount of funds requested by the number of participants planned).

3. Planned number of program completions (the number of participants who complete the services provided by the grant).

4. Planned number of program-related placements (the number of participants who are placed in jobs related to the training or services funded by the grant).

5. Average wage at placement (at a minimum, must exceed the JTPA Substate Area Title III average wage at placement by 20 percent).

6. Placement rate (must achieve a placement rate of at least 80 percent within 90 days of completing the project) [derived by dividing the number of participants placed in jobs by the number of project participants enrolled in the project].

7. Cost per placement [derived by dividing the amount of the grant request by the number of placements].

8. Average wage at 13-week follow-up.

9. Job retention rate at 13-week follow-up.

10. Percentage of participants rating the services of the project ''very'' or ''extremely'' helpful.

F. Coordination

Docmentationof consultation and support for the project concept from applicable labor organizations must be submitted when 20% or more of the targeted worker population are represented by a labor organization, or where the training is for jobs where a labor organization represents a substantial number of workers engaged in similar work.

Part IV. Evaluation Criteria

Prospective offerors are advised that the selection of grantee(s) for award is to be made after careful evaluation of proposals by a panel selected by DOL. Panelists will evaluate the proposals for acceptability based upon the overall responsiveness to the Statement of Work, with emphasis on the various factors enumerated below, taking into consideration the extent to which funds are available. The panel results are advisory in nature and not biding on the Grant Officer.

1. Documentation of High Wage Occupational Demand (20 points)

The documentation of demand for the targeted high wage job, at the present time and in the future, is based upon reliable, recognized, and timely sources of information. The analysis of the labor market indicates a general understanding of the labor market in the area(s) where the project will operate.

Documentation that the supply of workers at the skill level for which training is to be provided is inadequate to meet the local labor market needs.

2. Description of the Target Population to be Served (20 points)

The description of the characteristics of the target group is clear and meaningful and sufficiently detailed to determine the potential participants' service needs. Documentation is provided that a significant number of dislocated workers who meet these characteristics are available for participation in the project area. Sufficient rationale is provided to understand how the number of dislocated workers to be enrolled in the project was determined.

The recruitment plan supports the number of planned enrollments.

3. Service plan (35 points)

The scope of services to be provided is adequate to meet the needs of the target population given (1) their characteristics; (2) the occupation(s) in which they are to be trained and (3) the length of program participation planned prior to placement.

The strategies of identifying job openings appear to be appropriate. Adequate provision has been made for job development and placement services are appropriate to the target population's needs.

Note: Special Consideration will be given for: (1) Recruitment and placement plans providing jobs in

nontraditional occupations and (2) specifically identified innovative approaches to training or other services.

4. Management Plan (15 points)

The applicant has successfully managed grants in the past. The project workplan demonstrates the applicant's ability to effectively track the progress of the project with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator to take corrective action if indicated. The proposal provides for a grievance process. The project operator has a method of assessing customer satisfaction and taking into account the results of such assessment in the project operations. Review by the appropriate labor organizations, where appropriate, is documented.

5. Cost (10 points)

Project costs are reasonable in relation to the characteristics of the target group, the services to be provided, and the jobs in which the project participants will be placed. Sufficient justification is provided for cost per participant. Other resources have been leveraged to supplement this grant and involve a broader constituency of interested parties.

The proposed outcomes are cost effective, *e.g.*, placement rate, cost per placement, wage replacement rate, wage level achieved in comparison to local median wage, at a minimum, meet the minimum standards stated in this announcement.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the offeror(s). Award would be based on the offeror's proposal without alteration. The offeror's signature on the SF–424 constitutes a binding offer.

Signed at Washington, D.C., this 5th day of March, 1996.

Janice E. Perry,

ETA Grant Officer.

Appendices

1. Appendix A—Application for Federal Assistance (Standard Form 424)
2. Appendix B—Project Line Item Budget Estimates, Pages 1 and 2
3. Appendix C—State JTPA Dislocated Worker Units Telephone Listing

Suggested Format Attachments

1. Attachment 1—Implementation and Performance Benchmarks
2. Attachment 2—Service Plan Matrix

BILLING CODE 4510–30–M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c Telephone number
d. Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

APPENDIX A (Continued)

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: —"New" means a new assistance award. —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B - Project Line Item Budget

Expense Item	Cost Category				Total
	Administration	Basic Readjustment Services	Retraining	Supportive Services	
Staff Salaries*					
Staff Fringe Benefits --_____% of Salaries					
Staff Travel --Project Area: _____ --Other: _____**					
Communications					
Facilities (incl. rent, utilities, maintenance)					
Office Supplies					
Consumable Testing & Instructional Materials					
Tuition Payments					
OJT Reimbursements					

* Attach a list of staff positions and the number of Full-Time Equivalent (FTE) staff assigned to each for the project.

** Provide a description of out-of-project area staff travel and the rationale for such travel.

Project Line Item Budget Estimates - Continuation - 2

Expense Item	Cost Category				Total
	Administration	Basic Readjustment Services	Retraining	Supportive Services	
Equipment --Use/Depreciation: _____ --Purchase: _____*** --Lease: _____***					
Tuition Payments					
OJT Reimbursements					
Supportive Services --Child Care --Transportation --Health Services & Exams --Tools --Other Services					
Other****					
Indirect/Allocated Cost					
TOTAL					

*** Attach a list of equipment/furniture items with a unit cost of $5000 or more to be purchased or leased, and, for purchased items, a justification for purchase vs. lease or use charges.
**** Attach a description of the types of expenses and services included in this item.

APPENDIX C

Dislocated Worker Units Telephone Listing

STATE	PHONE	STATE	PHONE
Alabama	(334) 242-5893	Nebraska	(402) 471-9903
Alaska	(907) 269-4658	Nevada	(702) 687-4310
Arizona	(602) 542-2484	New Hampshire	(603) 228-9500
Arkansas	(501) 682-3137	New Jersey	1-800-343-3919
California	(916) 654-9212	New Mexico	(505) 827-6846
Colorado	(303) 758-5020	New York	(518) 457-3101
Connecticut	(203) 566-7550	North Carolina	(919) 733-6383
Delaware	(302) 368-6913	North Dakota	(701) 328-2843
District of Columbia	(202) 673-4434	Ohio	(614) 466-3817
Florida	(904) 488-9250	Oklahoma	(405) 557-7294
Georgia	(404) 656-6336	Oregon	(503) 373-1995
Hawaii	(808) 586-9067	Pennsylvania	(717) 787-9282
Idaho	(208) 334-6303	Puerto Rico	(809) 754-5633
Illinois	(217) 785-6006	Rhode Island	(401) 277-3450
Indiana	(317) 232-7461	South Carolina	(803) 737-2601
Iowa	(515) 281-9013	South Dakota	(605) 773-5017
Kansas	(913) 296-7876	Tennessee	(615) 741-1031
Kentucky	(502) 564-5630	Texas	(512) 936-0345
Louisiana	(504) 342-7637	Utah	(801) 538-8757
Maine	(207) 287-3377	Vermont	(802) 828-4177
Maryland	(410) 767-2832	Virginia	(804) 786-3037
Massachusetts	(617) 727-8158	Washington	(206) 438-4611
Michigan	(517) 335-0056	West Virginia	(304) 558-1847
Minnesota	(612) 296-7918	Wisconsin	(608) 266-0745
Mississippi	(601) 949-2234	Wyoming	(307) 235-3601
Missouri	(314) 751-7796	U.S. Department of Labor, Office of Worker Retraining	(202) 219-5577
Montana	(406) 444-4500		

Attachment 1 Implementation and Performance Benchmarks

Performance Factor	Quarter (through mo./yr.)					
CUMULATIVE QUARTERLY PERFORMANCE GOALS						
Total Participants Enrolled						
Total Enrollments in Training						
– Enrollments in Classroom Training						
– Enrollments in OJT						
Total Program Completions						
Total Program-Related Placements						
Total Entered Employments						
Total Cumulative Expenditures	$	$	$	$	$	$

Attachment 2

Service Plan Matrix

Type of Service	Demonstration Grant Funds	Funds provided by the Grantee	State Title III and Substate Area Funds	Other Sources
BASIC READJUSTMENT SERVICES				
Outreach & Recruitment				
Orientation				
Job/Career Counseling				
Assessment & Service Plng.				
Job Search Skills/Asst.				
Job Development & Placement				
RETRAINING				
Basic/Remedial Education				
Literacy/ESL				
Classroom Vocational/ Occupational				
On-the-Job				
SUPPORT SERVICES				
Transportation				
Child Care				
Financial/Personal Counseling				
Health Services & Exams				
Tools				
Other				

Instructions:
For the Demonstration Grant, Other Funds provided by Grantee, and State Title III and Substate Funds columns, for each service indicate whether service is being provided directly by the Project Operator (enter an "X), or will be procured from other providers (enter a "Y").

For the Other Sources column, identify the specific funding sources being used to provide each applicable service with the following codes: 1=Employer (if not grantee); 2=Union (if not grantee); 3=Student Financial Aid; 4=Other Education/Training; 5=United Way or other Social Service Agencies; 6= Individual Participant; 7= Other

[FR Doc. 96–5718 Filed 3–8–96; 8:45 am]
BILLING CODE 4510–30–C

Notice of Revised Schedule of Remuneration for the UCX Program

Under Section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1996.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to ''First Claims'' for UCX which are effective beginning with the first day of the first week which begins after April 6, 1996.

Pay grade	Monthly rate
(1) Commissioned Officers	
0–10	$10,629
0–9	10,274
0–8	9,426
0–7	8,495
0–6	7,217
0–5	6,040
0–4	4,973
0–3	4,033
0–2	3,236
0–1	2,307
(2) Commissioned Officers With Over 4 Years Active Duty as an Enlisted Member or Warrant Officer	
0–3E	$4,588
0–2E	3,835
0–1E	3,203
(3) Warrant Officers	
W–5	$5,389
W–4	4,606
W–3	3,851
W–2	3,256
W–1	2,756
Enlisted Personnel	
E–9	$4,172
E–8	3,523
E–7	3,068
E–6	2,674
E–5	2,295
E–4	1,908
E–3	1,658
E–2	1,515
E–1	1,314

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, D.C., on March 5, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 96–5719 Filed 3–8–96; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Board of Directors Sunshine Act Meeting

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet by telephone on March 20, 1996. The meeting will begin at 11:00 a.m. Eastern Standard Time.

LOCATION: Members of the Corporation's staff and the public will be able to hear and participate in the meeting by means of telephonic conferencing equipment set up for this purpose in the Corporation's Board Room, on the 11th floor of 750 First Street, NE, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on the adoption of a funding policy for the remainder of FY 1996.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, at (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting should contact Barbara Asante, at (202) 336–8800.

Dated: March 7, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–5905 Filed 3–7–96; 3:27 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 1:30 p.m., Wednesday, March 13, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Policy Statement: Alternative Dispute Resolution.
3. Proposed Rule: Amendments to Part 711, NCUA's Rules and Regulations, Management Official Interlocks.
4. Final Rule: Amendments to Part 748, NCUA's Rules and Regulations, Criminal Referral.
5. Final Amendments to Interpretive Ruling and Policy Statement 94–1, Chartering and Field of Membership.

RECESS: 2:45 p.m.

TIME AND DATE: 3:00 p.m., Wednesday, March 13, 1996.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meetings.
2. Request from a Federal Credit Union to Convert to a Community Charter. Closed pursuant to exemption (8).
3. Administrative Actions under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).
4. Administrative Action under Section 206 of the FCU Act. Closed pursuant to exemptions (7), (8), and (10).
5. Personnel Action: SSP Merit Pay Increase. Closed pursuant to exemption (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Hattie Ulan,

Acting Secretary of the Board.

[FR Doc. 96–5809 Filed 3–7–96; 10:14 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Commission of Fine Arts; Meeting

The Commission of Fine Arts' meeting scheduled for 14 March 1996 has been cancelled. The next meeting is scheduled for 18 April 1996 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC on March 4, 1996.

Charles H. Atherton,

Secretary.

[FR Doc. 96–5664 Filed 3–8–96; 8:45 am]

BILLING CODE 6330–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Installation information is submitted upon written notification from the Commission. Changes are submitted as occurring. Nuclear Material accounting and control information is submitted in accordance with specified instructions.

5. Who will be required or asked to report: All persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U.S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

6. An estimate of the number of responses: One. The IAEA is currently expected to select one NRC-licensed facility for inspection in the next year.

7. The estimated number of annual respondents: One reporting and five recordkeeping. The NRC-licensed facility selected for inspection will be reporting design information. This facility and the five facilities selected pursuant to a separate protocol will maintain transfer and material balance records, but reporting to the IAEA will be through the U.S. State system (Nuclear Materials Management and Safeguards System).

8. An estimate of the total number of hours needed annually to complete the requirement or request: 4,848 (48 hours for reporting and 800 hours each for 6 recordkeepers).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. This submittal is a revision which reflects a reduction in burden because IAEA will only be selecting one NRC-licensed facility for inspection pursuant to § 75.41.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the OMB reviewer by April 10, 1996: Troy Hillier, Office of Information and Regulatory Affairs (3150–0055), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 1st day of March 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–5678 Filed 3–8–96; 8:45 am]

BILLING CODE 7590–01–P

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: IAEA Form N–71—Design Information Questionnaire.

3. The form number if applicable: IAEA Form N–71.

4. How often the collection is required: Once.

5. Who will be required or asked to report: Licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.

6. An estimate of the number of responses: One.

7. The estimated number of annual respondents: One.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 360.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Licensees of facilities that appear on the U.S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71, to provide information concerning their installation for use of the International Atomic Energy Agency.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in

accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the OMB reviewer by April 10, 1996: Troy Hillier, Office of Information and Regulatory Affairs (3150–0056), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 1st day of March 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–5680 Filed 3–8–96; 8:45 am]

BILLING CODE 7590–01–P

Workshop on Generic Letter 96–01 ''Testing of Safety-Related Logic Circuits''

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of meeting.

SUMMARY: The NRC staff will meet with the Nuclear Energy Institute (NEI) and interested Utilities to discuss implementation and provide clarification on Generic Letter 96–01.

DATES: The meeting will be held on March 19, 1996, from 1:30 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton Gateway Hotel (Atlanta Airport) 1900 Sullivan Road, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Interested members of the public should contact Eunice Deras of NEI at (202) 739–8150 for registration.

Dated at Rockville, Maryland, this 5th day of March 1996.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5677 Filed 3–8–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–395]

South Carolina Electric & Gas Company; South Carolina Public Service Authority; Correction

The February 28, 1996, Federal Register contained a ''Notice of Issuance of Amendment to Facility Operating License and Final Determination of no Significant Hazards Consideration and Opportunitiy for a Hearing (Emergency Circumstances)'' for the Virgil C. Summer Nuclear Power Station, Unit 1. This notice corrects the notice published in the Federal Register on February 28, 1996 (61 FR 7568). The phrase ''No significant hazard consideration comments received: None'' is deleted. Also, at the end of the notice, ''Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218'' and ''NRC Project Director: Frederick J. Hebdon'' are added.

Dated at Rockville Maryland, this 4th day of March 1996.

Jacob I. Zimmerman,

Acting Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–5679 Filed 3–8–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program

AGENCY: Postal Service.

ACTION: Notice of computer matching program.

SUMMARY: This document publishes notice that the Postal Service intends to conduct an internal computer matching program that compares its records about postal employees with records about vendors. The objective of this matching program is to identify instances where employees have attempted to corrupt the postal procurement process and defraud the Postal Service. This notice meets the requirements of subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a, as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988) that agencies publish notice of new matching programs.

DATES: Any interested party may submit written comments on this proposed matching program. The matching program will begin no sooner than April 22, 1996.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5243. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: Subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), requires agencies to publish notice of the establishment or revision of a computer matching program. Subsection (o) requires agencies to conclude a computer matching agreement containing the terms under which the new or revised matching program will be conducted. This document publishes notice of a matching program for which an agreement has been concluded.

The Postal Service will conduct an internal agency match that compares records from a Privacy Act system of records and a grouping of records that is not subject to the Privacy Act. Under those circumstances, the match does not constitute a matching program subject to the computer matching provisions of the Privacy Act. Nevertheless, the Postal Service is conducting the matching program under those provisions because of potentially adverse consequences to some postal employees.

This new computer matching program identifies postal employees who have improperly exercised their influence to direct postal contract awards or other purchases to companies owned and operated by themselves, family members, or others. In addition, this matching program identifies any employees who are involved in financial conflict of interest, fraud, misrepresentation, or other situations in violation of Postal Service standards of conduct. Where records match, limited information is provided from employee and vendor records to the Postal Inspection Service, which then conducts an examination to determine any impropriety. A previous computer matching program, conducted for the same purpose, resulted in refinement of the matching and tracking process and the detection of contracts awarded in conflict with postal policy. Set forth below is the notice of the establishment of a computer matching program.

Notice of an Internal Computer Matching Program—United States Postal Service (Internal Agency Match of Payroll File With Vendor File)

A. *Participating Agencies:* The United States Postal Service is the only participant in this computer matching program, which compares two internal records files.

B. *Purpose of the Match:* This computer matching program identifies postal employees who have improperly exercised their influence to direct postal contract awards or other purchases to companies owned and operated by

themselves, family members or others. The matching program identifies employees who are involved in financial conflict of interest, fraud, misrepresentation, or other situations in violation of Postal Service standards of conduct.

C. *Authority for Conducting the Match:* Sections 401 and 404 of title 39, United States Code, grant the Postal Inspection Service the power to conduct civil and criminal investigations of violations of postal laws, including attempts to corrupt the postal procurement process and defraud the Postal Service. This computer matching program is also consistent with the Inspection Service's Inspector General authority to address fraud, waste, and abuse in the agency.

D. *Records to be Matched:* This computer matching program involves one Privacy Act system of records, ''USPS 050.020, Finance Records—Payroll System,'' which was most recently published in its entirety in the Federal Register on December 4, 1992 (57 FR 57517–57518) and amended in the Federal Register on November 22, 1993 (58 FR 61718–61719). That system contains Postal Service employee data that are compared with data in the Postal Service's vendor payment files (these files relate to businesses and, therefore, are not covered by the Privacy Act). Matches are made on the basis of like expanded ZIP Codes. For each hit (matched 9-digit ZIP Codes), the employee's name, address, social security number, occupation, and pay location are extracted from the payroll file; the vendor's name, address, vendor number, account number, finance number, year-to-date amount paid, and most recent payment date are extracted from the vendor file.

E. *Description of Computer Matching Program:* A match of nine-digit ZIP Codes indicates whether the employee's home address and the vendor's address are the same physical geographical location. No adverse action is taken based solely on such a match; the match merely indicates a need for further review to determine whether investigation is warranted. Review includes an identification of the transaction and examination of procurement files, employee records, and/or information from other sources from which verification of identity and compliance with postal procurement policy can be made. Where review indicates potential misconduct, case files may be established within the parameters of USPS 080.010, Inspection Requirements—Investigative File System (last published in its entirety in the Federal Register on March 20, 1991 (56 FR 11798–11805)). Where it is established that misconduct is present, administrative disciplinary action and/or prosecution may be initiated. However, no such action may be taken until the individual has received notice of adverse findings and has been given an opportunity to contest them, as required by Pub. L. 100–503.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–5585 Filed 3–8–96; 8:45 am]

BILLING CODE 7710–12–P

PRESINDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss issues related to chemical and biological warfare agents and will receive comment from members of the public. Major Thomas P. Cross will chair this panel meeting.

DATES: April 16. 1996, 9:20 a.m.–4:30 p.m.

PLACE: Radisson Hotel Atlanta, Courtland & International Boulevards, Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this Advisory Committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The Advisory Committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. Advisory Committee members have expertise relevant to the functions of the Committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, April 16, 1996

9:20 a.m.—Call to order and opening remarks.
9:30 a.m.—Public comment.
10:30 a.m.—Break.
10:50 a.m.—Public comment (cont.).
12:00 p.m.—Lunch.
1:00 p.m.—Government investigations of possible exposure to chemical and biological warfare agents.
2:30 p.m.—Break.
2:45 p.m.—Non-governmental investigations of possible exposure to chemical and biological warfare agents.
4:15 p.m.—Committee members and staff discussion.
4:30 p.m.—Adjourn.

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses. 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: March 6, 1996.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–5662 Filed 3–8–96; 8:45 am]

BILLING CODE 3610–76–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1996, shall be at the rate of 34 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1996, 34.2 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 65.8 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: March 1, 1996.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–5603 Filed 3–8–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Mobile Mini, Inc., Common Stock, $.01 Par Value; Warrants) File No. 1–12804

March 5, 1996.

Mobile Mini, 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 securities (''Securities'') from listing and registration on the Pacific Stock Exchange Incorporated (''PSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the application for listing on Nasdaq as a National Market Security (''Nasdaq/NMS'') was approved by the National Association of Securities Dealers (''NASD'') and the Company is now listed on the Nasdaq/NMS. Listing on the Nasdaq/NMS allows market makers in the Company's Securities to instantaneously change the bid and ask quotations of the Company's Securities while the market is open, provided that they comply with rules promulgated by the NASD. There are currently 19 market makers on the Nasdaq/NMS providing a market in the Company's Securities.

The Company believes that listing on both the Nasdaq/NMS and the Exchange could result in quotation discrepancies, resulting in detrimental fluctuations of the Company's securities. Price discrepancies and other market inefficiencies could result in arbitrage trading which could be detrimental to the Company's stockholders. Additionally, the Company is subject to fees assessed by both the Exchange and the NASD and believes that the interests of its stockholders are best served by withdrawal from listing and registration on the Exchange in order to avoid duplicate fees. The Company further believes that listing on the Nasdaq/NMS will enable current shareholders to facilitate trades in the Company's securities in the most cost-effective manner.

Any interested person may, on or before March 26, 1996, 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. 96–5685 Filed 3–8–96; 8:45 am]

BILLING CODE 5010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Simula, Inc., Common Stock, $.01 Par Value; 12% Senior Subordinated Notes (Series 1993) Due 1998) File No. 1–12410

March 5, 1996.

Simula, 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 securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Securities are listed on the New York Stock Exchange, Inc. (''NYSE''). The Securities commenced trading on the NYSE at the opening of business on January 31, 1996 and concurrently therewith the Securities were suspended from trading on the Amex.

In making the decision to withdraw the Securities from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Securities and believes that dual listing would fragment the market for the Securities.

Any interested person may, on or before March 26, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., 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. 96–5686 Filed 3–8–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Voice Control Systems, Inc., Common Stock, $.01 Par Value) File No. 1–1–11189

March 5, 1996.

Voice Control 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 (''Security'') from listing and registration on the Emerging Company Marketplace of the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors of the Company (''Board'') unanimously approved resolutions on October 4, 1995, to withdraw the

Security from listing on the Exchange and, instead, list the Security on the Nasdaq as a National Market Security (''Nasdaq/NMS''). The decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Security on Nasdaq will be more beneficial to the Company and its shareholders than the present listing on the Exchange because:

1. The Committee believes such a listing will result in additional market makers in the Company's security. This should in turn result in additional research reports on the Company and enhanced interest in the Company's stock;

2. The Exchange has recently discontinued the Emerging Company Marketplace on which the Company is listed. Accordingly, issuers of the type and size of the Company will not be listed on the Amex in the future and ultimately the Company will be out of place;

3. The Company's major publicly-held competitors and customers are listed on the Nasdaq/NMS, so the Company believes that the investment community will expect to find an issuer such as the Company listed on the Nasdaq/NMS. Failure to meet these expectations will diminish interest in the Company's stock.

Any interested person may, on or before March 26, 1996, 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. 96–5684 Filed 3–8–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36918; International Series Release No. 942; File No. SR–NASD–95–49]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Granting the Canadian Depository for Securities Access to the Automated Confirmation Transaction Service

March 4, 1996.

On October 12, 1995, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NASD–95–49) under section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to allow access by The Canadian Depository for Securities (''CDS'') to the NASD's automated confirmation transaction service (''ACT''). Notice of the proposal was published in the Federal Register on December 12, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The NASD is amending its ''Rules of Practice and Procedure for the Automated Confirmation Transaction Service'' (''ACT Rules'') to permit CDS to enter trades in NASD's ACT Service.[3]

In 1992, the NASD approved an amendment to its ACT Rules to permit certain non-member clearing organizations and their member broker/dealers to have access to and participate in ACT. The rule change was adopted with the West Canada Clearing Corporation (''WCCC'') in mind, and WCCC was the first non-member clearing organization to be granted access to and participation in ACT.[4]

However, in granting access and participation to non-member clearing organizations the NASD was concerned about its ability to regulate individual non-member broker/dealers that enter into transactions with NASD members. Accordingly, the NASD determined to permit non-member participation only for those organizations that would guarantee the trades submitted by their members.

Recently, the NASD received another request through the International Securities Clearing Corporation to allow member broker-dealers of CDS to participate in ACT. After reviewing the financial status of CDS, the NASD determined that CDS is in a financial position to guarantee the performance of its members. In addition, CDS is a member of the National Securities Clearing Corporation (''NSCC'') and a Special Representative under NSCC's rules.[5] Furthermore, CDS members submit trade data through NSCC's Correspondent Clearing Service[6] as required by ACT Rules.[7]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36552 (December 5, 1995), 60 FR 63746 [File No. SR–NASD–95–49].

[3] Generally, ACT facilitates comparison and clearing of interdealer over-the-counter equity trades by requiring input of trade details within specific time frames, by comparing the trade details, and by submitting matched, locked-in trades for clearing. For a complete description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR–NASD–89–25] (order partially approving proposed rule change to permit ACT to be used by self-clearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR–NASD–89–25] (order approving remainder of File SR–NASD–89–25 to permit ACT to be used by introducing and correspondent broker-dealers).

[4] The amendments to the ACT Rules allowing non-member clearing organizations access to and participation in ACT and specifically approving WCCC participation were approved by the Commission on April 19, 1995. Securities Exchange Act Release No. 35625 (April 19, 1995), 60 FR 20785 [File No. SR–NASD–94–55] (order approving proposed rule change relating to the access of WCCC and its members to ACT).

The NASD granted access and participation to WCCC in part because at that time WCCC was a participant of the Midwest Clearing Corporation (''MCC''). WCC also demonstrated sufficient financial strength to support the trade guarantee made on behalf of its members. Recently, Stock Clearing Corporation of Philadelphia (''SCCP'') replaced MCC as the clearing agency at which WCCC is a member. SCCP is a clearing agency registered with the Commission under section 17A of the Act. Furthermore, WCCC continues to guarantee the trades of its members and to provide financial resources to support the trade guarantee. For a description of the SCCP/WCCC arrangement, refer to a letter from William W. Uchimoto, General Counsel, Stock Clearing Corporation of Philadelphia, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (January 24, 1996), requesting the Commission take a no-action position regarding the clearing agency registration requirements under section 17A of the Act as they pertain to WCCC.

[5] Generally, a Special Representative is a member or a registered clearing agency that has been authorized by one or more other persons to act on their behalf at NSCC. For a complete description of Special Representative, refer to NSCC Rule 39, ''Special Representative/Index Receipt Agent.''

[6] Under the Correspondent Clearing Service, NSCC members functioning as Special Representatives (*e.g.*, CDS) submit transaction data on behalf of correspondents, which are NSCC members or non-members of NSCC that are members of an interfaced clearing organization (*e.g.*, CDS member). For a complete description of NSCC's Correspondent Clearing Service, refer to NSCC Procedure IV., C.

[7] ACT Rules require that a non-member clearing organization not be given access to ACT unless it (1) is a clearing agency registered under the Act, (2) maintains membership in a registered clearing agency, or (3) maintains an effective clearing arrangement with a registered clearing agency.

II. Discussion

Section 15A(b)(6)[8] of the Act requires that the rules of a national securities association be designed to promote just and equitable principles of trade and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, and in general, to protect investors and the public interest. The Commission believes the proposed rule change is consistent with the NASD's obligations because it fosters cooperation and coordination with persons engaged in clearing and settling securities transactions by streamlining and improving the process by which trades between NASD and CDS members are compared. The Commission also believes the rule change is consistent with the Act because it permits CDS broker/dealer members to participate in ACT under an agreement by CDS to guarantee its member transactions. Such participation should promote the public interest by expanding the universe of Canadian Brokers executing trades with NASD members in the U.S. Furthermore, the CDS guarantee of its member transactions should promote investor protection.

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 15A(b)(6) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–95–49) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5608 Filed 3–8–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. § 78o-3(b)(6) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice No. 2352]

United States International Telecommunication Advisory Committee (ITAC) Ad Hoc on the Leland Initiative: Africa GII Gateway; Meeting Notice

The Department of State announces the first meeting of the United States International Telecommunications Advisory Committee (ITAC) Ad Hoc on implementation of the Leland Initiative: Africa Global Information Infrastructure Gateway. The meeting is scheduled for Wednesday, April 3, 10:00 a.m. to noon, Loy Henderson Auditorium, Department of State, 2201 ''C'' Street NW., Washington, DC.

The purpose of ITAC is to advise the Department on policy, technical and operations matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues.

The purpose of the Ad Hoc Committee is to advise the U.S. Government on the Leland Initiative; a multi-year program to support full Internet connectivity in up to twenty African nations. The agenda for the meeting will cover how the U.S. plans to implement the Leland Initiative. We will address the three components of the Initiative: policies, infrastructure and approaches to assure wide use of the Internet. Questions regarding the agenda may be directed to John Mack, Department of State, at 202–647–5778.

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair. In this regard, entry to the building is controlled. If you wish to attend, please send a fax to 202–647–0158 not later than 1 week before the scheduled meeting.

One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: February 29, 1996.

Richard E. Shrum,

ITAC Executive Director.

[FR Doc. 96–5604 Filed 3–8–96; 8:45 am]

BILLING CODE 4710–45–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by P.L. 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (CST 13B), Chattanooga, TN 37402–2801; (423) 751–2523.

Comments should be sent to the Acting Agency Clearance Officer no later than May 10, 1996.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0016).

Title of Information Collection: Farmer Questionnaire-Vicinity of Nuclear Power Plants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, and farms.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1,200.

Estimated Total Annual Burden Hours: 600.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 96–5602 Filed 3–8–96; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1]

Railroad Safety Advisory Committee; Establishment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') Establishment.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act

(FACA), 5 U.S.C. App. 2 (1988) and 41 C.F.R. Part 101–6, section 101–6, 1015(a), the Federal Railroad Administration (FRA) is giving notice of the establishment of an advisory committee to address railroad safety issues. This committee will provide recommendations and comments and will be known as the ''Railroad Safety Advisory Committee''(RSAC).

DATES: On or about April 1, 1996, FRA will file the Committee's charter with the General Services Administration, the Library of Congress, and all Congressional committees with jurisdiction over FRA, as required by section 9(c) of FACA.

FOR FURTHER INFORMATION CONTACT: Grady Cothen, Deputy Associate Administrator for Safety Standards Program Development, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590, 202–366–0897, or Lisa Levine, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590, 202–366–0621.

SUPPLEMENTARY INFORMATION: FRA has concluded that the continued use of *ad hoc* collaborative procedures for appropriate rulemakings is not the most effective means of accomplishing our goal of achieving a more consensual regulatory program. Instead, FRA believes that establishing an advisory committee to address railroad safety issues will provide the best opportunity for creating a consensual regulatory program in order to inform the Administrator in the conduct of her statutory responsibilities. The formation and use of the Railroad Safety Advisory Committee are determined to be in the public interest in connection with the performance of duties imposed on the Secretary, and delegated to the Federal Railroad Administrator, by the federal railroad safety statutes (49 U.S.C. 20101–21311).

The Committee will provide a continuing forum for advice and recommendations on railroad safety issues. As all interested segments of the railroad industry will be represented on the Committee, all of FRA's customers will have a more direct role in shaping FRA's regulatory program. The Committee will allow management, labor, FRA and other interested parties cooperatively to address safety problems by identifying the best solutions based on agreed-upon facts, and, where regulation appears necessary, identify regulatory options to implement these solutions.

Committee Composition

The Administrator is the sponsor of the Committee and will designate the members of the Committee. The Administrator's representative (the Associate Administrator for Safety or that person's delegate) shall serve as Chairperson for the Committee. The Committee is authorized to constitute an Executive Committee and such subcommittees as the Administrator and the Committee find necessary to discharge its responsibilities.

The Committee will have sufficient diversity to ensure the requisite range of views and expertise necessary to discharge its responsibilities. The membership on the Committee will be fairly balanced with points of view representative of those interested in railroad issues, including those of railroad owners, manufacturers, labor groups, state government groups, and public interest associations. In order to foster harmonization of railroad safety standards at their inception, the agencies with regulatory responsibility for railroad safety in both Canada and Mexico will be extended Associate Memberships that will not include any voting rights.

Meetings and Recordkeeping

Timely notice of committee and subcommittee meetings will be published in the Federal Register at least 15 days before the meeting, except in exceptional circumstances, where the reasons for giving less than 15 days notice will be explained in the Federal Register notice. Each meeting of the Committee shall be open to the public, except as authorized by Section 10(d) of FACA, as implemented by 41 C.F.R. Part 101–6. Persons wishing to appear before the Committee will have to make prior arrangements to do so. Written materials may be submitted to the Committee at any time. Each meeting will be held at a reasonable time, in a place reasonably accessible to the public, and in a room large enough to accommodate the Committee members, staff, and interested members of the public.

Subject to the Freedom of Information Act, 5 U.S.C. 552, the records, reports, transcripts, minutes and other documents that are made available to, or prepared for or by, the Committee will be available for public inspection and copying at the Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20594. Fees will be charged for information furnished to the public in accordance with the fee schedule published in Part 7 of Title 49, Code of Federal Regulations.

Jolene M. Molitoris,

Administrator.

[FR Doc. 96–5505 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

International Harmonization of Safety Standards; Calendar of Meetings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will continue its participation during this year in the international meetings to harmonize U.S. and foreign motor vehicle safety standards. These meetings will be conducted by the Working Party on the Construction of Vehicles (WP29) under the Inland Transport Committee of the United Nations' Economic Commission for Europe (ECE), and by the six Meetings of Experts (formerly called Groups of Rapporteurs) of WP29. The NHTSA currently represents the United States in all of the Meetings of Experts except those on Pollution and on Noise.

DATES: For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings should be made at least two weeks preceding that meeting.

FOR FURTHER INFORMATION CONTACT: Francis J. Turpin, Office of International Harmonization (NOA–05), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2114).

SUPPLEMENTARY INFORMATION: This calendar consists of those ECE meetings currently scheduled. It is published for information and planning purposes and the meeting dates and places are subject to change. NHTSA attendance at these meetings will be affected by agenda content, priorities and availability of travel funds.

March 11, 1996

Administrative Committee for the Coordination of Work of WP29 + (AC.2), Sixtieth Session—Geneva, Switzerland.

March 12–15, 1996

Inland Transport Committee, Working Party on the Construction of Vehicles (WP29), One Hundred-and-Eighth Session—Geneva, Switzerland.

April 1–4, 1996

Meeting of Experts on Lighting and Light-Signalling (GRE), Thirty-Sixth Session—Geneva, Switzerland.
April 22–26, 1996
Meeting of Experts on General Safety Provisions (GRSG), Seventieth Session—Geneva, Switzerland.
May 6–10, 1996
Meeting of Experts on Passive Safety (GRSP), Nineteenth Session—Geneva, Switzerland.
June 11–14, 1996
Meeting of Experts on Pollution and Energy (GRPE), Thirty-Second Session—Geneva, Switzerland.
June 24, 1996
Administrative Committee for the Coordination of Work of WP29 + (AC.2), Sixty-First Session—Geneva, Switzerland.
June 25–28, 1996
Inland Transport Committee, Working Party on the Construction of Vehicles (WP29), One Hundred-and-Ninth Session—Geneva, Switzerland.
September 16–18, 1996
Meeting of Experts on Brakes and Running Gear (GRRF),Fortieth Session—Geneva, Switzerland.
September 19–20, 1996
Meeting of Experts on Noise, (GRB), Twenty-Fifth Session—Geneva, Switzerland.
October 7–10, 1996
Meeting of Experts on General Safety Provisions (GRSG), Seventy-First Session—Geneva, Switzerland.
October 28–November 1, 1996
Meeting of Experts on Lighting and Light-Signalling (GRE), Thirty-Seventh Session—Geneva, Switzerland.
November 11, 1996
Administrative Committee for the Coordination of Work of WP29 + (AC.2), Sixty-Second Session—Geneva, Switzerland.
November 12–15, 1996
Inland Transport Committee, Working Party on the Construction of Vehicles (WP29), One Hundred-and-Tenth Session—Geneva, Switzerland.
December 2–5, 1996
Meeting of Experts on Passive Safety (GRSP), Twentieth Session—Geneva, Switzerland. A listing of the meetings that were scheduled and have taken place is presented below:
January 16–19, 1996
Meeting of Experts on Pollution and Energy (GRPE), Thirty-First Session—Geneva, Switzerland.
February 5–9, 1996
Meeting of Experts on Brakes and Running Gear (GRRF), Thirty-Ninth Session—Geneva, Switzerland.
February 26–29, 1996
Meeting of Experts on Noise, (GRB), Twenty-Fourth Session—Geneva, Switzerland.

Issued on: March 6, 1996.

Francis J. Turpin,

Director, Office of International Harmonization.

[FR Doc. 96–5669 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[Finance Docket No. 32506]

Ellis & Eastern Company—Acquisition, Operation, Joint Relocation Project, and Trackage Rights Exemptions—Brandon-Ellis, SD

AGENCY: Surface Transportation Board.
ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Board exempts from the prior approval requirements of (a) 49 U.S.C. 10901 the acquisition and operation by Ellis & Eastern Company of a 16.5-mile rail line between milepost 49.0, at or near Brandon, and milepost 65.5, at or near Ellis, in Minnehaha County, SD, and (b) 49 U.S.C. 11343–45, (i) the sale by Ellis & Eastern Company to Burlington Northern Railroad Company of a switching yard and the adjacent 2.0-mile line between mileposts 56.6 and 58.6, all in Sioux Falls, SD, and the grant back of trackage rights over that line, (ii) the grant of additional trackage rights by Burlington Northern Railroad Company to Ellis & Eastern Company over a 2.0-mile line between mileposts 54.6 and 56.6, also in Sioux Falls, and (iii) a joint relocation project involving the respective lines of Ellis & Eastern Company and Burlington Northern Railroad Company between mileposts 55.6 and 56.6, also in Sioux Falls. The exemptions for those transactions requiring prior approval under 49 U.S.C. 11343–45 are subject to appropriate labor protective conditions.

DATES: The exemption will be effective April 10, 1996. Petitions to stay must be filed by March 26, 1996 and petitions to reopen must be filed by April 5, 1996.

ADDRESSES: An original and 10 copies of all pleadings, referring to Finance Docket No. 32506, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of all pleadings must be served on Mark H. Sidman, WEINER, BRODSKY, SIDMAN & KIDER, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5268. [TDD for the hearing-impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the decision, write to, call, or pick up in person from DC News & Data, Inc., Room 2229, Surface Transportation Board, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD services at (202) 927–5721.]

Decided: February 26, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5696 Filed 3–8–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32754]

Livonia, Avon & Lakeville Railroad Corporation—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.
ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10902 the acquisition and operation of an 18.49-mile line of railroad near Rochester, NY, by the Livonia, Avon & Lakeville

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901 and 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

Railroad Corporation, a Class III railroad.

DATES: The exemption will be effective March 31, 1996. Petitions to stay must be filed by March 19, 1996. Petitions to reopen must be filed by March 25, 1996.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 32754 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) petitioner's representative: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 5, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5693 Filed 3–8–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–406 (Sub-No. 5X)]

Central Kansas Railway, Limited Liability Company—Abandonment Exemption—in Clark and Comanche Counties, KS

Central Kansas Railway, Limited Liability Company (CKR)[2] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 30.3-mile portion of its line of railroad known as the Englewood Subdivision from milepost 136 at or near Protection to milepost 166 plus 1846 feet at or near Englewood, in Clark and Comanche Counties, KS.[3]

CKR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 10, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[4] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] and trail use/rail banking requests under 49 CFR 1152.29[6] must be filed by March 21, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 1, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Ogborn, Manager, Central Kansas Railway, Limited Liability Company, 252 Clayton Street, 4th Floor, Denver, CO 80206.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CKR has filed an environmental report which addresses the abandonments effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 15, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5695 Filed 3–8–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–459 (Sub-No. 1X)]

Central Railroad Company of Indiana—Abandonment Exemption—in Dearborn County, IN

Central Railroad Company of Indiana (CIND) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 2.3-miles of its rail line from milepost 22.4 near Lawrenceburg Junction to milepost 24.7 near Dearborn Junction, in Dearborn County, IN.

CIND has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) arrangements have

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

[2] CKR is a subsidiary of OmniTRAX, Inc., a noncarrier holding company. OmniTRAX was authorized to control CKR, pursuant to the notice of exemption in *Patrick D. Broe, The Broe Companies, The Great Western Railway Company, Railco, Inc., Chicago West Pullman Transportation Corp., et al.—Corporate Family Reorganization Exemption,* Finance Docket No. 32531 (ICC served July 12, 1994).

[3] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant in its verified notice, indicated a proposed consummation date of April 8, 1996. Because the verified notice was not filed until February 20, 1996, however, consummation should have not been proposed to take place prior to April 10, 1996. Applicant's representative has been contacted and informed of the correct consummation date.

[4] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[5] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[6] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

been made to reroute overhead traffic over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 10, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by March 21, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 1, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005–4797.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

CIND has filed an environmental report which addresses the abandonments effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 15, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–5694 Filed 3–8–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held March 20 and 21, 1996.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on March 20 and 21, 1996 in Room 118, beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS:4 901 D Street, SW., Washington, DC 20024. Telephone (202) 401–4128, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on March 20 and 21, 1996 in Room 118 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

This Notice is being published later than 15 days before the date of the meeting. This agency has concluded that exceptional circumstances warrant holding the meeting on March 20 due to scheduling conflicts of the members.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–5743 Filed 3–8–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation Board of Directors.

TIME AND DATE: 8:00 a.m., Tuesday, March 12, 1996.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

☐ Review of commercial and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: March 6, 1996.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 96–5810 Filed 3–7–96; 10:14 am]

BILLING CODE 8720–01–M

federal register

Monday
March 11, 1996

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 923, et al.
Coastal Zone Management Program Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 923, 926, 927, 928, 932, 933

[Docket No. 960126015–6015–01]

RIN 0648–AI43

Coastal Zone Management Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to revise and consolidate its regulations concerning coastal zone management (CZM) program development, approval, grants and evaluation, and remove obsolete rules concerning research and technical assistance. These regulations implement, in part, the Coastal Zone Management Act, as amended (CZMA). The purpose of this proposed rule is to remove outdated provisions and to revise and consolidate remaining provisions. The intended effect of this proposed rule is to make the CZM program regulations more concise and easier to use.

DATES: Comments on the proposed rule are invited and will be considered if submitted on or before April 25, 1996.

ADDRESSES: All comments concerning these proposed regulations should be mailed to: Clement Lewsey, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, N/ORM3, 1305 East-West Highway, SSMC 4, 11th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Roger Eckert, NOAA Office of General Counsel for Ocean Services, at 301–713–2967 (ext. 213), fax: 301–713–4408, e-mail: RBEckert@RDC.noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of the CZMA, 16 U.S.C. 1451 *et seq.*

II. Background

The CZMA was enacted to encourage and assist the 35 eligible coastal states and territories to develop and implement CZM programs to preserve, protect, develop and, where possible, restore or enhance the resources of the Nation's coasts. In all, 29 coastal states and territories have chosen to participate in this program, and their programs have received federal approval. Five states are currently developing programs for federal approval. Many of the regulations promulgated when the program began are no longer needed, now that the program has matured.

In March 1995, President Clinton issued a directive to federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to review all of their regulations, with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. This proposed rule is intended to carry out the President's directive with respect to the regulations implementing the Coastal Zone Management program and revises those regulations as follows:

A. Consolidates Regulations

The proposed rule would consolidate CZM program regulations found in present 15 CFR parts 923, 927, 928 and 932 into a revised part 923. This consolidation is expected to make the regulations easier for coastal states, territories and the public to use.

B. Removes Regulations Restating Statutory Language

The proposed rule would remove those regulations in 15 CFR part 923 that simply restate provisions contained in the Coastal Zone Management Act. These provisions would be replaced, where appropriate, with references to the applicable sections of the CZMA. Removal of these provisions is in accordance with the rules of the Office of the Federal Register which discourage agencies from restating the language of a law in a document intended for publication in the Federal Register.

C. Removes Outdated Provisions and Simplifies Remaining Provisions

The proposed rule would remove those regulations in 15 CFR part 923 that are no longer necessary because the CZM program has reached its maturity, and simplify the remaining provisions. Many of the more detailed regulatory requirements would be removed. Since part 923 largely addresses requirements for the development and approval of coastal management programs, many of these changes would not apply to those states that already have federally approved CZM programs. For the eligible coastal states that do not yet have approved programs, OCRM will continue to provide necessary guidance, and actual and timely notice of appropriate application procedures. In particular, OCRM will continue to work with the 5 coastal states currently developing programs in order to ensure that those programs meet the criteria for federal approval. Finally, the proposed rule would remove 15 CFR part 933 because it implements a portion of the CZMA that was repealed in 1986. OCRM will provide guidance on a corresponding technical assistance provision that was added to the CZMA in the Coastal Zone Act Reauthorization Amendments of 1990.

D. Updates Program Change Regulations

The proposed rule would update the program change regulations so that they more precisely reflect the structure of coastal management programs. In particular, the four criteria identified at 15 CFR 923.80(d)(1)–(4), by which program changes are assessed, would be replaced by a reference to the five program approvability areas identified in part 923: (1) uses subject to management, (2) special management areas, (3) boundaries, (4) authorities and organization, and (5) coordination, public involvement and national interest.

While the four criteria were an effort to group the program approvability areas, not all program changes fit squarely within the four groups. The proposed rule repeats the headings of subparts B through F of part 923, and so, tracks the program approvability areas. In addition, states may refer to these subparts for assistance in their analysis of a program change. Furthermore, states would no longer be required to address those program areas that do not apply to their proposed changes. Rather, the proposal allows states to discuss one or more of the program areas that would be affected by a change. Thus, the proposal allows states greater flexibility to provide a more focused analysis. OCRM anticipates that most program change requests will continue to be routine program changes. OCRM plans to provide coastal states and territories with additional program change guidance.

The proposed rule also would add explanatory statements concerning the addition of any enforceable policies to management programs. These statements reflect Congress' increased focus on enforceable policies in the Coastal Zone Act Reauthorization Amendments of 1990. OCRM, federal agencies, applicants for federal licenses or permits, and often the state coastal

programs themselves, cannot always identify the enforceable policies in a program. OCRM recognizes that events beyond a coastal management program's control can change the enforceability of a policy.

However, OCRM needs to know just what is being changed at the time of a program change, and federal agencies and applicants should be allowed to comment on the enforceable policies submitted for incorporation.

Finally, the term ''routine program implementation'' would be changed to the more descriptive term ''routine program change,'' and existing agency practice that allows for the resubmittal of routine program change requests would be codified.

III. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities because (1) the rule addresses CZM programs of coastal states and territories, (2) those provisions that would be removed, because they are outdated or repeat statutory language, are unnecessary for the development and implementation of CZM programs, and (3) the revision and consolidation of remaining provisions would impose no additional burden on small entities. In particular, the update of the CZM program change regulations, if adopted, would help ensure the continued approvability of CZM programs. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

The proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The collection-of-information requirements contained in this proposed rule have been approved under OMB Control Number 0648–0119. The estimated response times for these requirements are 480 hours for management program approval and 8 hours for program amendments and routine program changes.

The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the collection of information to the Coastal Programs Division at the ADDRESSES above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects

15 CFR Parts 923, 928 and 932

Administrative practice and procedure, Coastal zone, Grant programs—Natural resources, Reporting and recordkeeping requirements.

15 CFR Part 926

[Reserved]

15 CFR Part 927

Administrative practice and procedure, Coastal zone, Grant programs—Natural resources.

15 CFR Part 933

Administrative practice and procedure, Coastal zone, Grant programs—Natural resources, Reporting and recordkeeping requirements, Research.

Dated: March 1, 1996.

W. Scott Page,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out in the Preamble, it is proposed to amend 15 CFR Chapter IX as follows:

1. The heading for Part 923 is revised to read as follows:

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

2. The table of contents for Part 923 is revised to read as follows:

Subpart A—General

Sec.
923.1 Purpose and scope.
923.2 Definitions.
923.3 General requirements.

Subpart B—Uses Subject to Management

923.10 General.
923.11 Uses subject to management.
923.12 Uses of regional benefit.
923.13 Energy facility planning process.

Subpart C—Special Management Areas

923.20 General.
923.21 Areas of particular concern.
923.22 Areas for preservation or restoration.
923.23 Other areas of particular concern.
923.24 Shorefront access and protection planning.
923.25 Shoreline erosion/mitigation planning.

Subpart D—Boundaries

923.30 General.
923.31 Inland boundary.
923.32 Lakeward or seaward boundary.
923.33 Excluded lands.
923.34 Interstate boundary.

Subpart E—Authorities and Organization

923.40 General.
923.41 Identification of authorities.
923.42 State establishment of criteria and standards for local implementation—Technique A.
923.43 Direct State land and water use planning and regulation—Technique B.
923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.
923.45 Air and water pollution control requirements.
923.46 Organizational structure.
923.47 Designated State agency.
923.48 Documentation.

Subpart F—Coordination, Public Involvement and National Interest

923.50 General.
923.51 Federal-State consultation.
923.52 Consideration of the national interest in facilities.
923.53 Federal consistency procedures.
923.54 Mediation.
923.55 Full participation by State and local governments, interested parties, and the general public.

923.56 Plan coordination.
923.57 Continuing consultation.
923.58 Public hearings.

Subpart G—Review/Approval Procedures

923.60 Review/approval procedures.

Subpart H—Amendments to and Termination of Approved Management Programs

923.80 General.
923.81 Requests for amendments.
923.82 Amendment review/approval procedures.
923.83 Mediation of amendments.
923.84 Routine program changes.

Subpart I—Applications for Program Development or Implementation Grants

923.90 General.
923.91 State responsibility.
923.92 Allocation.
923.93 Eligible implementation costs.
923.94 Application for program development or implementation grants.
923.95 Approval of applications.
923.96 Grant amendments.

Subpart J—Allocation of Section 306 Program Administration Grants

923.110 Allocation formula.

Subpart K—Coastal Zone Enhancement Grants Program

923.121 General.
923.122 Objectives.
923.123 Definitions.
923.124 Allocation of section 309 funds.
923.125 Criteria for section 309 project selection.
923.126 Pre-application procedures.
923.127 Formal application for financial assistance and application review and approval procedures.
923.128 Revisions to assessments and strategies.

Subpart L—Review of Performance

923.131 General.
923.132 Definitions.
923.133 Procedure for conducting continuing reviews of approved State CZM programs.
923.134 Public participation.
923.135 Enforcement.

3. The authority for Part 923 is revised to read as follows:

Authority: 16 U.S.C. 1452 *et seq*. Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR, 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR, 1983 Comp. p. 186; (31 U.S.C. 6506; 42 U.S.C. 3334).

4. Subpart J consisting of §§ 923.90 through 923.98 is removed, and Subparts A through I of Part 923 are revised to read as follows:

Subpart A—General

§ 923.1 Purpose and scope.

(a) The regulations in this part set forth the requirements for State coastal management program approval by the Assistant Administrator for Ocean Services and Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act); the grant application procedures for program funds; conditions under which grants may be terminated; and requirements for review of approved management programs.

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and National Interest. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements;

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies;

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions;

(8) Provides a mechanism to ensure that all state agencies will adhere to the program; and

(9) Contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

§ 923.2 Definitions.

(a) The term Act means the Coastal Zone Management Act of 1972, as amended.

(b) The term Secretary means the Secretary of Commerce and his/her designee.

(c) The term Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

(d)(1) The term relevant Federal agencies means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration; Nuclear Regulatory Commission; Federal Emergency Management Agency.

(e) The term Federal agencies principally affected means the same as ''relevant Federal agencies.'' The Assistant Administrator may include other agencies for purposes of reviewing the management program and environmental impact statement.

(f) The term Coastal State means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section

703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term management program includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, including an articulation of enforceable policies and citation of authorities providing this enforceability, prepared and adopted by the State in accordance with the provisions of this Act and this part, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) Coastal zone;
(2) Coastal waters;
(3) Enforceable policy;
(4) Estuary;
(5) Land use; and
(6) Water use.

(i) The term grant means a financial assistance instrument and refers to both grants and cooperative agreements.

§ 923.3 General requirements.

(a) The management program must be developed and adopted in accordance with the requirements of the Act and this part, after notice, and the opportunity for full participation by relevant federal and state agencies, local governments, regional organizations, port authorities, and other interested parties and persons, and be adequate to carry out the purposes of the Act and be consistent with the national policy set forth in section 303 of the Act.

(b) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must include provisions to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area.

(c) The management program must contain a broad class of policies for each of the following areas: resource protection, management of coastal development, and simplification of governmental processes. These three broad classes must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas. The three classes must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone, and that minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Executive Order 11990, pertaining to wetlands. These policies also must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purpose of Executive Order 11988, pertaining to floodplains.

(d) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

(e) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide:

(1) A clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and

(2) A clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

§ 923.10 General.

This subpart sets forth the requirements for management program approvability with respect to land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. This subpart deals in full with the following subsections of the Act: 306(d)(1)(B), Uses Subject to the Management Program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

§ 923.11 Uses subject to management.

(a) (1) The management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(2) The management program must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

(3) The management program must explain how those uses identified in paragraph (a)(2) of this section will be managed. The management program must also contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(b) In identifying uses and their appropriate management, a State should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone, and should consider potential individual and cumulative impacts of uses on coastal waters.

(c) States should utilize the following types of analyses:

(1) Capability and suitability of resources to support existing or projected uses;
(2) Environmental impacts on coastal resources;
(3) Compatibility of various uses with adjacent uses or resources;
(4) Evaluation of inland and other location alternatives; and
(5) Water dependency of various uses and other social and economic considerations.

(d) Examination of the following factors is suggested:

(1) Air and water quality;
(2) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;
(3) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;
(4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.
(5) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

§ 923.12 Uses of regional benefit.

The management program must contain a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit. To this end, the management program must:

(1) Identify what constitutes uses of regional benefit; and

(2) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

§ 923.13 Energy facility planning process.

(a) The management program must contain a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities. (See subsection 304(5) of the Act.) This process must contain the following elements:

(1) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(2) Procedures for assessing the suitability of sites for such facilities designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns;

(3) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts; and

(4) Identification of how interested and affected public and private parties will be involved in the planning process.

Subpart C—Special Management Areas

§ 923.20 General.

(a) This subpart sets forth the requirements for management program approvability with respect to areas of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic Areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and Protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

(a) The management program must include an inventory and designation of areas of particular concern within the coastal zone, on a generic and/or site-specific basis, and broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) In developing criteria for inventorying and designating areas of particular concern. States must consider whether the following represent areas of concern requiring special management:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(6) Area or urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

(8) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(c) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(d) In identifying areas of concern by location (if site specific) or category of coastal resources (if generic), the program must contain sufficient detail to enable affected landowners, governmental entities and the public to determine with reasonable certainty whether a given area is designated.

(e) In identifying areas of concern, the program must describe the nature of the concern and the basis on which designations were made.

(f) The management program must describe how the management program addresses and resolves the concerns for which areas are designated; and

(g) The management program must provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

§ 923.22 Areas for preservation or restoration.

The management program must include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values, and the criteria for such designations.

§ 923.23 Other areas of particular concern.

(a) The management program may, but is not required to, designate specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. If a management program includes such designations, the basis for designation must be clearly stated, and a reasonable time frame and procedures must be set forth for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21. The management program must identify an agency (or agencies)

capable of formulating the necessary management policies and techniques.

(b) The management program must meet the requirements of § 923.22 for containing procedures for designating areas for preservation or restoration. The management program may include procedures and criteria for designating areas of particular concern for other than preservation or restoration purposes after program approval.

§ 923.24 Shorefront access and protection planning.

(a) The management program must include a definition of the term ''beach'' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(d) The management program must contain a definition of the term ''beach'' that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

(e) The management program must contain an identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§ 923.25 Shoreline erosion/mitigation planning.

(a) The management program must include a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, including potential impacts of sea level rise, and to restore areas adversely affected by such erosion.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) The management program must include an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

Subpart D—Boundaries

§ 923.30 General.

This subpart sets forth the requirements for management program approvability with respect to boundaries of the coastal zone. There are four elements to a State's boundary: the inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundary elements are discussed in the sections of this subpart that follow.

§ 923.31 Inland boundary.

(a) The inland boundary of a State's coastal zone must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—Waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas—Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas identified.

(b) The inland boundary of a State's coastal zone may include:

(1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.

(3) Indian lands not held in trust by the Federal Government.

(c) In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Lakeward or seaward boundary.

(a) (1) For states adjoining the Great Lakes, the lakeward boundary of the State's coastal zone is the international

boundary with Canada or the boundaries with adjacent states. For states adjacent to the Atlantic or Pacific Ocean, or the Gulf of Mexico, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas. Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of other laws.

§ 923.33 Excluded lands.

(a) The boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, the program must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§ 923.34 Interstate boundary.

States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of any adjacent inland and lateral seaward boundary.

Subpart E—Authorities and Organization

§ 923.40 General.

(a) This subpart sets forth the requirements for management program approvability with respect to authorities and organization. The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified in its management program. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) of the Act are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)-Means of Control; 306(d)(10)-Authorities; 306(d)(10)(A)-Control Development and Resolve Conflicts; 306(d)(10)(B)-Powers of Acquisition; 306(d)(11)-Techniques of Control; and 307(f)-Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)-Organizational Structure; 306(d)(6)-Designated State Agency; and 306(d)(7)-Organization.

§ 923.41 Identification of authorities.

(a) (1) The management program must identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters, including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions. These are the means by which the state will enforce its coastal management policies. (See section 304(6a) of the Act.)

(2) The state chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) must have the authority for the management of the coastal zone. Such authority includes the following powers:

(i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) In order to meet these requirements, the program must identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program, including the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

(1) Administer land and water use regulations in conformance with the policies of the management program;

(2) Control such development as is necessary to ensure compliance with the management program;

(3) Resolve conflicts among competing uses; and

(4) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing

particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

§ 923.42 State establishment of criteria and standards for local implementation—Technique A.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A) of the Act, is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement (control technique A).

(b) There are 5 principal requirements that control technique A must embody in order to be approved:

(1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the management program will comply with the program's enforceable policies. The adequacy of these authorities will be judged on the same basis as specified for direct State controls or case-by-case reviews.

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have statutory authority to prepare and adopt a program for a local government, and a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to:

(A) Prepare and adopt a plan, regulations, and ordinances for the local government and

(B) Enforce such plans, regulations and ordinances;

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(5) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(i) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

(ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(A) Directly enforce the entire local program;

(B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(C) Seek judicial relief against local government for failure to properly enforce;

(D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).

(b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to the management program. This authority can take the form of:

(1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal

management and the requirements of this Act.

(2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.

(c) In order to apply the networking concept, the State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The state agency designated pursuant to subsection 306(d)(6) of the Act, the state's Attorney General, another state agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.

(3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program-Technique C.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C) of the Act, is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings (control technique C).

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) To have control technique C approved, a State must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identified plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

§ 923.45 Air and water pollution control requirements.

The program must incorporate, by reference or otherwise, all requirements established by the Federal Water Pollution Control Act, as amended (Clean Water Act of CWA), or the Clean Air Act, as amended (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements must be the water pollution control and air pollution control requirements applicable to such program. Incorporation of the air and water quality requirements pursuant to the CWA and CAA should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

§ 923.46 Organizational structure.

The State must be organized to implement the management program. The management program must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d) (11) and (12); and 307(f). The management program must also describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

§ 923.47 Designated State agency.

(a) For program approval, the Governor of the state must designate a single state agency to receive and administer the grants for implementing the management program.

(1) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(2) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to the Office of Ocean and Coastal Resource Management (OCRM), the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program.

The entity also must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review by OCRM of State performance required by section 312 of the Act.

(b) (1) The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a ''super agency'' or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCRM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirement for the single designated agency should not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in selecting which agency to designate:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

A transmittal letter signed by the Governor is required for the submission of a management program for federal approval. The letter must state that the Governor:

(a) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(b) Has designated a single State agency to receive and administer implementation grants;

(c) Attests to the fact that the State has the authorities necessary to implement the management program; and

(d) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

§ 923.50 General.

(a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of varying, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effects of land subsidence and sea level rise.

(b) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(c) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

(a) The management program must be developed and adopted with the opportunity of full participation by relevant Federal agencies and with adequate consideration of the views of Federal agencies principally affected by such program.

(b) By providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See subpart G for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) In order to provide an opportunity for participation by relevant Federal agencies and give adequate consideration to their views, each state must:

(i) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

(a) The management program must provide for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the State must have considered any applicable national or interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during:

(1) The development of the State's management program,

(2) The review and approval of the program by the Assistant Administrator, and

(3) The implementation of the program as such facilities are proposed.

(c) In order to fulfill this requirement, States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

§ 923.53 Federal consistency procedures.

(a) A State must include in its management program submission, as part of the body of the submission an appendix or an attachment, the procedures it will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following must be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).

(b) Beyond the minimum requirements contained in paragraph (a) of this section, States have the option of including:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§ 923.54 Mediation.

(a) Section 307(h) of the Act provides for mediation of serious disagreement between any Federal agency and a coastal state in the development and implementation of a management program. In certain cases, mediation by the Secretary, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution.

(b) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefor. A copy of the request shall be sent to the other party to the disagreement.

(c) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305

program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

(d) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(e) Mediation shall terminate:

(1) At any time the parties agree to a resolution of the serious disagreement,

(2) If one of the parties withdraws from mediation,

(3) In the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or

(4) For other good cause.

(f) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes.

Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

§ 923.55 Full participation by State and local governments, interested parties, and the general public.

The management program must be developed and adopted with the opportunity of full participation by state agencies, local governments, regional commissions and organizations, port authorities, and other interested public and private parties. To meet this requirement, a State must:

(a) Develop and make available general information regarding the program design, its content and its status throughout program development;

(b) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(c) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and

(d) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

(a) The management program must be coordinated with local, areawide, and interstate plans applicable to areas within the coastal zone—

(1) Existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(2) Which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) A State must insure that the contents of its management program has been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the Flood Insurance Act of 1974; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

(a) As required by subsection 306(d)(3)(B) of the Act, a State must establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) of the Act and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this Act.

(b) The management program must establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(1) ''Management program decision'' refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms. A State management program decision is in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements is not in conflict with a local zoning ordinance, decision or other action;

(2) ''Local government'' refers to these defined in section 304(11) of the Act which have some form of zoning authority.

(3) ''Local zoning ordinance, decision or other action'' refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(4) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other

action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(5) ''Waiver'' of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(i) Following State agency receipt of a written statement from a local government indicating that it either:

(A) Waives its right to comment; or

(B) Concurs with the management program decision; or

(C) Intends to take action which conflicts or interferes with the management program decision; or

(ii) Following a public statement by a local government to the same effect as paragraph (b)(5)(i) of this section; or

(iii) Following an action by a local government that conflicts or interferes with the management program decision.

(6) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

The management program must be developed and adopted after the holding of public hearings. A State must:

(a) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(b) Provide a minimum of 30 days public notice of hearing dates and locations;

(c) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings; and

(d) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

Subpart G—Review/Approval Procedures

§ 923.60 Review/approval procedures.

(a) All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with regulations implementing the National Environmental Policy Act of 1969, as amended, OCRM will assist the State by outlining the types of information required. (See 40 CFR 1506.5 (a) and (b).)

(b) Upon submission by a State of its draft management program, OCRM will determine if it adequately meets the requirements of the Act and this part. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCRM will prepare draft and final environmental impact statements, in accordance with National Environmental Policy Act requirements. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should anticipate that it will take at least 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this timetable; these factors are discussed in OCRM guidance on the review/approval process. The OCRM guidance also recommends a format for the program document submitted to the Assistant Administrator for review and approval.

Subpart H—Amendments to and Termination of Approved Management Programs.

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments, modifications or other changes to approved management programs may be made. This subpart also establishes the conditions and procedures by which administrative funding may be terminated for programmatic reasons.

(b) Any coastal state may amend or modify a management program which is has submitted and which has been approved by the Assistant Administrator under this subsection, subject to the conditions provided for in subsection 306(e) of the Act.

(c) As required by subsection 312(d) of the Act, the Assistant Administrator shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Assistant Administrator determines that the coastal state has failed to take the actions referred to in subsection 312(c)(2)(A) of the Act.

(d) For purposes of this subpart, amendments are defined as substantial changes in one or more of the following coastal management program areas:

(1) Uses subject to management;

(2) Special management areas;

(3) Boundaries;

(4) Authorities and organization; and

(5) Coordination, public involvement and the national interest.

(e) OCRM will provide guidance on program changes. The five program management areas identified in § 923.80(d) are also discussed in subparts B through F of this part.

§ 923.81 Requests for amendments.

(a) Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6) of the Act) if the Governor had delegated this responsibility and such delegation is part of the approved management program. Whenever possible, requests should be submitted prior to final State action to implement the amendment. At least one public hearing must be held on the proposed amendment, pursuant to

subsection 306(d)(4) of the Act. Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date. At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public.

(b) Amendment requests must contain the following:

(1) A description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator. This description shall also identify any enforceable policies to be added to the management program;

(2) An explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant: Changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any, made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) A copy of public notice(s) announcing the public hearing(s) on the proposed amendments;

(4) A summary of the hearing(s) comments:

(i) Where OCRM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in paragraph (b)(1) of this section), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed; and

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

§ 923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCRM will review the request to determine preliminarily if the management program, if changed according to the amendment request, still will constitute an approvable program. In making this determination, OCRM will determine whether the state has satisfied the applicable program approvability criteria of subsection 306(d) of the Act.

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(d) of the Act have not been met, the Assistant Administrator shall advise the state in writing of the reasons why the amendment request cannot be considered.

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

§ 923.83 Medication of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of ''serious disagreements'' between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant Federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems. (See § 923.54).

§ 923.84 Routine program changes.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(d), will be considered a routine program change. While a routine change is not subject to the amendment procedures contained in §§ 923.81 through 923.82, it is subject to mediation provisions of § 923.83.

(b) (1) States must notify OCRM of routine program change actions in order that OCRM may review the action to ensure it does not constitute an amendment. The state notification shall identify and enforceable policies to be added to the management program, and explain why the program change will not result in the type of action described in § 923.80(d).

(i) States have the option of notifying OCRM of routine change on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when an how often to notify OCRM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (b)(4) of this section has been provided.

(2) Concurrent with notifying OCRM, States must provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCRM.

(i) This notice must:

(A) Describe the nature of the routine program change and identify any enforceable policies to be added to the management program if the State's request is approved;

(B) Indicate that the State considers it to be a routine program change and has requested OCRM's concurrence in that determination; and

(C) Indicate that any comments on whether or not the action does or does not constitute a routine program change may be submitted to OCRM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCRM will inform the State whether it concurs that the action constitutes a routine program change. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCRM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice must:

(A) Indicate the date on which the State received concurrence from OCRM that the action constitutes a routine program change;

(B) Reference the earlier notice (required in paragraph (b)(2) of this section) for a description of the content of the action; and

(C) Indicate if Federal consistency applies as of the date of the notice called for in this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCRM does not concur, a State will be advised to:

(i) submit the action as an amendment, subject to the provisions of §§ 923.81 through 923.82; or

(ii) resubmit the routine program change with additional information requested by OCRM concerning how the program will be changed as a result of the action.

Subpart I—Applications for Program Development or Implementation Grants

§ 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with applicable Federal laws and policies, Department of Commerce grants management regulations, policies and procedures, and any other applicable directives from the NOAA Grants Management Division and OCRM program offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act, and in accordance with the terms of the award.

(c) All applications for funding under section 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the discretion of the Assistant Administrator.

(d) For purposes of this subpart, the term ''development grant'' means a grant awarded pursuant to subsection 305(a) of the Act. ''Administrative grant'' and ''implementation grant'' are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(e) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

§ 923.91 State responsibility.

(a) Applications for program grants are required to be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application must designate a single state agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which program development or implementation funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated State entities shall be fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) of the Act foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate some of its coastal zone management responsibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes, if the work to result from such allocation(s) will contribute to the effective development or implementation of the State's management program.

(1) Local governments. Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government. Where a State will be relying on direct State controls as provided for in subsection 306(d)(11)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for other specified local activities or one-time projects, again subject to adequate State overview, then a portion of administrative grant funds may be considered regional agencies and may be allocated to local governments.

(2) Indian Tribes. Tribal participation in coastal management efforts may be supported and encouraged through a State's program. Individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

§ 923.93 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State, Local and Indian Tribal Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes. These costs may be eligible, however, pursuant to section 306A of the Act.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. Implementation activities should focus on achieving the policies of the Act.

(d) Section 306 funding in support of any of these purposes may be used to fund, among other things:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment, and

(4) Feasibility studies and preliminary engineering reports.

(e) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 306A, 308, 309, 310 and 315 of the Act, as well as with funding possibilities pursuant to section 6217 of the Coastal Zone Act Reauthorization Amendments to 1990. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCRM. States should consult with OCRM on technical aspects of consolidating requests into a single application.

§ 923.94 Application for program development or implementation grants.

(a) OMB Standard Form 424 (4–92) and the NOAA Application Kit for Federal Assistance constitute the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. The administrative requirements for grants and subawards, under this program, to state, local and Indian tribal governments are set out in 15 CFR Part 24. The administrative requirements for other entities are prescribed under OMB Circular A–110: Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms ''cost'' and ''grant project'' pertain to both the Federal amount awarded and the non-federal matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State, Local and Indian Tribal Governments. Eligible implementation costs also shall be determined in accordance with § 923.93 of these regulations. Allowability of costs for non-profit organizations will be determined in accordance with OMB Circular A–122: Cost Principles for Non-Profit Organizations. Allowability of costs for institutions of higher education will be determined in accordance with OMB Circular A–21: Cost Principles for Educational Institutions.

(c) In the grant application, the applicant must describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description must include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task the application must:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation; and

(iii) Indicate the estimated total cost.

(4) The sum of all task costs in paragraph (c)(3) of this section should equal the total estimated grant project cost.

(d) For program development grants, when evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirement for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

§ 923.95 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the NOAA Grants Officer, upon recommendation by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The NOAA Grants Officer, upon recommendation by the Assistant Administrator, may waive appropriate administrative requirements contained in this subpart, upon finding of extenuating circumstances relating to applications for assistance.

§ 923.96 Grant amendments.

(a) Actions that require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in 15 CFR Part 24, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

PART 926—[REMOVED]

5. Part 926 which is currently reserved is removed.

PART 927—[REDESIGNATED AS PART 923, SUBPART J]

6. Part 927, consisting of § 927.1, is redesignated as subpart J of part 923, consisting of § 923.110.

PART 928—[REDESIGNATED AS PART 923, SUBPART L]

7. Part 928 is redesignated as subpart L of part 923, and §§ 928.1 through 928.5 are redesignated as §§ 923.131 through 923.135 in the subpart.

§ 923.131 [Amended]

8. Redesignated § 923.131 is amended by replacing the two references to ''this part'' in the introductory text with references to ''this subpart.''

§ 923.133 [Amended]

9. Redesignated § 923.133 is amended by changing the references to 15 CFR 928.3 and 928.4 in paragraph (b)(9), the reference to § 928.2(d) in paragraph (c)(2), and the reference to § 928.3(c)(4) in paragraph (d)(2), as references to §§ 923.133 and 923.134, § 923.132(d) and § 923.133(c)(4), respectively.

§ 923.134 [Amended]

10. Redesignated § 923.134 is amended by changing the reference to 15 CFR 928.3(b)(7) in paragraph (b)(3) as a reference to § 923.133(b)(7).

§ 923.135 [Amended]

11. Redesignated § 923.135 is amended as follows:

(1) by changing the reference to 15 CFR 928.5(a)(3) in paragraph (a)(2)(i) as a reference to § 923.135(a)(3),

(2) by changing the reference to 15 CFR 928.4 in paragraph (a)(2)(ii) as a reference to § 923.134,

(3) by changing the reference to 15 CFR 923.81(c) in paragraph (a)(3)(i)(G) as a reference to 15 CFR 923.81(a), and

(4) by changing the four references to 15 CFR 928.5(a)(2) in paragraphs (b)(2)(i) and (iii) as references to § 923.135(a)(2).

PART 932—[REDESIGNATED AS PART 923, SUBPART K]

12. Part 932 is redesignated as Subpart K of Part 923, and §§ 932.1 through 932.8 are redesignated as §§ 923.121 through 923.128 in the Subpart.

13. Redesignated § 923.121 is amended by revising paragraph (h) to read as follows:

§ 923.121 General.

* * * * *

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

14. Redesignated § 923.121 is further amended as follows:

(1) by changing the references to ''this part'' in paragraphs (a) and (b) with references to ''this subpart'', and

(2) by changing the reference to 15 CFR 932.8 in paragraph (b)(1) as a reference to § 923.128.

§ 923.123 [Amended]

15. Redesignated § 923.123 is amended as follows:

(1) in paragraph (a), by replacing ''routine program implementation'' with ''routine program change'',

(2) in the footnote in paragraph (b), the address is revised to read: ''Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910'', and

(3) by changing the reference to 15 CFR 932.5(a) in paragraph (d) and the reference to 15 CFR 932.5(b) in paragraph (e), as references to §§ 923.125(a) and 923.125(b), respectively.

§ 923.124 [Amended]

16. Redesignated § 923.124 is amended as follows:

(1) by changing the reference to 15 CFR 932.1(b) and 15 CFR 927.1(c) in paragraph (d)(1)(i) as references to §§ 923.121(b) and 923.110(c), respectively,

(2) by changing the reference to 15 CFR 932.4(d) in paragraph (d)(1)(iii) as a reference to § 923.124(d),

(3) by changing the reference to 15 CFR 932.8 in paragraph (d)(3) as a reference to § 923.128,

(4) by changing the references to 15 CFR 932.4(d), 15 CFR 932.3(d) and 15 CFR 932.5(b) in paragraph (e) as references to §§ 923.124(d), 923.123(d), and 923.125(b), respectively, and

(5) by changing the references to 15 CFR 932.4(b), 15 CFR 932.4(c), 15 CFR 932.4(d) and 15 CFR 932.4(e) in paragraph (f) as references to §§ 923.124(b), 923.124(c), 923.124(d) and 923.124(e), respectively.

§ 923.125 [Amended]

17. Redesignated § 923.125 is amended as follows:

(1) by changing the reference to 15 CFR 932.6(b)(1) in paragraph (a)(1)(v) as a reference to § 923.126(b)(1),

(2) by changing the reference to 15 CFR 932.3(e) in paragraph (b)(2)(ii) as a reference to § 923.123(e),

(3) by changing the reference to 15 CFR 932.3(f) in paragraph (b)(2)(iii) as a reference to § 923.123(f), and

(4) by changing the references to § 932.5(a) and 15 CFR 932.5(b) in paragraph (c) as references to §§ 923.125(a) and 923.125(b), respectively.

18. Redesignated § 923.125 is further amended by removing footnote two in paragraph (a)(1)(ii).

§ 923.126 [Amended]

19. Redesignated § 923.126 is amended as follows:

(1) by changing the references to 15 CFR 932.6(b) and 15 CFR 932.1(b) in paragraph (a) as references to §§ 923.126(b) and 923.121(b), respectively,

(2) by changing the reference to 15 CFR 923.95(d)(3)(ii) in paragraph (b)(1)(iii) as a reference to § 923.94(d)(3)(ii),

(3) by changing the references to 15 CFR 932.5(a) and 15 CFR 932.5(b) in paragraph (b)(4) as references to §§ 923.125(a) and 923.125(b), respectively,

(4) by changing the reference to 15 CFR 932.3(a) in paragraph (b)(7) as a reference to § 923.123(a),

(5) by changing the references to 15 CFR 932.5(a) and 15 CFR 932.4(d) in paragraph (b)(8) as references to §§ 923.125(a) and 923.124(d), respectively,

(6) by changing the references to 15 CFR 932.5(a) and 15 CFR 932.5(b) in paragraph (c)(3) as references to §§ 923.125(a) and 923.125(b), respectively,

(7) by changing the references to 15 CFR 932.5(a) and 15 CFR 932.4(d) in paragraph (c)(4) as references to §§ 923.125(a) and 923.124(d), respectively, and

(8) by changing the reference to subpart J of 15 CFR part 923 in paragraph (c)(5) as a reference to subpart I of 15 CFR part 923.

§ 923.127 [Amended]

20. Redesignated § 923.127 is amended as follows:

(1) by changing the reference to subpart J of 15 CFR part 923 in paragraph (a) as a reference to subpart I of 15 CFR part 923,

(2) by changing the reference to 15 CFR 932.6(b)(1) in paragraph (b) as a reference to § 923.126(b)(1),

(3) by changing the reference to subpart J of 15 CFR part 923 in paragraph (c) as a reference to subpart I of 15 CFR part 923, and

(4) by changing the reference to 15 CFR 932.6(c)(2) in paragraph (e) as a reference to § 923.126(c)(2).

PART 933—COASTAL ZONE MANAGEMENT RESEARCH AND TECHNICAL ASSISTANCE [REMOVED]

21. Part 933 is removed.

* * * * *

[FR Doc. 96–5237 Filed 3–8–96; 8:45 am]

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Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mine Ventilation; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA's) existing safety standards for ventilation of underground coal mines. After publication of the existing standards, the U.S. Court of Appeals in the D.C. Circuit stayed the application of one standard and MSHA stayed two standards. The rule revises these stayed provisions, revises or clarifies other provisions in the rule and includes some new provisions. The provisions of the final rule are expected to decrease the potential for fatalities, particularly accidents which can result in multiple deaths, and to reduce the risk of injuries and illnesses in underground coal mines. For the convenience of the reader, MSHA has published the full text of the ventilation standards for underground coal mines in this document.

EFFECTIVE DATE: The final rule is effective June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone 703/ 235–1910; fax 703/ 235–5551.

SUPPLEMENTARY INFORMATION:

I. Background

The mining of coal underground has historically been recognized as one of the more hazardous occupations in the world. It is a universally recognized principle of underground coal mine safety that there must be proper ventilation of the mine. Indeed, no aspect of safety in underground coal mining is more fundamental than proper ventilation. A basic tenet of mining safety states that ventilation must be sufficient: (1) To dilute, render harmless and carry away the hazardous components of mine air, such as potentially explosive methane; and (2) to provide necessary levels of oxygen to the miners' working environment. Ventilation safety programs are designed around this philosophy. The history of mining is replete with tragic incidents where one aspect or another of a necessary ventilation safety protection was either not in place or not followed, with disastrous results. Examples include the explosion at the Monogah mine in 1907 in which 362 miners perished, the worst mining disaster in the history of the United States. Other more recent examples include the Farmington disaster in 1968 in which 78 miners died, the Scotia mine in 1976 where 26 died, Grundy No. 17 in 1981 where 13 died, Wilberg in 1984 where 27 died, Pyro in 1989 with 10 deaths and Southmountain in 1992 where 8 miners died. In 1969 and again in 1977, Congress recognized the hazards of improper ventilation and established a role for the government in addressing ventilation hazards. MSHA, with the cooperation of labor and industry, has met with a large measure of success in reducing the accidents, injuries and fatalities that have resulted from poor ventilation practices. For example, explosions and fires in a 29 year period from 1940 to 1968 resulted in the deaths of 491 miners. Since the passage of the Federal Coal Mine Health and Safety Act of 1969, 178 explosion and fire related deaths have occurred. While MSHA recognizes that this number is still unacceptable, the significant reduction in loss of life cannot be ignored. To a great extent, the framework for this success has been the implementation of effective ventilation standards.

Preventing recurrence of disasters like those of the past remains the top priority of MSHA. MSHA believes that a serious commitment by management, labor, and government is necessary to develop effective, yet reasonable and practical regulations that protect the safety and health of our nation's miners. MSHA anticipates that this rulemaking, which revises portions of the comprehensive ventilation rule published in 1992 (57 FR 20868, May 15, 1992) and adds new provisions, will bring the coal mining industry closer to that objective.

The comprehensive 1992 ventilation rulemaking was closely followed by interested industry and labor groups, who frequently expressed divergent views on approaches to resolving ventilation issues. Certain commenters exercised their right to challenge the rule and the U.S. Court of Appeals for the D.C. Circuit Court stayed one provision relating to oxygen and carbon dioxide in the bleeder entries. MSHA held a series of informational meetings around the country during which it explained the application of the rule. In so doing, MSHA listened to many questions about the implementation of the rule. MSHA was sensitive to the views expressed at these meetings and gave serious consideration to these issues. Some of these comments became the basis for portions of this rulemaking. Internal discussions of MSHA's experience with the implementation of the rule led MSHA to include still other issues in this rulemaking. In fact, MSHA stayed the application of two additional provisions in response to potential problems pointed out by interested parties. These stayed provisions relate to actions following the stoppage of the main mine fan with persons underground and to a potential fire hazard from the enclosure of compressors in a noncombustible structure. MSHA addresses these issues in the rulemaking. Once MSHA decided that it was going to proceed with a rulemaking to address these issues, it added other provisions to the package to allow all parties an opportunity to comment where they expressed the view that they had insufficient opportunity to comment on the existing rule (The comprehensive rule that was published in the Federal Register on May 15, 1992). The rule MSHA proposed also included issues raised by parties in litigation challenging the existing rule. MSHA anticipates that the final rule should resolve matters included in the challenge raised by the litigation of the existing rule. Finally, in an effort to address confusion that seemed to exist with certain provisions of the existing ventilation rule promulgated in May of 1992, MSHA either proposed clarifications to the existing rule or discussed the affected provisions in the preambles to the proposed and final rules in an effort to clarify them.

The issues in the rulemaking are complex and highly technical. Comments to the proposal (published on May 19, 1994, 59 FR 26536) and comments following the public hearings (held in September and October 1994, in Price, Utah, Logan, West Virginia, and Washington, Pennsylvania) were extensive. One party alone submitted over two thousand pages of written comments and over 275 exhibits. Not only were the safety issues involved complex, but in many cases, MSHA's task was made more difficult by hearing diametrically opposed viewpoints.

Major Improvements in the Final Rule

The final rule provides a number of significant improvements to the existing ventilation regulations. For example, the final rule provides for the electronic storage of records. A major portion of the mining industry has this capability at the present time through computer technology at the mine site. Electronic

record retention can reduce the cost of storage and maintenance of records and provide for ease in access and transfer of information without reducing the protection afforded miners. Additionally, having records electronically stored can facilitate trend analysis, allowing for earlier detection and correction of potential hazards.

The final rule also requires pressure recorders or an option of the use of a fan monitoring system on main mine fans at all mines. This represents a major step toward monitoring the mine fans controlling the ventilation at the mines and helps assure that the miners have uncontaminated air at all times. The final rule also provides for methane testing at the face during mining operations. This technology is especially useful for taking methane tests during extended cut mining operations. The methane testing evaluates air flow to the face to determine that methane is sufficiently diluted, rendered harmless, and carried away so as to reduce or eliminate the hazards associated with methane liberated during mining operations.

Other improvements in the rule include revisions to the three stayed provisions in the existing rule. Air quality levels for oxygen and carbon dioxide in bleeders are established to protect mine examiners who are required to travel to determine if the bleeders are functioning properly. A second stayed provision is revised to limit the use of transportation equipment during the withdrawal of miners after an unintentional fan stoppage. This revision to the existing rule reduces the likelihood of an ignition from methane that can accumulate during the fan stoppage. The third stayed provision is revised to allow the option of attending rather than housing compressors in a noncombustible enclosure. The hazards associated with the operation of compressors in underground mines were demonstrated at the Wilberg mine disaster, where 27 people lost their lives as a result of a compressor fire.

This final rule provides for an alert and alarm device to be located outside of noncombustible structures housing electrical installations. The alert and alarm assures that miners are made aware of a problem in time to extinguish a fire or safely evacuate an area or the mine as necessary for safety. Another change to the existing rule involves miners or their representatives in the mine ventilation plan approval process before the plan is submitted for approval. This provides for the opportunity for input from those having first hand knowledge in the particular mining conditions and practices that impact the plan approval.

Other safety enhancements from the existing rule include: requiring the use of extendable probes to conduct methane tests at deep cuts; requiring on-shift examinations on other than coal producing shifts; and accepting a performance test to determine minimum dimensions at certain locations in escapeways.

Finally, the final rule clarifies existing regulations that were considered vague by some parties or were misunderstood. For example, the final rule provides that certified pumpers can conduct their own examination rather than requiring the examination to be conducted during the preshift segment of the mining operation.

To serve the interests of the mining community, MSHA has republished the full text of subpart D of 30 CFR part 75 as it will read upon promulgation of this rule.

II. Discussion of the Final Rule

A. General Discussion

In developing the final rule, MSHA has made every effort to address the comments received during the rulemaking, and to develop practical requirements for real safety problems. Both the costs and the benefits of each standard were also considered. In addition, each standard, as well as revisions and deletions, was carefully considered against the statutory requirement that nothing in the final rule shall reduce the protection afforded miners by an existing mandatory health or safety standard. Where appropriate, MSHA has provided for a phase in period to allow mine operators time to effectively plan and implement the necessary changes.

MSHA carefully analyzed the comments received and responded in many instances by revising the proposed requirements. For example, unlike the proposal, the final rule does not require the second level countersigning of records; allows the use of nonpermissible equipment when conducting an examination upon restart of a fan following unintentional fan stoppages, and requires pressure recording devices or an option of the use of a fan monitoring system to be used on all main mine fans.

Several commenters strongly urged MSHA to proceed in this rulemaking on the issue of using air coursed through the belt entries (''belt air'') to ventilate the working face. MSHA has completed its consideration of the Report of the Secretary's Advisory Committee Report on Belt Air and has placed the issue of using belt air to ventilate the working face on the rulemaking agenda for development of a proposed rule. Thus, ''belt air'' is not addressed in this rulemaking.

MSHA has also received comments and recommendations on a number of other issues that are outside the scope of this rulemaking. For example, much of the extensive testimony directed toward the use of atmospheric monitoring systems was beyond the issues dealt with in this rulemaking. Also, recommendations for the use of transparent or translucent material for check curtains exceed the scope of this rulemaking. The final rule, therefore, does not include these recommendations.

Commenters to the proposal frequently included a discussion of various accident reports, most written by MSHA. In addition, there were discussions of other documents related to specific incidents or mines, such as MSHA Internal Review Reports or specific mine plans. In some cases, the documents were submitted for inclusion in the record. In other cases, the documents were merely referenced.

MSHA is independently aware of the extensive history of ventilation related explosions, and has considered this information. Where appropriate, this information is discussed in the section-by-section analysis in the preamble of this rule. MSHA is aware that accidents can result from or be contributed to by the violation of one or more of the existing standards. In that context, MSHA has found that the solution is not necessarily to promulgate another standard. (The offender may be as likely to ignore it as well.) Instead, for demonstrated noncompliance with existing standards, the solution is often found in increased emphasis, training, or enforcement, rather than in the promulgation of additional rules.

Several sections of the final rule deal with requirements for sections and areas where mechanized mining equipment is being installed or removed. These provisions, which were included in the existing standard published in May 1992, were reproposed without change for the purpose of receiving additional comments from all interested parties. One commenter cited the William Station mine explosion as evidence of the need for these requirements. Other commenters reiterated an earlier objection that the standards were procedurally flawed. MSHA does not agree that these provisions are procedurally flawed and notes that each of these standards was reproposed and not simply restated as part of this rulemaking. Comments relative to the

technical merits of an individual standard are addressed in the section-by-section portion of this preamble.

Recordkeeping Requirements in the Final Rule

The final rule revises the recordkeeping requirements for several standards. The standards affected are § 75.310, Installation of main mine fans; § 75.312, Main mine fan examinations and records; § 75.342, Methane monitors; § 75.360, Preshift examination; § 75.362, On-shift examination; § 75.363, Hazardous conditions; posting, correcting and recording; § 75.364, Weekly examinations; and § 75.370, Mine ventilation plan; contents.

Generally, the final rule requires examiners to record the results of methane tests as a percent of methane detected; records must be made in a book that is secure and not susceptible to alteration, or electronically in such a manner as to be secure and not susceptible to alteration; and records must be countersigned by the mine foreman by the end of the mine foreman's next regularly scheduled working shift. These rules are intended to assure that examination results are maintained and made available, and that the appropriate level of mine management is made aware of conditions or problems requiring attention. The revisions also help assure the integrity of records and enable mine management to review the quality of the examinations. MSHA intends the term ''secure and not susceptible to alteration'' when applied to electronic storage to mean that the stored record cannot be modified. One example of acceptable storage would be a ''write once, read many'' drive.

Numerous comments were received both supporting and opposing the proposed recordkeeping requirements. MSHA reviewed and fully considered each of these comments. The proposal would have required that records be kept in either state-approved books or in bound books with sequential machine-numbered pages. Commenters argued that under the existing rule records may be falsified or altered. Commenters also stated that accident investigations have demonstrated the need for improved records. Other commenters asserted that the proposed requirement for bound books with sequential machine-numbered pages adds an economic burden for the majority of compliant operators and another way should be found, ''to foil the very few who are recalcitrant.'' Other commenters stated that since all records currently include dates and times, machine-numbered pages are unnecessary.

Some record books that are currently in use and acceptable under the existing standards are vulnerable to misuse or manipulation. For example, under the existing rule, records could be kept in a spiral notebook or even a loose leaf binder. The final rule addresses this issue by requiring that records be made in books that are secure and not susceptible to alteration. Examples of books that are considered by MSHA to be secure and not susceptible to alteration include, but are not limited to, record books that are currently approved by state mine safety agencies, and permanently bound books. Examples of books that would not be considered books that are secure and not susceptible to alteration include loose leaf binders and spiral note books.

Several commenters advocated the use of computers for the storage and retrieval of records. In support of this approach, the commenters cited computer records as being highly accurate, requiring less storage space and facilitating data retrieval. Other commenters expressed concern for the security of records stored electronically, and offered examples of breaches of security in record systems at banks and national security installations as evidence to support this concern.

Electronic storage of information and assessing it through computers is more and more a common business practice generally and in the mining industry. Recognizing this trend, the final rule permits the use of electronically stored records provided they are secure and not susceptible to alteration, are able to capture the information and signatures required, and are accessible to the representative of the miners and the representatives of the Secretary. Based on the rulemaking record, MSHA believes that electronic records meeting these criteria are practical and as reliable as traditional records.

In the preamble to the proposal, MSHA expressed its intent to require a hard copy printout of the information stored electronically to be available within 1 hour of a request, and to require backing up of the information within 24 hours. Commenters objected to making the records available within 1 hour as being too stringent and unnecessarily requiring a person to be on duty at all times. MSHA agrees that the requirement would be overly burdensome and has not included it in the final rule. Similarly, MSHA has not included a specific requirement for backing up the computer data. The final rule requires that the records be secure. This encompasses backing up the data as appropriate to the conditions and electronic storage system used at the mine. Upon reconsideration, MSHA has concluded that an additional specific requirement would be an unnecessary burden and has not included it in the rule.

A variety of comments were received regarding the countersigning of certain records by the mine foreman, and the time frame permitted for countersigning. The final rule adopts the proposal that the mine foreman must countersign the record by the end of the mine foreman's next regularly scheduled working shift. The mine foreman is the person most responsible for the day-to-day operation of the mine. It is essential for the health and safety of the miners that the mine foreman be fully aware of the information contained in examination reports so as to be able to allocate resources to correct safety problems as they develop. Allowing until the end of the mine foreman's next regularly scheduled working shift to countersign the reports assures that the mine foreman is aware of the results of the examination in sufficient time to initiate corrective actions. In response to commenters, the final rule allows a mine official equivalent to a mine foreman to countersign the records.

Some commenters suggested that the time for countersigning is unnecessarily long, and that the final rule should restore a previous requirement that countersigning be completed ''promptly.'' The term ''promptly'' involves a level of ambiguity that is eliminated by specifying the time for countersigning records. The record does not show that the time set by the final rule would expose miners to safety or health risks. Also, hazardous conditions are required to be corrected immediately.

Commenters suggested that the term ''mine foreman'' be replaced by a ''certified person responsible for ventilation of the mine or his designee.'' Another commenter suggested that the record could be countersigned by the mine foreman or any other mine official responsible for the day-to-day operation of the mine. Commenters stated that some operations no longer use the terms ''mine foreman'', ''mine manager,'' or ''superintendent.'' To provide for alternative management titles, the final rule incorporates the phrase ''or equivalent mine official.''

Numerous comments were received regarding the requirement of the proposal for second level countersigning by the mine superintendent, mine manager, or other mine official to whom the mine foreman is directly accountable within 2 scheduled

production days thereafter. Commenters objecting to the proposal stated that higher level management should be able to delegate responsibility, noting that often this level of official has more than one mine to oversee and may not necessarily be available within the proposed two days. One commenter suggested allowing three days for second level countersigning in order to recognize that such an official often has numerous obligations and to allow for normal absences. Other commenters simply recommended that the second level countersigning be deleted.

Another commenter stated that some states hold the mine foreman legally responsible, that the mine foreman should correct hazardous conditions immediately and withdraw miners as appropriate, and that the second level countersigning would add no measure of safety. One commenter noted that in many cases the mine manager or superintendent is not a certified individual and long periods may elapse during which this person does not go underground. In these instances, the person countersigning would have little or no understanding or first hand knowledge of the conditions in the mine. Commenters stated that countersigning by the mine foreman is adequate notification to the operator of any deficiency and that the mine foreman has the necessary resources and responsibility to correct any situation noted in the records.

Other commenters supported the proposal noting that second level countersigning would provide an additional level of accountability. These commenters also suggested that in the event of a major accident, the second level countersigning requirement would be important in fully assessing the contributing causes.

MSHA has determined that countersigning by the mine foreman or equivalent mine official, as specified in the final rule, provides the means necessary to detect and correct developing hazards in a mine. Countersigning by the mine foreman assures the necessary notification to an official with the knowledge of the day-to-day operation of the mine having the authority to maintain the mine in a safe operating condition. Agency experience has demonstrated that higher level mine officials commonly lack hands-on involvement or in-depth knowledge of the specific conditions underground or how the highly detailed ventilation rules impact upon those conditions. Therefore, countersigning by a mine official at a higher level does not assure any additional level of safety and imposes an unnecessary burden.

B. Section-by-Section Discussion

The following section-by-section portion of the preamble discusses each provision affected. The text of the final rule is included at the end of the document.

Section 75.301 Definitions

The final rule revises the definition of return air to permit operators to designate certain air courses as return air courses for the purpose of ventilating structures, areas or installations that are required to be ventilated to return air courses and for ventilating seals when the air in the air course will not be used to ventilate working places. Thus, an operator wishing to split air off of an intake for the purpose of ventilating shops, electrical installations, or for other purposes, could designate the air course into which the split is directed as a return provided the air in the air course would not be used to ventilate working places or other locations, structures, installations or areas required to be ventilated with intake air. Commenters generally agreed with the change. However, one commenter expressed the concern that air currents ventilating electrical installations could be coursed to the conveyor belt entry before being coursed to a redesignated return air course, and thus not vented directly to a return. The commenter expressed the opinion that because the air is not vented directly to a return under this scenario, the rule would not permit this practice. MSHA does not agree with the commenter's interpretation and the final rule, consistent with § 75.340, permits this practice.

MSHA does not anticipate that operators will need to redesignate air courses on a routine basis. When questions arise as to the need to redesignate an intake as a return, the operator should contact the local MSHA office. In order that all interested persons are made aware when an air course is redesignated, the final rule requires in § 75.372, Mine ventilation map, that such redesignated air courses be shown on the mine's ventilation map.

Section 75.310 Installation of Main Mine Fans

The main mine fans serve a vital role in providing ventilation to prevent methane accumulations and possible explosions as well as providing miners with a healthful working environment. Section 75.310 is primarily directed at protecting the main mine fans from fires and damage in the event of an underground explosion so that necessary ventilation can be maintained. Monitoring of the fans to assure that they are operating properly is an element of this protection. The final rule for § 75.310 revises paragraphs (a) and (c) of the existing rule. The revisions address: (1) automatic signals for fan stoppage, (2) pressure recording devices, and (3) main mine fan monitoring systems.

Paragraph (a)(3) of § 75.310, like the proposal, requires each main mine fan to be equipped with an automatic device that gives a signal at the mine when the fan either slows or stops. The existing rule does not specify where the signal is to be given. Commenters supported the proposal stating that a signal alarming at a location away from the mine site would rely on overland communication lines to transmit the signal, with the person receiving the signal then notifying the mine. These overland communication lines are subject to weather and other potential sources of damage, which could result in a disruption of the communication. Other commenters objected to the proposal, however, stating that the ability of a mine operator to consolidate monitoring of several mines at one single location is a very efficient and cost-effective practice and should not be arbitrarily prohibited. Further, they stated that there would be absolutely no delay in contacting the miners from this central location should a fan malfunction occur. For clarity and for increased safety, the final rule requires that the signal be given at the mine. MSHA believes that in the case of a fan stoppage, this will assure more timely notice to miners, and hence, a more effective safety response. The requirement that the signal be given at a surface location at the mine does not preclude the signal from also being given elsewhere, such as at a central office, as long as it is given at the mine.

Paragraph (a)(3) of § 75.310 requires that a responsible person, designated by the operator, shall always be at a surface location at the mine where the signal can be seen or heard while anyone is underground. In addition, the responsible person must be provided with two-way communication with working sections and with other established locations where persons are normally assigned to work. Commenters supported the proposal stating that the changes provide clarification and specificity. Other commenters agreed with the proposed concept of two-way communication but felt that the wording, ''established locations where persons are normally assigned to work'' is ambiguous and subject to misinterpretation. Some commenters

objected to the proposed requirement stating that (1) it is redundant of § 75.1600 Communications; (2) properly the subject of a separate rulemaking under § 75.1600 or; (3) it is vague, ambiguous, or subjective. Section 75.1600 only requires two-way communication between the surface and working sections and does not identify that this communication must be provided to a location where a person can see or hear the fan alarm signal. Commenters suggested that the requirement be revised to more specifically quantify locations where persons are normally assigned to work. MSHA recognizes that, as proposed, the standard might result in misinterpretation and the final rule has been reworded to read, ''* * * two-way communication with working sections and work stations where person(s) are routinely assigned to work for the majority of a shift.''

Some, but not all, outby areas where two-way communication would be required by the final rule include; shops, attended belt transfer points, attended rail car loading points, and attended underground coal storage bins and hoppers. It is not intended that this communications capability be provided in areas where secondary roof support is being installed or where rock dust is being applied, or at unattended underground pumps, or in areas such as return air courses, bleeder entries and conveyor belt haulageways other than at belt transfer points. The requirement that two-way communication be provided to work stations where persons are routinely assigned to work for the majority of a shift is intended to help assure that these persons receive prompt notification of fan stoppages. Because these work stations are off the working section, a lack of communication capabilities could result in delays in notification and therefore delays in egress from the mine.

Paragraph (a)(4) of the existing rule requires that main mine fans be equipped with a pressure recording device or with a main mine fan monitoring system but exempts from this requirement mines permitted to shut down main mine fans under § 75.311.

The final rule eliminates this exemption and requires that all main mine fans be equipped with a pressure recording device or a main mine fan monitoring device. For mines not currently required to have such a device, MSHA has provided for a 1 year phase in period to allow mine operators time to effectively plan and implement the necessary changes. One commenter suggested that all main mine fans at all mines be required to operate continually and further suggested that all main mine fans be equipped with pressure recording devices and main mine fan monitoring systems. In support of this suggestion, the commenter stated that continuous fan pressure recording devices would have a positive impact on safety at these operations. Such devices will provide necessary information to operators and miners at operations affected by this change. MSHA has not included one commenter's suggestion that main mine fan monitoring systems be required for all main mine fans. While MSHA supports and encourages the use of this advanced technology the Agency does not believe that it is appropriate to mandate it for all mines because daily fan examinations coupled with pressure recording devices have proved to be adequate over the years. Also, MSHA does not adopt a suggestion that main mine fans at all mines be required to operate continuously.

Paragraph (a)(4) of the final rule requires that when a pressure monitoring device is used in lieu of a pressure recording device, it must produce a continuous graph or chart of the fan pressure. A hard copy of the continuous graph or chart must be printed at regular intervals of not more than 7 days. This provision permits the use of relatively recent advances in technology for monitoring main mine fan pressure provided a continuous record of the fan pressure is provided. In the proposal, MSHA specifically solicited comments as to an appropriate polling frequency that would provide a record that is substantially continuous. In response to this request, one commenter proposed that a polling frequency of two seconds is necessary to take full advantage of available technology. This commenter stated that continuously means constant or unbroken and that a continuous record should require a polling frequency of not greater than 2 seconds. Another commenter, an instrument manufacturer, suggested that a one minute sampling interval is definitely feasible. Main mine fan monitoring, when used, is often part of a more comprehensive mine-wide atmospheric monitoring system (AMS), and to require that the fan be polled every two seconds could delay the polling of other important sensors. Additionally, because these pressure monitoring devices are intended to be used in lieu of the traditional circular pressure recorder they must provide a substantially equivalent record. Experience by MSHA engineers following mine explosions and during more routine ventilation survey work has shown that the accuracy to which a 7-day, circular recording chart of the type normally used can be read is on the order of several minutes. MSHA would expect that the polling frequency for a pressure recording device used in lieu of a pressure recorder would be no more than one (1) minute.

MSHA received a number of comments in response to the proposed requirement in paragraph (a)(4) that when a pressure recording device other than a circular pressure recorder is used, a hard copy of the continuous graph or chart be generated at not more than 7-day intervals. Comments ranged from requiring daily printouts to not requiring any printout except when requested by an Authorized Representative of the Secretary. In response to these comments, the final rule retains the requirement for a hard copy of the continuous graph or chart be generated at not more than 7-day intervals. In light of MSHA's stated position to permit records of examinations to be stored electronically, the final rule permits the record of main mine fan pressure to be stored electronically provided the record is secure and not susceptible to alteration.

Paragraph (c) of § 75.310 specifies requirements for main mine fan monitoring systems if used under § 75.312. Commenters suggested that the requirements were repetitive, confusing, and would discourage mine operators from using monitoring systems which could provide more protection. MSHA believes that the requirements in paragraph (c) are necessary to effectively monitor a fan, particularly when these systems are used in lieu of daily fan examinations.

Paragraph (c)(3) of § 75.310 of the proposal would have required that main mine fan monitoring systems provide, on demand, a printout of the monitored parameters, including the mine ventilating pressure. Several commenters objected to the requirement that a printout be provided ''on demand.'' As interpreted by these commenters, this standard would require that the operator provide a printout at any time it is requested. As explained in the preamble to the proposal, ''* * * the monitoring system would be required to have the *capability of providing* (emphasis added), on demand, a printout of the information being monitored. This capability is intended to facilitate the review of the information by mine management required in § 75.312(b).'' The commenters misinterpreted the purpose for the standard. MSHA recognizes,

however, the merits of being able to obtain a printout within a reasonable period of time. Therefore, the final rule requires that a main mine fan monitoring system used to satisfy the requirements of § 75.312 provide a printout of the monitored parameters, including the mine ventilating pressure, within a reasonable period, not to exceed the end of the next scheduled shift during which miners are underground.

Paragraph (c)(5) of § 75.310 requires that two-way communication be provided between a surface location at the mine where the signals from the fan monitoring system can be seen or heard and working sections and other established locations where persons are normally assigned to work for the majority of the shift. Except for minor editorial changes, this requirement is the same as the proposal. Comments on this proposal were the same as comments on proposed paragraph (a)(3). Several commenters supported the proposal stating that the changes provide clarification and specificity. Other commenters agreed with the proposed concept of two-way communication but felt that the wording, ''established locations where persons are normally assigned to work'' is ambiguous and subject to misinterpretation. Some commenters objected to the proposed requirement stating that (1) it is redundant of § 75.1600 Communications; (2) properly the subject of a separate rulemaking under § 75.1600 or; (3) it is vague, ambiguous, or subjective. Section 75.1600 only requires two-way communication between the surface and working sections and does not identify that this communication must be provided to a location where a person can see or hear the fan alarm signal. Commenters suggested that the requirement be revised to more specifically quantify locations where persons are normally assigned to work. MSHA recognizes that, as proposed, the standard might result in misinterpretation and the final rule has reworded the proposal to read, ''* * * two-way communication with working sections and work stations where person(s) are routinely assigned to work for the majority of a shift.''

Some, but not all, outby areas where two-way communication would be required by the final rule include; shops, attended belt transfer points, attended rail car loading points, and attended underground coal storage bins and hoppers. It is not intended that this communications capability be provided in areas where secondary roof support is being installed or where rock dust is being applied, or at unattended underground pumps, or in areas such as return air courses, bleeder entries and conveyor belt haulageways other than at belt transfer points. The requirement that two-way communication be provided to work stations where persons are routinely assigned to work for the majority of a shift is intended to help assure that these persons receive prompt notification of fan stoppages or other problems with the fan that might require withdrawal of miners. Because these work stations are off the working section, a lack of communication capabilities could result in delays in notification and therefore delays in egress from the mine.

Section 75.311 Main Mine Fan Operation

The main mine fan provides the pressure that causes air to move through the mine to dilute and carry away explosive and toxic gases, dusts and fumes. As such it is the most important part of the ventilation system. Section 75.311 requires fans to be continuously operated to provide constant ventilation to underground areas and specifies precautions for planned fan stoppages. It also addresses the repair of main mine fans, monitoring of fan signal devices on the surface, and protection against fires around fans and intake air openings.

The final rule revises paragraph (d) of § 75.311, which addresses the notification of mine officials of any unusual variance in mine ventilation pressure and requires the prompt repair of electrical or mechanical deficiencies. The final rule requires immediate notification and the prompt institution of corrective action or repairs.

Commenters suggested deletion of the word ''unusual'' maintaining that this term makes the requirement vague and subject to different interpretations. These commenters suggested substituting the phrase, ''that could materially affect the safety and health of persons in the mine'' to describe the type of pressure variance that would require action. In making this recommendation, the commenters cited similar language in existing § 75.324(a)(1) that, according to the commenters, is understood throughout the coal mining community. Section 75.324(a)(1) concerns alterations of the main ventilation air current or any split of the main air current. The final rule does not adopt this recommendation. Minor fluctuations in fan operating pressure are normal; however, unusual changes can be indications of changes in fan operation or changes underground, such as roof falls or loss of ventilation controls, that require prompt attention and corrective action. In addition, MSHA has 25 years of experience with the phrase ''unusual variances in mine ventilation pressure'' and is unaware of significant difficulties with this terminology.

Commenters questioned what constitutes an ''electrical or mechanical deficiency'' for the purposes of § 75.311. The purpose of the standard is to assure that a problem with main mine fans is corrected promptly and that the proper persons are notified that the problem exists. The types of electrical or mechanical deficiencies requiring action under paragraph (d) are those that can interfere with mine ventilation. In addition, MSHA has 25 years of experience with the phrase ''electrical and mechanical deficiencies'' and is, again, unaware of any significant difficulties with the use of this terminology during this time frame.

Commenters also addressed the proposal that the ''mine superintendent, assistant mine superintendent, or mine foreman'' be notified immediately when an unusual variance in mine ventilation pressure is observed, or when an electrical or mechanical deficiency in a main mine fan is detected. The final rule does not retain the mine superintendent or the assistant mine superintendent as mine officials to be notified. Commenters stated that this provision provides a measure of safety to the miners by requiring that specific mine managers be notified of possible main mine fan problems, while the existing standard specifies that such a situation must be investigated. Other commenters, however, suggested that the persons identified for notification under the proposal may not be the most qualified to handle the problem. They also indicated that the notification requirement could unnecessarily delay appropriate action by other responsible persons. The commenters further stated that the mine superintendent or assistant mine superintendent may not be at the mine and that a certified person would be in charge who should be permitted to take the appropriate action. The proposed requirement that certain mine managers be notified immediately was not intended to require that these individuals personally take the necessary actions to respond to the problem with the main mine fan. Neither was it intended that they be notified of such a problem, to the exclusion of all others. The objective of the rule is to assure that the appropriate actions are taken as soon as possible. Additionally, notification of specified mine officials is intended to assure that those persons who are responsible for the mine are aware of the problem. The

final rule, therefore, retains the requirement that certain mine managers be notified of any unusual variance in the mine ventilation pressure or if an electrical or mechanical deficiency of a main mine fan is detected.

The final rule does, however, delete reference to notification of the mine superintendent or assistant mine superintendent. As discussed in relation to the countersigning of records, the mine superintendent is quite often not a certified person and is only periodically present at the mine. In addition, consistent with other sections of the final rule and recognizing that the term mine foreman is not used at some mines, the final rule requires that if an unusual variance in the mine ventilation pressure is observed, or if an electrical or mechanical deficiency of a main mine fan is detected, the mine foreman or equivalent mine official, or in the absence of the mine foreman or equivalent mine official, a designated certified person acting for the mine foreman or equivalent mine official shall be notified immediately. As with the proposal, the final rule requires that appropriate action or repairs shall be instituted promptly. It is not intended that the appropriate action or repairs be delayed until the mine foreman or equivalent mine official is notified.

During a series of informational meetings held by MSHA following publication of the existing rule, questions arose concerning the operation of back-up fans. For informational purposes, the preamble to the proposal included a detailed discussion of questions about the operation of back-up fans under the ventilation regulations and solicited comments. MSHA did not propose any rule changes, nor does the final rule contain specific provisions for back-up fans. When a back-up fan operates in place of the main mine fan, the back-up fan is considered to be a main mine fan and all subpart D requirements for main mine fans are applicable.

Section 75.312 Main Mine Fan Examinations and Records

Proper operation of main mine fans is critical to mine ventilation and the prevention of methane accumulations and possibly methane explosions. Recognizing the importance of the main mine fan, § 75.312 requires that each main mine fan be examined at least once each day that the fan operates unless the fan is continuously monitored with a main mine fan monitoring system. Through daily examinations or continuous monitoring of critical parameters, the operator can determine if problems with the fan are developing and correct these problems before ventilation is affected.

The final rule removes existing paragraph (g)(2), revises existing paragraphs (a), (b)(1), (c), (d), (g)(1) and (h), redesignates existing paragraph (f) as (f)(1), and adds new paragraphs (f)(2) and (g)(2). Paragraph (a) of the final rule, like the existing rule, requires daily examination of main mine fans unless a fan monitoring system is used. In addition, paragraph (a) specifies that an examination of the main mine fan is not required on days when no person goes underground. An examination of the fan, however, is required prior to anyone entering the mine. The purpose of this examination, as stated in paragraph (a), is to assure the electrical and mechanical reliability of the fan.

When a fan monitoring system is used, the final rule requires a daily review of the data from the monitoring system to be made, except on days when no person goes underground. A review of the data from the monitoring system must be completed, however, prior to anyone entering the mine.

Fan examinations or review of fan monitoring system data are required to be performed by a trained person designated by the operator.

Commenters questioned the use of the term ''assure'' in paragraph (a) when referring to the electrical and mechanical reliability of main mine fans. MSHA uses the term ''assure'' in this context as defined in *Webster's Third New International Dictionary,* Unabridged, 1993 edition, to mean, ''to make safe, to give confidence to.'' The sense of this definition is consistent with the intended purpose of the examination. The term does not mean to ''guarantee'' safety, as suggested by one commenter.

Commenters suggested that the final rule require the examination of main mine fans for proper operation be conducted by an individual trained as part of the mine operator's training plan required by MSHA's comprehensive training regulation in part 48 of 30 CFR. Other commenters understood the proposal to require training of fan examiners under part 48, and objected to such a requirement. These commenters suggested that the person conducting the fan examination be one who has received training through experience or has been trained by an experienced person, or by the fan manufacturer. The final rule does not require fan examiners to be trained as part of the operator's part 48 training plan. Instead, the final rule specifies that fan examiners must be trained sufficiently to have the skill and knowledge to ascertain whether the fan is in proper working order, mechanically and electrically.

Paragraph (a) requires a daily physical examination of the main mine fan, unless a fan monitoring system is used. If a fan monitoring system is used, paragraph (b) requires a weekly physical examination of the main mine fan, a weekly test of the monitoring system, and a daily review of the main mine fan monitoring data. Commenters suggested that even if a main mine fan is equipped with a monitoring system, the fan should still be subject to daily physical examinations because a fan monitoring system is not capable of disclosing all conditions that a physical inspection could disclose. The final rule does not adopt this suggestion. A weekly physical examination of the fan and a test of the monitoring system coupled with a daily review of the monitoring data provides reasonable assurance that a mine fan is operating reliably. Commenters suggested that the proposed requirement of paragraph (b)(1) requiring a daily review of main mine fan monitoring system data is unnecessary and redundant. These commenters suggested that the system need only be capable of producing a printout because the systems would automatically alarm anytime an electrical or mechanical deficiency exists. Requiring a daily review of the monitoring system data, according to these commenters, could discourage the use of improved technology. Other commenters noted that operators currently using fan monitoring systems conduct a daily review of the data at the present time and that the requirements to review the data would provide an additional measure of safety for the miners. MSHA believes that a daily review of data from fan monitoring systems is needed to assure that mine management is made aware of any operational changes or trends in monitored parameters. Main mine fans provide the source for mine ventilation and, therefore, are critical to miners' safety. As discussed earlier, these daily reviews of data are designed to complement the physical examinations of the fan.

The final rule adopts the requirements of proposed paragraphs (b)(1)(ii) (A) and (B) and requires that when a fan monitoring system is used as provided under paragraph (a), a trained person designated by the operator must test the system for proper operation at least every 7 days. Commenters objected that it is redundant because a fan monitoring system is capable of monitoring itself and can automatically provide a warning when a fan malfunction occurs. These commenters also stated that if the

system is continuously operated, the system is self-tested for proper operation several times a minute and that the 7-day test is unnecessary. The commenters suggested that the 7-day test only be conducted if the fan monitoring system is not continuously operated. For continuously operating fans an examination of the fan should more appropriately be conducted monthly, according to these commenters. Requiring more frequent checks the commenters maintain would discourage the use of fan monitoring systems.

The final rule does not adopt these suggestions. While MSHA encourages the use of fan monitoring systems, excessive reliance on the self-monitoring features of these systems is incompatible with the importance of reliable operation of main mine fans. MSHA does not anticipate that the final rules for examination requirements will discourage the use of fan monitoring systems. Main mine fans without a monitoring system are required to be examined daily, while fans with monitoring systems are required to be examined every seven days.

Paragraphs (c) and (d) of § 75.312 of the final rule continue in effect the requirements that tests of the automatic fan signal device and automatic closing doors, when these doors are required, be conducted at intervals not to exceed 31 days. The specified means of testing these devices and doors is by stopping the fan. The proposal would have permitted an alternative test not involving stopping the fan if the alternative method provided the same level of assurance that the signal device or door would function as intended during fan stoppages. Two commenters favored the proposal and suggested that there is no need to approve alternate means of testing fan signal devices in the mine ventilation plan. These commenters expressed the opinion that each authorized representative should be capable of ascertaining the validity of the alternative method. The commenters did not make a similar suggestion relative to the alternative means provision proposed in paragraph (d) for automatic closing doors. Another commenter opposed the use of alternative tests stating that it would be premature to adopt a provision for an alternative test to stopping the fan when such a test has not as yet been developed. MSHA has reconsidered the proposal and the final rule continues to require that the tests of fan signal devices and automatic closing doors be conducted by stopping the fan. Should an operator develop an alternative method that provides the same level of protection as stopping the fan, the petition for modification process is available for an operator to obtain approval.

Paragraphs (c) and (d) permit underground power to remain energized during fan signal and automatic closing door testing, notwithstanding the requirements of § 75.311. If the fan is not restarted within 15 minutes, the final rule requires that underground power be deenergized and no one is permitted to enter any underground portion of the mine until the fan is restarted and an examination is conducted. Additionally, paragraphs (c) and (d) require that only persons necessary to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be done while the fan is operating, are permitted underground.

Some commenters objected to limiting the persons who can be underground during fan signal and closing door tests. Other commenters objected to anyone being permitted underground during the stoppage of a fan to conduct the required tests. These commenters expressed the opinion that all necessary work can be performed with the fan operating and therefore, when a fan is shut down to test the fan signal device or the automatic closing doors no one should be underground.

Some work, such as working immediately inby a blowing fan, could place workers at risk by exposing them to extreme temperatures, effects of the high velocity air stream, or excessive noise levels when the fan is operating. In addition, repair work within a shaft can more safely be done when a fan is stopped. The rule, therefore, retains the exception that permits persons underground during intentional fan stoppages to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be done while the fan is operating.

Paragraphs (c) and (d) of the final rule are reworded to clarify that during the required tests, power circuits may remain energized only if no person is underground. Therefore, if an operator elects to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be done while the fan is operating, simultaneous with the tests required, power circuits must be deenergized in accordance with § 75.311(b)(3). Additionally, in accordance with § 75.311(b)(2), all mechanized equipment must be shut off.

Paragraph (f)(1) of the final rule retains the longstanding requirement that the person performing main mine fan examinations certify by initials and date at the fan or another location specified by the operator that the examinations were made. Each certification is required to identify the main mine fan that was examined. When daily fan examinations are conducted, daily certification is required. When a main mine fan monitoring system is used and fan examinations are conducted at 7 day intervals, certification is required each time the fan is examined.

One commenter offered suggested wording that would eliminate the option of certifying that the examination was completed at a location other than the fan being examined. This suggestion has not been adopted and the final rule retains the flexibility for certifications to be made away from the fan.

Paragraph (f)(2) of the final rule requires that when a main mine fan monitoring system is used, a daily printout of the system's data must be certified to indicate that the daily review was completed. While some commenters generally agreed with this requirement other commenters suggested that an alternative should be provided for systems which are continuously operated and supervised. In such cases, the commenters suggested that immediate notification of the mine foreman when a deficiency arises would be appropriate, together with maintaining the internal records of data gathered by the systems for one year.

The suggested alternative is not included in the final rule. MSHA believes that documentation that monitoring system data is being reviewed is necessary to provide reasonable assurance that mine management is aware, on a timely basis, of the operating condition of the fan being monitored. However, to reduce the burden of this requirement, the final rule in paragraph (f)(2) does permit the electronic certification of the review of the data generated by a fan monitoring system. As with electronically kept records, the rule would require that the electronic certification include handwritten initials and dates. A discussion of comments concerning the use of computers to maintain records can be found in the General Discussion of this preamble.

Paragraph (g)(1) of § 75.312 requires that by the end of the shift on which the examination is made, persons making main mine fan examinations must record all uncorrected defects found during the examination that may affect the operation of the fan. The rule also specifies that records be maintained in a book that is secure and not susceptible

to alteration, or electronically in such a manner as to be secure and not susceptible to alteration. The proposal would have required all defects found during the main mine fan examination that may affect the operation of the fan to be recorded whether corrected or uncorrected.

Some commenters objected to recording defects that ''may'' affect the operation of the main mine fan, and suggested only defects that do affect the operation of the main mine fan and that are not corrected by the end of the shift, need to be recorded.

Some commenters asserted that a record of ''all'' defects should be required in order to identify recurring problems that may lead to bigger problems. These commenters interpreted the proposal to require such a record. The final rule is intended to address problems found during fan examinations that may indicate more serious defects and ultimately lead to a fan failure and that cannot be corrected by the end of the shift. The objective is to record defects of a nature and seriousness that could result in a fan failure, but not to record defects that are so minor that it would be unreasonable to expect fan failure to result. Another commenter stated that recording all defects that may affect fan operation would result in excessive paperwork of little value. This commenter also suggested that if mine ventilation does become ineffective, the workers are to be withdrawn from the mine. MSHA is sensitive to concerns about recordkeeping. Therefore, the final rule requires that all uncorrected defects which are found during the examination that may affect fan operation be recorded. In this manner, miners on the oncoming shift are aware of problems with the fan that potentially could impact underground ventilation.

Commenters supported the use of electronic media as a substitute for specific types of record books. Commenters pointed out that almost all such systems incorporate recordkeeping functions and that significant variances from the norm are easily noted. They concluded that the computer monitoring systems provide superior protection for the miners. The final rule permits, in paragraph (g)(1), the use of electronically stored records for main mine fan examinations provided the records are secure, are able to capture the information and signatures required, and are accessible to the representative of the miners and the representatives of the Secretary.

As with other records required by this rule, paragraphs (g)(2) and (g)(3) require that records required by § 75.312 must be made in books that are secure and not susceptible to alteration, or electronically in such a manner as to be secure and not susceptible to alteration. A detailed discussion of record books and the use of computers to maintain records can be found in the General Discussion of this preamble.

Paragraph (g)(2) of the existing rule requires that at mines permitted to shut down main mine fans under § 75.311, if a pressure recording device is not used, a record shall be made, in a book maintained for that purpose, of the time and fan pressure immediately before the fan is stopped, and after the fan is restarted and the fan pressure stabilizes. The final rule does not retain this requirement in light of the new requirement of § 75.310(a)(4) that all main mine fans be provided with a pressure recording device or an option of the use of a fan monitoring system. This new requirement eliminates the need for an additional record of the time and fan pressure made immediately before the fan is stopped and after the fan is restarted and the fan pressure stabilizes. This information is obtained from the pressure recording chart, which records the pressure continuously and automatically, thus maintaining the protection afforded the miners.

Paragraph (h) of the final rule requires that the records required by § 75.312 be maintained at a surface location at the mine for one year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments were generally favorable on this proposal. A discussion of comments concerning the use of computers to maintain records can be found in the General Discussion of this preamble.

As with the other provisions of the final rule allowing electronic certification or recordkeeping, sufficient protections have been included so that there is no reduction in protection from the existing standards.

Section 75.313 Main Mine Fan Stoppage With Persons Underground

Section 75.313 was stayed by MSHA as explained in the introductory section of this preamble. Generally, this standard is concerned with protecting miners from the danger introduced when the main mine fan stops, such as when there is a loss of power. Under these circumstances, mine ventilation is interrupted, permitting gases such as methane to accumulate. These conditions can lead to an explosion ignited by electric circuits or the operation of equipment.

Paragraph (a)(3) of the final rule requires that if a main mine fan stops, everyone shall be withdrawn from the working sections and from areas where mechanized mining equipment is being installed or removed. The language of the final rule is identical to the wording of stayed § 75.313 (a)(3). An in-depth discussion of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

The final rule revises paragraphs (c)(2), (c)(3), (d)(1)(i) and, (d)(1)(ii) of the stayed standard. Paragraphs (c)(2) and (c)(3) require that when a main mine fan stops with persons underground, the underground electric power circuits shall be deenergized and mechanized equipment shall be shut off. These rules further recognize an exception to facilitate miners' evacuation from the mine. The exception temporarily permits some circuits to remain energized and some mechanized equipment to not be shut off, provided these circuits and mechanized equipment are necessary to withdraw persons from the mine and are located in areas where methane is not likely to migrate to or accumulate. These circuits must be deenergized and the mechanized equipment must be shut off as persons are withdrawn. The final rule differs from the stayed standard by limiting the exception permitting the use of these circuits or equipment to areas where methane is not likely to migrate to or accumulate.

Paragraph (d)(1)(i) requires that when a fan stoppage lasts for more than 15 minutes a preshift-type examination must be conducted before persons other than designated examiners, are permitted to enter any underground area of the mine. Examiners are permitted to re-enter the underground area of the mine from which miners have been withdrawn only after the fan has operated for at least 15 minutes unless a longer period of time is specified in the mine ventilation plan. Paragraph (d)(1)(ii) requires that when a fan stoppage lasts for more than 15 minutes, underground power circuits are not to be energized and nonpermissible mechanized equipment is not to be started until a preshift-type examination is conducted, except that designated certified examiners may use nonpermissible transportation equipment in intake airways to facilitate the conduct of the required examination.

Some commenters suggested that actions following fan stoppages are best handled on a mine-by-mine basis through a plan approval process. Along

these lines, commenters suggested that the fan stoppage plan approval process previously used by MSHA should be used with only minor modification to assure that plans do not become standardized, that is, model the rule on a past standard with criteria for approval of fan stoppage plans. Other commenters, while supporting the concept of fan stoppage plans, proposed to tie the submission and approval of such plans to total mine ventilation surveys and computer simulations conducted by the operator every three months. According to one commenter the data provided by these surveys would be used to determine the adequacy of a fan stoppage plan.

The final rule does not adopt the suggestions of the commenters for mine fan stoppage plans. One objective in this rulemaking is to reduce the need for paperwork, such as plans, where reasonable, uniform requirements can be developed. The final rule establishes the general requirement that after a fan stoppage lasting more than 15 minutes, mine power and equipment is to be shut down. However, experience shows that using transportation equipment to facilitate mine evacuation is often necessary, provided this is done where gas is not likely to accumulate, and circuits are deenergized on the way out of the mine.

Some commenters suggested that the requirements in paragraphs (c)(2) and (c)(3) limiting the use of transportation equipment to areas and haulageways ''where methane is not likely to migrate to or accumulate'' are inconsistent with certain state laws. As support for this assertion, the commenters gave the example of the state of Illinois' requirements for evacuating mines following an interruption in ventilation, which does not expressly recognize limited use of power and equipment to facilitate evacuation. State mine safety laws, including Illinois', are similar to the final rule provisions for evacuation after a mine fan stoppage. As a general rule, state mine safety regulations that are more stringent than MSHA standards are not considered to be in conflict with federal regulations, and the more stringent safety requirement applies. In this case, if the Illinois regulation would not permit temporary use of power and equipment to facilitate evacuation, then the state law would not be inconsistent with MSHA.

Several commenters objected to the wording, ''where methane is not likely to migrate to or accumulate,'' in paragraphs (c)(2) and (c)(3), as being vague. Other commenters stated that the rule's requirement was simply good practice that would be heeded by prudent mine managers. MSHA agrees that the terms and objectives of the final rule are understood in the mining community, and believes that the determination of whether methane may migrate from adjacent areas and enter travelways and haulageways used by miners during withdrawal should be made on a mine-by-mine basis. Therefore, the final rule retains the exception that power circuits may remain energized and mechanized equipment may be operated only if located in areas where methane is not likely to migrate to or accumulate.

Some commenters stated that history does not support the need for the requirements of paragraphs (c)(2) and (c)(3). Mine fan stoppages unquestionably result in the existence of unventilated areas and may result in highly hazardous methane accumulations. Although there have been a limited number of ignitions/explosions directly attributable to the operation of transportation equipment during a fan stoppage, the true measure of the potential hazard addressed by this standard can be seen in the ignitions and explosions that were the result of the operation of transportation equipment in unventilated areas. Examples of such types of accidents include: The 1972 Itmann No. 3 explosion, in which 5 miners died; the 1976 Scotia Mine explosion, in which 15 miners died; the 1982 Virginia Pocahontas No. 6 Mine explosion in which 1 miner was injured; the 1983 McClure No. 1 Mine explosion, in which 7 miners died; the 1983 Homer City Mine explosion in which a mine examiner was killed; the 1983 Greenwich Collieries No. 1 Mine explosion in which 3 miners were killed and 4 miners were injured and; the 1993 explosion at the Buck Mountain No. 2 Mine in which 3 miners were injured. Given this history of explosions, it would not be prudent to permit electric circuits to remain energized and mechanized equipment to be operated in areas or haulageways where methane is likely to migrate to or accumulate during a fan stoppage.

One commenter stated that the in-mine test necessary to determine the likelihood of methane migration could only be done with the fan stopped. The commenter questioned whether miners would be permitted underground during the tests. To the extent the tests require the main mine fan to be turned off, persons would be allowed underground to evaluate the effect of the fan stoppage or restart.

Paragraphs (d)(1)(i) and (ii) address safety precautions for reentering the mine after ventilation is restored. Key objectives of these standards are the protection of the examiners and the safety of miners returning to work.

As proposed, paragraph (d)(1)(i) would have required that when a fan stoppage lasts for more than 15 minutes a preshift- type examination be conducted covering the requirements of § 75.360(b) through (e) before persons, other than designated examiners, enter any underground area of the mine. Commenters suggested that to provide the level of protection desired, a complete preshift examination, including the certification and recordkeeping requirements of § 75.360(f) through (g), should be required. Commenters pointed to the need for miners reentering evacuated areas to be able to determine if the area had been examined and urged that the final rule require the examiner to certify by initial, date and time the areas examined.

MSHA agrees that clear notice to miners about which areas have been examined is necessary and consistent with the objectives of the rule. The final rule, therefore, adopts the proposal. A record of the hazardous conditions found by examiners is required under § 75.363 of the final rule. This record serves the purpose of providing mine management with the information necessary relative to the existence and correction of hazardous conditions in the mine. The final rule incorporates these requirements by specifying that the scope of the examination be conducted as described in § 75.360(b) through (e).

Under paragraph (d)(1)(i) no one other than designated certified examiners would re-enter any underground area of the mine until the entire examination is completed. Commenters suggested that paragraph (d)(1)(i) be revised to permit partial examinations following fan stoppages and restarts under certain conditions. Under this suggested approach, the examination would focus on the effectiveness of the mine's ventilation system and methane accumulations in travelways, work places or other areas where miners will work following the interruption of ventilation. One commenter further suggested that an exception to this examination be provided for noncoal producing shifts, where persons are to work in the shaft, slope, drift, or on the immediate shaft or slope bottom area. The commenter suggested the examination following a fan stoppage could be limited to this area.

The final rule does not adopt this approach. Limiting the scope of examinations following an interruption in mine ventilation to general

ventilation effectiveness and methane accumulation would not focus on likely areas of concern. For example, no examination for hazards would be required, and no air measurements to determine if the air is moving in its proper direction and at its normal volume would be required. As to the area of the mine required to be examined, only those places where miners will return to work and the route of travel used to reach these places must be examined. Thus, the final rule is sufficiently flexible to meet the commenter's concerns about non- coal producing shifts.

A question arose during public meetings as to the meaning of the term on-coming shift in § 75.360 when applied to § 75.313. For the purposes of § 75.313(d)(1)(i) and (ii) the term ''persons on the on-coming shift'' is interpreted as meaning persons on the shift on which the fan is restarted. If a fan outage extends from one shift into another, a preshift examination as required by § 75.360 must be completed before any person, except certified examiners designated to conduct the examination, enters the mine.

Commenters also suggested that the final rule specify a minimum time for the fan to run before examiners re-enter the mine so that examiners are not unduly exposed to danger. Several commenters observed that this is a general practice in the industry.

MSHA agrees that an important measure of safety is gained by allowing the mine fan to run sufficiently long to begin reventilating the mine before anyone enters. The final rule, therefore, provides designated certified examiners shall enter the underground area of the mine from which miners have been withdrawn only after the fan has operated for at least 15 minutes unless a longer period of time is specified in the approved mine ventilation plan. The 15 minute provision will permit re-ventilation of entries in which examiners will travel to take place and the examiners will then be traveling into the mine in fresh air.

Proposed paragraph (d)(1)(ii) would have required that when a fan stoppage lasts more than 15 minutes underground power circuits are not to be energized and nonpermissible equipment is not to be started until a preshift-type examination is completed. Commenters objected to the proposal for various reasons. One commenter suggested that before power is permitted to be energized a complete ventilation survey should be required. Other commenters focused on the practical considerations involved in conducting examinations and urged that use of nonpermissible equipment for the transportation of examiners be permitted.

As revised, paragraph (d)(1)(i) requires that the main fan when restarted run for at least 15 minutes so that restoration of mine ventilation is underway before anyone enters the mine. Once this is accomplished, electrical circuits in shafts and slopes can be energized safely as these areas are the first places to be reventilated by fresh air. Accordingly, the final rule permits these circuits to be re-energized after the mine fan has run for at least 15 minutes.

The final rule also permits examiners to use nonpermissible equipment for transportation during the examination. The proposal would have prohibited this practice. Some commenters supported the proposed prohibition citing two mining accidents involving nonpermissible equipment in unventilated areas. Other commenters objected to the proposal not to allow the use of nonpermissible equipment to facilitate examinations following the restart of a main mine fan. These commenters stated that travelways and equipment roadways can be examined and tested for the presence of methane, the results of the examination called out, and typical nonpermissible transportation equipment placed into operation to expedite the examination of the mine.

After considering all of the comments, MSHA has revised the proposal and the final rule permits the use of nonpermissible transportation equipment, in intake airways, to facilitate making the examinations after an interruption in mine ventilation. Using nonpermissible equipment in this fashion, in nonventilated areas, has been a demonstrably safe practice for many years in the industry. In addition, the requirement of running the fan for 15 minutes before reentering the mine, together with keeping the transportation equipment in the intake airways where the main ventilating current travels first, provides the desired level of safety.

Under proposed paragraph (d)(2), if ventilation was restored to the mine before miners reached the surface, all miners would have been required to continue traveling to the surface. As proposed, designated certified examiners would have been permitted to remain underground for the purpose of beginning the required examination. The final rule does not adopt the proposal and retains the language of the existing standard.

While supporting the requirement that miners continue to the surface after a fan is restarted, some commenters objected to permitting certified persons to remain underground. These commenters also took the position that once a fan has been off for more than 15 minutes, all efforts to restart the fan should be suspended, unless it is known that it is safe to restart the fan. Other commenters expressed significantly different views on both issues. A number of commenters supported restarting the fan as soon as possible because the longer it is off, the greater the potential hazard. MSHA concurs with this reasoning and the final rule adopts this approach.

On the issue of requiring the evacuation to continue once it has begun until the fan is restarted, even when ventilation is restored, a number of commenters objected that such a requirement would result in unnecessary delays and may result in additional safety risks. One commenter stated that the proposal would not allow for the variables that exist from mine to mine. Several commenters suggested that if the operator has reason to believe that the time frame of the fan stoppage would be less than the travel time or equivalent, the dangers of traveling outby into possible pockets of dangerous gas buildup (or other travel hazards) far outweigh the dangers of staying on the section in intake air back from the face. This would also allow the miners to remain on the section and proceed to the working places after the fan has restarted and the working places have been examined by a certified person.

MSHA disagrees with this position. In some mines, the time to travel from the outside to the working sections can approach 1 hour. Following the approach suggested, miners would remain on the section in an unventilated mine for up to 1 hour. If at the end of this time ventilation is still not restored, it is unclear whether the miners then proceed to the surface, traveling through the same area the commenter suggested might be hazardous some 45 minutes before.

The commenters stated further that, ''Forcing miners to walk out of the mine could take hours and unnecessarily delay the restoration of ventilation and resumption of operations.'' While there may be instances where the time required to withdraw miners is increased, the requirements in paragraphs (c)(2) and (c)(3) have no impact on the restoration of ventilation. In fact, MSHA's position is that ventilation should be restored as soon as possible following a fan stoppage.

Lastly, a number of commenters suggested that when ventilation is restored during evacuation, miners should be permitted to remain where

they are and return to working areas after an examination of inby areas is completed. These commenters stated that no additional measure of safety is gained by requiring miners to continue to the surface if ventilation has been restored and the area in which the miners are located is free of hazards. MSHA agrees and has retained the language of the existing rule. By retaining the existing language, the general practice of miners stopping their evacuation and waiting for examiners to complete their work will continue. Under this approach, miners remain in a safe location while ventilation of the mine is restored. They do not return to any area of the mine until it has been determined to be safe. The final rule does not prevent mine operators from having miners continue to the surface if they so choose. Regardless of whether miners remain where they are or continue to the surface, paragraph (d)(1)(i) of the final rule requires that the fan operate for at least 15 minutes before the examination of the areas from which miners have withdrawn is examined.

Section 75.320 Air Quality Detectors and Measurement Devices

Section 75.320 establishes the standards for the devices relied upon to test for the presence of methane and other dangerous gases that can accumulate in a mine. It generally requires that these devices be approved and maintained in permissible and proper operating condition.

The final rule adds a new paragraph (e). It requires that maintenance of instruments required by paragraphs (a) through (d) of § 75.320 to detect and measure air quality be done by a trained person. The final rule does not include the proposal that before each shift care shall be taken to assure the permissible condition of the air quality detectors and other measurement devices to be used during the shift. MSHA has concluded that this requirement would have been redundant with paragraph (a) and is unnecessary. The final rule permits an operator to send instruments to a repair facility or to the manufacturer for regular servicing. Commenters at the informational meetings and in later discussions on the existing rule stated that maintenance by trained persons should be specified and that requiring only that air quality detectors and other measurement devices be maintained in permissible condition would not be sufficient. They stated that without a requirement for maintenance to be done by a trained person, similar to that which existed in the previous standard, a person with less than the necessary understanding of the instrument and the permissibility requirements might be assigned the task.

Several commenters suggested that the requirements of paragraph (e) are redundant with general requirements found elsewhere in the standards and are unnecessary. Other commenters felt that the current performance standard is adequate, but that the meaning of ''assure'' is unclear. Still other commenters indicated that the assurance of permissibility is properly the responsibility of the user. One commenter noted that the instruments are intrinsically safe and that the manufacturer's instructions are sufficient. MSHA agrees that the general requirement under paragraph (a), together with requiring trained persons, is adequate.

Another commenter suggested that a formal written maintenance program be required. Under this suggestion, the program would be subject to MSHA approval and would include records of all maintenance and calibrations to be made by the end of the shift. This commenter also suggested that existing paragraph (a) be revised to provide for more frequent calibration by inserting the phrase ''* * * or more often if necessary * * *.'' This suggestion has not been adopted since compliance with the proper operating and permissibility provisions of paragraph (a) would result in more frequent calibration, if necessary. MSHA notes that under the previous standard, there was no written maintenance program required nor were records required. MSHA believes that experience under both the previous and existing standards demonstrates that, with the addition of paragraph (e), maintenance and calibration is appropriately addressed in the final rule and safety is not reduced.

Several commenters agreed with the proposal for a ''trained'' person to maintain air quality detectors and measurement devices. These commenters suggested that the trained person be defined as a person designated by the operator who has received training through experience in maintenance of the instrument, has been trained by an experienced person, or one who has received training by or through the instrument manufacturer. MSHA has not adopted this suggestion since the operator should have some flexibility as to the mode of training. The requirement that the person performing the maintenance must be trained is intended to mean that the person be capable of doing the required maintenance, not that they receive a specific course of instruction in what to do.

Commenters suggested that maintenance and calibration requirements should parallel those proposed under § 75.342 for machine-mounted methane monitors. They suggested that, because the detectors and monitors perform similar functions, the requirements should be similar. The final rule does not adopt this suggestion. The methane monitoring instruments under this standard and those governed by § 75.342 are subject to different mining conditions. For example, machine-mounted monitors must be calibrated and maintained underground, on the equipment on which they are installed and on working sections. This calibration must also be scheduled within production timetables. Handheld detectors and measurement devices, however, are removed from the mine and are maintained and calibrated in surface environments. Calibration and maintenance of handheld detectors is usually done during shifts when the instruments are rotated out of service. Thus machine-mounted monitors are calibrated and maintained under more strenuous conditions than handheld detectors.

One commenter suggested that written records of all maintenance and calibration should be required. The commenter further suggested that: Each operator submit a written maintenance program to MSHA for approval and provide a copy to the miner's representative; the written program specify training to be provided; records be completed by the person performing maintenance and be countersigned by the mine foreman within 24 hours; and that records be maintained for one year and be made available to MSHA and the representative of the miners. These additional requirements were not included in the proposal and are not adopted in the final rule. The requirements contained in the final rule adequately address and are appropriately related to the concerns relative to maintenance, calibration, permissibility, and the general condition of air quality detectors and measurement devices.

Section 75.321 Air Quality

The primary function of a mine ventilation system is twofold, to remove hazardous gases such as methane, and to provide miners with an respirable environment in areas where they are required to work or travel. As discussed in the introductory section of this preamble, § 75.321 of the existing standard was stayed by the United States Court of Appeals for the District of Columbia Circuit as it pertains to bleeder entries. The final rule, in

§ 75.321, addresses acceptable levels of oxygen and carbon dioxide in areas of a mine, including areas of a bleeder entry, where persons are required to work or travel.

Paragraph (a)(1) continues a basic air quality requirement that has been in place since 1970 that air in areas where persons work or travel contain at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide, and the volume and velocity of the air current in these areas be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dusts, smoke, and fumes. Paragraph (a)(2) applies the same requirement for oxygen, 19.5 percent, for the air in areas of bleeder entries and worked-out areas where persons work or travel. The final rule does not require the carbon dioxide level of 0.5 percent to be applied to bleeder entries and worked-out areas. Rather paragraph (a)(2) requires that the carbon dioxide levels in the air in bleeder entries and worked-out areas where persons work or travel not exceed 0.5 percent time-weighted average (TWA) and 3.0 percent short-term exposure limit (STEL).

MSHA interpreted former § 75.301 to require at least 19.5 percent oxygen and no greater than 0.5 percent carbon dioxide in bleeder systems where persons work or travel. It was MSHA's intent that existing § 75.321 would necessitate compliance with these levels where persons would be exposed in bleeder entries and in worked-out areas. However, the application of this provision to bleeders and worked-out areas was stayed by the United States Court of Appeals pending the outcome of litigation addressing the promulgation of the existing rule. MSHA continues to believe that providing necessary air quality is essential to protect miners and examiners whenever they work or travel in bleeder entries and worked-out areas. Therefore, the final rule includes a new provision specifying that the air in bleeder entries and worked-out areas where persons work or travel contain at least 19.5 percent oxygen, and that carbon dioxide not exceed 0.5 percent TWA and 3.0 percent STEL. A TWA is the time-weighted average concentration for a normal 8-hour workday and a 40-hour workweek. A STEL is the maximum time-weighted average concentration to which miners can be exposed for a continuous period of up to 15 minutes. Commenters noted an error in the preamble to the proposal with respect to the time an individual can be exposed to concentrations between the TWA and the STEL. MSHA intends to apply TWA and STEL levels in a manner consistent with the Air Quality rulemaking. The levels for carbon dioxide in the final rule for areas where persons work or travel in bleeder entries and worked-out areas are identical to the levels contained in MSHA's proposed Air Quality standards for coal and metal and nonmetal mines and the 1992 Threshold Limit Values (TLVs) as specified by the American Conference of Governmental Industrial Hygienists (ACGIH).

Some commenters suggested that other changes be included in the final rule. First, they recommended that the permissible minimum oxygen level for bleeders and worked-out areas be lowered from 19.5 percent to 18 percent. Second, they suggested that the requirements that apply to bleeders and worked-out areas be expanded to include airways associated with bleederless mining areas. The rationale given for this second recommendation was that the conditions in these airways are similar to bleeders. In light of the ongoing Air Quality rulemaking, MSHA is not at this time clarifying existing Air Quality standards except those for worked-out areas and bleeder entries.

Commenters for the most part agreed with the change relative to carbon dioxide although one commenter indicated that there was no need for any standard. Bleeder entries and worked-out areas are required to be traveled or evaluated at least weekly. Generally, this is done by a person traveling alone who is often required to be in the bleeder entries or worked-out areas for an extended period. The purpose of this standard is to protect miners, not to regulate air quality where persons are not exposed. Therefore, if examinations are performed remotely or if persons making the examination can otherwise remain in air that meets the requirements of the standard, oxygen and carbon dioxide levels at bleeder connectors and bleeder evaluation points would not have to meet the concentrations required by the final rule.

According to the National Institute for Occupational Safety and Health (NIOSH) of the U.S. Department of Health and Human Services (NIOSH Respirator Decision Logic, May 1987), 19.5 percent oxygen provides an adequate amount of oxygen for most work assignments and incorporates a safety factor. Also according to NIOSH, the safety factor is needed because oxygen-deficient atmospheres offer little warning of danger. In the NIOSH publication, ''A Guide to Safety in Confined Spaces,'' (page 4), a chart is presented that indicates that 19.5 percent oxygen is the minimum level for safe entry into an area, and that at a level of 16 percent, judgement and breathing are impaired. The American National Standards Institute (ANSI), in ANSI Z88.2–1992, ''American National Standard for Respiratory Protection'' recognizes that at 16 percent oxygen there is an impairment in the ability to think and pay attention, and a reduction in coordination. ANSI recognizes that at 19 percent oxygen there are some adverse physiological effects.

The need for regulating the oxygen level where persons work or travel in bleeder entries is illustrated by two mining accidents. One of these accidents resulted in the death of a mine examiner and the second resulted in the near death of two individuals, one of whom was a mine examiner. Mine examiners are, through training and experience, the individuals best able to identify the hazards associated with irrespirable atmospheres. The first accident occurred at the Arclar Mine in Equality, Illinois in 1989. Prior to implementation of the existing standard, a mine examiner entered a worked-out area that was posted with a danger sign and was asphyxiated. Under the existing regulation, ventilation or sealing of this area, rather than posting, would be required. Because the area was not sealed, the existing regulation would require the area to be examined during the weekly examination. The final rule would require that the route of travel for the examiner contain at least 19.5 percent oxygen. Had the final rule been in place when the examiner entered the worked-out area, the accident may have been avoided.

The second accident, although not in a bleeder entry or worked-out area, is illustrative of what can happen when individuals, including mine examiners, are subjected to oxygen deficient air. In 1983 at the Bird No. 3 Mine in Riverside, Pennsylvania, an assistant mine foreman, a certified person, entered the mine for the purpose of conducting an examination. After traveling approximately 1100 feet, the examiner became dizzy, noticed that his flame safety lamp had extinguished and withdrew approximately 200 feet where he sat down and apparently became unconscious. A second individual upon entering the area in search of the examiner also became dizzy but was able to withdraw to a location that was not oxygen deficient. When the mine examiner regained consciousness, his cap lamp battery had discharged and he traveled in total darkness until he encountered a mine rescue team. Air samples collected in the area where the mine examiner first became dizzy

indicated an oxygen level of about 16.8 percent, while other samples collected nearby indicated oxygen concentrations of nearly 20 percent.

Because mine examiners are required to work or travel in areas where oxygen-deficient air could occur without warning, and they normally travel and work alone, there must be a requirement that provides them the protection necessary for the performance of their duties under these conditions. It is important that the level for oxygen be established above that identified as resulting in impaired judgement because it is essential that individuals traveling in these areas remain highly alert. The hazards that can exist in bleeder entries and worked-out areas include elevated methane levels, poor footing, loose and unstable roof, and water accumulations. For this reason, the final rule adopts a minimum level of oxygen of 19.5 percent as recommended by NIOSH.

MSHA is also concerned with the effects of other gases often found in bleeder entries. Section 75.322 of the existing regulation limits the concentration of noxious or poisonous gases to the current (1971) TLV's as adopted and applied by the ACGIH. Section 75.322 specifically excludes carbon dioxide since it is covered by § 75.321. However, so the mining public will clearly understand the application of the regulation, the final rule establishes a separate standard for carbon dioxide levels for areas where persons work or travel in bleeder entries and worked-out areas. The levels set by the final rule, 0.5 percent TWA and 3.0 percent STEL, when considered in conjunction with the requirements of § 75.322 and the requirement for oxygen, will provide persons working or traveling in these areas with a safe and healthful working environment. MSHA recognizes that the effects of carbon dioxide are both chronic and acute and, therefore, sets both a TWA and a STEL. NIOSH, in recommending a standard for carbon dioxide, also recognized this and recommended a similar approach. The NIOSH recommendation, made in a Criteria Document published in 1976, proposed a TWA concentration of 1.0 percent and a ceiling value of 3.0 percent not to exceed 10 minutes. In making this recommendation, NIOSH recognized that there are additive stress effects of increased carbon dioxide concentrations and exercise. As support for this, the NIOSH document cites research that showed that healthy, trained subjects exposed to 2.8 to 5.2 percent carbon dioxide at maximum exercise levels experienced respiratory difficulty, impaired vision, severe headache, and mental confusion; three subjects collapsed.

During rulemaking on the proposed air quality standard, NIOSH recommended a 0.5 percent TWA and a 3.0 percent STEL. NIOSH made a similar recommendation to the Occupational Safety and Health Administration during that Agency's permissible exposure limit rulemaking. Given the work environment in bleeder entries and worked-out areas, as described earlier, MSHA believes that the regulatory approach to bleeders and worked-out areas provided by the final rule is necessary and appropriate. In addition to examiners, other miners may be required to work in the bleeder entries and worked-out areas, performing duties such as installing roof support, pumping water, recovering materials or adjusting ventilation. The levels established in the final rule would provide these miners with the necessary protection.

Section 75.323 Actions for Excessive Methane

Section 75.323 establishes the actions that must be taken when methane reaches certain levels. Methane is the most dangerous gas encountered by miners working underground. When the level of methane reaches 5.0 percent it is explosive. Section 75.323 generally establishes action levels below this lower explosive limit to permit appropriate actions to be taken by mine operators in order to prevent an explosion.

The final rule adopts the proposal for § 75.323. In doing so, it revises paragraphs (b)(1)(ii), (c)(1), and (d)(2)(i) of the existing standard. The rule clarifies that corrective actions at specified methane levels must be taken ''at once'' and provides that actions for excessive methane include areas where mechanized mining equipment is being installed or removed. MSHA believes that final rule § 75.323 increases the protection afforded by the existing standard.

Initially, the need for clarification was raised during informational meetings and subsequent discussions after publication of the existing rule. As discussed below, the final rule retains the language of the proposal which is identical to the wording of the previous standard.

Some commenters indicated that delays in remedial actions to reduce methane were being experienced at some mines. These commenters attributed delays to the deletion of the phrase ''at once'' in the existing standard. These commenters also suggested that the phrase ''at once'' conveys the proper sense of urgency to correct the condition. Other commenters stated that the addition of the phrase ''at once'' does nothing to improve health or safety. MSHA has included the phrase in the final rule for clarity.

Methane poses a significant hazard to miners when it is permitted to accumulate without corrective action being taken quickly. MSHA has always intended that corrective changes be made at once. The final rule revises paragraphs (b)(1)(ii), (c)(1) and (d)(2)(i) to require that these changes be made ''at once,'' the phrase used in former §§ 75.308 and 75.309.

Some commenters stated that the proposal, if literally enforced, would necessitate changes to be made before the cause or source of the increase in methane can be investigated. Other commenters stated that approvals must be obtained for many ventilation changes and that some changes require extended periods of time to complete. Operators may take those actions necessary to abate imminent dangers or hazardous conditions, or to safeguard persons and equipment. A part of this action would be a determination of the cause of the problem. MSHA knows of no case where an operator has been prohibited from a necessary correction for a methane problem pending a plan approval. However, in cases where intentional changes are made which could materially affect the safety and health of miners, approval is required before resumption of normal work if the changes affect the information approved in the mine ventilation plan. MSHA recognizes that some ventilation changes take time to accomplish and interprets the phrase ''at once'' as meaning that the work of making the necessary change to reduce methane levels begins immediately.

One commenter questioned how the phrase ''at once'' would apply to a methane feeder which is encountered despite an appropriate and well thought out ventilation change. MSHA recognizes that methane feeders may be encountered unexpectedly. As long as a mine operators takes action as required by the standard, they will be in compliance.

One commenter suggested that some MSHA personnel were improperly interpreting methane excursions above 1.0 percent to be violations of the standard. The commenter seemed to suggest the regulations should provide that the actions specified in § 75.323 for excessive methane do not apply to concentrations detected on machine-mounted methane monitors. Other commenters indicated that the standard requires unnecessary ventilation

changes in response to instantaneous increases caused by excessive methane liberation. MSHA recognizes that instantaneous methane monitor readings for machine mounted monitors may occasionally reach or exceed 1.0 percent. Usually, these are short-lived and the monitor reading quickly falls below 1.0 percent, even before the machine operator can react. However, consistent monitor readings of 1.0 percent or more indicate a problem and should cause appropriate changes and adjustments. Repeated short duration increases above 1.0 per cent should also be cause for concern and may necessitate changes or adjustments to ventilation.

With respect to paragraphs (b)(1), (b)(2), and (c)(1) some commenters stated that the mere presence of methane does not constitute a violation of a mandatory health and safety standard. MSHA agrees. In this context, one commenter suggested replacing the word ''present'' with ''detected.'' The commenter continued that an operator cannot possibly correct a methane problem until it has been detected, that the rule should reflect realistic expectations, and that the current term ''present'' is meaningless. MSHA agrees that a methane problem cannot be corrected unless it has been detected and that the mere presence of methane does not constitute a violation. Only the failure to properly respond once being made aware of the presence of methane in excess of allowable levels is a violation. The standard requires that an operator properly conduct an examination; and if methane over 1.0 percent or 1.5 percent is found, as applicable, corrective action must be taken at once.

When 1.0 percent or more methane is present in a working place, an intake air course, or an area where mechanized mining equipment is being installed or removed, paragraph (b)(1)(i) of the final rule requires all electrical, diesel, and battery- powered equipment in the affected working place, intake air course, or other area, except for intrinsically safe AMS, to be deenergized or shut off. Deenergizing or shutting off of this equipment protects miners by preventing this equipment from providing ignition sources.

One commenter suggested that non-intrinsically safe AMS equipment should be permitted to run under battery power when 1.0 percent or more methane is encountered. The commenter stated that the benefit derived through the system's operation outweighs the hazard of the non-intrinsically safe system. The commenter continued that since the batteries will deplete quickly, little hazard would result, or in the alternative, each battery outstation could be monitored for methane and automatically trip at some set methane level. The final rule does not include this suggestion. Where excessive methane concentrations necessitate that power be deenergized, information from continued operation of the non-intrinsically safe system would not outweigh the potential ignition hazard. To permit operation of a non-intrinsically safe system in areas known to contain excessive levels of methane would be a departure from accepted, effective, and long standing safety practice.

Several commenters objected to the requirement in paragraph (b)(1)(iii) that prohibits any work in the affected area until the methane is reduced to less than 1.0 percent. Commenters questioned whether the standard would prohibit an operator from taking steps to reduce the methane. The language must be given a reasonable interpretation and should be considered in context of the preceding requirement in paragraph (ii) that ''changes or adjustments shall be made at once * * *''

These requirements are virtually identical to those found in the previous standard which was in effect for over 20 years. MSHA is unaware of any instance where an operator was prohibited from correcting methane problems by such an application of the standard.

Some commenters suggested adding a phrase to paragraph (b)(1)(iii) to read, ''No work other than removal of the accumulation shall be permitted * * *'' Similarly, MSHA believes that the suggested change is unnecessary and has not adopted it. MSHA experience indicates that the rule is well understood and has been properly applied.

Other commenters thought that the standard, as proposed, would cause hasty, ill-advised changes to be made and would prohibit an investigation into the cause or source of the methane problem which could result in phased-in corrections. MSHA agrees that operators should seek long term solutions and should fully investigate the cause or source of methane accumulations. Investigation and long term corrections are not prohibited by the rule. However, the final rule does require that certain actions be undertaken at once to correct the short term or acute safety hazards resulting from accumulations of methane.

If 1.5 percent or more of methane is present in a working place, an intake air course, or an area where mechanized mining equipment is being installed or removed, paragraph (b)(2) of the final rule requires persons to be withdrawn from the affected area. The presence of methane in these areas can pose a significant risk to miners and therefore their withdrawal from the affected area is essential to their safety. Paragraph (b)(2) also requires that all electric power to equipment in affected areas be disconnected at the power source. This prevents accidental energization of equipment and removes power from cables and circuits which may also be ignition sources. No other work is permitted in the affected area until the concentration of methane is less than 1.0 percent. A conforming change is also made to paragraph (b)(2) by adding ''mechanized'' before mining equipment for consistency with other provisions of the rule.

Comments were received which objected to the (b)(2)(ii) requirement that except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source. Some commenters suggested that this equipment should be simply ''deenergized.'' These commenters stated that there was no need to disconnect the power source, that this could require belt drives, pumps, etc. to be physically disconnected where permanent connections have been made, which could result in a major unnecessary operation. MSHA has not adopted this suggested revision. MSHA issues numerous citations and orders for damaged power cables, trailing cables, and splices where the conductors are badly damaged or exposed. Each of these citations and orders represents the presence of a potential ignition source. Power cables would remain energized under these conditions as would be the case if the commenters' suggestion were adopted.

There are several aspects of § 75.323 which were not proposed for revision, but for which comments were received. Comments were received relative to the 1.0 percent action level in intake air courses. Commenters contended that Congress established an immutable methane limitation of 0.25 percent in intakes. Commenters stated that because Congress had expressly limited intakes passing openings to abandoned areas to 0.25 percent methane, that implicitly, all intakes were limited to 0.25 percent methane. However, the commenter then suggested adopting an intake action level for methane of 0.5 percent. MSHA notes that the methane levels were not proposed for revision and are not being revised under the final rule. The commenters, however, should refer to a discussion of this issue included in the

preamble to the existing rule dated May 15, 1992.

If 1.5 percent or more methane is present in return air, paragraph (d)(2)(i) would require changes or adjustments be made ''at once'' to the ventilation system to reduce the concentration of methane. Because of the hazards presented by accumulations of methane, MSHA believes that changes or adjustments should be made immediately and be made independent of the mine ventilation plan in the interest of safety. MSHA recognizes that some changes take time to complete. If operators begin ''at once'' to make the necessary changes and adjustments, they will be in compliance with the standard.

MSHA received comments relative to § 75.323 which, although were outside the scope of the rulemaking, demonstrate an incorrect understanding of the existing rule. The limitations on methane content and the associated actions required when excessive methane is encountered are important components of a safety program to protect underground miners. Therefore, several of these comments will be addressed so that the mining community will better understand these standards.

First, one commenter objected to the existing requirements in § 75.323(d). The commenter incorrectly stated that paragraph (d) permits normal operations with 1.5 percent methane in working places. Methane limits in working places and intake air courses is limited by § 75.323(b). Paragraph (b) specifies actions if 1.0 percent methane is present, and withdrawal if 1.5 percent is present. Similarly, § 75.323(c) limits methane between the last working place on a working section and where that split of air meets another split of air to 1.0 percent and requires withdrawal at 1.5 percent. Paragraph (d) modifies the requirement for that portion of the return split outby the section loading point and has no effect on methane either in working places or between the last working place and the point in the return opposite the loading point.

One commenter indicated a preference for the language used in a previous MSHA regulation, § 75.308–1. The previous standard restricted the changes or adjustments to increasing the quantity or improving the distribution of air in the affected working place to an extent sufficient to reduce and maintain the methane to less than 1.0 percent. The existing rule establishes a performance standard that allows for several methods of compliance. One acceptable method of compliance is to limit the rate of production of coal to permit the existing ventilation system to maintain the level of methane below 1.0 percent. In all cases, however, increasing the quantity or distribution of air continues to be an accepted means of reducing methane levels. No safety benefit would be derived from disallowing reduced coal extraction rates as a means of maintaining methane levels under 1.0 percent.

The final rule retains the language of proposed §§ 75.323(b)(1)(i), 75.323(b)(1)(iii), and 75.323 (b)(2)(i) and (b)(2)(ii) which is identical to the wording of the existing standards. An in-depth discussion of the reproposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

Section 75.324 Intentional Changes in the Ventilation System

This section addresses the precautions that must be taken when a significant change is made to the ventilation system. MSHA did not propose any change to existing § 75.324 and is not making any revisions in the final rule.

Questions had been raised concerning the language, ''materially affect the safety or health of persons in the mine'' that appears in the existing standard. The phrase is important in that it identifies those ventilation changes that require approval of the MSHA district manager under § 75.370(c). MSHA regards it as impractical to follow a ''cookbook'' approach to identifying what will or will not require approval. Each particular circumstance is to be reviewed by the operator on its own merits. To illustrate the Agency's expectations, the following is a list of some examples of what MSHA considers intentional changes that would materially affect the safety or health of miners. These examples are not meant to include all possibilities, but are meant to provide some general guidance: adding a new shaft; bringing a new fan on line; changing the direction of air in an air course; changing the direction of air in a bleeder system; shutting down one fan in a multiple fan system; starting a new operating section with ventilating quantities redistributed from other sections of the mine; changing entries from intakes to returns and vice versa; and any change that affects the information required by § 75.371, Mine ventilation plan; contents.

Comments were specifically solicited on issues raised in the preamble discussion to the proposal. In response, written comments were received from one commenter. These comments were reinforced by several speakers at the public hearings. Other commenters indirectly referred to § 75.324 and stated that the phrase, ''materially affect the safety or health of persons in the mine'' is accepted and understood by the mining community.

One commenter suggested that the person designated by the operator to supervise ventilation changes should be a certified person that is knowledgeable of the mine's ventilation system. The results of changes to a complex ventilation system are not always easy to predict, and for that reason caution must be used when making significant changes to one air split or several air splits. The balance of splits can be affected and may result in air reversals, dead air spaces, or insufficient air flow in critical areas. For this reason, such changes must be evaluated by a certified person examining the affected areas to determine that the areas are safe before production is resumed. Therefore, the Agency believes that it is to be an unnecessary burden to also have ventilation changes supervised by a certified person. Thus, the suggestion of the commenter has not been adopted in the final rule.

This commenter also suggested that the provisions of § 75.324 should apply to all intentional changes which alter the air current in any section or area of the mine by 10 percent or more, or by 9,000 cfm or more, whichever is less and that such change be considered to affect the entire mine. The commenter recommended the miners' representative be afforded the right to accompany the certified person to evaluate the effects of the ventilation change and that a preshift examination of the mine be conducted to assure that the mine is safe before electric power is restored.

The commenter also suggested that a record be maintained of all ventilation changes to include the names of all persons involved with the change, the date and time of the change, and results and locations of air quality and quantity measurements taken both before and after the change. The commenter stated that the record should be made in an approved book within 24 hours of the change and that the record should be signed and countersigned. Finally, the commenter recommended that the mine ventilation map should be updated immediately after the ventilation change is made and that within 24 hours of the change, the updated map should be made available to the miners' representative and a copy sent to the district manager. Section 75.370(c) requires that any change to the ventilation system that alters the main

air current or any split of the main air current in a manner that could materially affect the safety or health of the miners, or any change to the information required in § 75.371 shall be provided to and approved by the district manager before implementation. The final rule requires that this information be provided to the miners' representative at least 5 days before submittal to the district manager (See § 75.370 for full discussion). MSHA believes that this provision provides necessary protection for miners.

One commenter stated that the standard is reactive and that MSHA routinely cites mine operators after a methane explosion or ignition. MSHA believes that the standard is designed to assure that operators are proactive and develop plans that prevent hazardous conditions. The Agency anticipates that with the clarification provided through this rulemaking, operators will obtain MSHA approval prior to making intentional ventilation changes that materially affect the safety and health of miners, thereby preventing potentially hazardous conditions. When questions arise as to whether an anticipated change requires prior approval, MSHA is available to provide guidance as to whether approval is necessary.

Section 75.325 Air Quantity

The quantity of air in cubic feet per minute (cfm) is an important measure of underground coal mine ventilation. It is essential for miners' health and safety that each working face be ventilated by a sufficient quantity of air to dilute, render harmless, and carry away flammable and harmful dusts and gases produced during mining. An insufficient quantity of air at a working face could permit methane to accumulate and lead to an explosion. Section 75.325 generally establishes the quantities of air that must be provided and the locations underground where these quantities must be provided.

Section 75.325(d) requires that areas where mechanized mining equipment is being installed or removed be ventilated and that the minimum quantity of air and the ventilation controls necessary to provide these quantities be specified in the approved mine ventilation plan. The final rule adds the word ''minimum'' to the phrase, ''quantity of air'' that appears in the existing standard and the proposal. The existing standard was reproposed without change. An in-depth discussion of the reproposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

Only a few comments were received that were specific to paragraph (d). One commenter discussing § 75.371(r) suggested that the quantity of air required by § 75.325(d) to be specified in the plan should represent the ''minimum'' quantity to be provided and that the location specified should be identified as typical so as to give the mine the flexibility to adapt to conditions. This comment is consistent with MSHA's intent for the proposal and helps to clarify it. Therefore, the word ''minimum'' has been inserted into the final rule in both § 75.371(r) and paragraph (d) of § 75.325. Obviously, mine operators can have air quantities which exceed the minimum specified in the mine ventilation plan. MSHA agrees conceptually with a comment that the ventilation scheme shown in the plan should be representative of the method of ventilation to be used. However, MSHA does not adopt this comment because the plan must also be specific enough so that the operator, the miners, the representative of miners, and MSHA are assured that the areas are being adequately ventilated.

Other commenters suggested that the total quantity of air to be delivered to a longwall needs to be specified in the mine ventilation plan. In support of the suggestion the commenter stated that the inclusion of the word ''total'' recognizes that some mines may use belt air at the set up or tear down phase while some intake air may be diverted to ventilate bleeders, battery chargers or compressors and, therefore, the total quantity of air being delivered to the longwall face should be the figure with which MSHA is concerned. The commenter stated further that the recommendation recognizes that conditions vary greatly from mine to mine, coal seam to coal seam, even from one longwall panel to the next panel of the same mine. The commenter added that while a specified amount of air can be delivered to a recovery face, and pressure can be placed on the gob, it is impossible to guarantee a specified volume or velocity of air at the recovery point.

MSHA agrees that the total air quantity provided to a recovery face is of importance; however, the distribution of this air is also important. The volume of air being delivered to the longwall face during equipment removal is important because of the types of activities that occur (e.g. cutting and welding and the operation in some cases of considerable numbers of diesel powered vehicles) and the fact that it is along the face that the majority of miners work and where an ignition hazard exists. It is important to know exactly how areas where mechanized equipment is being installed or removed will be ventilated. Therefore, this suggestion has not been included and the rule.

Commenters were concerned about the ventilation of a longwall face prior to the first gob fall. This type of concern should be handled through the mine ventilation plan. Paragraph (d) only deals with areas were mechanized mining equipment is being installed or removed and not where mining is in progress.

Section 75.330 Face Ventilation Control Devices

The final rule adds a new paragraph (c) adopting the proposal language. The new paragraph (c) requires that when line brattice or any other face ventilation control device is damaged to an extent that ventilation of the working face is inadequate, production activities in the working place are required to cease until necessary repairs are made and adequate ventilation is restored. MSHA notes that before issuing a citation for a violation of this provision, an inspector would normally be expected to measure the air quantity to determine whether adequate ventilation is being maintained.

Some commenters considered the proposed regulation redundant since operators must already maintain minimum air quantities at the face, thereby making repairs necessary to maintain the required quantity. Face ventilation controls are a critical feature of reliable ventilation. As such, maintaining these controls in good condition and making repairs necessary to restore ventilation is sound safety practice. To do less invites increased risk of a methane ignition and elevated respirable dust. Also on a practical level most miners on a working section do not have a means of measuring air quantities. However, miners can determine when ventilation controls are damaged appreciably and are likely to adversely affect the air quantity.

One commenter indicated that entire working sections might be shut down to repair a ventilation control at any one face with no corresponding safety benefit. The final rule provides that ''production activities in the working place shall cease'' until adequate ventilation is restored. Unless elevated methane levels or some other problem existed, the entire section would not be shut down for repair of a ventilation control.

Some commenters asserted that controls may be slightly damaged while still maintaining quantities in excess of

the requirements at the face. Similarly, commenters worried that numerous citations would be issued based solely on the appearance of the controls, even though the minimum required face air quantities are exceeded. These commenters stated that the only reliable indicator is an air measurement.

MSHA agrees that the only precise indicator of air quantity is a measurement. Accordingly, MSHA anticipates that noncompliance decisions will be based on air measurements which show ''ventilation of the working place is inadequate.'' However, ventilation controls which are in poor condition are likely to cue an inspector to conduct an air measurement.

Other commenters generally expressed the view that the requirements of § 75.330, even considering the proposed revision, are inadequate to fully address the issue of face ventilation. According to these commenters, additional requirements are needed, including: proper installation and maintenance criteria for face ventilation control devices, requirements for providing devices continuously from the last open crosscut to the working face, immediate repair of these devices if damaged by a fall or otherwise, providing sufficient space between the line curtain and the rib and maintaining the area free of obstructions, and minimizing leakage while providing installations which permit traffic to pass without adversely affecting ventilation. Further, the commenters asserted that only cumulatively can the desired result be obtained through these requirements and that additional requirements would empower individual miners to take corrective actions when needed.

Each of these suggestions is a desirable ventilation practice which MSHA supports. However, the final rule is not intended to set detailed standards for the installation of ventilation control devices. Instead, the rule addresses minimum requirements for face air quantities and requires the face ventilation system used to deliver these quantities to be maintained.

Some commenters indicated a concern about so-called ''deep-cut'' mining wherein continuous miners, by remote control, develop cuts from 25 to 60 feet inby permanent roof support. Commenters questioned the adequacy of face ventilation where ventilation controls may be 30 to 50 feet from the face. Specifically, questions were raised about: whether adequate ventilation actually reaches the face in ''deep cuts'' to dilute methane; whether more frequent air measurements are needed; whether methane checks are representative of face concentrations; maximum feasible cut depth and ventilation device distance; respirable dust in ''deep cuts;'' proper maintenance of ventilation control devices; how ventilation is maintained after the continuous miner is withdrawn from the cut; roof bolter ventilation; and differences between scrubber systems and sprayfan systems. Another commenter noted that historically most roof fall fatalities have occurred within 25 feet of the face. This commenter asserted that the deep-cut mining system helps to resolve this problem and reduce exposure. The commenter continues that to prohibit any variation from the 10 foot line curtain distance requirement would adversely affect safety of the miners working in the area.

MSHA agrees that each of these issues is important. The appropriate vehicle to address these specific concerns is the mine ventilation plan required by existing § 75.370. The mine ventilation plan provides the necessary latitude to address the diversity of mining conditions found throughout the country. Details of each system must be shown in the plan and must be specific to the conditions at each mine where such a system is employed. Also, MSHA's review and approval of mine plans includes an onsite investigation to evaluate the system and to assess the adequacy of the specified plan parameters. In addition, inspectors routinely evaluate the suitability of the mine ventilation plan during regular mine inspections.

The commenter's concerns about methane checks in ''deep cuts'' is addressed by the final rule § 75.362(d)(2) which requires that methane tests be made ''at the face.'' This new requirement will assure that measurements are taken at the location where the hazard is most likely to occur. Testimony received at the public rulemaking hearings indicated that technology exists in the form of extendable probes that can be used to take these measurements, without putting miners at additional risk from fall of ground.

Section 75.332 Working Sections and Working Places

Working sections and working places are the areas of a coal mine with the greatest amount of activity and the largest concentration of workers. They are the location of the greatest number of potential ignition sources. They therefore harbor the greatest risk of accidents such as methane ignitions and explosions and equipment fires. Section 75.332 addresses the ways these areas are ventilated to reduce the likelihood of an accident on one section impacting another section, with deadly consequences. Generally, § 75.332 provides that each of these areas must be ventilated with a separate split of fresh air that has not been used to ventilate another working area or an area where mining has ceased if this area cannot be examined. When ventilated in this manner, the products from a fire on one section will not contaminate another section and methane in worked-out areas will not be carried to working sections by the ventilating air stream.

The final rule provides that each working section and each area where mechanized mining equipment is being installed or removed, shall be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls. The final rule adopts the language of proposed § 75.332(a)(1), which is identical to existing § 75.332(a)(1). An in-depth discussion of the reproposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

Several commenters responded to § 75.332(a)(1). Some commenters suggested that the standard be revised to permit the installation of mechanized mining equipment in either the return or intake air courses of working sections provided the air had not been used to ventilate any worked-out areas, areas where pillars have been recovered, or bleeder systems. The commenters maintained that prohibiting the installation of longwall equipment on the same split of air as a developing unit delays the installation of a mining system. The commenters further observed that this mining equipment consists mainly of steel conveyor sections and roof supports that contain a 95 percent water-based hydraulic fluid which does not burn. Therefore, according to these commenters, longwall mining equipment can safely be installed on the intake side of an active mining unit and, with monitoring, in the return air course of an active mining unit.

The safety benefits of using separate splits of air to provide ventilation are well established. A primary benefit of such a provision is to protect workers down-wind from being put at risk by events up-wind from their location. Among the most serious of these risks is miners being overcome by the products of combustion or an explosion.

In Miner's Circular 50, ''Explosions and Fires in Bituminous-Coal Mines'' published by the Bureau of Mines in

1954, the authors state that when air travels a long path through a mine, it gradually becomes depleted of oxygen and may become so contaminated with other gases that it no longer is healthful, or it may accumulate enough explosive gas to present an explosion hazard. The authors go on to state that when the air is divided into several splits, each traveling a short path, better air can be furnished to each group of persons in the mine. Further, if a local explosion or fire should occur, the poisonous gases evolved may be confined to one section and the force of the explosion and the gases may kill all the persons in that particular section but may not affect other sections of the mine. According to the authors, when a mine is ventilated by a continuous current of air, the miners on the return side of an explosion or fire probably will be killed or overcome by the poisonous gases and that judicious splitting of the air is a safeguard against this eventuality.

Similarly, Stefanko states in the 1973 edition of the Society of Mining Engineers (SME) Engineering Handbook that splitting the air is recognized as being necessary for safety and presents only minimal power cost.

The commenters implied that because longwall mining equipment is largely noncombustible, this danger is minimized for workers down-wind on an active mining section. This reasoning overlooks the fact, however, that the installation of a longwall is labor-intensive, involving cutting and welding in the presence of methane and coal, as well as machinery operating under load. These conditions add contaminants to the ventilating current, and increase the possibility of a fire or explosion. Likewise, a longwall being installed on the return side of an active mining section would expose the miners doing the installation to the dust and gases, and the results of a fire or explosion, from the section. Even with monitoring, miners would be put at risk as their opportunities for escape would be limited. For these reasons, the final rule does not adopt the commenters'' suggestion.

One commenter also suggested that ''approved ventilation controls'' be required instead of specifying that overcasts, undercasts or other permanent ventilation controls be used to direct intake air. The commenter explained that this would allow operators the flexibility of submitting plans that allow the use of temporary controls in some instances.

Temporary controls to split air are not as reliable as permanent controls. The first explosion at the Scotia Mine in 1976 which killed 15 miners, was due in part to the improper use of a temporary ventilation control where a permanent control (i.e., an overcast) should have been used. More recently, the explosion that occurred during the set up of a longwall at the Golden Eagle Mine in 1991 which injured 11 miners involved the removal of two permanent ventilation controls and the replacement of these controls with temporary controls. As these and other accidents illustrate, the ventilation controls that deliver air to working areas are vitally important to miners'' safety. Therefore, the final rule requires that these controls be permanent in nature and not temporary.

Another commenter indicated that the use of temporary controls would lower worker exposure to hazards by not requiring repeated handling of permanent control materials which can be heavy. Proper handling practices and modern materials can reduce the risk of injuries associated with handling construction materials. MSHA considers these risks lower than the dangers of using temporary controls in lieu of permanent controls.

Section 75.333 Ventilation Controls

The primary means for directing air from the outside, through the mine openings, to the working areas and back to the surface is through the use of ventilation controls: either permanent controls, such as stoppings (walls), overcasts or undercasts (air bridges), and doors, or temporary controls, such as line brattice (curtains). Permanent ventilation controls are designed for long term use while temporary controls are intended for use on a short term basis. In general, § 75.333 specifies where each type of control can be used and how each permanent control is to be constructed. It is essential that ventilation controls be correctly constructed, maintained, and properly located to provide ventilation to working sections and other areas where it is needed to dilute methane, respirable coal mine dust and other contaminants, and provide miners with a safe and healthful work environment.

The final rule revises paragraphs (a), (b)(1), (b)(3), (b)(4) and (e)(1) of existing § 75.333, and adds a new paragraph (h). Revisions to paragraphs (a) and (e)(1) address the durability of stoppings, while the revisions to (b)(1), (b)(3) and (b)(4) address ventilation controls required when continuous haulage systems are used. New paragraph (h) requires all permanent ventilation controls, including seals, to be maintained to serve the purpose for which they were built.

The use of continuous haulage systems, particularly in low seam coal mines, is becoming more common. The final rule specifically addresses continuous haulage systems in paragraphs (b)(1), (b)(3) and (b)(4) of the rule and clarifies where temporary controls are an acceptable means of ventilation control when these systems are used. Continuous haulage systems utilize mobile bridge conveyors or similar mechanisms to transport coal directly from a continuous mining machine to a low profile belt. As the continuous mining machine moves from place to place, the continuous haulage system slides back and forth along a low profile conveyor belt using a ''dolly'' or other travel mechanism. The low profile conveyor belt then transports the coal to the section conveyor belt.

The existing rule permits the use of temporary ventilation controls in lieu of permanent ventilation controls to separate continuous face haulage systems from return, intake, and primary escapeway entries in rooms developed 600 feet or less from the centerline of the entry from which the rooms were developed. This practice is consistent with longstanding MSHA policy, which recognizes that these rooms are used for a short duration and the minimum air quantity must be maintained regardless of the controls used.

Existing paragraph (b)(1) allows temporary controls to separate intake and return air courses in rooms driven 600 feet or less from the centerline of the entry from which the room was developed. The final rule adds to existing paragraph (b)(1) the proposed language clarifying that the use of temporary controls in these rooms is also acceptable when continuous haulage systems are used. This change responds to commenters who point out that the rooms in which the continuous haulage systems are installed are continuously attended by the operators of the system and an immediate response to any safety related problem with the system or the ventilation controls would be expected. Commenters also noted that two or three rooms are often concurrently developed using a continuous haulage system and the life of the actively developing rooms is often less than three days. As a result of this short life, mining in these rooms is often completed before construction of permanent controls is finished. Also, access to the continuous haulage system is required through crosscuts for maintenance and operation of the system.

Under paragraphs (b)(3) and (b)(4) the proposal would have required belt and

intake separation to the outby travel point of the dolly and belt and primary escapeway separation to the inby most travel point. Commenters indicated confusion because of the distinction between intake and primary escapeway separation and believed that conflicts would exist. Commenters also suggested that the language proposed to address the use of temporary ventilation controls for continuous haulage systems was confusing and contradictory. The final rule revises the requirements of proposed paragraphs (b)(3) and (b)(4) to respond to these comments.

Paragraph (b)(3) of the final rule retains the requirement that permanent controls be provided to separate belt conveyor haulageways from intake air courses when the air in the intake air course is used to provide air to active working places. The final rule also retains the proposed provision that when continuous haulage systems are used in rooms less than 600 feet from the centerline of the entry from which the rooms were developed, temporary stoppings or other temporary ventilation controls may be built and maintained to provide the required separation.

Commenters stated that new technology may result in continuous haulage systems with the outby point of travel of the dolly extending considerably beyond the 600 feet distance. The commenters noted that such an extended length of temporary controls could result in unanticipated adverse consequences for the ventilation system, and suggested that a maximum distance of 300 feet outby the inby point of travel of the dolly be established for the use of temporary ventilation controls. MSHA agrees that extensive use of temporary ventilation controls can create problems, including excessive leakage and the possible short circuiting of air. The final rule, therefore, limits the distance that temporary controls may be used to separate continuous haulage systems from intake air courses, including the primary escapeway. The final rule permits temporary controls to be used from the point of deepest penetration of the conveyor belt entry to the most outby point of travel of the dolly or 600 feet, whichever distance is the less. As a result, 600 feet is the maximum linear distance of entry in which temporary controls may be used for separation of air courses. The 600 feet would be measured as a straight-line distance from the point of deepest penetration in the conveyor belt haulage entry. This approach comports with the 600 foot limit for the use of temporary stoppings in rooms and allows a reasonable use of temporary ventilation controls with continuous haulage systems, while preserving the integrity of the ventilation system. At present, MSHA would expect that the most outby point of travel of the dolly would govern since MSHA is not aware of any continuous haulage systems which travel more than 600 feet outby the point of deepest penetration.

Paragraph (b)(4) of the final rule continues to require permanent stoppings or other permanent ventilation control devices to separate the primary escapeway from the belt and trolley haulage entries, as required by § 75.380(g). Commenters suggested that for the purposes of § 75.380(g), the definition of loading point in proposed paragraph (b)(4) be revised to be the outby point of travel of the dolly as opposed to the inby point of travel. The final rule adopts this suggestion and requires separation by permanent stoppings to be maintained to the outby point of travel of the dolly or 600 feet from the point of deepest penetration, whichever distance is less, to separate the haulage entry from the primary escapeway. The provisions of § 75.380(g) continue to allow the district manager to require a greater or lesser distance for this separation.

In response to questions about acceptable construction methods and materials for permanent ventilation controls (excluding seals) MSHA proposed eliminating the definition of ''durable'' in paragraph (a) and to modify paragraph (e)(1). The proposal would have required these controls to be constructed in a manner and of materials that result in a construction that has been tested and shown to have a minimum strength of 39 pounds per square foot as tested under ASTM E72–80 Section 12—Transverse Load-Specimen Vertical, load only (ASTM E72–80). The 8-inch hollow-core concrete block stopping with mortared joints, to which all other constructions were tied under the definition of durable in the existing standard, has been tested and shown to have a minimum strength of 39 pounds per square foot.

MSHA received numerous comments questioning the validity of the ASTM E72–80 test for determining acceptability of underground ventilation controls. Commenters questioned the appropriateness of a strength requirement of 39 pounds per square foot and the relevance of this value to the in-mine conditions. After review, MSHA continues to believe that use of the ASTM E72–80 test to determine that the relative strength of a ventilation control construction is appropriate and the final rule retains this standard. However, MSHA sees merit in some of the suggestions made by commenters. Commenters suggested that some constructions can not be tested according to the ASTM test, some constructions that are widely used in coal mines do not meet the 39 pound per square foot threshold, and the ASTM test can only be run at a limited number of locations nationwide.

After reviewing all of the comments received and based on experience with various construction methods and materials used for permanent ventilation controls since the inception of the Mine Act, the final rule recognizes traditionally accepted construction methods for permanent ventilation controls, and retains the ASTM test for new materials and methods. Controls made with new materials or methods must be comparable in strength to controls made with traditionally accepted materials or methods.

Since the inception of the Mine Act, a number of traditionally accepted construction methods have performed adequately and have served their intended function of separating air courses. These traditionally accepted construction methods are: 8-inch and 6-inch concrete blocks (both hollow-core and solid) with mortared joints; 8-inch and 6-inch concrete blocks dry-stacked and coated on both sides with a strength enhancing sealant suitable for dry-stacked stoppings; 8-inch and 6-inch concrete blocks dry-stacked and coated on the high pressure side with a strength enhancing sealant suitable for dry-stacked stoppings; steel stoppings (minimum 20-gauge) with seams sealed using manufacturer's recommended tape and with the tape and perimeter of the metal stopping coated with a suitable mine sealant; and lightweight incombustible cementatious masonry blocks coated on the joints and perimeter with a strength enhancing sealant suitable for dry-stacked stoppings. In addition, 4-inch concrete blocks may be used in the above applications in seam heights less than 48 inches. Tongue and groove 4-inch concrete blocks coated on both sides with a strength enhancing sealant suitable for dry-stacked stoppings may be used in coal seams of any height. The sealants referred to in this paragraph would be applied in the thickness recommended by the manufacturer. MSHA maintains a list of sealants which may be used for the above applications. This list is available at each MSHA District Office. The final rule would continue to permit these traditionally accepted construction

methods to be acceptable for the construction of ventilation controls.

For new construction methods or materials other than those used for the traditionally accepted constructions identified above, the final rule requires that the strength be equal to or greater than the traditionally accepted in-mine controls. Tests may be performed under ASTM E72–80 Section 12—Transverse Load-Specimen Vertical, load only, or the operator may conduct comparative in-mine tests. In-mine tests must be designed to demonstrate the comparative strength of the proposed construction and a traditionally accepted in-mine control.

As with the existing rule, the final rule would require, in paragraph (e)(1)(ii), that all overcasts, undercasts, shaft partitions, permanent stoppings, and regulators, installed after November 15, 1992, be constructed of noncombustible material. Also, like the existing standard, the final rule lists materials that would be suitable for these controls. The final rule would also continue to prohibit ventilation controls installed after November 15, 1992, from being constructed of aluminum.

Paragraph (h) of the proposal would have required that all permanent ventilation controls, including seals, be maintained to serve the purpose for which they were built. The final rule retains proposed paragraph (h) with one revision. One commenter stated that the paragraph should require all ventilation controls, including temporary controls, to be maintained to serve the purpose for which they were built. Given the importance of temporary controls devices in providing for adequate ventilation, the final rule requires all ventilation controls, both permanent and temporary, including all doors and seals, to be maintained to serve the purpose for which they were built. This standard applies to all ventilation controls, regardless of the construction date.

Relative to seal maintenance, MSHA does not intend that the maintenance requirement be applied to seals located within another sealed area. Additionally, the rule does not apply to seals which have become consumed within a gob area which is ventilated and evaluated in a manner approved in the mine ventilation plan.

One commenter raised several questions concerning what MSHA would consider to be an acceptable temporary stopping. MSHA has not defined the term ''temporary ventilation control'' in the rule. The commenter stated that, in the preamble to the proposal, MSHA refers to ''properly constructed'' temporary stoppings but does not include a standard for construction or installation and maintenance of temporary stoppings. The commenter adds that temporary ventilation controls are a source of potential leakage and are often susceptible to damage from roof and rib falls and from mobile equipment. The commenter also refers to several accidents where failure to maintain permanent or temporary ventilation controls was a critical factor in the accident.

MSHA agrees that to properly direct the flow of air and provide for adequate face ventilation, temporary controls, as well as all permanent ventilation controls, must be installed and maintained in an adequate manner to control leakage. MSHA has accepted as temporary controls, check curtains or other flame- resistant material approved by MSHA that are constructed and installed in such a manner to minimize leakage. As required by paragraph (h) of this section of the final rule, these controls must be maintained to serve the purpose for which they were built.

Section 75.334 Worked-Out Areas and Areas Where Pillars Are Being Recovered

Worked-out areas, areas where coal extraction has been completed, can pose deadly hazards to miners, including an explosive methane accumulation, irrespirable atmosphere, and the possibility of fire from spontaneous combustion. Section 75.334 establishes the requirements for ventilation of these areas to mitigate these hazards. In general, § 75.334 requires that following mining, these areas are to be sealed or ventilated. Section 75.334 also specifies the requirements for evaluating the effectiveness of the ventilation of worked-out areas so operators can determine that the ventilation system is functioning as intended.

The final rule revises paragraph (e) of the existing § 75.334. Existing paragraph (e) requires that each mining system be designed so that worked-out areas can be sealed. The final rule adds to paragraph (e) the proposed requirement that the location and sequence of construction of proposed seals be specified in the approved mine ventilation plan. Improper location and sequencing of seal construction can have a dangerous effect on mine air quality and ventilation. As the proper location and sequence of construction of seals is a mine-by-mine determination, the mine ventilation plan provides the most workable mechanism by which to assure proper air quality and ventilation of the mine.

Several commenters objected to including seal construction sequence as part of the information to be submitted for approval in the mine ventilation plan. Their rationale was that mining conditions change and could result in a change in the sequence of seal construction. The construction might then be delayed while approval for the change is obtained. These commenters suggested that in some cases, delays in seal construction could result in a hazard to miners. Other commenters stated that the sequence of construction of seals is more appropriately and more easily shown on the mine ventilation map required by § 75.372. Another commenter stated that the sequence of construction should be subject to approval because the placement of seals if improperly installed can cause adverse effects on the ventilation system and gob gases. MSHA is sensitive to the concern that a delay in approval could result in a hazard to miners and, as explained in the preamble discussion of § 75.370, if a delay in seal construction would result in a hazard to miners the review and approval of the plan can be expedited.

MSHA agrees with the commenter that the location and sequence of seal construction may be more easily, that is, more clearly shown on the mine map required by § 75.372 than in the written text of the plan submitted under § 75.371. The existing standard permits appropriate information required under § 75.371 to be shown on the map required by § 75.372. The effect is that the information both appears on the ventilation map and in the ventilation plan and is subject to approval. The discussion of § 75.371(bb) further addresses this point.

Spontaneous combustion is the process through which coal or other materials self heat by the absorption of oxygen. Paragraph (f) of § 75.334 addresses mines with a demonstrated history of spontaneous combustion and those located in coal seams determined to be susceptible to spontaneous combustion. Paragraph (f) requires that the approved mine ventilation plan for these mines specify the measures that will be used to detect methane, carbon monoxide, and oxygen concentrations during and after pillar recovery, and in worked-out areas where no pillars have been recovered; the actions that will be taken to protect miners from the hazards of spontaneous combustion; and, if a bleeder system will not be used, the methods that will be used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dusts, and fumes in the worked-out area.

Through meetings with various segments of the mining community, MSHA became aware of a concern that paragraph (f) of existing § 75.334 may have been promulgated without the public being provided the opportunity to adequately comment. Although MSHA believes that existing paragraph (f) was promulgated properly, the Agency reproposed paragraph (f) with wording identical to that used in existing § 75.334. The purpose of the reproposal was to assure MSHA received and considered all pertinent comments.

Several commenters to the existing rule suggested that bleeder systems should not be required for all mines. These commenters stated that in some mines the practice of ventilating worked-out areas increases the risk of spontaneous combustion by supplying oxygen to combustion-prone materials in these areas. They also requested that the final rule promulgated in 1992 include provisions to address spontaneous combustion. MSHA acknowledged the need to reduce the flow of oxygen to areas where there is a likelihood of spontaneous combustion, and included in the 1992 rule requirements for mine ventilation plans to address spontaneous combustion in mines with a demonstrated history of this hazard or mines that are located in coal seams determined to be susceptible to spontaneous combustion.

Experience gained through application of the existing standard has demonstrated that a limited number of mines have experienced spontaneous combustion problems. Studies by the Bureau of Mines have identified the volatile properties of coal seams and have determined that certain seams are susceptible to spontaneous combustion. The final rule is directed to mines in these seams.

MSHA is not suggesting that all coal mines will meet the test to show susceptibility to spontaneous combustion. A demonstrated history or the determination of susceptibility to spontaneous combustion is a prerequisite to the applicability of paragraph (f). While it is true that all coal oxidizes when exposed to air, this fact is not sufficient to make the determination that a coal seam is susceptible to spontaneous combustion. MSHA would expect that absent a demonstrated history of spontaneous combustion in a mine, an operator would provide the necessary data to demonstrate that the mine is susceptible to spontaneous combustion so that the provisions of paragraph (f) should apply. A number of methods are used to determine the self heating tendency of a coal.

However, MSHA is also mindful that some mines that have a spontaneous combustion problem may be unable to reduce the oxygen content to a sufficiently low level to mitigate spontaneous combustion. For these mines, a bleederless system may not be appropriate. To illustrate, it is well known that the oxygen level in a gob varies depending on the location where the measurement is made. For example, the periphery of a gob normally will have higher oxygen levels than the interior of the gob. The oxygen level in the interior of the gob is critical when dealing with spontaneous combustion. If conditions are such that the oxygen content in critical areas within a gob cannot be reduced below that necessary for a methane ignition to occur, a bleeder system may provide the most safety. MSHA specifically solicited comment on this subject; however, none was received.

Under paragraph (f)(1), the approved ventilation plans for mines that have or are susceptible to spontaneous combustion must specify measures to detect methane, carbon monoxide, and oxygen concentrations in worked-out areas. These measures must be taken during and after pillar recovery and in worked-out areas where no pillars have been recovered. The purpose of these measures is to determine if worked-out areas will be ventilated or sealed. If the methane concentration or other hazards in the worked-out area cannot be controlled while the mine is limiting airflow to avoid spontaneous combustion, it may be necessary to seal or to ventilate the worked-out area using a bleeder system. These measures also help to determine the extent to which the worked-out areas can be ventilated without increasing the spontaneous combustion hazard.

Under the provisions of paragraph (f)(2) the operator is required to specify in the mine ventilation plan the actions that will be taken to protect miners from the hazards of spontaneous combustion. Protections from the hazards of spontaneous combustion might include: Additional continuous monitoring of fire gases at strategic locations underground, increased air sample collection and analysis, trending of air contaminant data, increased examinations, and changes to the mine ventilation system such as redistribution of air or pressure balancing. This requirement would be triggered if the mine has a demonstrated history of spontaneous combustion, or, if an evaluation of the susceptibility of the coal seam to spontaneous combustion leads to a mine operator determination that a bleeder system should not be used.

One commenter stated that this rule is unnecessary because only a limited number of mines actually have a demonstrated spontaneous combustion problem. The commenter suggested that the petition for modification (variance) process should be used to address this issue, which would allow miners representatives to participate. The final rule does not adopt this approach. To the extent practicable, an objective of this rulemaking is to reduce the need for exceptions and paperwork. In this case, the existing mine ventilation plan process provides a ready-made mechanism for establishing the precautions necessary, on a mine-by-mine basis, to protect miners from the hazards of spontaneous combustion in a timely manner. In addition, under the final rule, miners representatives are afforded input into the mine ventilation plan.

Another commenter stated that paragraph (f) should be directed more to the detection and control of spontaneous combustion and not solely at its prevention. The commenter offered examples of detection and control techniques that could be used.

MSHA agrees that spontaneous combustion prevention, detection and control are all important when dealing with spontaneous combustion. The final rule recognizes, however, that while prevention is the goal, instances of spontaneous combustion will occur.

Another commenter stated that the preamble to the proposal was not correct in that it implied a need to limit airflow to avoid spontaneous combustion. The commenter states that, to avoid spontaneous combustion, miners must create a near-zero pressure differential across most areas of concern. MSHA agrees that creating a ''near-zero pressure differential'' will have the desired effect of limiting the airflow. In a paper entitled ''Examination of Bleederless Ventilation Practices for Spontaneous Combustion Control in U. S. Coal Mines'' presented at the 7th U.S. Mine Ventilation Symposium in June 1995, the authors report that their study revealed that restricting airflow into mined-out areas is recognized world-wide as a spontaneous combustion control measure and that when designing a bleederless ventilation system critical attention must be given to mine layout, seal construction, methane drainage, regulations, monitoring, and emergency procedures. In discussing the subject of air leakage, Koenning in a paper entitled ''Spontaneous Combustion in Coal

Mines'' presented at the 4th U.S. Mine Ventilation Symposium in June 1989, identified air leakage as the most often cited cause of spontaneous combustion. In both of these papers, the authors emphasize the need to properly design a bleederless ventilation system to reduce the likelihood of spontaneous combustion and achieve the level of worker safety desired. MSHA agrees with these authors that a bleederless ventilation system must be designed to encompass all of the factors identified. It was suggested by one commenter that measurement of carbon dioxide should be included in the requirements of paragraph (f). In discussing the gases required to be measured (methane, oxygen, and carbon monoxide), the commenter stated that these gases alone will not aid in the detection of spontaneous combustion in its incipient or developed stage. The commenter suggested that miners be required to monitor for carbon dioxide because, in the opinion of the commenter, the trend in the ratio CO/CO_2 is the only viable predictor.

MSHA sees merit in the measurement of carbon dioxide as well as other products of combustion to assist in the detection of spontaneous combustion. However, the ratio CO/CO_2 is not the only viable predictor of spontaneous combustion. One researcher suggested that carbon monoxide production is the earliest, detectable effect of spontaneous heating. Others have suggested, following a series of tests, that four gas ratios clearly indicated the development of thermal runaway, but only the $CO_2 -> O_2$ ratio gave an early warning of the heating in the coalbed.

As can be seen, a number of methods of predicting the onset of spontaneous combustion have been suggested. While paragraph (f)(1) requires only the measurement of methane, oxygen, and carbon monoxide, MSHA would not discourage operators from incorporating, as part of the mine ventilation plan, any or all of these methods as well as other appropriate methods to aid in the early detection of spontaneous combustion.

Section 75.340 Underground Electrical Installations

Electrical installations can provide an ignition source for methane and can represent a serious fire hazard underground. Typical electrical installations are battery charging stations, substations, rectifiers and certain water pumps. Section 75.340 requires that these installations be ventilated and protected against fire. These installations must also be housed in noncombustible structures or areas or protected with fire suppressions systems, and be ventilated or monitored to protect miners working down stream from the products of combustion.

MSHA proposed to revise paragraph (a) of existing § 75.340 to clarify the standard and to add requirements concerning alarms and sensors. The final rule adopts the language in the proposal with one modification. It replaces the word ''located'' with the word ''housed.''

Existing 75.340(a) requires that certain underground electrical equipment be either located in a noncombustible structure or area or equipped with a fire suppression system. Section 75.340 (a) also requires that the equipment be ventilated by intake air, and lists alternatives ways to do so in paragraphs (a)(1),(a)(2), and (a)(3). The final rule adds language to paragraph (a)(3), the alternative which establishes an acceptable means for monitoring the underground electrical installations using sensors other than a § 75.351 atmospheric monitoring system.

MSHA sought in the proposal to clarify the application of existing § 75.340(a)(3). Paragraph (a)(3) of the existing rule provides for the activation of doors upon the presence of certain indications of a possible fire. The paragraph was appropriate for enclosed structures or areas; but questions at informational meetings challenged its applicability to the alternative where a fire suppression system was used without an enclosure. To address the questions, the proposal placed the requirements for noncombustible structures or areas and for fire suppression systems into separate paragraphs. MSHA proposed that one of the alternatives for ventilating with intake air (monitoring the underground electrical installations using sensors other than a § 75.351 atmospheric monitoring system) was acceptable only if the equipment was located in a noncombustible structure or area and not acceptable if only a fire suppression system was used. This revision eliminates the confusion that existed with the existing rule. It should be noted that if an operator elects to locate this equipment in a noncombustible structure or area, the operator would not be precluded from also installing a fire suppression system.

One commenter questioned the reason for separating fire suppression and noncombustible structures, noting that there was no need for the distinction in the rule. In objecting to the proposal, the commenter stated that there should be several cumulative layers of protection, including both fireproof enclosures and fire suppression systems. The commenter includes several examples of fires involving compressors to illustrate this point. MSHA has addressed concerns relative to compressor fires in the final rule section dealing with compressors, § 75.344. Other examples cited by the commenter included explosions caused by mobile equipment and a fire that occurred on a power center located at the working section. The instances cited by the commenter are not relevant to § 75.340. The commenter argued that fire suppression systems have not worked and uses the compressor fires previously mentioned to illustrate the point. MSHA notes that there are numerous instances where the systems have worked. However, in the vast majority of these cases there is no documentation because there is no requirement for reporting fires that are extinguished within 30 minutes.

The final rule in paragraph (a)(1)(iii) revises existing paragraph (a)(3) of § 75.340 by adding 2 requirements. It adds a requirement that a visual and audible alarm be provided on installations if the (a)(1)(iii) alternative is selected. Also, when operating under this alternative, monitoring of intake air that ventilates battery charging stations must be done with sensors not affected by hydrogen.

Some commenters noted their agreement with these proposed changes. Noting that no single system is failsafe, one commenter suggested that all the requirements of § 75.340 be combined and made applicable in all cases. The requirements would include; noncombustible structures, fire suppression, ventilation directly to the return, additional communications, continuous AMS monitoring for carbon monoxide, methane, and hydrogen, along with automatic closing doors and temperature protection. After consideration of the comments and the underlying rationale, MSHA concludes that to require that the alternatives be applied cumulatively in every case would be infeasible or impractical. In addition, MSHA does not believe that these overly restrictive requirements are necessary in all circumstances.

Paragraph (a)(1)(iii) addresses electrical installations that are equipped with doors that automatically close when sensor readings reach certain levels. One of these action levels is a level for the optical density of smoke. In § 75.340 (a)(1)(iii)(B) of the proposal and the preamble discussion on page 26371, MSHA refers to the optical density of smoke of 0.05 per meter to characterize the sensitivity of smoke detectors. As discussed in MSHA's opening statement to the ventilation rulemaking hearings,

the value used for the optical density of smoke is based on information provided from the Bureau of Mines. MSHA pointed out that based on comments received from the Bureau of Mines, this number is incorrect and should be divided by 2.303 to conform to the internationally accepted term of optical density. No commenter took issue with this point. MSHA has made the correction in the final rule. One commenter suggested that optical densities be increased and based on an ambient to account for background dust. In contrast, another commenter suggested that the specified optical density should be reduced by half. MSHA has found insufficient justification to adopt either of these suggestions and believes that the specified 0.05, corrected to 0.022 based on comments from the Bureau of Mines, is the appropriate level for optical density used in § 75.340. Existing § 75.351 Atmospheric monitoring system (AMS), uses a level for optical density of smoke of 0.05 per meter. MSHA recognizes that the level in § 75.351 should also be corrected. MSHA intends to correct the level for optical density used in § 75.351 in a future rulemaking. In the meantime, MSHA will use an optical density of 0.022 per meter for purposes of § 75.340.

The visual and audible alarm required in paragraph (a)(1)(iii) must be situated so that it can be seen or heard by persons traveling in the intake entry immediately adjacent to the installation. It was suggested to MSHA that these electrical installations may be susceptible to fire and the fire could go undetected. The visual and audible alarms would provide additional safety at these installations by alerting miners in the area.

One commenter suggested that an alternative should be added to carbon monoxide or smoke detection. The suggested alternative would be to permit another means that would be approved by the district manager. This suggestion has not been adopted since both carbon monoxide monitoring and smoke detection have been shown to be effective and reliable and can be used.

One commenter stated that battery chargers located on working sections do not present the same hazards as those located outby, along the intake. The commenter suggested that chargers located on working sections should be exempted from § 75.340. MSHA disagrees. MSHA believes that battery chargers present the same safety hazards associated with other electrical equipment plus the charging of batteries results in the liberation of hydrogen. There is a demonstrated history of fires caused by battery chargers. The requirements are necessary to safely operate chargers, regardless of the location of the charger.

One commenter suggested that all water pumps should be exempted from § 75.340 because fire history is limited. The standard already exempts pumps that have limited fire hazard potential in paragraphs (b)(2) through (b)(6). Pumps outside of the listed categories do present hazards. As an example, a 200 horsepower pump exploded at a mine in Virginia after an extended period of being overheated. An example of a pump posing a limited hazard is an emulsion pump located at or near the section that is moved as the section advances or retreats. Emulsion pumps are considered for the purpose of § 75.340 to be water pumps.

Also, one commenter called attention to MSHA's omission of the word ''or'' in two places in § 75.340, Underground Electrical Installations. MSHA agrees that the omission was inadvertent and so stated in its opening statement at the ventilation hearings. In § 75.340, the word ''or'' has been inserted between paragraphs (a)(1) (i) and (ii) dealing with alternative ventilation requirements for noncombustible structures or areas and between paragraphs (a)(1)(iii) (A) and (B) setting out criteria that would govern the activation of automatic closing doors.

Another commenter suggested that the signal from the visual and audible alarms required by existing paragraph (a)(3) should be sent to a surface location at the mine rather than being located outside the installation. The commenter supported the suggestion by indicating that a quicker response would thus be provided since the alarm would be immediately noticed. In order to achieve an effective level of safety, MSHA has provided in paragraph (a)(1)(iii) that the visual and audible alarm be located outside of and on the intake side of the enclosure. This location will permit persons traveling in the intake entry immediately adjacent to the installation to see or hear the alarm. Paragraph (a)(2) allows the use of an alternative system using an AMS which would provide an alarm at the surface of the mine.

Finally, one commenter objected to the use of the word ''located'' in the phrase ''located in noncombustible structures or areas''. The commenter argued that MSHA should use the word ''housed'' and that the use of the word ''located'' actually reduces the protection intended by Congress. MSHA does not agree with that interpretation and maintains that in the context in which the word is used there is no meaningful distinction between the two words. However, because the word suggested by the commenter will not reduce safety and may add to the clarity of the rule for some readers, it has been adopted in the final rule.

Section 75.342 Methane Monitors

Methane monitors are a critical link in the safety protections designed to prevent mine explosions. Mounted on mining equipment which works directly in the face, these instruments provide the first warning that gas is being liberated in potentially dangerous quantities. Methane monitors are relied upon to shut down mining equipment automatically when gas concentrations reach 2 percent. The continued operation of mining equipment under these conditions can lead to a spark and catastrophic explosion.

The final rule revises paragraph (a)(4) which addresses maintenance and calibration of methane monitors that are required on underground mining equipment to provide a warning to equipment operators when the methane concentrations nears dangerous levels. Methane monitors also automatically deenergize the equipment when methane approaches the explosive range or if the monitor is not operating properly. The rule requires that trained persons perform maintenance and calibration of the methane monitors at least every 31 days and requires that calibration records be maintained. The final rule does not adopt the proposal which would have required that a written maintenance program be available for inspection.

Some commenters expressed the view that the proposed revisions were unnecessary and recommended that they be deleted from the final rule. Other commenters supported the proposed revisions and urged MSHA to adopt additional requirements as well.

Paragraph (a)(4) of the final rule requires that calibration and maintenance of the monitors be performed by persons properly trained in maintenance, calibration, and permissibility of the methane monitors. One commenter expressed the view that no change was needed to the existing rule. However, the rulemaking record also contains a number of examples in which poorly maintained or improperly repaired methane monitors have been found during the investigations of methane related accidents.

The final rule in paragraph (a)(4)(ii) requires that each operator maintain a record of all calibration tests of methane monitors. As with other recordkeeping requirements under the final rule, records must be maintained in a secure

book that is not susceptible to alteration, or may be kept electronically in a computer system so as to be secure and not susceptible to alteration. Some commenters recommended that a record be kept of all maintenance performed on a methane monitor, urging that a record is necessary to prove the maintenance is done. MSHA believes that the revisions contained in the final rule, together with the existing requirements, will assure an appropriate level of maintenance without the need for additional records of maintenance.

Some commenters expressed concern over the security of computer-based records, and offered examples of breaches of security in the banking and national security fields. Others, however, advocated the use of computers for the storage and retrieval of records as being highly accurate, requiring less storage space and facilitating data retrieval. MSHA agrees that security of required records is important. It is also MSHA's objective to make the final rule requirements for compilation and storage of records practical and in concert with modern methods. To this end, the final rule requires that the record of maintenance and calibration of methane monitors be maintained in secure books that are not susceptible to alteration, and also permits these records to be maintained electronically in a computer system so as to be secure and not susceptible to alteration. The calibration record will aid operators in tracking calibration activity and will serve as a check to assure that calibrations are being conducted at least once every 31 days. The record will also be reviewed by authorized representatives of the Secretary and miners' representatives to determine that calibrations are being conducted as required.

Paragraph (a)(4)(iii) of the final rule requires that operators retain the record of calibration tests for 1 year from the date of the test. Records are to be maintained at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and the representative of miners. A discussion of comments concerning the use of computers to maintain records can be found in the General Discussion of this preamble.

Several commenters suggested that equipment not operated in the face area also be equipped with methane monitors. Commenters noted accidents which have occurred when this nonpermissible equipment has ignited methane in outby areas. Commenters also asserted that equipment used for the withdrawal of personnel during fan stoppages would be safer if methane monitors were provided. An opposing comment indicated that an expansion of the methane monitor coverage was not necessary since methane is rarely associated with outby areas. Because of the response time of methane monitors, and considering the speed at which most outby equipment normally operates, it is unlikely that a monitor would prevent a machine from entering a body of methane if such a concentration were encountered. MSHA believes that methane monitors are suitable and effective in face areas where coal is being cut, mined, or loaded. However, MSHA does not believe that an expansion of coverage to include all nonpermissible equipment is warranted.

A number of commenters recommended that methane monitors should be calibrated at least every 7 days rather than at least every 31 days as provided by the existing standard. One commenter suggested daily calibration. Commenters noted that methane monitors lose sensitivity and that response time increases with monitor age and after exposures to elevated methane concentrations. The existing requirement for calibration of methane monitors at least every 31 days parallels the recommendations of several manufacturers. The 31 day requirement establishes a maximum time interval between calibrations. However, the final rule also requires the operator to maintain methane monitors in permissible and proper operating condition. Thus, under unusual circumstances of use, it is possible that weekly or even more frequent calibration may be necessary to comply with the standard.

Comment was also received recommending an additional requirement that calibration records be countersigned by the Maintenance Supervisor or Chief Electrician at the mine. The final rule does not adopt this recommendation. The purpose of the calibration record required under the final rule is not the same as other records where countersigning is required by the final rule. Countersigning requirements are directed at informing upper mine management of hazardous conditions which require their attention. While the calibration record has the potential to assist mine management in identifying equipment problems, its main function is to assist operators in assuring that timely calibration is occurring.

The proposal would have required that operators adopt a written maintenance program for methane monitors. Commenters pointed out that the existing standard already requires all permissible equipment, including methane monitors, to be maintained in permissible condition. MSHA agrees.

Section 75.344 Compressors

Section 75.344 deals with the use of air compressors underground. As discussed in the introductory section of this preamble, MSHA stayed § 75.344(a) because of a concern over a possible overheating or fire hazard. Improperly used or maintained air compressors can present a significant risk of fire underground. MSHA determined that the cause of the 1984 fire at the Wilberg Mine that claimed the lives of 27 miners was an improperly maintained compressor. In general, § 75.344 requires that most compressors be operated only while attended or located in a noncombustible structure or area that is monitored for temperature and carbon monoxide or smoke; have a fire suppression system; and, automatically shut down in the event of a fire.

The final rule revises the existing § 75.344, including the stayed paragraph (a), and supersedes interim § 75.345. The final rule recognizes that in some cases compliance with the existing rule could result in heat buildup when a compressor is located in a noncombustible structure or area. To address this possible hazard the final rule provides an option. A compressor would be acceptable when not located in a noncombustible structure or area provided it is continuously attended by someone who can see the compressor at all times, activate the fire suppression system and shut off the compressor. Also, the existing rule is modified for compressors that are located in a noncombustible structure or area. They must be ventilated by intake air coursed directly into a return air course or to the surface and equipped with sensors to monitor for heat and for carbon monoxide or smoke. In addition, upon the activation of the fire suppression system, the compressor must automatically deenergize or shut off.

The final rule does not include proposed paragraph (b)(2) which provided an additional alternative means of ventilating compressor installations located away from working sections and near a return air course where a substantial pressure differential exists.

Comments were solicited on the exemption for compressors having a certain maximum horsepower. Comments were received both supporting and opposing a possible revision to increase the limit from 5 to 30 horsepower. Because of the history of compressor fires, including the 1984 Wilberg mine disaster which resulted in

27 fatalities, the existing limitation of 5 horsepower has not been revised. One commenter questioned the proposal reference to 9 mine fires which started in compressors between 1970 and 1992. The commenter suggested that the nine fires was inaccurately low and referenced an MSHA report which stated that 21 compressor fires occurred between 1977 and 1987. The preamble discussion addressing the number of fires was in relation to underground coal mines. Other compressor fires have occurred at surface coal mines and at noncoal mines. Regardless of the number of compressors affected, however, the safety concerns remain the same.

Several commenters suggested that the cutoff for application of § 75.344 be changed from 5 horsepower for all compressors to 30 horsepower for reciprocating compressors and 5 horsepower for all other types of compressors. The rationale for this recommendation was that reciprocating compressors of up to 30 horsepower contain about the same amount of lubricating oil as 5 horsepower compressors. This suggestion was not included in the proposal, based on MSHA information (Report No. 06–292–87 of the Industrial Safety Division, Pittsburgh Safety and Health Technology Center) that the predominant hazard for fire or explosion in reciprocating compressors is not the lubricating oil, but rather the formation of carbonaceous deposits in the discharge system. MSHA received comments addressing the formation of carbonaceous deposits in the discharge system indicating that the use of synthetic oil prevents any carbonaceous accumulation. Commenters suggested that all identified hazards would be eliminated through the use of synthetic oils. However, commenters also noted that synthetic oils have a higher flash point.

MSHA has examined the subject of synthetic oils and found that synthetic oils can be formulated with polyalphaolefins, polyglycols, silicones, esters, phosphate-esters, and di-esters as the primary ingredient. These compounds are also blended with mineral oils to form synthetic lubricants. The rate of oxidation is varied among these compounds. Of these types, only silicone based lubricants exhibit virtually no oxidation and are used primarily where extremely high temperatures are expected. Also, silicone based lubricants are inherently fire resistant. Unfortunately, silicone based lubricants are incompatible with reciprocating compressors and will rapidly lead to failure of the compressor. Polyalphaolefins, polyglycols, and mineral oil blends all contain hydrocarbons and have a tendency to varnish and create deposits in air compressors. Accordingly, the final rule, like the existing rule, exempts compressors of five horsepower or less and the suggested revision to 30 horsepower has not been adopted.

One commenter stated that modern compressor technologies allow for much safer rotary screw compressor operation using non-defeatable programmed safety controls, synthetic lubricants, automatic fire suppression and shutdown, and other precautions. Although synthetic lubricants offer some safety enhancement, they do not fully mitigate the hazards. Also, considering the accident history including the Wilberg disaster, MSHA has not provided an exemption for rotary screw compressors.

Existing § 75.344 (a)(1) requires all compressors to be located in noncombustible structures or areas and to be equipped with a heat-activated fire suppression system. During informational meetings it was brought to MSHA's attention that in some instances requiring compressors to be inside such a structure could present a hazard through compressor overheating. Upon reviewing this potential effect of the regulation, MSHA agreed. Therefore, before the existing standard could become effective, MSHA stayed the application of paragraph (a)(1) and included the standard in this rulemaking.

The final rule addresses the potential of compressor overheating by allowing a compliance alternative to enclosing the compressor. Heat is generated at considerable rates by operating compressors. Improperly used or maintained compressors can present a significant risk of fire. To minimize this hazard, the rule specifies other installation and operational requirements as well as providing for fire detection and fire suppression. As recommended by commenters, the final rule also provides for audible and visual alarms and automatic deenergization or shut-off.

Several commenters discussed the proposed revisions to paragraph (a). One commenter urged that the term ''operation'' be clarified, noting that compressors which are designed to automatically start when necessary to rebuild air pressure should be protected. MSHA considers compressors that are installed to automatically start when necessary to rebuild air pressure to be in operation. MSHA agrees that these compressors should be provided either a noncombustible structure (or area) or an attendant. Accordingly, for the purpose of clarifying the requirement, the final rule includes the commenter's recommendations. Compressors which have been disconnected from the power or fuel source would not be subject to the requirement under the final rule.

Another commenter suggested that the person specified in paragraph (a)(1) be trained. The commenter noted that the attendant would be of little value if unaware of the appropriate response to a fire. The commenter suggested that the person know how to deenergize the machine and activate the fire suppression system manually. MSHA agrees and notes that this knowledge is required under the proposal by requiring that the attendant be capable of performing these tasks. MSHA believes that any training necessary to meet this capability is implicit in the standard and the proposal has been retained under the final rule.

Another commenter suggested that an attendant be accepted as an alternative to noncombustible structures or areas for a maximum of 8 hours. The commenter stated that 8 hours would provide sufficient time for urgent roof bolting or construction work such as coating stoppings or powering a jack hammer. After considering the comment, the suggested time limit has not been adopted. MSHA believes that a continuous attendant, always within sight of the compressor and capable of responding as required, provides a level of protection equivalent to the protection provided by an enclosure. Therefore, the final rule allows either alternative to be selected. It should also be noted that the final rule has been revised to require either a continuous attendant or containment in a noncombustible enclosure or area.

One commenter suggested that an alternative be provided in the rule to allow for video monitoring of compressors as an alternative to attendance or noncombustible enclosures. MSHA has not adopted the suggestion since video monitoring would not provide an equivalent level of safety compared to either an enclosure or attendance. There would be a considerable time delay in responding to a video monitor as compared to a nearby attendant who could immediately shut down the compressor, activate fire suppression, discharge fire extinguishers, apply rock dust, and take other necessary actions.

Other commenters addressed an allowable distance within which the compressor attendant must remain. In the preamble to the proposal, MSHA solicited comments on the proposed language, ''can see the compressor at all times'' versus having the attendant

remain within some specified distance. Rationale was solicited for any specific distances suggested. Several commenters supported the proposal, noting that adjustment is inherently provided for high mining heights and seam undulations since a low undulating seam would cause the attendant to remain closer to the compressor. Another commenter suggested that a maximum distance of 20 feet be specified. The commenter reasoned that a maximum distance of 20 feet would assure that the attendant could react to a fire quickly, noting that a compressor fire would propagate rapidly. The commenter also voiced a concern over travel time in low height mines and noted that distances over 20 feet might allow a fire to get out of control before the attendant could reach the machine.

Another commenter was concerned with the proposed requirement in (a)(1) that a person be able to see the compressor at all times. The commenter suggested that the term ''close proximity'' be adopted noting that a person could be in close proximity, e.g. in an adjacent crosscut, but not within sight. The commenter suggested that this should be acceptable since the person would still be able to activate the fire suppression system. MSHA disagrees. The suggested situation is not acceptable since a considerable delay could result before detection of a problem if the person were not within sight of the compressor. In such a case the person would be relying on the smell of smoke or some indirect means of detecting a problem. Because of the potential fire hazard associated with compressors, reaction time is critical. MSHA continues to believe that reaction time is appropriately minimized if the assigned person can see the compressor at all times, is capable of deenergizing the unit, and is capable of activating the fire suppression system. While agreeing that reaction time is critical and after considering all of the comments, MSHA finds the arguments for not specifying a set distance to be more persuasive. Therefore, the final rule permits compressors to be continuously attended by a person designated by the operator who can see the compressor at all times during its operation. Any designated person attending the compressor must be capable of activating the fire suppression system and deenergizing or shutting-off the compressor in the event of a fire.

If a compressor is not enclosed in accordance with (a)(2), the compressor can be operated only while it can be seen by a person designated by the operator according to (a)(1). In adopting this approach, the proposed paragraph (a)(1) language was deleted. Commenters indicated confusion over the similarity of proposed paragraphs (a)(1) and (b)(1) of the existing rule. The final rule combines these two requirements in (a)(1). The final rule requires both that the person be able to see the compressor and be capable of activating the fire suppression system.

Paragraph (a)(2) of the final rule requires that compressors, if installed in a noncombustible structure or area, be ventilated by intake air coursed directly into a return air course or to the surface and be equipped with sensors to monitor for heat and for carbon monoxide or smoke. MSHA expects that an air quantity sufficient to cool the compressor will be provided through the enclosure. The manufacturer's operation manuals for compressors often specify an air quantity or a maximum ambient temperature. The sensors required by paragraph (a)(2) must deenergize power to the compressor, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors to automatically enclose the noncombustible structure or area when either of the conditions in paragraph (a)(2)(i) or (ii) occurs. The visual alarm should be situated so that it can be seen by persons traveling in the intake entry immediately adjacent to the enclosure. The sensors must also deenergize or shut-off the compressor in addition to closing the doors of the enclosure.

Paragraph (a)(1)(ii) specifies that the sensors shall deenergize power to the compressor, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors to automatically enclose the noncombustible structure or area when the carbon monoxide concentration reaches 10 parts per million above the ambient level for the area, or the optical density of smoke reaches 0.05 per meter. These levels are the same as required by the existing rule. As discussed in MSHA's opening statement at the ventilation rulemaking hearings, the value used for the optical density of smoke is based on information provided from the Bureau of Mines. MSHA pointed out that, based on comments received from the Bureau of Mines, this number is incorrect and should be divided by 2.303 to conform to the internationally accepted term of optical density. MSHA's remarks were made in reference to the requirement in § 75.340(a)(1)(iii)(B). The final rule also makes a conforming technical revision to § 75.344(a)(2)(ii).

Paragraph (e) of the final rule requires automatic deenergization or automatic shut off of the compressor if the fire suppression system of paragraph (b) is activated. A number of commenters suggested that compressors should have an automatic shutdown feature that deenergizes or shuts-off the compressor when the required fire suppression system is activated. MSHA agrees. MSHA recognizes that under § 75.1107–4 automatic deenergization is required if the automatic fire suppression system is activated on unattended electrically powered compressors.

Proposed paragraph (b)(2) has been omitted from the final rule. The paragraph was intended to provide additional flexibility for compressor installations located away from working sections and near a return air course where a substantial pressure differential exists. No comments were received in support of the proposed standard, while a number of comments were received in opposition. Commenters objecting to the standard raised concerns about overheating and stated that the revisions were made unnecessary in view of modified paragraph (a). MSHA agrees. Historically, when compressors that are on fire continue to operate, they often released oil into the environment, thus increasing the severity of the fire. For this reason, MSHA believes that safety is best served by requiring compressors to be deenergized or shut-off when the fire suppression system is activated. Commenters recommended deenergization in (a)(2) of the final rule. MSHA agrees and has the included automatic deenergization in (a)(2). One commenter suggested that alarms be automatically given at the section and surface and that two-way communications be provided at each compressor installation. This recommendation has not been adopted since the rule provides the desired level of safety through venting to the return, automatic fire extinguishment and closure of doors, in addition to the alarms outside the enclosure.

Section 75.360 Preshift Examination

The preshift examination is a critically important and fundamental safety practice in the industry. It is a primary means of determining the effectiveness of the mine's ventilation system and of detecting developing hazards, such as methane accumulations, water accumulations, and bad roof.

A considerable number of comments were received representing a range of opinions on the changes MSHA proposed. After consideration of all comments received, the final rule

adopts certain modifications and clarifications to the existing standard to increase the effectiveness of the preshift examination. The final rule removes paragraph (e), redesignates existing paragraphs (f) through (h) as (e) through (g), revises paragraphs (a), (b), and (f) and adds new paragraphs (b)(8) through (b)(10).

Existing paragraph (a) is divided into paragraphs (a)(1)and (a)(2) in the final rule. Paragraph (a)(1) of the final rule contains the existing general requirement that preshift examinations are to be conducted by certified persons designated by the operator. Paragraph (a)(1) also modifies the existing and proposed language in response to comments, to provide for preshift examinations at 8-hour periods. Paragraph (a)(2) of the proposed rule would have allowed pumpers to conduct an examination in lieu of the preshift examination under certain conditions. The final rule adopts this approach with 2 changes. The final rule does not require the pumper to examine for noncompliance with mandatory safety and health standards that could result in a hazardous condition and does require that records be made and retained in accordance with § 75.363.

A number of commenters addressed the application of this standard at mines where extended, overlapping, or other novel working shifts are employed. MSHA agrees with commenters that evolution within the industry in shift scheduling has presented a number of questions and controversies regarding the standard which must be resolved to assure that proper preshift examinations are conducted within suitable time frames. Based on comments, the final rule adopts a modification to clarify and standardize the application of the preshift examination in recognition of the use of novel shifts while maintaining the protection of the existing standard.

Underground working schedules of three 8-hour shifts per day were virtually standard when the previous rule was implemented. Currently a substantial number of mining operations have work shifts of more than 8 hours. Other operations stagger or overlap shifts providing for continuous underground mining activities. Some mines that operate around the clock schedule persons to begin shifts at one- or two-hour intervals. In such cases, controversies and misunderstandings have developed regarding application of the current standard.

Commenters suggested that preshift examinations should be conducted for distinct 8-hour periods. Under this scenario a preshift examination for an 8-hour period would be acceptable for the entire 8-hour period regardless of shift schedules. Other comments indicate that this suggested modification would be consistent with the original intent and language of section 303(d)(2) of the Mine Act, which provides that no person, other than certified persons designated to conduct the examination, is permitted to enter any underground area unless a preshift examination of such area has been made within 8 hours prior to their entering the area. A commenter stated that to allow preshifts at more than 8-hour periods reduces the protection envisioned by the drafters of the Mine Act. MSHA understands the concerns and the critical nature of the preshift examinations to monitor the constantly changing conditions underground and has revised the rule accordingly to provide for an examination at 8-hour intervals.

Under the final rule, operators will establish the 8-hour periods for which preshift examinations will be conducted. Persons may enter or leave the mine, regardless of their shift schedule during any established period for which a preshift examination has been conducted. However, another preshift examination must be completed prior to the next 8-hour period if any persons, other than examiners, remain in the mine. As always, no person other than examiners may enter any underground area prior to the completion of a preshift examination.

The final rule requires three preshift examinations where persons are underground for more than 16 hours per day. At mines with only one 8-hour shift per day only one preshift examination per day would be required. Mines working 10-or 12- hour shifts would conduct preshift examinations for each 8-hour period during which persons are underground. MSHA agrees with comments that the original legislation of the Mine Act envisioned that preshift examinations would be conducted for each 8-hour interval that persons worked underground. Similar to the existing requirement, the final rule does not require examinations for designated 8-hour periods when no one goes underground.

MSHA recognizes that the final rule may cause a limited number of mines to perform examinations that are not currently required. These affected mines do not operate 24 hours per day but work one or two shifts which exceed 8 hours. For example, the final rule requires two examinations per day at a mine operating one 12-hour shift per day. When a mine operates two 10-hour shifts per day the final rule requires three examinations per day. The Agency has concluded that, considering the speed at which underground conditions can change, a reasonable period must be identified after which another examination is necessary. It is not MSHA's intent that the preshift be a continuous examination without a beginning or an end. Rather if the mine uses regular shifts that are longer than 8 hours in length, the preshift examination is good for an entire 8-hour interval. Those persons who start their work shift later than the normal shift start time do not need an additional preshift examination during the remainder of the 8-hour period. However, a preshift will be required if they are to stay in the area past the end of the 8-hour period. However, in accordance with longstanding practice, unplanned short excursions past the 8-hour period that occur infrequently will be accepted without an additional preshift. For example, miners required to stay an additional short period of time, such as 15 minutes to complete a mechanical repair, or due to a mantrip delay, would not need an additional preshift. The rule simplifies and clarifies the application of the standard at mines employing creative shift scheduling.

Comments were received suggesting that the regulation should stipulate 12:00 a.m., 8:00 a.m., and 4:00 p.m. as the beginning of the 8-hour periods for which preshift examinations would be required. This suggestion has not been adopted. There is no safety or health benefit to be gained through prohibiting operators from adopting other 8-hour intervals, e.g., 10:00 p.m., 6:00 a.m., and 2:00 p.m. Also, the standard is not intended to prevent operators from establishing their own work times. For example, an operator may elect a starting time of 11:00 a.m. for a weekend project provided the preshift is completed within the 3 hours prior to the beginning of the shift.

A commenter suggested that the final rule not require a preshift examination for non-coal producing shifts, where persons are to work in the shaft, slope, drift, or on the immediate shaft or slope bottom area. Under the commenter's suggestion, only that area immediately surrounding the bottom would need to be examined. The rationale given for the suggested change is that it is intended to bring the standard into conformity with ''certain state regulatory programs''. MSHA is not aware of state regulatory programs which would necessitate a change in the language of the final rule. Additionally, because areas where persons are not scheduled to work or travel are not required to be examined under the final rule, the

change is unnecessary. Therefore, the suggestion of the commenter has not been adopted.

Paragraph (a)(2) of the final rule provides that preshift examinations of areas where pumpers are scheduled to work or travel are not required prior to the pumper entering the areas, if the pumper is a certified person and the pumper conducts the specified examinations. This standard recognizes that pumpers travel to remote areas of the mine to check on water levels and the status of pumps, making regular preshift examinations impractical. The examinations required by pumpers include an examination for hazardous conditions, tests for methane and oxygen deficiency, and a determination of whether the air is moving in its proper direction in the area where the pumper works or travels. The examination of the area must be completed before the pumper performs any other work. A record of all hazardous conditions found by the pumper must be made and retained in accordance with § 75.363.

One commenter objected to the proposal stating that areas where pumpers work or travel should be preshift examined. The commenter stated that the proposed revision would weaken the protections provided under the existing standard, and that the rule would indirectly require that pumpers be certified. The commenter noted that most pumpers are not certified to perform examinations, and that it would be inappropriate to require ''hourly employees'' to obtain such certifications. The commenter further suggested that the proposed revision could infringe on the traditional relationship between labor and management wherein only management is required to be certified. The final rule does not require that pumpers be certified. Rather the final rule provides an option for pumpers to perform examinations for themselves if they are certified. Otherwise, areas where pumpers are scheduled to travel must be preshift examined by a certified person.

The final rule maintains the existing level of safety. A complete examination by a certified person is still required and the examination will be conducted closer to the time that work is performed in the area. As with other examination requirements, no one may accompany the pumper during the examination. It is important to note that the examination performed by the pumper under paragraph (a)(2) is not acceptable if other persons have been scheduled to enter the area. The pumper may only perform an examination in lieu of a preshift for himself or herself. If, however, after the beginning of the preshift examination, persons are assigned to enter the area, the pumper may perform a supplemental examination for other persons in accordance with § 75.361, provided that the certified pumper is designated by the operator to conduct such examinations.

Commenters asserted that pumpers cannot conduct quality examinations and effectively perform their normal work duties. Under a previous standard replaced in 1992, persons such as pumpers, who were required to enter idle or abandoned areas on a regular basis in the performance of their duties, and who were trained and qualified, were authorized to make examinations for methane, oxygen deficiency and other dangerous conditions for themselves. Under the final rule, either a preshift examination must be made in accordance with paragraph (a)(1) before a pumper enters an area, or certified pumpers must conduct an examination under paragraph (a)(2).

One commenter cited a 1984 incident at the Greenwich No. 1 mine where three miners were killed in an explosion while entering an idle area to work on a pump. The commenter suggested that an effective preshift examination would have prevented the accident and suggests that both a preshift examination and examinations by qualified pumpers should be required. An adequate preshift examination or supplemental examination as specified in the final rule, would prevent a similar result. One of these two examinations is always required under the final rule before persons enter any such idle area.

Also in addressing paragraph (a)(2), one commenter suggested that some certified persons who are pumpers may not conduct adequate examinations. According to the commenter, certified persons conducting examinations under paragraph (a)(2) cannot be expected to perform at the same level as preshift examiners conducting examinations under (a)(1). MSHA expects that all certified persons who are required to conduct examinations, including certified pumpers, will conduct the examinations in accordance with the standards.

Another commenter suggested that persons performing other jobs, such as rock dusters, should be permitted to perform examinations for themselves. Pumpers, unlike most other miners except mine examiners, travel in remote areas of the mine and normally work alone. Persons performing work such as rock dusting, however, normally work in newer areas of the mine where mining has only recently been completed and normally work as a part of a crew. Therefore, MSHA does not consider the work assignments to be similar enough to merit the same consideration and has not included this recommendation in the final rule.

As proposed, paragraph (a)(2) would have required that the certified pumper examine for noncompliance with mandatory safety or health standards that could result in a hazardous condition, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction in the area to be worked or traveled by the pumper. A number of commenters recommended the deletion of the requirement that the certified pumper identify and record noncompliance with mandatory safety and health standards that could result in a hazardous condition. Commenters cited a number of objections: the requirement would detract from miner safety, would significantly and unnecessarily increase the burden on examiners, would diminish the quality of the examination, would require excessive judgment and discretion by the examiners, and require examiners to make predictions. After considering all submitted comments, MSHA concludes that these comments have merit and the final rule does not require certified pumpers to examine for violations of mandatory safety and health standards that could result in a hazardous condition.

Under paragraph (a)(2), a record of all hazardous conditions found by the pumper must be kept in accordance with § 75.363. One commenter objected in that all of the records resulting from a preshift examination would not be required of the pumper, such as the locations of air and methane measurements and the results of methane tests. The commenter suggested that the full preshift record should be produced just as if the examination were done according to paragraph (a)(1). In the case of the pumper-examined area, the records required under paragraph (a)(2) will assure that mine management is made aware of any condition which results in a hazardous condition and will facilitate corrective actions being taken. It is important to note that the pumper is conducting an examination in a limited area only for himself or herself. This is in contrast to the various areas addressed in paragraph (a)(1), where the examination is in anticipation of one or many other miners entering these areas usually on a regular basis, all of whom are relying on the examiner's findings. In these circumstances, it is important that a record is made which can be

utilized to spot ongoing problems and trends.

Paragraph (b) of the rule specifies the nature of the preshift examinations and the locations where a preshift examination is required. Proposed paragraph (b) would have required that the person conducting the preshift examination would examine for noncompliance with mandatory safety or health standards that could result in a hazardous condition. After considering all submitted comments, the final rule does not contain this requirement.

A number of commenters recommended the deletion of the requirement to identify and record noncompliance with mandatory safety and health standards that could result in a hazardous condition. Various commenters stated that the proposed requirement: would distract the examiner from the most important aspects of the preshift examination; would require predictions; would be an unrealistic expectation; and/or is designed only to facilitate enforcement actions. Commenters also suggested that the proposal would result in a shift in the focus of preshift examination from true hazards to noncompliance.

Other commenters objected that the proposed requirement to examine for noncompliance with mandatory safety or health standards that could result in a hazardous condition is so vague that it could detract from miner safety. One commenter suggested that the examiners would spend their time performing permissibility checks, torquing roof bolts, measuring roof bolt spacing, and similar tasks which represent a significant departure from the examiners traditional duties.

Another commenter expressed the opinion that paragraph (b) should require that all violations of mandatory safety or health standards be recorded and it should not be limited to those that could result in hazardous conditions. Preshift examinations assess the overall safety conditions in the mine; assure that critical areas are properly ventilated; assure that the mine is safe to be entered by miners on the oncoming shift; identify hazards, whether violations or not, for the protection of miners; and through this identification facilitate correction of hazardous conditions.

The preshift examination requirements in the final rule are intended to focus the attention of the examiner in critical areas. This approach is consistent with the fundamental purpose of preshift examinations which is to discover conditions that pose a hazard to miners. MSHA is persuaded that to require examiners to look for violations that might become a hazard could distract examiners from their primary duties. The final rule, therefore, does not adopt this aspect of the proposal.

Paragraph (b)(1) of the final rule adopts the proposal and clarifies that preshift examinations are to include travelways in addition to roadways and track haulageways. During informational meetings, commenters indicated that the terms ''roadways'' and ''track haulageways'' are associated with areas where mobile powered equipment is operated. By including the term ''travelways,'' the rule clarifies that areas where persons are scheduled to travel on foot are to be included, since hazards may also develop in these areas.

One commenter suggested that the proposal would greatly increase the area that must be preshift examined, even though the requirement is limited to only those travelways where miners are scheduled to work or travel. This commenter suggested that in large mines many more areas than would actually be used by miners would have to be preshift examined. The premise of the preshift examination is that all areas where miners will work or travel be examined for hazards. The final rule change concerning ''travelways'' is intended only to clarify that, when miners are scheduled to use these areas, they must be preshift examined first. The final rule, therefore, does not expand the existing scope to the preshift examination requirements.

The language of the existing paragraph (b)(1) referring to, ''* * * other areas where persons are scheduled to work or travel during the oncoming shift'' is transferred to a new paragraph (b)(10) with conforming changes, as proposed. MSHA received no comments on moving this provision to paragraph (b)(10). Commenters did respond to the phrase in proposed paragraph (b)(1) requiring preshift examinations of roadways, travelways and track haulageways where persons are ''* * * scheduled, prior to the beginning of the preshift examination to work or travel during the oncoming shift.'' The purpose of this proposal, which is adopted in the final rule with only clarifying changes, is to permit work and mining personnel to be rescheduled after the start of a shift. Preshift examinations, by their nature, must be completed before the start of the shift. Changes in conditions, however, such as a breakdown of equipment, can alter planned work schedules. To accommodate these circumstances, the final rule requires mine operators to design preshift examinations around the best information available at the time the preshift begins. If changes must be made, § 75.361 specifies that areas not preshift examined be covered by a supplemental examination performed by certified persons before miners enter the area.

One commenter objected that was confusing and should be modified. Other commenters foresaw possible abuses of the flexibility offered by the rule with some operators performing supplemental rather than preshift examinations, claiming that assignments were made after the preshift examination begins. After considering the comments, MSHA has retained the proposed flexibility to preshift examine areas where miners are scheduled to work or travel. To require more than this would be impractical.

Section 75.360(b)(3) of the final rule requires preshift examinations of working sections and areas where mechanized mining equipment is being installed or removed if anyone is scheduled to work on the section or in the area during the oncoming shift. A discussion of the reproposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble. As with the existing rule, the examination includes working places, approaches to worked-out areas, and ventilation controls on these sections or in these areas. The final rule, like the proposal, adds a new requirement that the examination also include a test of the roof, face and rib conditions on these sections or in these areas.

Proposed changes to paragraph (b)(3) not adopted in the final rule would have also required preshift examination of sections not scheduled to operate but capable of producing coal by simply energizing the equipment on the section. Also, proposed changes to paragraphs (c), (c)(1), and (c)(3) specifying where air volume measurements were to be taken on these sections have also not been adopted in the final rule.

The new requirement to test the roof, face and rib conditions is added because of the importance of this test to the safety of miners. In newly mined areas, checking roof, face and rib stability is most important to preventing injuries and death. Comments were received in support of the revision, citing accidents which might have been prevented had such tests been adequately performed during preshift examinations. One commenter, when suggesting new wording for paragraph (b)(3), indicated that the requirement to test the roof, face and rib conditions should be deleted but

did not offer any rationale for the suggested deletion. Another commenter suggested that the preshift examination should only require a visual examination of the roof, rather than a physical examination. Physical examinations of the roof, such as ''sounding,'' have been a historically accepted method for examiners to test roof competency. Whenever an examiner has a question as to whether a section of roof is competent, such a test should be performed.

Comments were mixed on MSHA's proposed revision to include idle working sections as part of the preshift examination. The proposal is not retained in the final rule. Some commenters objected to the proposal as unnecessary, burdensome, or impractical. Commenters believed that the existing § 75.361 requirement for supplemental examinations prior to anyone entering into such an area was sufficient. Commenters also stated that a preshift examination in these areas could introduce a false sense of security and that the effect would be to divert preshift examiners from more important duties. One commenter stated that the proposed requirement would be inconsistent with and contradictory to the basic concept of preshift examinations. Another commenter objected to MSHA's statement in the preamble to the proposal that there is a reasonable likelihood that miners will at some point during a working shift enter sections that are set up to mine coal.

In support of the proposed requirement to preshift examine idle sections, one commenter cited explosions at the Red Ash Mine in 1973, the Scotia Mine in 1976, the P&P Mine in 1977, the Ferrell #17 in 1980, the Greenwich #1 Mine in 1984, and the 1994 explosion at the Day Branch No. 9 Mine in Kentucky. As the commenter pointed out, in each of these accidents miners were sent into an area that had not been preshift examined. However, none of these accidents were the result of miners entering areas that would have been covered by the proposal. In each instance, miners entered an area where mining had ceased, but could not be resumed by simply energizing equipment. Another common thread in each of these explosions was the failure of the operator to conduct the required supplemental examination prior to miners entering the area on an unscheduled basis.

Paragraph (b)(4) of the final rule requires preshift examinations to include approaches to worked-out areas along intake air courses and at the entries used to carry air into worked-out areas if the intake air passing the approaches is used to ventilate working sections where anyone is scheduled to work during the oncoming shift. The examination of the approaches to the worked-out areas is to be made in the intake air course immediately inby and outby each entry used to carry air into the worked-out area. The examination of the entries used to carry air into the worked-out areas is to be at a point immediately inby the intersection of each entry with the intake air course. The standard is intended to assure that miners are not exposed to the hazards associated with ventilating working sections with contaminated air which has passed through a worked-out area. The requirement is consistent with the § 75.301 definition of ''return air'' and with § 75.332 which provides that working sections and other specified areas must be ventilated with intake air.

Commenters correctly noted that a clarification was needed in the first sentence of proposed paragraph (b)(4) to indicate that the examination at the specified points is only required if the intake air passing the approaches is used to ventilate working sections where anyone is scheduled to work during the oncoming shift. Commenters suggested that an examination should not be required if the intake air is not used to ventilate working sections or if no one is scheduled to work on the section. This was the result intended by the proposal and the final rule has been revised accordingly.

One commenter also suggested that the requirement in paragraph (b)(4) is unnecessary because the safeguards in the approved mine ventilation plan should prevent an air reversal in a worked-out area in which this air would enter the intake air course. The commenter offered the example of a worked-out area connected directly to a bleeder system. MSHA agrees that when proper safeguards are in place and operating as intended, air reversals are unlikely. However, roof falls and other obstructions in the worked-out area or in the bleeder can cause air reversals, permitting return air to enter the intake and be transported to the working section. Without a suitable examination, this condition would go undetected and could lead to disaster. While not exactly the same, the explosion at the Pyro Mine in 1989, which resulted in the deaths of 10 miners, was the result of a somewhat similar set of circumstances. A water blockage in the bleeder entry that combined with changes to certain ventilation controls led to methane migrating from the worked-out area onto the longwall face. MSHA's report of this accident concludes, in part, that changes that occurred during the mining of the longwall panel and in the bleeder entries caused a fragile balance of air flows to exist in the ventilation system that permitted methane to migrate from the gob and to accumulate near the longwall headgate.

One commenter agreed with the proposal and discussed the need to assure that miners are not exposed to the hazards associated with ventilating working sections with return air.

Essentially, the final rule requires that at each applicable approach, three examinations must be made; immediately inby and outby the approach in the intake entry and in the approach itself immediately inby the intersection with the intake entry. Situations exist where multiple openings along an intake lead into a worked-out area. Under some conditions intake air enters the upstream openings, passes through the worked-out area, and then re-enters the intake. The examination required by paragraph (b)(4) is designed to assure that such a condition is detected. Also, the examination detects any change in ventilation entering the worked-out area which may warrant follow-up or corrective actions to assure that the worked-out area is ventilated.

Paragraph (b)(6) of the final rule adopts the proposal modifying the existing rule. No comments were received on this aspect of the proposal. The final rule in paragraph (b)(6)(i) requires preshift examinations to include entries and rooms developed after November 15, 1992 (the effective date of the existing rule), and developed more than 2 crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to reach a working section where anyone is scheduled to work during the oncoming shift. Similarly, under (b)(6)(ii) the examination must include entries and rooms developed after November 15, 1992, and driven more than 20 feet off an intake air course without a crosscut and without permanent ventilation controls where intake air passes through or by these entries or rooms to reach a working section where anyone is scheduled to work during the oncoming shift.

Existing paragraph (b)(6) requires that a preshift examination be made in all entries and rooms driven more than 20 feet off an intake air course without a crosscut or more than 2 crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift. MSHA proposed

modifications to existing paragraph (b)(6) based on concerns raised following publication of the existing rule on May 15, 1992. Commenters at that time indicated that extensive rehabilitation would be required at a number of mines to implement the standard in the rooms and entries described in the rule, causing diminished safety for miners performing the rehabilitation work. Commenters noted that some areas had been timbered heavily and cribbed because of adverse roof conditions and that rehabilitation would unnecessarily expose miners to roof falls and rib rolls while removing or repositioning roof support. In addition, roof conditions in some areas would remain hazardous even after rehabilitation. The commenters also noted that many such areas had been in existence for many years without incident and that any methane liberation had long since stopped due to the passage of time. They noted that some areas cannot be effectively sealed and that the risks associated with rehabilitation and subsequent physical examinations would greatly outweigh the safety benefit to be gained. MSHA recognizes the legitimate concerns raised by the commenters and the final rule requires preshift examination of entries and rooms developed after November 15, 1992 and driven more than 20 feet off an intake air course without a crosscut or more than 2 crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift. MSHA believes, however, that the conditions addressed by paragraph (b)(6) are the result of improper mining practices in the past. These mining systems should be revised in the future to avoid poor conditions, or the areas affected should be fully and reliably ventilated and be examined. Also, the final rule applies only to entries and rooms developed after the effective date of the existing rule. As such, the mining industry was on notice of the shortcomings of mining practices that left entries and rooms of the type addressed by the standard.

Paragraph (b)(8) retains the proposal requiring preshift examinations to include high spots along intake air courses where methane is likely to accumulate, if equipment may be operated in the area during the shift. As noted in the proposal, it has long been recognized that methane can accumulate in high areas with no indications being detected in the lower portions of the opening. As mobile equipment passes under these areas or a conveyor belt is put into operation, the methane is pulled down and mixed with the air in the entry and may be ignited. The final rule addresses the hazards of undetected accumulations of methane in high spots by requiring preshift examinations in such areas in intake air courses if equipment will be operated in the area during the shift.

Several commenters requested that MSHA clarify the term ''high spots.'' One commenter stated that many hours would be necessary to examine every indentation in the roof of a large mine and stated the belief that the turbulence created by passing equipment would render harmless any of the small amounts of methane that might possibly accumulate. Another commenter believed the requirement was unnecessary because there has never been a problem with methane accumulating in intakes in quantities sufficient to cause an explosion. One commenter suggested that the requirement should only be applicable to mines with a demonstrated history of methane accumulations, noting that although mines are considered likely to liberate methane, it is not likely that all mines will accumulate methane in high spots.

Another commenter suggested that preshift examinations should be required in all high spots in intakes, returns, belt entries, and track haulage entries. The commenter also objected to limiting the examination in intakes only to areas where equipment may be operated during the shift. The commenter observed that methane can accumulate quickly in high spots and that it is critical to detect the methane before it creates a danger. The commenter notes several accidents involving methane accumulations in high spots, including: Meigs No. 31 Mine in 1993 where methane in a roof cavity was ignited by a torch; VP–5 Mine in 1992 when methane in a cavity was ignited by a torch; Ferrell No. 17 Mine in 1980 where, according to the commenter, methane may have accumulated in a cavity in the belt entry roof and may have been ignited by a trolley powered vehicle; and in the VP–6 in 1982 where methane in a high spot was ignited by a trolley powered vehicle traveling through the area. The commenter stated that accumulations of methane in high spots can be ignited by any number of sources.

A meaningful preshift examination requires that conditions which can lead to an explosion or ignition be detected and corrected before miners begin their work. In addition to the accidents cited above attributed to methane accumulations in high spots, the Itmann No. 3 Mine explosion occurred when a trolley powered vehicle ignited methane in a high spot, resulting in the death of 5 miners and severe burns to 2 other miners. The phrase ''high spots where methane is likely to accumulate'' should be understood in the coal mining industry. Experienced miners, and in particular preshift examiners and certified persons, can readily recognize a high spot where methane is likely to accumulate. Also, MSHA for many years has considered preshift examinations to be inadequate where examinations did not include methane tests in these areas. An examination of ''every indentation,'' as foreseen by one commenter is not expected nor intended by paragraph (b)(8), which specifies that preshift examinations be used to identify methane hazards by testing in the appropriate locations. The final rule does not adopt the suggestion that methane examinations be based on mine liberation history since significant methane liberation may begin or can greatly increase at any time. Also, the potential for a dangerous accumulation of methane in a high spot is influenced by mine ventilation, particularly the air velocity in the entry.

One commenter suggested that the rule require tests only in ''unventilated high spots'' along intake air courses. The final rule does not adopt this approach. The purpose of the preshift examination is to detect hazards, in this case accumulations of methane. Nominal ventilation in a high roof cavity may not be sufficient to sweep away methane and an accumulation could exist. The final rule directs an examiner's attention to such situations.

Proposed paragraph (b)(9) is modified in the final rule. Paragraph (b)(9) of the final rule requires preshift examinations at underground electrical installations referred to in § 75.340(a), except those water pumps listed in § 75.340(b)(2) through (b)(6), and areas where compressors subject to § 75.344 are installed if the electrical installation or compressor is or will be energized during the shift. The proposal would have exempted all water pumps from the requirements of paragraph (b)(9).

One commenter objected to the exemption for pumps and recommended that all pumps be examined pointing out that some pumps are large, high-horsepower units. The commenter noted a 1994 case in Virginia where a 200 horsepower pump exploded. Pumps of this type may be in locations or in applications that would not be examined by pumpers under paragraph (a)(2). The final rule responds

to this issue by requiring that all pumps should not be exempted from the standard. Paragraph (b)(9) requires preshift examinations of all pumps, except those specified in § 75.340(b)(2) through (b)(6). Pumps specified in § 75.340(b)(2) through (b)(6) and other pumps that operate automatically or that otherwise may be energized are generally in the more remote areas of the mine and are to be examined weekly in accordance with § 75.364.

Pumps which will be examined by certified pumpers in accordance with paragraph (a)(2) are not covered by the final rule because of the limited hazards they pose and because certified pumpers would themselves conduct examinations of this equipment in accordance with paragraph (a)(2). Examinations by pumpers at these locations will assure that methane has not accumulated and that the equipment is not in a condition to create a fire or ignition source.

A review of the accident history reveals a number of fires in equipment that, under the final rule, would be subject to preshift examinations. For example, the compressor that MSHA identified as the probable cause of the fire in the Wilberg Mine, which killed 28 miners, would have required a preshift examination under (b)(9) of the final rule. Additionally, MSHA has identified several fires associated with rectifiers and transformer installations in the mining industry. One of these transformer fires was discovered during a preshift examination.

One commenter supported proposed paragraph (b)(9) and noted a number of ignitions involving trolleys. The commenter also noted that history demonstrates that other electrical installations present ignition or fire hazards which should be examined before each shift.

One commenter incorrectly understood proposed paragraph (b)(9) to not require preshift examinations of areas where compressors subject to § 75.344 are installed if the compressor is or will be energized during the shift. The standard does require preshift examinations of such equipment, which includes all compressors except those which are components of equipment such as locomotives and rock dusting machines and are compressors of less than five horsepower.

Paragraph (b)(10) adopts the proposal that preshift examinations include other areas where work or travel during the oncoming shift is scheduled prior to the beginning of the preshift examination. This provision recognizes that work requirements and situations may change after the preshift examination has begun. Often, once the examination has started it is not possible to contact the examiners to direct them to newly identified areas where miners will work. In these cases, a supplemental examination is required before persons work or travel in these areas. As discussed in the preamble to the proposal, paragraph (b)(1) requires preshift examinations of any underground area where persons are scheduled to work or travel during the oncoming shift. Under the existing rule, an operator did not have the flexibility to modify work assignments after the preshift examination had begun, unless it was possible to contact and redirect the examiners to perform a preshift examination before the beginning of the shift. Commenters in general supported the proposal. One commenter, however, while supporting the change expressed concern that the provision could be abused. MSHA does not anticipate abuse of the rule and believes it to be a reasonable approach to assuring that areas where persons work or travel are examined.

As discussed above, the final rule does not adopt the proposed revisions to paragraphs (c), (c)(1), and (c)(3) and instead retains the language of the existing standard. While commenters to proposed paragraphs (c), (c)(1), and (c)(3) objected to expanding air volume measurements made during preshift examinations to sections where coal could be mined by simply energizing the equipment, no comments were received objecting to retaining the requirement for areas where equipment is being installed or removed. An in-depth discussion of the reproposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

Paragraph (f) of the final rule sets out the requirements for recording and countersigning both the results of the preshift examination and actions taken to correct hazardous conditions found during the preshift examination. The final rule adopts the following proposed revisions to the existing rule: a record of the results of the preshift examination is required to be made; the results of methane tests are required to be made in terms of the percentage of methane found; and a certified person is required to record the actions taken to correct hazardous conditions found during the preshift examination.

Additionally, paragraph (f) of the proposal would have required countersigning by both the mine foreman and the superintendent or equivalent individual to whom the mine foreman reports. The final rule does not require this second level countersigning. Also, the final rule allows an official equivalent to a mine foreman to sign the records. Finally, the final rule allows for secure storage of records in a way that is not susceptible to alteration and the records can be kept in a book or in a computer system.

Commenters suggested that the final rule only require the examiner to record uncorrected hazardous conditions and not those which were corrected by the end of the shift. Commenters characterized the reporting of corrected hazardous conditions as unnecessary and unjustified by the accident history.

MSHA did not adopt the proposal to record corrected defects found during the fan examination required by § 75.312. MSHA believes, however, that a record of all hazards found during the preshift examination, including those corrected, is necessary. The record serves as a history of the types of conditions that are being experienced in the mine. When the records are properly completed and reviewed, mine operators can use them to determine if the same hazardous conditions are occurring repeatedly and if the corrective action being taken is effective. Additionally, this record can permit mine management, the representative of miners, and the representative of the Secretary to better focus their attention during examinations and inspections. The safety value of a complete record is illustrated by the 1989 explosion at Pyro Mining Company's William Station Mine in which 10 miners were killed. MSHA's accident investigation report concludes that methane concentrations of up to 6.5 percent were detected in the explosion area prior to the explosion but reports by the mine foreman for the shift failed to record the presence of these dangerous accumulations of methane or show the action taken to correct the condition. The investigation further found that the failure to record these methane accumulations in the appropriate record books prevented management officials and other interested persons from learning of the hazardous condition and initiating corrective action. In light of the record, the final rule adopts the proposal and requires the examiner to record the results, whether corrected or not, of the preshift examination and the action taken to correct hazardous conditions found during the preshift examination. This would include hazardous conditions and their locations and the results of methane and air measurements required to be made elsewhere in § 75.360.

As with other records required by this rule, the records of preshift examinations may be kept either in secure books that are not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. A detailed discussion of record books and the use of computers to maintain records can be found in the General Discussion of this preamble.

A variety of comments were received regarding the countersigning of preshift records by the mine foreman, and the time permitted for countersigning. The final rule adopts the proposal that the mine foreman or equivalent mine official must countersign the record of the preshift examination by the end of the mine foreman's next regularly scheduled working shift. The mine foreman is in a position of responsibility for the day-to-day operation of the mine. It is essential for the health and safety of the miners that the mine foreman be fully aware of the information contained in the preshift examination reports so as to be able to allocate resources to address safety problems. Allowing until the end of the mine foreman's next regularly scheduled working shift to countersign the reports provides sufficient flexibility to make compliance practical while assuring that the mine foreman is aware of the results of the examination in a reasonably timely manner.

Some commenters suggested that the time for countersigning is unnecessarily long, and that the final rule should restore a previous requirement that countersigning be completed ''promptly.'' The term ''promptly'' involves ambiguity that is eliminated by specifying the time for countersigning the preshift examination record. The rulemaking record does not show that the time set by the final rule would expose miners to safety or health risks. Commenters suggested that the term ''mine foreman'' be replaced by a ''certified person responsible for ventilation of the mine or his designee.'' Another commenter suggested that the record could be countersigned by the mine foreman or any other mine official responsible for the day-to-day operation of the mine. Commenters stated that some operations no longer use the terms ''mine foreman,'' ''mine manager,'' or ''superintendent''. To provide for alternative management titles, the final rule incorporates the phrase ''or equivalent mine official.''

Numerous comments were received regarding the proposal for second level countersigning of the preshift examination record by the mine superintendent, mine manager, or other mine official to whom the mine foreman is directly accountable, within 2 scheduled production days after the countersigning by the mine foreman. The final rule does not retain this proposed requirement. A detailed discussion of the subject of second level countersigning can be found in the General Discussion section of this preamble.

Paragraph (f) of the final rule also contains revisions to the existing rule to allow for electronic storage of records. Paragraph (g) requires that the records required by § 75.360 be maintained at a surface location at the mine for one year and be made available for inspection by authorized representatives of the Secretary and the representatives of miners. A discussion of comments concerning the use of computers to maintain records can be found in the General Discussion of this preamble.

Section 75.362 On-Shift Examination

Like the preshift examination, the on-shift examination of working sections is a long accepted safety practice in coal mining. As coal is extracted, conditions in the mine continually change and hazardous conditions can develop. Because the mining environment changes constantly during coal production, this examination identifies emerging hazards or verifies that hazards have not developed since the preshift examination. Generally, the on-shift examination includes tests for methane and oxygen deficiency, an examination for hazardous conditions, and air measurements at specified locations.

The final rule adopts proposed § 75.362 with the exception that revisions have been made to the proposed provisions dealing with an examination for compliance with the mine ventilation plan requirements for respirable dust control.

The final rule redesignates existing (d)(1)(i) and (ii) as (d)(1)(ii) and (iii), revises paragraphs (a)(1), (c)(1), (d)(1)(iii) and (d)(2), removes paragraph (a)(2), and adds new paragraphs (a)(2) and (d)(1)(i). Additionally, the requirements of existing paragraphs (g) and (h), recordkeeping and retention, are transferred to § 75.363, Hazardous conditions, posting, correcting, and recording. New paragraphs (g)(1) and (g)(2) are also added by the final rule.

The word ''on-shift'' has been added to the first sentence of paragraph (a)(1) for clarity and consistency with other paragraphs of § 75.362. MSHA did not receive any comments on this proposed revision. Paragraph (a)(1) is also revised as proposed to require a certified person designated by the operator to conduct an on-shift examination of each section where anyone is assigned to work during the shift and any area where mechanized mining equipment is being installed or removed during the shift. The existing rule required that an on-shift examination be performed only on sections where coal is produced and areas where mechanized mining equipment is being installed or removed. Some commenters agreed that many of the same hazards exist on a section whether coal is being produced or not. Commenters gave several examples of activities that take place on non-coal producing sections including equipment repair and maintenance, cutting and welding, rockdusting, clean-up, and roof bolting. As indicated by these commenters, all of these activities present the potential for a serious accident. One commenter arguing against the proposed change stated that the preshift and supplemental examinations already address the safety concerns to which the proposal was directed. While MSHA considers the preshift and supplemental examinations to be of great importance in providing a safe work environment, these examinations are performed prior to workers on a shift entering the mine or, in the case of the supplemental examination, in an area of the mine that has not been preshift examined. The on-shift examination is intended to address hazards that develop during the shift. The concept of the on-shift examination is not new. On-shift examinations of coal producing sections have been required since the enactment of the Federal Coal Mine Health and Safety Act of 1969.

Another commenter arguing against expanding the on-shift examination requirement to non-coal producing sections stated that requiring on-shift examinations of areas other than working sections would detract from other required examinations. On-shift examinations on coal producing sections are normally conducted by section foremen who spend the vast majority of the shift on the section they are supervising. These individuals will not normally conduct the on-shift examinations in non-coal producing sections. These examinations will be conducted by certified persons assigned to work in these areas or other certified persons assigned to conduct these examinations. MSHA does not, therefore, foresee reduced attention to examinations in working sections.

Another commenter suggested that the requirements for on-shift examinations be expanded further than proposed. The commenter stated that many of the same types of activities that

occur on non-production shifts on the sections also occur in outby areas of mines. In support of this recommendation the commenter pointed to 4 explosions which occurred in outby areas of the mines. Those accidents were the explosions at the Greenwich Collieries No. 1 Mine in Pennsylvania in February 1984 where 3 miners were killed; the explosion at the Day Branch Mine in Kentucky in 1994 where 2 miners lost their lives and; an ignition at the Loveridge No. 22 Mine in West Virginia in 1992 that burned 1 miner. In each accident, several violations of safety standards contributed to the explosion or ignition, including inadequate or entirely omitted examinations required by standards in effect at the time. Compliance with those safety standards would have significantly reduced the likelihood of these tragic accidents occurring. Likewise, requirements of this final rule, such as the requirements for preshift and supplemental examinations in areas where persons are assigned to work or travel, would have served well to prevent these accidents.

The final rule requirements for on-shift examinations focus on the areas most likely to develop hazards during a shift. Expanding the examination requirements further is not supported by the record nor needed for miner safety.

As proposed, the final rule also revises paragraph (a)(1) to clarify that sufficient on-shift examinations must be conducted to assure safety. One commenter suggested that MSHA should include language to require more than one examination if necessary for safety, as provided for in the previous standard. The final rule adopts this approach and requires that at least once during each shift, or more often if necessary for safety, a certified person designated by the operator must conduct an on-shift examination of each section where anyone is assigned to work during the shift and any area where mechanized mining equipment is being installed or removed during the shift. As with other changes to this section, comments were received both supporting and opposing the change. One commenter in opposition to the standard argued that although the operator is required to maintain a safe work environment at all times, documentation should not be required for each inspection that is made of the working environment throughout the shift. The commenter is correct in stating that the rule, in § 75.363, requires additional documentation. However, the only additional documentation required will be for hazardous conditions found during the additional on-shift examination conducted on non-coal producing sections where miners are working. The additional documentation required does not override the need for the standard. Another commenter suggested that the term ''more often if necessary for safety'' be changed to ''more often if necessary for safety as determined by the operator depending on the mining conditions at the time.'' This commenter stated that conducting additional checks for safety is a current practice and individuals working on the section, including the section foreman, are the most familiar with conditions in that area and should make the determination whether additional examinations are needed. MSHA agrees with this commenter that persons working on a section are in the best position to identify the need for additional examinations. The suggested language has not been adopted, however, because MSHA believes that this determination should not be limited to persons working on the section.

Another commenter supported the proposal and listed explosions that have occurred which, in the opinion of the commenter, could have been prevented had additional on-shift examinations been made. MSHA agrees that there are occasions when additional on-shift examinations are necessary for safety and, therefore, the final rule requires that on-shift examinations be conducted at least once each shift, or more often if needed for safety.

The final rule retains the existing provision of paragraphs (a)(1), (c)(1) and (c)(2) requiring an on-shift examination of areas where mechanized mining equipment is being installed or removed. An in-depth discussion of the reproposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

Paragraph (a)(2) adds a new on-shift examination requirement to address respirable dust control. Under the final rule, before coal production begins on a section, an examination for compliance with the dust control measures established in the mine ventilation plan must be completed. This examination includes measurement of air quantities and velocities, water pressures and flow rates, a check for excessive leakage in the water delivery system, and checks of the number of operating water sprays and their orientation as well as the placement of section ventilation control devices.

Assuring full compliance with these requirements is important in safeguarding the health of miners. Human and financial costs demonstrate the need for further attention. In 1990, approximately 2000 deaths were associated with Coal Worker's Pneumoconiosis and the total number of deaths between 1968 and 1990 were over 55,000. As of 1993, total annual Black Lung Program costs were over $1.3 billion and the cumulative total cost had exceeded $30 billion.

Agency experience shows that needed attention has not always been given to the proper functioning of respirable dust controls. For example, a series of special spot inspections, undertaken in 1991 to conduct checks of the dust control parameters during the course of working shifts, revealed that 21 percent of the 781 mining units sampled were not complying with one or more of their dust control parameters. In its 1992 report, an MSHA Task Group recommended coal mine operators be required to make periodic on-shift examinations to verify that the mine ventilation plan parameters are in place and functioning as intended. MSHA considers on-shift examinations of respirable dust controls an important part of reasonable and prudent respirable dust control strategy.

Several methods of measuring water spray pressures would be acceptable. For example, water flow and pressure can be monitored through the installation of an in-line water meter and a pressure transducer. Water pressure can also be measured by permanently installing a pressure gauge on a machine. Operators would determine the working relationship between the pressure gauge reading and the actual operating pressure at the sprays. Once the working relationship has been established, the gauge pressure could be used to indicate the actual spray pressure specified in the mine ventilation plan for a given number and type of operating sprays.

Measurement of any required water flow rate could be accomplished through the installation of a flowmeter. A flowmeter provides a direct and reliable measurement and is the preferred method of determining water flow rate. Another acceptable method of determining flow rate would be to establish the relationship between the water pressure and the spray orifice diameter, either through engineering data or through actual tests. Once established, the water pressure gauge reading could be used to reliably indicate a flow rate for a specific number of sprays at a given orifice size.

One commenter, while generally supportive of the requirement for an on-shift examination of respirable dust controls, expressed concern over permitting the use of in-line flowmeters

and pressure transducers. The commenter stated that leaks in the location of the flowmeter and pressure transducer could go undetected, resulting in a loss of pressure and flow at the sprays. MSHA agrees that undetected leaks could result in improper operation of the system. To address this point, the final rule has been revised from the proposal to require that a check for excessive leakage in the water delivery system be made during the on-shift. This commenter also suggested that use of incorrect spray nozzles could result in improper operation of the system that would not be detected with in-line flowmeters and pressure transducers. MSHA would expect that as part of the examination of the number of operating sprays a check would be made to assure that the proper sprays are being used.

The final rule requires that the number of water sprays and their orientation be included in the examination. While spray orientation is important in air-directing spray systems, such as sprayfans and shearer-clearers, MSHA does not intend that precise angles be determined during each examination. Rather, the examiner would be responsible for assessing whether the direction and orientation of the sprays are generally correct and in accordance with the requirements of the mine ventilation plan.

The final rule also requires that the working section ventilation and control device placement be examined for compliance with the mine's ventilation plan. Mine ventilation, particularly where coal extraction occurs, is a basic respirable dust control measure.

Any other respirable dust controls specified in the approved mine ventilation plan are also included in the scope of the examination required under the final rule. An example of such controls is the cleaning and maintenance procedures for a wet bed scrubber installed on a continuous mining machine. The examination would include a check to assure that air inlets and discharges are not plugged. It is not MSHA's intent that the air quantity produced by a machine-mounted scrubber be measured as part of the on-shift examination required by paragraph (a)(2), unless such a requirement is included as a part of the mine ventilation plan.

MSHA is aware that through advances in technology it may be feasible to continuously monitor air quantity and velocity, and spray water flow rate and pressure. Continuous monitoring offers the potential to further improve miner protection by providing real-time data on the performance and condition of key dust control measures. This information can be used to give early warnings of deteriorating dust controls, allowing corrective action to be taken before the dust control system fails to protect miners from excessive dust levels. Although continuous monitoring will eliminate the need for periodic physical measurements to verify proper operation of some dust controls, visual observation of other controls will still be necessary. Among these are the number and location of operating water sprays, their general condition and orientation, the section ventilation setup and control device placement, the check for excessive leakage in the water delivery system, and other control measures where performance and operating condition can only be assessed visually.

One commenter suggested that MSHA not permit the use of continuous monitoring in lieu of physical checks because technology to permit such monitoring is not as yet available. The final rule is intended to be sufficiently flexible to permit the use of new technology, such as continuous monitoring and sensing devices, and also to encourage the introduction of such modern equipment. The final rule does not require the physical measurement of the air velocity and quantity, water pressure and flow rates if continuous monitoring of the dust control parameters is used and indicates that the dust controls are functioning properly.

The on-shift examination of the dust controls is to be completed under the direction of a person who has been designated by the operator. The proposal would have required that a certified person conduct the examination. One commenter objected to this approach, suggesting that the completion of this examination would require considerable time and that a more thorough examination could be accomplished by a person(s) familiar with the equipment and the dust control measures being utilized. This commenter recommended that MSHA remove the word ''certified'', thus permitting the examination to be conducted by persons other than certified persons. A second commenter argued that the examination should be conducted by a single individual because other persons may be assigned to a section who are not familiar with the requirements of the mine ventilation plan for that section.

The final rule deletes the word ''certified,'' permitting on-shift examinations of dust controls to be conducted by one or more persons who are not certified individuals. However, the examination must still be conducted under the direction of a person designated by the operator and as set out in paragraph (g)(2), a certified person must certify that the examination has been completed. MSHA would expect that the person directing this examination would be present at the site of the examination while the examination is conducted.

Another commenter recommended that the final rule not specify the measurements that are to be made need during the on-shift examination of dust controls, and that the standard be rewritten to require such an examination be sufficient to assure compliance with the respirable dust parameters specified in the mine ventilation plan. Because it is possible to identify specifically some of the parameters that must be measured in all instances the suggestion of the commenter has not been adopted. By identifying these parameters in the final rule, misunderstandings over whether a plan specification is for dust control or methane control, for example, can be eliminated.

As proposed, paragraph (a)(2) would have required that the respirable dust control portion of the examination be made at or near the beginning of the shift and before production begins on a section. One commenter suggested that such a requirement would eliminate the common practice of changing shifts on the section without an interruption in production. MSHA recognizes that changing crews without an interruption in production has become a common practice in some areas and does not intend that this practice be changed by this rule. The final rule has revised the proposal so that when a shift change is accomplished without an interruption in production on a section, the required examination may be made any time within 1 hour of the shift change. In those instances when there is an interruption in production during a shift change, the final rule requires that the on-shift examination of respirable dust controls be made before production begins on a section. The proposed wording ''at or near the beginning of the shift'' has not been included in the final rule in recognition of the fact that production on a section could be delayed and not begun until well after the beginning of the shift. Because the purpose of the standard is to assure that dust exposures are controlled during mining, the on-shift examination must be conducted prior to the beginning of production in order to be most effective.

Other commenters objected to examining respirable dust control parameters for various reasons. Some commenters stated that operators are

required to comply with the requirements of the mine ventilation plan relative to dust control and a separate requirement is not needed. The measurements specified in the final rule are a practical way to provide reasonable assurance that miners are not being exposed to unhealthy levels of respirable dust. The purpose of these checks is not to restate the requirements for compliance with the mine's ventilation plan. Instead, as discussed above, the final rule is intended to bring needed attention to the proper functioning of dust controls before production begins.

Other commenters expressed the opinion that coal production should not be delayed until after the completion of the examination of dust controls. According to these commenters, this examination will take the certified person away from other examinations that must be completed to assure safety. As explained previously, the final rule has been revised to permit the changing of crews without an interruption in production. The completion of the on-shift examination of dust control parameters can be postponed for up to 1 hour when crews are switched out at the face. Additionally, the final rule has been revised to permit the examination of dust control parameters to be performed by a person(s) other than a certified person and to simply require the certified person to certify that the examination was completed. These revisions substantially reduce any delay in production that could have resulted under the rule as proposed.

Another commenter objected to the requirements of paragraph (a)(2) stating that examination of dust controls is unnecessary because all personnel are required to be trained in the requirements of all approved mine plans including the mine ventilation plan, and many of the required mine ventilation plan parameters are checked during the pre-shift examination. The commenter stated further that other parameters, such as number of water sprays and pressure, are checked by the equipment operators during the pre-operational inspection. In the opinion of the commenter, the proposed examination of dust control parameters is redundant and unnecessary.

The requirements of paragraph (a)(2) are not redundant with existing standards. There is no requirement for a pre-operational inspection of dust controls. For the reasons discussed above, MSHA considers examination of dust controls for proper functioning to be an important practical measure for protecting miners'' health. To the extent that these checks are currently being made by some operators, together with the flexibility of the final rule, the burden of making these checks is minimized.

The final rule requires in paragraph (a)(2) that deficiencies found during the on-shift examination of dust controls be corrected before production begins, or when crews are changed without an interruption in production, before production continues. The proposal would have required that deficiencies in the controls be corrected immediately. However, the final rule revises the proposal in response to one commenter who pointed out that the correction of deficiencies is important prior to production, in view of the purpose of the rule.

Another commenter suggested that the examination of dust controls be conducted after production begins so as to be more representative of production conditions. In contrast, another commenter observed that if the required dust control parameters are not being met before production is begun, it is unlikely that they will be met after production is started. This commenter suggested multiple examinations, one before production begins and one at some later time during the shift. MSHA agrees that if dust control measures are deficient before production begins it is unlikely that they will be corrected later in the shift. Therefore the final rule requires the on-shift examination of the dust control measures prior to the beginning of production. The final rule, however, does not include the recommendation for an additional examination of dust control measures.

Paragraphs (c)(1) and (c)(2) require certified persons conducting on-shift examinations to take air measurements at the same locations where air measurements are required during the preshift examination. This includes areas where mechanized mining equipment, including longwall or shortwall mining equipment, is being installed or removed. Reduced volume or velocity of air during the shift can contribute to increased levels of respirable dust, methane accumulations, or oxygen-deficient atmospheres. Checking the mine's ventilation system verifies that changes in the mine ventilation system due to the production process have not occurred.

The final rule removes the word ''working'' from paragraph (c)(1) to assure that the application of the standard would extend to all sections, consistent with paragraph (a). Many of the activities to which miners are assigned are on sections not normally thought of as ''working sections,'' a term associated with coal production. For purposes of § 75.362, a section in the mine is considered to be the area inby the loading point; or, in the case of the installation of mechanized mining equipment, inby the proposed loading point; or, in the case of the removal of mechanized mining equipment, inby the location of the last established loading point. The final rule requires in paragraphs (a)(1), (c)(1), and (c)(2) that the certified person conducting the on-shift examination examine the section in much the same way as it would be examined during a coal producing shift, including checking for hazardous conditions, testing for methane and oxygen deficiency, determining if the air is moving in its proper direction, and measuring the volume of air in the last open crosscut or in the intake of longwalls or shortwalls, as appropriate.

Some commenters objected to this provision stating that there is little safety benefit to requiring on-shift examinations on sections other than working sections where coal is being produced. The final rule does not limit on-shift examinations to ''working sections'' but includes other areas where persons are working. Hazards similar to those that develop on a coal producing section can also develop during a shift on sections that are not producing, but where personnel are assigned to work.

Paragraph (d)(1)(i) requires that at the start of each shift, before electrically operated equipment is energized, a qualified person test for methane at each working place. One commenter suggested that the existing standard is sufficient because quite often in today's mining practices equipment is already energized at the start of the shift since one equipment operator takes over from the previous operator and examinations for methane have been performed every 20 minutes as required by § 75.362(d)(1)(ii). MSHA does not agree that the existing standard is sufficient for a number of reasons. First, although the commenter is correct in stating that switching operators while the equipment remains energized is a relatively common practice it is not a universal practice. In mines where equipment is deenergized between shifts, the final rule provides for a test for methane in each working place prior to the equipment being energized. On sections in mines where equipment operators are switched while equipment remains energized, MSHA would consider a methane test performed during the previous 20 minutes under paragraph (d)(1)(iii) as sufficient to comply with the methane test requirement of paragraph (d)(1)(i) for the working place where mining is taking place. However, paragraph

(d)(1)(i) also requires that methane tests be made in other working places on the section not only in the working place where the equipment is being operated.

The final rule requires in paragraph (d)(1)(iii) that methane tests be made more frequently than 20 minutes if required in the approved mine ventilation plan at specific locations, during the operation of equipment in the working place. One commenter objected to this requirement expressing the opinion that the standard does not identify situations in which more frequent methane tests would be warranted and, therefore, operators could be faced with a requirement to conduct additional methane tests which are unwarranted and would result in the misallocation of safety resources. The final rule is intended to address situations such as an abnormally high methane liberation rate in a mine or an area of a mine that would warrant more frequent testing for methane. Like the existing standard the final rule requires this test to be made by a qualified person, not a certified person, thus in most cases the person who makes the test will be the machine operator. As a result, this test will not require that other safety-related activities be stopped to make a test for methane.

Under the existing rule, methane tests required by paragraph (d)(1) were to be made at the last permanent roof support unless the mine ventilation plan required that they be made closer to the face using extendable probes. Paragraph (d)(2) of the final rule revises this standard and requires that the methane tests specified in paragraphs (d)(1)(i) through (d)(1)(iii) be made at the face from under permanent roof support, using extendable probes or other means. Like the existing standard, paragraph (d)(2) requires that for longwall and shortwall mining systems, the tests are to be made at the cutting head. When mining has been stopped for more than 20 minutes, methane tests must be made prior to the start up of the equipment.

During informational meetings following the publishing of the existing standard, it became apparent that a large segment of the mining community felt that methane tests should be made as close to the working face as practicable without exposing miners to unsafe conditions. MSHA agrees that proper testing for methane at the face is essential for safe mining operations. The need for making methane tests at the face has been demonstrated by researchers and engineers from the U.S. Bureau of Mines and MSHA through work performed over the last 25 years. This work documents that in a working place the concentrations near the face are considerably higher than other areas in the working place. For example, Luxner, in Bureau of Mines Report of Investigation 7223, ''Face Ventilation in Underground Bituminous Coal Mines,'' published in 1969, reported methane concentration in excess of 5 percent as far back as 15 feet using both blowing and exhaust ventilation systems with a curtain-to-face distance of 20 feet. The concentration outby this location as reported by Luxner was between zero and 1 percent. Later, Haney, et al., also showed lesser concentrations of methane further from the face using various types of assisted ventilation systems.

A speaker at one of the public hearings on the proposal suggested that tests should be made at the last row of bolts and if 0.2 percent of methane is found at that location, a probe should be used to test at the face. The final rule does not adopt this recommendation because MSHA is unaware of any tests that relate the concentration of methane at the face with the concentration at the last row of bolts. Based on current knowledge, it is doubtful that such a direct correlation could be made because of the number of variables involved.

A recurring comment concerning taking methane tests at the face with a probe was that such a requirement will lead to an increase in the number of back injuries among miners. However, other commenters supported the requirement and stated that probes as long as 40 feet are currently being used in some areas of the country. Miners with experience in using these probes testified at the rulemaking hearings that although the long probes can at times be difficult to use, they are being used and are providing measurements of methane at the face in mines operating in coal seams as low as 37 inches.

The possibility of an increase in the number of back injuries is of serious concern to MSHA. However, after reviewing all of the written comments and testimony taken during public hearings, particularly that of miners having experience with the use of probes, MSHA is persuaded that this is a reasonable approach and will achieve the desired safety results without undue risk of back injuries.

Several commenters suggested that in lieu of requiring methane tests at the face, MSHA should permit the use of the methane monitor to satisfy the requirement. In making this recommendation, one commenter suggested that the methane monitors should not be required to be installed on face equipment if they cannot also be used to test for methane in unsupported faces. Methane monitors have proven reliable over the years and provide a second level of protection against methane ignitions. Methane monitors provide for methane detection at a fixed location while the use of a methane detector with a probe permits methane measurements to be made at various locations in the face area.

Historically, machine-mounted methane monitors have been used as a backup for the other required tests. This concept was exactly what Congress recognized in § 303(l) of the Coal Mine Health and Safety Act of 1969 (Coal Act). Discussing this provision, the conference managers noted ''...the methane monitor is an additional backup device for detecting methane and should not be construed as a substitute for the other tests and testing devices required in this title for detecting and controlling methane.'' H.R. Conf. Rep. No. 91–761, 91st Cong., 1st Sess. 80 (1969).

The final rule does not adopt the suggestion of commenters that methane monitors be accepted in lieu of the methane tests required by paragraph (d)(2).

Paragraph (g)(1) adopts the language of proposed paragraph (g) and requires that the person making the on-shift examination in belt haulage entries certify by initials, date, and time that the examination was made at enough locations to show that the entire area has been examined. As explained in the preamble to the proposal, the existing rule does not require certification that examinations were conducted in belt conveyor entries. Comments received expressed the view that without certification, no mechanism exists to verify that examinations were conducted in belt conveyor entries. Other commenters questioned what MSHA meant by ''enough locations.'' MSHA agrees with the commenter that the certification requirement should be added to the rule to provide a means to verify that the examination has taken place. With respect to the locations where the certification should be made, this certification process is a common practice in the industry and is required by several state regulations. The locations where certification would be expected to be kept are no different than those which were required for many years under the previous MSHA regulation and which have been commonly accepted in the industry. Paragraph (g)(2) is a new requirement relating to the certification of the examination of respirable dust control parameters. Under (g)(2), the person making the on-shift examination to assure compliance with the respirable

dust control parameters specified in the mine ventilation plan must certify by initials, date, and time that the examination was made.

Section 75.363 Hazardous Conditions; Posting, Correcting, and Recording

Section 75.363 is a new section requiring the posting, correcting and recording of hazardous conditions. The posting of hazardous conditions against entry is a time tested method for preventing accidents. Examiners, upon finding a hazardous condition, erect ''danger boards'' to alert persons traveling in the area of the presence of the hazard. In this manner, miners are prevented from inadvertently entering an area where a hazard exists. Section 75.363 requires that hazardous conditions be posted and access to the area be limited; that the hazardous conditions be corrected immediately or remain posted; and, that a record be made and maintained of the hazardous condition and the action taken to correct the condition. Records of the hazards and the actions required to correct the hazards provide valuable safety information about conditions in the mine and the effectiveness of corrective measures.

MSHA's final rule modifies the proposal in several ways. The final rule deletes the phrase ''or reported to'' that appeared in the first sentence of proposed § 75.363(a) and deletes the requirement for countersigning by a second level official. It specifies that, except for preshift or preshift type examinations, hazardous conditions shall be corrected immediately or posted until the conditions are corrected. The final rule allows for countersigning by an official equivalent to the mine foreman and provides for storage of records in either a secure book or in electronic media which is not susceptible to alteration.

It is essential that all hazardous conditions, regardless of when detected or by whom, be adequately addressed. Commenters suggested that the proposed standard be deleted because, in their opinion, other standards provide adequate coverage. One commenter interpreted the proposed standard as being directed at only those hazards found during the on-shift examination and supplemental examinations, because hazardous conditions found during the preshift and weekly are excluded from the standard. This commenter recommended rewriting the requirements for the on-shift and supplemental examinations to reflect the needed changes.

Section 75.363 is not directed only toward hazardous conditions found during examinations. Hazardous conditions occur and are found at times during the shift when examinations are not being made. Under the final rule, these hazardous conditions would also require posting, correction, and recording when found by the mine foreman or equivalent mine official, assistants to the mine foreman or equivalent mine official, or other certified persons designated by the operator to conduct examinations.

One commenter questioned whether the proposed standard was intended to assign new duties to the mine foreman and assistant mine foremen. The final rule does not impose additional responsibilities on the mine foreman and assistant mine foremen. However, these individuals are certified and routinely travel throughout the mine for purposes other than making examinations. The standard requires that hazardous conditions found by the mine foreman, assistant mine foreman, or equivalent mine officials, be treated the same as hazardous conditions found by other certified persons who have been designated to conduct examinations. That is, the hazardous conditions are to be appropriately posted, corrected, and recorded. The term ''equivalent mine officials'' has been added in response to commenters who suggested that the term ''mine foreman'' is no longer used at all mines.

Under paragraph (a) any hazardous condition found by the mine foreman or equivalent mine official, assistants to the mine foreman or equivalent mine official, or other certified persons designated by the operator to conduct examinations is to be posted with a conspicuous danger sign. The posting requirements of this section apply to every hazardous condition regardless of when it is found. Under the proposal, hazardous conditions reported to the mine foreman, assistants to the mine foreman or other certified persons designated by the operator to conduct examinations would have required posting. Commenters suggested that requiring hazardous conditions ''reported to'' these individuals would eliminate the judgement of the persons responsible for making decisions about whether or not a hazardous condition exists. One commenter suggested that the requirement, as proposed, could undermine the integrity of the certified person. The final rule is revised to require that hazardous conditions found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purpose of conducting examinations shall be posted with a conspicuous danger sign and shall be corrected immediately or remain posted. MSHA would expect that when a hazardous condition is reported to these certified persons, that the measures necessary to evaluate the situation and, if necessary, to comply with the provisions of this section would be taken.

One commenter suggested that the proposed requirement that all hazardous conditions be corrected ''immediately'' would diminish safety because miners could be exposed to hazards unnecessarily. The commenter offered as an example an area of bad roof in a ''remote, unused crosscut'' and suggested that in this case posting of the area against entry would be sufficient. MSHA recognizes that there are instances, such as the example presented by the commenter, where safety is best served by simply posting the area against entry. This has long been the practice in the industry and the final rule does not prevent this from continuing. In these cases, the corrective action required to prevent injury is to preclude persons from entering the area. The proposal would have required that the hazardous condition be corrected immediately and that the area remain posted until the hazardous condition is corrected. To reflect the recommendation of the commenter, the final rule requires that the hazardous condition be corrected immediately or that the area remain posted until the hazardous condition is corrected. The Agency recognizes that in some instances posting the area against entry is the corrective action.

The requirement that the hazardous conditions be corrected immediately does not necessarily require correction by the certified examiner finding the condition. To do so could delay the completion of the examination. Rather, the final rule requires that the hazardous condition be corrected following the reporting of the condition by the examiner to the appropriate mine official. Common sense and sound judgement should enter into the decisions as to when hazardous conditions are corrected. Posting of the area where the hazardous condition exists in order to prevent entry is to be accomplished by the certified person finding the hazardous condition.

One commenter questioned whether proposed paragraph (a) would require the hazardous condition itself be posted. The posting of the area, as opposed to the hazardous condition itself, would, in most cases, be more effective and a safer practice. For instance, if a section

of bad roof is detected, it would be in the best interest of safety to mark the area or perimeter of the area of bad roof instead of the roof itself. The ''danger'' sign would be placed at a location where anyone entering the area of the hazardous condition would pass so that persons approaching the area would be expected to see the ''danger'' sign. The area would remain posted until the hazardous conditions are corrected. The posting of areas where hazardous conditions exist to alert persons is a long-standing accepted safety practice in the mining community.

Paragraph (a) requires that once an area is posted due to a hazardous condition, only persons designated by the operator to correct or evaluate the condition may enter the posted area. Additionally, if the hazardous condition creates an imminent danger, everyone must be withdrawn from the affected area to a safe area until the condition is corrected. Persons referred to in section 104(c) of the Act are permitted to enter in the area.

One commenter suggested that the representative of the miners be permitted to enter an area which has been posted with a ''danger'' in order to evaluate the condition. The final rule follows the statutory provision in § 104(c) of the Mine Act. This longstanding requirement provides that only persons designated by the operator to correct or evaluate the hazardous condition may enter such posted areas. With respect to the representative of miners, § 104(c)(3) provides that the representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the Secretary, qualified to make mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the hazardous condition may enter the area.

Paragraph (b) requires that a record of hazardous conditions be made by the end of the shift on which the condition was found. This record is required to be maintained on the surface and must include the nature and location of the hazardous condition and the corrective action taken. A record of all hazards found, as well as the required corrective action, serves as a history of the types of conditions that can be expected in the mine. When the records are properly completed and reviewed, mine management can use them to determine if the same hazardous conditions are recurring and if the corrective action being taken is effective. No record is required on any shift on which no hazardous conditions are found. Paragraph (b) excludes hazardous conditions found during the preshift and weekly examinations because these examinations have separate record keeping requirements.

Commenters recommended rewording the standard to eliminate the provisions that no record is required on any shift on which no hazardous condition is found and that the corrective action taken must also be recorded. These suggestions were offered to clarify the standard. MSHA believes that deleting these requirements would not clarify the rule and the suggestions are not adopted in the final rule.

Paragraph (c) requires that a record be made either by the certified person who conducted the examination or by a person designated by the operator. As with other records required by this subpart, when the record is made by a designated person other than the certified person making the examination, the person making the record need not be certified. If the record is made by a person designated by the operator, the certified person must verify the record by initials and date. MSHA did not receive any comments objecting to this part of the standard. Like the other recordkeeping requirements in the proposal, proposed paragraph (c) would have required that the record be made in a state-approved book or a bound book with sequential machine-numbered pages. Additionally, the proposal would have required countersigning by both the mine foreman and the superintendent or equivalent individual to whom the mine foreman reports. The final rule requires that the records of hazardous conditions must be kept in either secure books that are not susceptible to alteration, or electronically in a computer system so as to be secure and not susceptible to alteration. A detailed discussion of record books and the use of computers to maintain records can be found in the General Discussion of this preamble.

A variety of comments were received regarding the countersigning of the record by the mine foreman, and the time permitted for countersigning. The final rule adopts the proposal that the mine foreman or equivalent mine official must countersign the record of hazardous conditions by the end of the mine foreman's next regularly scheduled working shift. The mine foreman is responsible for the day-to-day operation of the mine. It is essential for the health and safety of the miners that the mine foreman be fully aware of the information contained in this record so as to be able to allocate resources to correct safety problems as they develop. Allowing until the end of the mine foreman's next regularly scheduled working shift to countersign the records assures that the mine foreman is aware of hazardous conditions in sufficient time to initiate corrective actions.

Some commenters suggested that the time for countersigning is unnecessarily long, and that the final rule should require daily countersigning by the mine foreman. The rulemaking record does not show, however, that the time set by the final rule would expose miners to safety or health risks. Also, hazardous conditions must be corrected immediately or the area must remain posted until the condition is corrected.

Numerous comments were received regarding the requirement of the proposal for second level countersigning of the preshift examination record by the mine superintendent, mine manager, or other mine official to whom the mine foreman is directly accountable within 2 scheduled production days after the countersigning by the mine foreman. The final rule does not retain this proposed requirement. A detailed discussion of the subject of second level countersigning can be found in the General Discussion section of this preamble.

As proposed, paragraph (d) of the final rule requires that the records required by § 75.363 be maintained at a surface location at the mine for one year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments on this requirement were generally favorable. A discussion of comments concerning the use of computers to maintain records can be found in the General Discussion of this preamble.

Section 75.364 Weekly Examination

The weekly examination is directed at hazards that develop in the more remote and less frequently visited areas of a mine. These areas include: worked-out areas where pillars have not been removed, bleeder entries used to ventilate worked-out areas where pillars have been removed and, some main intake and return air courses. Over the course of time, hazards such as methane accumulations and obstructions to ventilation can develop in these areas and can result in an explosion or loss of ventilation if not discovered and corrected. Because of the confined nature of the underground mining environment, loss of life can result in other areas of the mine outside the immediate location of the hazard. The weekly examination assures that these hazards are located and corrected.

Generally, § 75.364 requires an examination in unsealed worked-out areas that have not been pillared; travel

in bleeder entries and the performance of appropriate measurements in these entries and; a check for hazardous conditions in return and intake air courses, in each longwall travelway, at each seal along return and bleeder air courses and each seal along intake air courses not otherwise examined, in each escapeway, and each working section that has not been preshift examined during the previous 7 days.

The final rule modifies existing § 75.364 (a), (b), and (h). It adopts several proposed changes to § 75.364 and modifies or rejects other proposed changes.

Paragraph (a) specifies weekly examination requirements in unsealed worked-out areas where no pillars have been recovered as well as in bleeder systems. The final rule requires that unpillared worked-out areas and bleeder systems be physically examined on a weekly basis and specifies the tests and measurements to be performed by the examiner. The final rule identifies two separate locations within nonpillared areas and bleeder systems where measurements may be required. First, measurement points must be included in the mine ventilation plan to identify the locations within unpillared worked-out areas and bleeder systems where examiners will conduct air measurements and tests, the results of which are to be recorded. These measurement points are not in lieu of traveling the system, but rather are the locations where the examiner will perform air quantity and quality tests and measurements to determine the effectiveness of ventilation. These points are tracking and evaluation tools to assure adequate ventilation and to identify developing trends in ventilation or air quality which may require attention.

Second, evaluation points may be approved in the mine ventilation plan on a case-by-case basis as provided under (a)(1) and by (a)(2)(iv). These evaluation points may be used in lieu of physical examinations. Evaluation points may only be approved in lieu of travel if the evaluation points are fully adequate to demonstrate that the area is ventilated. These provisions are discussed below.

The final rule clarifies that measurement points for weekly examinations must be specified in the mine ventilation plan for both unpillared and pillared worked-out areas described in (a)(1) and (a)(2)(iii), respectively. These measurement points are distinct from the evaluation points which may be approved in lieu of a physical examination under some circumstances. As mentioned above, evaluation points are governed by (a)(1) for unpillared worked-out areas, and by (a)(2)(iv) for pillared worked-out areas ventilated by bleeder systems. Section 75.371(z) of the final rule refers to these requirements for both measurement points and evaluation points. The measurement points and evaluation points may be either in the body of the mine ventilation plan or may be shown on the 75.372 map. In either case, the locations are subject to approval by MSHA.

Under paragraph (a)(1), at least every 7 days a certified person must examine unsealed worked-out areas where no pillars have been recovered by traveling to the area of deepest penetration; measuring methane and oxygen concentrations and air quantities and making tests to determine if the air is moving in its proper direction in the areas. The locations of measurement points where tests and measurements will be performed must be included in the mine ventilation plan and must be adequate in number and location to assure ventilation and air quality in the area. Air quantity measurements must be made where the air enters and leaves the worked-out areas. Sufficient methane and oxygen measurements must be made to assure the air quality in the worked-out areas. An alternative method of evaluating the ventilation of the areas may be approved in the mine ventilation plan.

Under paragraph (a)(1), in addition to measuring oxygen and methane concentrations and testing for proper air direction, air quantities must also be determined. Air quantity measurements are required where air enters and leaves the worked-out area. The final rule also requires that a sufficient number of measurement points must be included in the mine ventilation plan to assure appropriate ventilation and air quality in the area.

The changes to paragraph (a)(1) are in response to comments and MSHA experience with weekly examinations. Currently some examiners are simply traveling to the point of deepest penetration while conducting few if any tests or air measurements within the system. The full benefit of an examiner traveling to the point of deepest penetration is lost if the examiner does not conduct air quantity and quality measurements at key locations.

The results of these measurements are important in assessing the effectiveness of ventilation. In addition, trends in either air quantity or quality can reveal developing problems which can be corrected in the earliest stages.

One commenter suggested that the entire perimeter of worked-out areas should be physically examined to all points of deepest penetration. The commenter suggested that the face of each entry or room should be examined at its point of deepest penetration. MSHA agrees that travel to a single point of deepest penetration within an area may sometimes be inadequate to fully demonstrate effective ventilation of a worked-out area. The final rule addresses this issue by requiring that measurement points be established in the mine ventilation plan.

Paragraphs (a)(2) (i) through (iv) of the final rule retain the requirement that at least every 7 days a certified person must evaluate the effectiveness of bleeder systems used under § 75.334 (b) and (c). Like the proposal, the final rule also specifies tests and locations for an effective examination. One commenter noted that mine examinations are sometimes ineffective and supported the proposed additional specificity in the rule, requiring air measurements and tests at key locations or measurement points within worked-out areas. Established locations where examiners will conduct air measurement and tests will help assure effective examinations and provide quantitative results to the operator. The final rule requires that the mine ventilation plan include measurement points within worked-out areas and paragraph (h) requires that the results be recorded.

Paragraph (a)(2)(ii) requires that measurements of methane and oxygen concentrations be made, air quantity be measured, and a test performed to determine if the air is moving in its proper direction at a point immediately before the air enters a return split of air. A commenter supported the proposed air measurements where air enters and leaves worked-out areas and correctly noted that such measurements would reveal some types of ventilation problems. In a special case, such as where it may not be possible to measure intake air, paragraph (a)(2)(iv) permits an alternate method of evaluation to be used when approved in the mine's ventilation plan.

Another potential hazard exists when multiple intake openings lead into such an area, if passing intake air enters upstream openings of the worked-out area and reenters the intake from downstream openings. The final rule also requires that air quantity measurements be made where air enters and leaves worked-out areas. Measurements made where air enters and exits the area will alert the examiner and operator to airflow changes or imbalances which indicate a potentially dangerous ventilation problem. The specification of

measurement points within worked-out areas will also assure that short circuits have not interrupted ventilation.

One commenter stated that the standard should fully delineate all aspects of the weekly examination by specifying that the examination include roof and ribs, ventilation controls, water accumulations, etc. Although MSHA agrees that these and other conditions fall within the purview of the weekly examination, the final rule does not attempt to provide an exhaustive list of what is to be covered in a weekly examination. Examinations are performed by persons trained and certified as able to make the required examinations. Such certified persons can be expected to give proper attention to basic safety considerations.

Paragraph (a)(2)(iii) requires that at least one entry of each set of bleeder entries used as part of a bleeder system under § 75.334 must be traveled in its entirety. Under the final rule, measurements of methane and oxygen concentrations and air quantities are required to be made during the examination. Also, a test to determine if the air is moving in its proper direction must be made at locations or measurement points, specified in the mine's ventilation plan. The measurements and tests provide the information necessary to determine the effectiveness of the bleeder system.

One commenter believed that the proposal would require each parallel and common bleeder entry of a set to be traveled. The final rule is intended to simplify the examination and would, under the circumstances described by the commenter, require only one entry of a set of common entries to be examined in a bleeder system. Also, similar to the requirements for traveling intake and return air courses, this requirement should not be interpreted to require the examiner to stay in one entry. For example, if the examiner desires to ''zig zag'' between entries while traveling in a multi-entry bleeder system, this would be acceptable under the regulation provided tests and measurements are made at the appropriate locations.

Paragraph (a)(2)(iv) provides that, in lieu of the requirements of (i) through (iii), alternative methods of evaluation may be specified in the mine ventilation plan provided that the alternative method results in proper evaluation of the effectiveness of the bleeder system. One commenter cited several explosions that were related to bleeder system deficiencies and linked poor design and inadequate maintenance with the provision allowing examination at evaluation points in lieu of traveling the area in its entirety. The thrust of the commenter's argument was that an inflexible standard requiring either full travel of a bleeder system or sealing of the entire area would result in superior designs and improved maintenance. While MSHA agrees with the commenter's ultimate objective of ensuring effective ventilation of bleeder systems and worked-out areas, MSHA does not agree that elimination of any flexibility within the standard would result in infallible designs. Since approval of evaluation points is only granted in cases where adequate ventilation can be determined through evaluation, MSHA believes that retaining flexibility to review individual cases is an appropriate method and results in proper evaluation of the effectiveness of the bleeder system.

Paragraph (h) of the final rule governs recordkeeping requirements for weekly examinations. The final rule incorporates several revisions based on recommendations submitted by commenters. The final rule requires that at the completion of any shift during which a portion of a weekly examination is conducted, a record of the results be made. This record must include any hazardous conditions found during the examination and their locations, the corrective actions taken, and the results and location of air and methane measurements. The record must be made by the person making the weekly examination or a person designated by the operator.

The final rule includes a revision requiring that the results of methane tests must be recorded as the percentage of methane measured by the examiner. Previously, terms such as ''ok,'' ''low,'' or ''trace'' were entered in record books as test results. The final rule clarifies that such qualitative terms are not acceptable when examination requirements specify the measurement of air quantity or methane levels as such entries provide little useful information.

The final rule requires that if the record is made by a person other than the examiner, the examiner must verify the record by initials and date by or at the end of the shift for which the examination was made. As with other records required by this rule, the records of weekly examinations may be kept either in secure books that are not susceptible to alteration, or electronically in a computer system so as to be secure and not susceptible to alteration. A detailed discussion of record books and the use of computers to maintain records can be found in the General Discussion of this preamble.

Commenters suggested that the final rule only require the examiner to record uncorrected hazardous conditions. MSHA is sensitive to minimizing recordkeeping requirements and, for example, the final rule requires only uncorrected defects found during the fan examination to be recorded. However, the weekly examination record serves as a history of the types of conditions that can be expected in the mine. When the records are properly completed and reviewed, management can use them to determine if the same hazardous conditions are occurring and if the corrective action being taken is effective. Additionally, this record can permit mine management, the representative of the Secretary, and the representative of miners to better focus their attention during examinations and inspections. The final rule adopts the proposal and requires the examiner to record all hazardous conditions found and the action taken to correct the hazardous condition.

A variety of comments were received regarding the countersigning of the records of weekly examinations by the mine foreman, and the time permitted for countersigning. The final rule adopts the proposal that the mine foreman or equivalent mine official must countersign the record of the weekly examination by the end of the mine foreman's next regularly scheduled working shift. The mine foreman is in a key position of responsibility relative to the day-to-day operation of the mine. It is essential for the health and safety of the miners that the mine foreman be fully aware of the information contained in the preshift examination reports so as to be able to allocate resources to correct safety problems as they develop. Allowing until the end of the mine foreman's next regularly scheduled working shift to countersign the reports assures that the mine foreman is aware of the results on a regular and timely basis.

Numerous comments were received regarding the requirement of the proposal for second level countersigning of the weekly examination record by the mine superintendent, mine manager, or other mine official to whom the mine foreman is directly accountable. A full discussion of second level countersigning can be found in the General Discussion section of this preamble.

Paragraph (h) of the final rule also contains revisions to the existing rule to allow for electronic storage of records. Paragraph (i) requires that the records required by § 75.364 be maintained at a surface location at the mine for one year and be made available for inspection by authorized representatives of the Secretary and the representatives of

miners. A discussion of comments concerning the use of computers to maintain records can be found in the General Discussion of this preamble.

Under the final rule, the record of weekly examinations must be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's next regularly scheduled working shift. Based on comments noting that traditional mine management structures have changes at some operations, the final rule provides that an official equivalent to mine foreman may countersign the records. The purpose of this change is to require that when a mine foreman is not present in the mine's management structure, an equivalent official must perform this function. As with the existing standard, second level countersigning by the mine superintendent is not required by the final rule.

The record of weekly examinations must be made in secure media not susceptible to alteration. If records are made electronically, they must be unalterable, shall capture dates and signatures, must be accessible to representatives of the miners and the Secretary, and must be capable of producing printouts. Further discussion of both the issues of second level countersigning and acceptable record books or electronic records can be found in the general discussion section of this preamble.

The proposal, at paragraph (b), would have added a requirement that the certified person examine for noncompliance with mandatory safety or health standards that could result in a hazardous condition. The proposal drew considerable objection. Commenters objected to the unlimited scope of the term ''noncompliance,'' the legal propriety of recording noncompliance, and the additional examination time required to determine noncompliance, the diversion of the examiner's attention away from key safety conditions to minor compliance issues. Even so, another commenter supported the proposal as necessary, suggesting that the earlier rule was intended to require operators to assure full compliance through the required examinations. The commenter correctly noted that a requirement to examine for safety and health violations was in effect from 1970 until 1992 when it was deleted.

While the proposed standard appeared attractive in concept, the majority of comments received indicate that the standard would result in considerable confusion. In addition, it would be impractical to define and adequately limit the scope of the requirement. Comments consistently indicated confusion and misinterpretation of the proposal's scope, offering a wide range of interpretations.

As discussed in the preamble to the 1992 rule, most hazards are violations of mandatory standards. Requiring the examiner to look for all violations regardless of whether they involve a distinct hazard could distract the examiner from the more important aspects of the examination. Despite an attempt in the proposal to limit the scope of the examination for noncompliance to situations that, ''could result in a hazardous condition,'' commenters expressed a high level of misunderstanding. Although a similar requirement existed between 1970 and 1992, MSHA generally did not broadly apply the standard. After consideration of all comments and a review of the history since the current standard became effective, MSHA concludes that the existing standard is appropriate and best serves the objective of giving examiners clear guidance for making effective examinations. Accordingly, the proposal for examinations to include noncompliance with mandatory safety and health standards is not adopted in the final rule.

Paragraph (b)(7) has been added to require that water pumps not examined as part of a preshift examination conducted during the previous 7 days be examined during the weekly examination. This modification is an outgrowth of comments received in response to proposed § 75.360, which would have required examination of certain pumps. As discussed in the preamble to § 75.360, one commenter persuasively argued that all pumps should be examined. Pumps that are not preshift examined under the final rule are generally located in remote areas of the mine. These pumps are appropriately examined on a weekly basis.

Section 75.370 Mine Ventilation Plan; Submission and Approval

Mine ventilation plans are a long recognized means for addressing safety and health issues that are mine specific. Individually tailored plans, with a nucleus of commonly accepted practices, are an effective method of regulating such complex matters as mine ventilation and roof control. Section 75.370 requires that each mine operator develop and follow a ventilation plan that is approved by MSHA and that is designed to control methane and respirable dust in the mine. Section 75.370 further requires that the plan be suitable to the conditions and mining system at the mine. In addition, § 75.370 provides the procedures for submittal, review and approval of the plan to assure that the plan for each mine will address the conditions in that mine.

In this final rule, MSHA revises the existing plan submission and approval process to provide an increased role for the representative of miners in the mine ventilation plan approval process. This revision is consistent with the statutory purpose that miners play a role in safety and health.

The final rule redesignates existing paragraphs (b)(1) through (f) as (c)(1) through (g), revises paragraphs (a)(3), (c)(1), and (f), and adds a new paragraph (b). The proposal would have modified the existing rule by providing that the representative of miners would receive a copy of the proposed mine ventilation plan or proposed revisions at the time of submittal to MSHA, and the approved plan upon approval by MSHA. The existing rule provided that the submitted plan and the approved plan were to be made available to the miners representative. Another proposed change was to specify the length of time the submitted plan and the approved plan would be posted at the mine. A new paragraph (b) would allow for timely comments on the submitted plan from the miners representative. Representatives of miners would receive written notice of plan approval. The final rule, for the most part, adopts the proposed rule. However, the final rule requires that the miners representative be notified of the submittal of a mine ventilation plan and revisions to a plan 5 working days prior to submittal and that the representative of miners be provided with a copy of the plan upon request. It also requires that MSHA provide a copy of miners'' representative comments to the mine operator upon request.

Final rule paragraph (a)(3) is divided into (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) and contains new requirements in (a)(1)(i) and (a)(1)(iii). Paragraph (a)(3)(i) requires that the mine operator notify the representative of miners that a mine ventilation plan or a plan revision is to be submitted to the District Manager for approval. This notification must be given at least 5 days prior to submission. Paragraph (a)(3)(i) further requires that the operator provide a copy of the plan or revision to the representative of miners at the time of notification, if requested. Paragraph (a)(3)(ii) requires that the proposed plan be made available for review by the representative of miners, and paragraph (a)(3)(iii) requires that the proposed plan or revision be posted on the

bulletin board at the mine and remain posted until it is approved, withdrawn, or denied.

Commenters representing both operators and labor suggested that the proposed plan or revision should be provided to the representative of miners prior to being submitted to the district manager for approval. One commenter suggested that the proposed plan or revision be provided to the representative of miners 10 days prior to submittal and stated that this could speed up the approval process by allowing the miners affected to investigate the proposed change and by permitting the operator and the representative of miners the opportunity to reconcile differences prior to the operator's seeking approval. The commenter pointed out that some existing wage agreements have adopted such a requirement. The commenter suggested that the rule should also include such a requirement because operators do not always comply with the requirements of the agreement. This commenter further suggested that there have been instances where plans have been revised and acted upon before the representative of miners was aware that a revision was to be made. Other commenters suggested that the proposed plan or revision be provided 3 days prior to submittal. These commenters expressed different reasons for the suggestion. One of these commenters stated that the industry has historically maintained that since the plan is submitted to the district manager for approval, and developed by the mine operator, the requirement to provide copies to other parties is contrary to the Mine Act. However, the commenters further stated that their suggestion reflected an attempt to balance all interests and resolve this matter.

These comments are constructive and MSHA has used all of them to fashion a final rule which is consistent with the statutory purpose and responsive to the mining community. One commenter attempted to relate the rule to terms of a wage and hour agreement. MSHA does not intend or have authority to affect any wage and hour agreement. MSHA believes that the involvement of the miners and their representative in the plan approval process will improve the health and safety of the Nation's coal miners. As suggested by commenters, miners who work under the mine ventilation plan are often in the best position to know the effect of proposed revisions. MSHA has long recognized the importance of input from the miners and their representatives in the plan-approval process. The preamble to the existing standard discusses the role of miners and their representatives in the development of mine ventilation plans in detail. MSHA continues to believe that miners have a stake in the implementation of the ventilation plan at each mine.

The final rule is consistent with the existing plan approval process and does not change the process for developing and approving a mine ventilation plan. The operator continues to be the party responsible for developing the mine ventilation plan and MSHA continues to be responsible for reviewing and approving the plan. The proposed rule, in paragraph (a)(3)(i), would have required the operator to provide a copy of a proposed mine ventilation plan or any proposed revision to the representative of miners at the time of submittal to MSHA. The final rule requires the operator to notify the representative of miners of the submittal of the proposed plan or revision at least 5 working days prior to submittal to the district manager. In addition, a copy is to be provided to the representative of miners upon request. In most instances, this should provide sufficient time for a review of the proposed plan or revision and a discussion between the operator and the representative of miners over concerns that may exist.

In response to comments, paragraph (a)(3)(i) is further revised in the final rule to reflect that there are occasions when mine ventilation plans must be submitted and reviewed within a very short time frame. In response to a question during one of the public hearings on the proposed rule, one commenter stated that miners understand that at times situations may arise that necessitate an operator submitting a plan or revision to MSHA that will not allow for the ten (10) day provision for the representative of the miners.

Paragraph (a)(3)(i) of the final rule requires that in the case of a situation requiring immediate action on a plan revision, notification of the revision shall be given, and if requested, a copy of the revision shall be provided to the representative of miners by the operator, at the time of submittal to the district manager. The final rule does not include the recommendation of one commenter that the plan or revision be provided to the representative of miners before submittal because to so require could delay approval of a change necessary to health and safety. Questions will undoubtedly arise relative to what constitutes a situation requiring expedited action. MSHA does not believe that it is possible or appropriate to set forth all circumstances which would be covered by the standard. Should such a situation arise, it would be handled by the district manager on a case by case basis. Generally, the district manager would be guided by whether the condition, if uncorrected, could result in a health or safety hazard or an imminent stoppage of production in the mine or an area of the mine.

Paragraph (a)(3)(ii) of the final rule retains the requirement that a copy of the proposed plan or any proposed revisions be made available for inspection by the representative of the miners. Although some commenters thought this was superfluous in light of the requirement in paragraph (a)(3)(i), MSHA believes that this requirement facilitates the overall approval process.

Paragraph (a)(3)(iii) of the final rule retains the existing requirement that copies of the proposed plan and proposed revisions be posted on the mine bulletin board and clarifies that posting is required at the time of submittal. MSHA believes that the posting requirement is necessary to assure that all miners at a mine will have the opportunity to review the proposed plan or revision and provide input during the review process. One commenter suggested that proposed plans or proposed revisions be required to remain posted for only 30 days from the time of submittal so as not to ''clutter up the bulletin board.'' This suggestion has not been included in the final rule because the mine ventilation plan impacts miners'' safety and health and it is important for miners to know which plan provisions are in effect versus those which have not been approved. Another commenter suggested that proposed plans and revisions be posted 10 days prior to submittal to MSHA. This recommendation has not been included in the final rule to assure that there is no confusion between plans that are approved and proposed provisions awaiting MSHA approval. To require posting of proposed plan revisions prior to submission to MSHA would create another category of mine ventilation plans which could result in unnecessary confusion. This is particularly true since the representative of miners will have the plan at least 5 days prior to submittal. Because there are occasions where a representative of miners does not feel it is necessary to review a plan or revision, the rule only requires the operator to provide a copy of the plan or revision upon request.

Paragraph (b) of the final rule specifies procedures that the representative of miners may use to provide input in the mine ventilation plan review process. Under the final rule, the representative of miners may

submit comments on the proposed plan or revisions to the plan to the district manager for consideration. Recognizing that in some instances a decision relative to the approval or denial of a revision must be made in a short time frame, the final rule requires that comments be made in a ''timely manner.'' MSHA has not defined ''timely manner'' but would consider it to be a period of time that does not unnecessarily delay the approval process. The district manager will continue to be available to discuss with the representative of miners all aspects of the plan as they affect miners' health and safety at any time during or following approval or denial of a proposed plan or revision. Commenters suggested that the representative of miners be given a deadline for the submission of comments similar to the time frame established in paragraph (a)(3)(i) for the operator to provide copies of proposed plans and revisions to the representative of mines. In support of this recommendation, these commenters stated that unlimited time could unnecessarily delay the approval process. This recommendation is not included in the final rule due to the complexity of some plans and revisions. MSHA's goals are for a process that includes both timely review and approval and opportunity for input from miners and the Agency believes both goals can be accomplished under the final rule. MSHA does not believe that this provision will unnecessarily delay the plan approval process since the final rule, like the proposal, requires comments to be submitted in a timely manner.

One commenter suggested that comments submitted by the representative of miners to the district manager as part of the plan approval process should be provided to the operator. MSHA would expect that during the five day period before the plan is submitted to the district manager the operator and the representative of miners will discuss the plan and inform the other of their respective positions. MSHA would encourage the representative of miners to provide a copy of their comments to the operator prior to submitting them to MSHA. However, to assure that all parties to the plan approval process are aware of each others position paragraph (b) of the rule provides that the district manager will provide the operator with these comments upon request.

Paragraph (c)(1) of the final rule is unchanged from the proposal and retains the existing requirement that the district manager notify the operator in writing of the approval or denial of a proposed plan or proposed revision. Paragraph (c)(1) adds a requirement that a copy of this notification be sent by the district manager to the representative of miners. This provision is intended to assure that the representative of miners is kept informed of the status of the plan approval. One commenter pointed out that quite often, plan provisions are modified during the review process and the final approved plan may be different from that which was originally submitted. This commenter suggested that when a change is made to a submission, the representative of miners should be notified of the intended change and afforded the opportunity to comment. MSHA agrees that changes to proposed plans do occur during the review process. Consistent with MSHA's philosophy that all parties to the plan approval process need to be aware of the status of a proposed plan or revision, MSHA would expect that the operator would inform the representative of miners of changes to the original submittal. However, to require that notification be provided for each and every change, no matter how minor, could effectively stop the plan review and approval process. Therefore, the final rule does not adopt the suggestion of the commenter. Some commenters interpreted paragraph (c)(1) as requiring the district manager to provide a copy of the approved plan to the representative of miners. Paragraph (c)(1) only requires that the district manager provide to the representative of miners a copy of the notification of approval or denial that is sent to the operator.

Proposed paragraphs (f)(1), (f)(2) and (f)(3) are adopted in the final rule. Paragraph (f)(1) is new and requires the operator to provide the representative of miners with a copy of the plan or revision following notification of approval, if requested. This facilitates review of the plan or revision by the representative of miners. Also, the final rule continues in paragraphs (f)(2) and (f)(3) the existing requirements that the approved plan or revision be made available for inspection by the representative of miners and be posted on the mine bulletin board. Like the proposal, a new requirement in paragraph (f)(3) also requires that an approved plan or revision must be posted within 1 working day of notification of the approval and must remain posted for the period that the plan is in effect. This helps to assure that the miners themselves, as well as the representative of miners, are aware of the provisions of the mine ventilation plan once it is approved.

Commenters both supported and opposed paragraph (f). Those in opposition suggested that some of the requirements were unnecessary in light of other requirements in the standard. Those supporting the rule suggested that the operator should be required to provide a copy of the approved plan or revision to the representative of miners and to make it available within 24 hours of notification of approval. Other commenters stated that mine ventilation plan approvals are sometimes sent to the company offices and not necessarily to the mine. They stated that in these cases, there could be a delay in copies of the approved plan or revision reaching the mine. MSHA crafted the final rule in light of the existing paragraph (d) which requires that operators instruct persons affected by the mine ventilation plan or its revision prior to implementation. Changes to the plan do occur during the approval process; MSHA would expect that the plan or revision would be available to the person conducting the required training and, therefore, would be provided to the representative of miners.

One commenter suggested that, because the approved plan is required to be made available for inspection by the representative of miners, there is no need for the plan or revision to be posted on the bulletin board. This commenter identified some logistical problems associated with posting of plans stating that removal of the plan from the bulletin board could be a problem.

This same commenter proposed that notification of the miners of a revision to the mine ventilation plan should be the responsibility of the representative of miners. MSHA does not agree that making the plan available for inspection by the representative of miners is an adequate substitute for posting of the plan or revision so as to make it available to all miners at all times. Nor does MSHA agree that the responsibility for assuring that miners are aware of the requirements of the plan is the proper function for the representative of miners. MSHA recognizes that difficulties can exist in assuring that the approved plan or revision is posted, however the safety benefits of having the plan available to the persons affected by its provisions far outweigh any logistical problems.

Section 75.371 Mine Ventilation Plan; Contents

Section 75.371 sets forth the information that the operator must include in the mine ventilation plan. Because the plan deals with situations

unique to a mine, the general rules applicable in other standards do not fit. For the convenience of the reader, the standard that sets out the general rule or provides for an option to include a provision in a plan will generally cross reference to the appropriate paragraph in § 75.371.

MSHA proposed revisions to existing paragraphs (b), (s), (z) and (bb) of § 75.371 and reproposed existing paragraph (r). MSHA's final rule adopts the proposal for paragraphs (s), (z) and (bb). MSHA revises its proposed paragraph (r) to make conforming changes with other provisions. Finally, the final rule retains the existing language for paragraph (b).

As stated in the General Discussion section of this preamble, provisions concerning the installation and removal of mechanized mining equipment that were promulgated in May of 1992 as part of the safety standards for underground coal mine ventilation were reproposed in May of 1994 as part of this rulemaking for the purpose of receiving and giving full consideration to all pertinent comments on this issue. Paragraph (r) of the final rule is one of the provisions that was reproposed. Section 75.325(d) of the final rule requires that areas where mechanized mining equipment, including longwall equipment, is being installed and removed be ventilated. Paragraph (r) of § 75.371 requires that the quantity of air that will be provided be included in the mine ventilation plan. Most commenters either supported the provision, citing the explosion at the William Station Mine, or stated that the standard was originally promulgated inappropriately and did not substantively comment on the requirement. One commenter suggested that the quantity of air specified in the plan under paragraph (r) should represent the minimum quantity that will be provided and the location specified should be identified as what would be typical so as to give the mine the flexibility to adapt to varying mine conditions. This recommendation is consistent with MSHA's intent and MSHA has included it in the final rule to help clarify the rule.

One commenter suggested that the ventilation scheme shown in the plan should be representative of the method of ventilation to be used. MSHA agrees that the mine ventilation plan should include a method of ventilation that is representative of that used in the mine. However, MSHA has not adopted this suggestion since the plan must be specific enough so that the operator, the miners, the representative of miners, and MSHA are assured that all areas are being adequately ventilated.

Paragraph (r) of the final rule requires that the mine ventilation plan include the location where air quantities will be provided, and the ventilation controls that will be used to provide these quantities. This language was included in the reproposed provision and in § 75.325(d), which requires that the quantity of air that will be provided during the installation and removal of mechanized mining equipment, the location where this quantity will be provided, and the ventilation controls that will be used, be included in the mine ventilation plan. In reproposing paragraph (r), MSHA inadvertently excluded from § 75.371(r) the requirement relative to the location where the air quantity is provided. The final rule has been modified in § 75.371(r) to conform to the requirements of § 75.325(d).

The final rule revises existing paragraph (s) to conform to changes in § 75.362(d)(1)(iii). The final rule deletes the portion of existing § 75.362(d)(2) which requires that the mine ventilation plan include the location of tests which are to be made closer to the working face than the last permanent roof supports using extendable probes or other acceptable means. The final rule in paragraph (d)(1)(iii) requires that the mine ventilation plan specify the frequency and location of the methane tests if required more often than 20 minutes by § 75.362(d)(1)(iii). One commenter suggested adding the words, ''or at other locations and frequencies if approved by the district manager and contained in the ventilation plan.'' The suggested clarification is not necessary and has not been adopted in the final rule.

The final rule revises paragraph (z) to conform to § 75.364(a). Section 75.364(a) addresses the measurements to be made to evaluate the effectiveness of bleeder systems and the ventilation of worked-out areas during the weekly examination. The final rule requires that the locations where these measurements are made or alternative methods of providing these evaluations be included in the mine ventilation plan. One commenter suggested that the locations where air measurements are made should not be required in the mine ventilation plan. The commenter made a similar suggestion relative to the requirement in § 75.364 that air measurements be made to evaluate the ventilation of worked-out areas and determine the effectiveness of bleeder systems. According to the commenter, since no specific air volume is required it is not necessary to measure the volume present. The measurement of air quantity, as well as the other measurements required by the existing standard, are essential to evaluate the ventilation of worked-out areas and determine the effectiveness of bleeder systems. The final rule, therefore, does not include the suggested changes in either § 75.364 or § 75.371(z).

Another commenter suggested that since the current standards do not require a specific volume of air in bleeder entries, it is unnecessary to measure the air volume. Proper evaluation of the effectiveness of a bleeder system can only be achieved by comparison of measurements taken in the bleeder system. In most instances, one of the most important measurements is the air quantity at strategic points in the bleeder system. Therefore, the final rule includes the proposed requirement that the locations where air quantity measurements will be made in the bleeder system be specified in the mine ventilation plan.

Existing paragraph (bb) requires that the location of ventilating devices used to control air movement through worked-out areas be included in the mine ventilation plan. The final rule reinstates a requirement contained in the previous regulation, that the location and sequence of construction of proposed seals also be indicated. This requirement is consistent with § 75.334(e) which requires that the sequence of construction of seals be specified in the mine ventilation plan. Some commenters on paragraph (bb) and § 75.334(e) suggested that proper sequencing of seals can change due to mining conditions and should not be made a part of the mine ventilation plan. Another commenter suggested that because the time to get a plan approved can be lengthy, it may even create unnecessary hazards. Proper sequencing of seal construction is necessary for effective ventilation during sealing. Therefore, the final rule requires the location and sequence of the construction of seals be specified and approved in the mine ventilation plan. If a delay in seal construction will result in a hazard to miners, the review and approval of the plan can be expedited as explained in the preamble discussion of § 75.370.

One commenter on paragraph (bb) suggested that the locations of stoppings, regulators, and bleeder connector entries are better shown on the mine map with a notation that it is subject to approval under § 75.371. The existing standard permits appropriate information required under § 75.371 to be shown on the map required by § 75.372. This is explained in the preamble discussion for existing § 75.371. MSHA recognizes that some of

the information required to be submitted under § 75.371 is best shown on a map. Rather than require additional maps, this information may be shown on the § 75.372 map. When shown on the § 75.372 map, only that portion of the map that contains information required under § 75.371 is subject to approval by the district manager.

The proposal would have revised paragraph (b) to reflect the proposed changes in paragraphs (c) and (d) of § 75.312 allowing alternative testing methods for main mine fan automatic closing doors and fan signals. Because the final rule does not include the proposed changes to § 75.312(c) and (d), final rule § 75.371(b) conforms.

Section 75.372 Mine Ventilation Map

The mine ventilation map provides a basis for understanding how a particular coal mine is ventilated. An accurate and up to date map of the mine enables the operator and MSHA to review the mine's ventilation plan to determine the appropriateness of the ventilation system to the conditions in the mine. Only through a thorough understanding of the ventilation system can the operator and others determine whether the system is capable of preventing methane accumulations, possible explosions, and high levels of respirable dust. Generally, § 75.372 requires that the necessary information be provided on the map.

The final rule revises existing paragraph (b)(3) and adds new paragraphs (b)(19) and (b)(20). Paragraph (b)(3) addresses which adjacent workings must be shown on the mine map. The final rule, like the proposal, requires all known adjacent workings within 1,000 feet of existing or projected mine workings to be shown on the mine map, regardless of whether the workings are located on mine property or on adjacent property. The existing rule required that only the adjacent workings within 1,000 feet be shown if they are on mine property.

MSHA has concluded that it is necessary to require that the mine ventilation map include all known workings located in the same coalbed within 1,000 feet of existing or projected workings, regardless of whether the workings are located on the mine property. Hazards, such as methane and water accumulations and irrespirable atmospheres, exist in old workings whether located on mine property or not. MSHA also notes that this revision makes paragraph (b)(3) consistent with existing paragraph (h) of § 75.1200, Mine map. Paragraph (h) of § 75.1200 requires that the mine map show all adjacent mine workings within 1,000 feet. Like the previous standard, this revision would assure that all adjacent mine workings appear on the § 75.372 map in those cases where operators do not use a § 75.1200 map for their required submission.

One commenter suggested that this requirement not be included because mine operators have no legal obligation or authority to force an adjacent land owner to provide the required information. MSHA recognizes that the mine operator may, in some instances, have difficulty obtaining this information. The hazards that exist within abandoned mines, however, warrant such a requirement. Additionally, as noted previously, this requirement is consistent with the requirements of § 75.1200(h) and will, therefore, impose no additional burden on the operator. Agency experience reveals that the existing standard, § 75.1200(h), has not proven to be practically difficult for compliance. In addition, this information would be available to the miners and would enhance their understanding of the ventilation system and aid them in the event of an emergency.

Another commenter suggested that the rule explicitly require that all mine workings, including workings from auger mining, highwall mining and strip mining, be shown on the map. This recommendation has not been included in the final rule because MSHA believes that the final rule is clear and requires any workings from other mines, such as strip, auger and similar workings, to be shown if they are in the same coalbed and are within 1,000 feet of existing or projected mine workings.

Proposed paragraph (b)(19) is adopted in the final rule. The proposal was drafted in response to comments received at public meetings. It reinstates the requirement in the previous standard that the mine map include the entry height, velocity and direction of the air current at or near the midpoint of each belt flight where the height and width of the entry are representative of the belt haulage entry. Paragraph (b)(19) of the final rule should assist the examiner in rapidly determining whether the air is flowing in its normal velocity and direction during examination of the belt entry required elsewhere in subpart D. One commenter suggested that this requirement is redundant because the mine ventilation plan already requires that this be ''illustrated''. MSHA does not agree that the requirement is redundant since there is no such requirement in the mine ventilation plan.

MSHA emphasizes that like much of the information required to be shown on the ventilation map, this information would not be subject to approval. When shown on the § 75.372 map, only that portion of the map that contains information required under § 75.371 is subject to approval by the district manager. The information required by paragraph (b)(19) does not fit this criteria and therefore is not subject to approval by the district manager.

As explained in the discussion of § 75.301, instances have developed where operators direct air from an intake air course to ventilate shops, electrical installations, or for other purposes, and this air is then coursed to the surface and is not used to ventilate working places. Under one interpretation of the existing definition, because this air has not ventilated a working place or a worked-out area, the air course cannot be considered a return air course. In these instances, the final rule in § 75.301 expressly permits the redesignation of the affected portion of the air course as a return air course. Because it is important that personnel, including examiners, the miners' representative, and representatives of the Secretary, know which air courses have been redesignated, the final rule requires that these air courses be shown on the map. Paragraph (b)(20) requires that the location of redesignated air courses be shown on the ventilation map. Commenters were supportive of this provision.

Section 75.380 Escapeways; Bituminous and Lignite Mines

When a fire, explosion or other emergency necessitates an immediate evacuation of a mine, the designated route for miners to leave the mine is the escapeway. The escapeway should be appropriately located and designed to be free of obstructions and hazards to assure safe passage from the hazardous underground environment. The final rule addresses requirements for escapeways. Paragraphs (b)(1) and (b)(2) set forth the requirements for the location of the escapeway when installing and removing mechanized mining equipment. Paragraphs (d)(3) through (d)(5) deal with the minimum dimensions of escapeways. Paragraph (f) addresses the equipment that can be used in escapeways and the requirements for fire suppression systems on this equipment. Finally, paragraph (i) sets the minimum slope of an escapeway.

The final rule republishes existing paragraphs (b)(1) and (b)(2) and revises paragraph (d)(3) through (d)(5), (f) and (i)(2).

Sections 75.380 (b)(1) and (b)(2) of the final rule deal with escapeways on

working sections and areas where mechanized mining equipment is being installed or removed. MSHA adopts the proposal in the final rule. An in-depth discussion of the proposal of provisions concerning the installation and removal of mechanized mining equipment is presented in the General Discussion section of this preamble.

MSHA specifically solicited comments on those portions of the proposal dealing with the installation and removal of mechanized mining equipment, including paragraphs (b)(1) and (b)(2) of § 75.380. These paragraphs require that an escapeway be provided to areas where mechanized mining equipment is being installed or removed. Only one substantive comment was received. The commenter suggested that the location of the beginning of the escapeway during equipment installation and removal should be specified in the mine ventilation plan to minimize the potential for congestion during movement of heavy equipment. The commenter stated that the proposal would eliminate all access to a longwall during the installation or removal of the longwall equipment except for the face crosscut, and lead to accidents.

MSHA believes that the location where the loading point will be installed and where the loading point was last located prior to removal are easily identifiable and offer the best choice. The suggestion of the commenter has not been adopted in the final rule. In addition, the commenter noted that mobile equipment was needed during the installation and removal of longwalls; this equipment can be used in the escapeway if properly attended and protected with proper fire suppression.

As with the existing rule, paragraph (d)(3) of the final rule generally requires escapeways to be maintained to a height of 5 feet from the mine floor to the mine roof, excluding the thickness of any roof support. To accommodate mines in low seams, the rule provides that where the coalbed is less than 5 feet, the escapeways shall be maintained at least to the height of the coalbed. As in the past, convergence, the reduction in entry height due to roof sag or floor heave, which occurs as a natural geologic process, will be excluded when determining escapeway height unless it would impede the escape of miners, including disabled persons, in the event of an emergency. The final rule modifies (d)(3) to provide that in areas of mines where escapeways pass through doors or in areas of mines developed before November 16, 1992 where escapeways pass across or under overcasts or undercasts, the height of the escapeway may be less than 5 feet provided the height is sufficient to enable miners, including disabled persons, to escape quickly in an emergency. It was brought to the attention of MSHA by one commenter that in some instances the removal of roof support or the lowering of the tops of overcasts may be necessary to provide the 5-foot height required by the existing rule. It has been suggested that this could result in a diminution of safety.

One commenter suggested that escapeways should be 6 feet in width and 5 feet in height without exception. This suggestion has not been adopted in the final rule. Under the previous rule, escapeway dimensions were addressed through criteria and operators routinely requested and received approval for lesser dimensions than that in criteria based on a performance test referred to as a ''stretcher test.'' As applied, this test required 4 persons to carry a fifth person on a stretcher through the area in question. The purpose of the ''stretcher test'' was to demonstrate that the lesser dimension would not delay escape. The final rule permits lesser escapeway heights and widths under specific circumstances provided the height and width maintained enable miners to escape quickly in an emergency. The final rule requires that when there is a need to determine whether sufficient height or width is provided, MSHA may require a stretcher test where 4 persons carry a miner through the area in question on a stretcher.

This commenter suggested that the results of a stretcher test could be manipulated by having the most fit miners carry the smallest miner. MSHA continues to believe that the stretcher test is appropriate. MSHA's experience is that the stretcher test provides a good measure of the ability of miners to escape.

Since the escape of miners is not impeded, the demonstration that there is no delay in escape assures that there is no reduction in safety.

MSHA received similar comments regarding the dimensions of escapeways developed on or after November 16, 1992, (the effective date of the existing rule). Commenters suggested that where these escapeways pass across or under overcasts or undercasts, the height of the escapeway should be permitted to be less than 5 feet provided the height is sufficient to enable miners, including disabled persons, to escape quickly in an emergency situation. This suggestion is not adopted in the final rule since sufficient clearance should have been provided in these escapeways through proper planning and engineering. Also, MSHA's experience does not reveal any compliance problems associated with the standards since November 1992.

One commenter recommended changing the phrase ''disabled persons'' in paragraph (d)(3) to ''injured persons.'' In support of this recommendation, the commenter stated that the phrase is intended to include persons who may be injured but not necessarily disabled. MSHA does not believe that the change is needed since there are many situations that occur underground that can result in a person being injured but not severely enough to need assistance (i.e. disabled) to be transported from the mine. An escapeway that will permit the transport of disabled persons, i.e. the more severely injured persons, can be expected to accommodate persons with lesser injuries. The term disabled with respect to the concept of injured has existed in the regulations for over 25 years and MSHA is not aware of any problems with its use.

Questions arose during informational meetings regarding the requirements for the height of doors in escapeways. The final rule, like the proposal, permits door heights of less than 5 feet under certain conditions. Under the previous rule, escapeway dimensions, including door heights, were addressed through criteria and operators routinely requested and received approval for lesser dimensions than that in criteria based on a performance test referred to as a ''stretcher test.'' Under the final rule, door heights of less than 5 feet are permitted provided the operator can demonstrate that persons, including disabled persons, can escape without delay. The method of demonstration would be the stretcher test, the same as for the escapeway. Additionally, there are normally few doors in an escapeway and the distance traversed in a door is very short. Passing the stretcher test assures that there would be no diminution of safety under the new provision. Also, since significant pressure differentials can exist in escapeways, doors which are less than 5 feet are easier to open.

Paragraph (d)(4) of the existing rule requires the escapeways be maintained at least 6 foot wide with some exceptions. Widths of less than 6 feet are permitted in either the primary or the alternate escapeway in instances where supplemental roof support is necessary and where the route of travel passes through doors or other permanent ventilation controls. In both cases, existing paragraph (d)(4) requires that the escapeway be at least 4 feet wide. Under the final rule, paragraph (d)(4)(iii) permits the alternate

escapeway to be less than 4 feet wide under certain conditions.

Paragraph (d)(4)(iii) applies to the alternate escapeway only and allows the escapeway width to be less than 4 feet for the same conditions addressed in paragraphs (i) and (ii) if it can be demonstrated that sufficient width is maintained to enable persons, including disabled persons, to escape quickly in an emergency. The conditions that could warrant lesser widths are the locations where the alternate escapeway passes through doors or other permanent ventilation controls, including constructed approaches to permanent ventilation controls and facilities addressed in paragraph (d)(6), or where supplemental roof support is required.

One commenter stated that the alternate escapeway should be maintained at a minimum width of 4 feet without exception and noted that on several occasions miners have been forced to use the alternate escapeway in emergencies. The commenter noted that it could be difficult to transport an injured person on a stretcher at widths under 4 feet. The final rule requires that when there is a need to determine whether adequate width is provided, the stretcher test would be applied.

Under the previous rule, approval had been granted for reduced escapeway widths based on the stretcher test. These approvals were due to the need to provide additional roof support and, in some cases, the need for passage through ventilation controls. Additionally, as newer portions of a mine age and require additional roof support, the final rule allows widths of less than 4 feet in the alternate escapeway where this roof support exists, provided the stretcher test is passed. MSHA believes this approach achieves the intended result of the standard while at the same time addressing the safety issues of providing necessary supplemental roof support and permitting travel in the alternate escapeway.

The preamble to the proposal stated that under the existing standard § 75.380(d)(4) mobile equipment should not be considered when determining escapeway width unless the equipment has been permanently abandoned in the escapeway or would be obstructing the escapeway for a significant portion of a shift. Commenters objected that this interpretation would be unduly restrictive and impractical. Commenters noted that certain parked mobile equipment would enhance miner safety where the equipment could be used to transport people out of the mine in the event of an emergency.

Experience under the existing and the previous rule indicates that track-mounted and rubber-tired equipment which could be used for evacuation should be excluded when determining escapeway widths. Track-mounted supply cars enhance safety by providing a readily available supply of rock dust, roof support material, and other essential safety related material. Section 75.214 requires that a supply of supplementary roof support material and the tools and equipment necessary to install the materials be available at a readily accessible location on each working section or within 4 crosscuts of each working section. In contrast, the Agency received comments that escapeways should be maintained at least 6 feet in width except in rare cases where roof supports could reduce the width to no less than 4 feet over a limited distance.

The final rule takes a practical approach, preserving the requirement that escapeways must be of sufficient width to enable miners, including disabled persons, to escape quickly in an emergency. The final rule also recognizes that certain necessary mining and transportation equipment is located on and near working sections. For example, necessary supply cars containing safety related material like rock dust, roof support, ventilation control construction material, etc., is allowable. Additionally, longwall section equipment commonly includes, but may not be limited to, starter box, water pump, section belt tailpiece and takeup assembly, section transformer, and emulsion pump. Because this equipment is necessary to the operation of the longwall, it also is permitted to be in the escapeway near the working section under the final rule. In continuous miner sections as well as longwall sections, mantrips and personnel transportation equipment, which could be utilized in an emergency evacuation, is allowable. The final rule would not prohibit this equipment in escapeway entries on or near working sections. The rule would require, however, that sufficient clearance be maintained to permit rapid escape.

This aspect of the final rule maintains the historical approach taken to addressing issues of clearance in the confined environment of underground coal mines. The final rule, while permitting reduced dimensions near working sections as discussed above, requires that the escapeways always be maintained of sufficient width to enable miners, including disabled persons, to escape quickly in an emergency. As discussed elsewhere in this preamble, the Agency will assess the adequacy of escapeway widths in such areas by means of the stretcher test to assure that the width is sufficient to enable miners, including disabled persons, to escape quickly in an emergency.

Like the proposal, the final rule in paragraph (d)(5) revises the existing language dealing with the location of escapeways. It provides that escapeways shall be located to follow the most direct, safe and practical route to the nearest mine opening suitable for the safe evacuation of miners. A question arose during an informational meeting as to whether MSHA intended that the existing rule eliminate the requirement that escapeways be routed to the ''nearest mine opening.'' It was not MSHA's intent to change this requirement from the previous standard. The existing requirement that the escapeway follow the most direct route to the surface would, in fact, require the route to go to the nearest mine opening. However, to eliminate any confusion that may exist, the final rule revises paragraph (d)(5) and adopts language similar to that in previous regulation, § 75.1704–2(a), that is, that the escapeway must follow the most direct, safe and practical route to the nearest mine opening suitable for the safe evacuation of miners.

One commenter stated that escapeways should not be permitted to pass an opening to be routed to a more distant opening. Another commenter stated that the nearest mine opening may not always be the safest due to roof conditions or other factors. MSHA acknowledges that the nearest mine opening may not always be the safest route to the surface. A number of factors affect whether or not the safest, most direct, practical route has been selected. These factors include roof conditions, travel height, fan location, physical dimensions of the mine opening, and similar considerations. For example, if bad roof conditions are present along the shortest direct route and those roof conditions are beyond reasonable control, then an alternate ''safe'' route designated by the mine operator may be appropriate. However, the presence of roof falls does not necessarily indicate that the passageway would not be suitable for evacuation if it is reasonable to rehabilitate the area. By way of another example, where coal seam thickness varies to the extreme, the shortest route may be through lower coal, making travel relatively slow and difficult. An alternate route through a high passageway may permit easier travel. Such an alternate route, although longer, may be more practical and therefore may be more appropriate.

Similarly, there can be other instances where the ''nearest mine opening'' may not be suitable for safe evacuation of miners. For example, an old mine shaft may not be safe for travel because of badly deteriorated conditions, such as a deteriorated shaft lining or deteriorated timbers, even though the shaft is still suitable for mine ventilation purposes.

As with the existing standard, mine development projections do not have to be altered to provide additional rooms, entries, or crosscuts for the sole purpose of providing a passageway to the nearest mine opening. However, the construction of ventilation controls such as stoppings, overcasts and undercasts, or the installation of an escape facility may be required to provide the most direct, safe and practical route to the surface.

One commenter suggested that MSHA should require an escapeway plan to be approved by the MSHA district manager to assure the most direct route to the surface. Existing standards require that escapeways be shown on the ventilation map. In addition, as with other regulations, inspectors assess whether escapeways follow the most direct, safe and practical route to the surface during each regular inspection. Accordingly, MSHA does not believe that an additional plan is necessary.

Existing paragraph (f) establishes the requirements for ventilation of the primary escapeway and identifies which equipment can be operated in the primary escapeway and the fire suppression requirements for this equipment. The final rule, like the proposal, modifies paragraph (f) to explicitly identify the equipment that is not permitted in the primary escapeway and to specify the types of fire suppression systems that are to be used and the conditions under which each is to be used on equipment permitted in the primary escapeway. This is done by replacing existing paragraphs (f)(1) and (f)(2) with paragraphs (f)(1) through (f)(7) in the final.

Existing paragraph (f)(1) requires that one escapeway that is ventilated with intake air be designated as the primary escapeway and prohibits certain equipment from being used in the primary escapeway in areas developed after November 15, 1992. Further, paragraph (f)(1) requires fire suppression systems on mobile equipment that is operated in the primary escapeway. The final rule transfers the part of existing paragraph (f)(1) that specifies the area of the primary escapeway affected to paragraph (f)(2).

The existing rule limited the installation or use of certain equipment in areas of the primary escapeway developed after November 15, 1992. Paragraph (f)(2) of the final rule modifies the existing rule for clarity and expands the application of certain requirements contained in paragraphs (f)(3) through (f)(7) to the entire primary escapeway except those areas of the primary escapeway developed prior to March 30, 1970 where separation of the primary escapeway from the belt and trolley haulage entries did not exist as of November 16, 1992. For areas of mines developed after September 15, 1992, (those areas covered by the existing rule) the provisions of paragraphs (f)(3) through (f)(7) will be effective as of March 11, 1997. For other areas covered by the rule, MSHA has provided for a 1 year phase in period to allow mine operators time to effectively plan and implement the necessary changes. The phase in period applies to areas of a primary escapeway developed between March 30, 1970 and November 16, 1992, and to areas of the primary escapeway developed prior to March 30, 1970 where separation of the belt and trolley haulage entries from the primary escapeway existed prior to November 16, 1992.

Paragraph (f)(3) prohibits certain equipment from being in the primary escapeway. Paragraphs (f)(4) and (f)(5) deal with fire protection for mobile equipment that is permitted in the primary escapeway and paragraph (f)(6) addresses a specific circumstance when mobile equipment may operate in a primary escapeway without a fire suppression system. Paragraph (f)(7), a provision added to the proposed language in response to comments, allows the use of designated emergency vehicles or ambulances in the primary escapeway.

One commenter suggested that the final rule should not provide an exception for all areas where separation of the primary escapeway from the belt and trolley haulage entry does not exist. The commenter recognized, however, that Congress granted an exemption from separation requirements for areas of the primary escapeway developed prior to March 30, 1970, the effective date of the Act. The intent of the proposal was to provide an exemption from the requirements of proposed paragraphs (f)(3) through (f)(6) for these same areas. The commenter points out that the proposal would have extended the exemption to other areas of the primary escapeway where, for one reason or another, separation did not exist on November 16, 1992, the effective date of the existing rule. The final rule modifies the proposal to clarify that the exemption only applies to those areas of the escapeway that were developed prior to March 30, 1970 and where separation did not exist on November 16, 1992.

Another commenter correctly interpreted proposed paragraph (f)(2) as extending the requirement that limits the types of equipment permitted in primary escapeways to areas of the mine developed prior to November 16, 1992. The commenter stated that the proposed regulation would pose great cost to the industry with no appreciable safety benefit derived. A review of the fire history relative to both stationary and mobile equipment indicates that fires can and do occur on this equipment. Mobile equipment by design is intended to provide flexibility in movement and is capable of operating anywhere in the mine. Although the accident reports do not specify whether the mobile equipment that caught fire was in the primary escapeway when the fire started, it is reasonable to conclude that at least some of these fires did occur in the primary escapeway. MSHA continues to believe that given the importance of the primary escapeway to the safety of miners, the extension of the requirements for operation of equipment in the primary escapeway is necessary and appropriate.

Paragraph (f)(3) lists the equipment that is not permitted in the primary escapeway. Under paragraph (f)(3)(i) of the final rule, operating diesel equipment without an automatic fire suppression system is prohibited in the primary escapeway unless it is attended, except as provided in paragraphs (f)(6) and (f)(7). One commenter stated that attended diesel equipment with a manual fire suppression system presents no fire hazard. Another commenter suggested that unattended diesel equipment should be prohibited. When diesel equipment is operated in the primary escapeway and is properly attended and equipped with a manual fire suppression system, the equipment operator can immediately respond to a fire, and the safety afforded by the existing standard is maintained. If the machine is shut off, however, attendance is not necessary. When diesel equipment is to be operated unattended, an automatic system is required to protect against fire.

One commenter stated that ''attended'' should be interpreted to mean that the operator is on or within sight of the vehicle. Another commenter urged that the standard be clarified to require that the operator be at the controls of the equipment. For the purposes of § 75.380(f), by ''attended'' MSHA means that the equipment operator would be on the mobile

equipment or immediately adjacent to the equipment and be capable of activating the fire suppression system in the event of a fire.

The existing standard permits equipment to be in the escapeway for purposes of transporting miners and materials and for maintaining the escapeway but does not expressly prohibit the haulage of coal in the primary escapeway. As a matter of clarification, the final rule specifically prohibits coal haulage in the primary escapeway unless incidental to cleanup and maintenance of the escapeway. One commenter supported the proposed prohibition of coal haulage noting that coal haulage would provide a ready source of fuel to a machinery-initiated fire. Several commenters expressed a concern that incidental coal haulage associated with cleanup and maintenance of the primary escapeway would be prohibited under the proposed standard. Cleanup and maintenance of the primary escapeway must be permitted. Therefore, the final rule modifies the proposal to permit mobile equipment to haul coal if incidental to cleanup and maintenance of the primary escapeway.

Paragraph (f)(3)(iii) prohibits compressors in the primary escapeway except as provided in subparagraphs (f)(3)(iii) (A) through (C). Subparagraph (A) allows compressors necessary to maintain the escapeway in safe, travelable condition; (B) allows compressors that are components of equipment such as locomotives and rock dusting machines; and, (C) allows compressors of less than five horsepower due to the limited fire hazard associated with their operation.

One commenter described an incident involving a compressor in an intake airway, which was located in a fireproof enclosure but was improperly ventilated. According to the commenter, smoke and contaminants spread throughout the intake entry and reached the section, which was then evacuated. This illustrates the importance of providing adequate protection from the possible spread of smoke and contaminants associated with compressor fires or overheating.

Paragraph (f)(3)(iv) of the final rule adds battery chargers to the equipment included in the proposal that is permitted in the primary escapeway provided they are located on or near a working section and moved as the section advances or retreats. In all other respects, paragraph (f)(3)(iv) of the final rule adopts the proposal. Under paragraph (f)(3)(iv), underground transformer stations, battery charging stations, substations, and rectifiers cannot be located in the primary escapeway except: (A) where necessary to maintain the escapeway in safe, travelable condition; and (B) battery chargers and rectifiers and power centers with transformers that are either dry-type or contain nonflammable liquid, provided they are located on or near a working section and are moved as the section advances or retreats. The first exception allows work to be performed in the primary escapeway to assure its integrity. The second provides for the locations of the described equipment at or near working sections if the equipment moves with the section. Equipment at or near working sections will normally be within a few crosscuts of the working face. In many cases, particularly with battery chargers, there may be no practical alternative to locating this equipment in the escapeway. In addition, § 75.340 provides additional protection when using underground electrical equipment.

Paragraph (f)(3)(v) of the final rule adopts the proposal and prohibits water pumps from being in the primary escapeway except as provided under paragraphs (f)(3)(v)(A) through (f)(3)(v)(F). The pumps that are permitted in the primary escapeway are the same ones that are excepted from the requirements of § 75.340 due to the low potential for fire associated with their operation. They include: water pumps necessary to maintain the escapeway in safe, travelable condition; submersible pumps; permissible pumps and associated permissible switchgear; pumps located on or near a working section that are moved as the section advances or retreats; pumps installed in anthracite mines; and small portable pumps. While the existing rule refers to the electrical equipment described in § 75.340 (a) and (b)(1), the final rule, like the proposal, lists the affected equipment for the convenience of the reader. Like § 75.340, paragraph (f)(3)(v) applies to water pumps and emulsion pumps when they are located on or near the working section and are moved as the section advances or retreats. One commenter agreed that pumps may be necessary to maintain and rehabilitate the primary escapeway but suggested that a time limit be placed on the length of time the pump is allowed to remain in the escapeway. MSHA believes that specific conditions at the mine will govern the amount of time required for any necessary pumping. Therefore, MSHA has not included the suggestion in the final rule since the decision relative to time must be made on a case-by-case basis, as appropriate.

Paragraph (f)(4) of the final rule adopts MSHA's proposal with one change. As proposed, paragraph (f)(4) would have required the use of fire suppression systems on mobile equipment operated in the primary escapeway, and would have allowed exceptions for continuous miners and as provided in § 75.380 (f)(5) and (f)(6). The final rule adds an additional exception for emergency vehicles or ambulances as provided in § 75.380(f)(7). Unlike the existing standard, the final rule in paragraph (f)(4) permits certain mobile equipment operated in the primary escapeway to be protected with a manual fire suppression system instead of an automatic system, provided it is attended by a person trained in the use and operation of the fire suppression system. MSHA believes that when a piece of equipment is operated in the primary escapeway and is properly attended and equipped with a manual fire suppression system, the equipment operator can immediately respond to the situation, and the safety afforded by the existing standard is maintained.

One commenter stated that no electrical, battery or diesel equipment, or other equipment such as compressors should be allowed in the primary escapeway, except for the purpose of maintenance of the escapeway, and that this equipment should have an appropriate fire suppression system. Because travel in the escapeway in certain mining systems is essential for safety given the design of the mining system used, the recommendation of the commenter has not been adopted in the final rule. Instead, the final rule provides that certain types of mining equipment can be operated in the primary escapeway provided the safety precautions set out in the standard are followed. One commenter stated that the rule should only apply to mobile equipment which is operated in the primary escapeway, since equipment not operating presents little or no hazard. MSHA agrees and has incorporated this clarification into the final rule.

Commenters indicated that it is sometimes necessary to withdraw face equipment, such as continuous miners, roof bolting machines and shuttle cars, into the primary escapeway for a short distance beyond the loading point. The equipment is sometimes parked and left there on down shifts or between shifts. MSHA notes that, as clarified, the final rule does not prohibit this practice. Because the equipment would be attended when operated and is provided with manual fire suppression, the

equipment may be operated in the primary escapeway.

Following promulgation of the existing rule, some persons construed the requirement for an automatic fire suppression system to apply to electric face equipment. As explained in the preamble to the proposal, this was not the intent of MSHA. To clarify its intent, MSHA issued Program Policy Letter No. P92–V–4 on November 16, 1992, addressing the operation and location of equipment in primary escapeways. Under existing regulations in Subpart L—Fire Protection, face equipment is required to be protected by a manual fire suppression system. The final rule recognizes and generally conforms with this requirement. Other than for an exception to permit a situation such as the movement of continuous mining machines between sections without a continuous water supply, the final rule requires that when face machinery, equipped with a manual fire suppression system, is operated in the primary escapeway, it must be attended by a person trained in the proper function and use of the fire suppression system. The continuous mining machine exception recognizes that the fire suppression system for the continuous mining machine often relies on a water supply that may be impracticable to provide during equipment moves.

The final rule requires in paragraph (f)(4) that with exceptions for continuous mining machines and as provided in paragraphs (f)(5), (f)(6), and (f)(7), each piece of mobile equipment operated in primary escapeways shall: (1) be equipped with manually operated fire suppression systems installed in compliance with §§ 75.1107–3 through 75.1107–16 and be attended continuously; or (2) be equipped with an automatic fire suppression system that is capable of both automatic and manual activation and installed in compliance with §§ 75.1107–3 through 75.1107–16. Fire suppression systems which were installed to meet the 1992 rule will continue to be accepted.

Under paragraph (f)(5) of the final rule, personnel carriers and small personnel conveyances designed and used solely for the transportation of personnel and small hand tools can be operated in the primary escapeway if either of the requirements under paragraphs (i) or (ii) are met. This class of equipment would not include diesel-powered pickup trucks, for example, which would be governed by paragraph (f)(4). Paragraph (i) requires a multipurpose dry chemical type automatic fire suppression system capable of both manual and automatic activation. Paragraph (ii) provides an alternative for a class of small, battery powered, golf cart type, equipment used for transport of persons and small hand tools. In this case, fire extinguishers may be used in lieu of a fire suppression system.

Commenters questioned the need for automatic systems on the class of equipment consisting of small, battery powered, golf cart type equipment. One commenter suggested that a manual fire suppression system should be accepted. After a review of the issue, MSHA has concluded that some types of mobile equipment present a very limited fire hazard. In the case of small, battery operated, golf cart type, conveyances designed and used for the transport of personnel and small hand tools, considering the limited hazard, a trained operator provided with two 10 pound multi-purpose dry chemical fire extinguishers is equivalent in protection to a fire suppression system. Accordingly, as an alternative under paragraph (ii), small battery powered, golf cart type, equipment may be operated in the primary escapeway if provided with two 10 pound multi-purpose dry chemical fire extinguishers. Unlike diesel powered equipment, the golf cart type of equipment is shut off when not operating and, therefore, attendance is not an issue. The 10 pound units are standard size extinguishers and are appropriate for the equipment involved.

The system used in accordance with paragraph (i) must be suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory. The language was proposed as two paragraphs but has been combined in the final rule under paragraph (i) and an alternative has been added as paragraph (ii). The types of machinery which fall under paragraph (f)(5) are not required to meet the additional requirements of §§ 75.1107–3 through 75.1107–16. For example, it would be impractical and would not enhance safety to apply the minimum dry chemical poundage requirements of § 75.1107–9 to small equipment designed and used solely for personnel and small hand tools.

During informational meetings, it was suggested that the term ''dry chemical'' would be more accurate and appropriate than the term ''dry powder'' used in the existing standard. Like the proposal, the final rule adopts this language. MSHA received no comments on this proposed revision

Paragraph (f)(6) of the final rule provides an exception to the general requirement and allows mobile equipment not provided with a fire suppression system to operate in the primary escapeway if no persons are inby other than persons directly engaged in the use or moving of the equipment. This provision of the final rule allows for the necessary movement of face equipment, such as between sections.

One commenter stated that the exemption provided in (f)(6) should be expanded to allow equipment that does not have a fire suppression system to be relocated provided monitoring equipment is utilized for carbon monoxide or smoke and two-way communication is available to notify appropriate persons. The final rule does not adopt this suggestion. During moves, equipment is often laboring at maximum capacity and there can be several machines operating simultaneously. Under these conditions, equipment fires can develop quickly and the products of combustion would be carried to inby workers by the ventilating current. By permitting only workers who are directly engaged in the operation or movement of the equipment, the final rule prevents other workers from being exposed to the hazards of a fire on the equipment being moved. Workers operating or engaged in moving the equipment will be in a position to quickly identify the hazard and take necessary action.

Another commenter objected to the provision stating that fire suppression should be required on all equipment in the primary escapeway. This suggestion has not been adopted in the final rule. MSHA does not agree that fire suppression is needed when no persons are inby or downstream of the equipment being moved. MSHA has concluded that either these machines should be equipped with fire suppression, or fire extinguishers as in (f)(5)(ii), or no persons should be inby the location where the equipment is being operated except those persons directly engaged in the operation or movement of the equipment.

Another commenter suggested that the wording of (f)(6) could be read to allow miners to work on a longwall face while equipment not equipped with fire suppression is operated anywhere in the primary escapeway. This is not permitted by the standard. By including the phrase, ''. . . except those persons directly engaged in using or moving the equipment'', the persons affected are only those persons in the immediate vicinity of the machine. With no persons working inby, the use of machinery without a fire suppression system would not expose persons to the hazard of toxic gases and fumes from a fire on the equipment. The language

also would not permit persons to operate mobile equipment without a fire suppression system in the primary escapeway while miners are downstream working on a longwall face. The controlling factor is whether the persons inby are directly engaged in using or moving that particular piece of equipment. If they are, and no one else is inby, the equipment may be operated without a fire suppression system. For example, when moving a longwall shield, no one would be permitted to be inby the machine being used to move the shield if the machine is not provided with a fire suppression system except those persons moving the shield. This would include miners operating other pieces of equipment to move other shields.

Paragraph (f)(7) modifies the existing rule to include a new exemption to the requirement that mobile equipment operated in primary escapeways have a fire suppression system. Paragraph (f)(7) permits mobile equipment designated and used only as emergency vehicles or ambulances to operate in the primary escapeway without fire suppression systems. It was suggested to MSHA that certain types of emergency equipment, such as diesel powered ambulances, should be exempt from the requirements for fire suppression systems. Comments were received suggesting that ambulances should be exempt because space is extremely limited on these vehicles and because they are used infrequently. MSHA recognizes the potential benefit in the use of this type of equipment. Another commenter objected, foreseeing potential abuses of the exemption by mine operators who would designate equipment as ambulances but use it as ordinary equipment. The final rule permits emergency vehicles to be operated in the primary escapeway without fire suppression systems only when this equipment is used for medical emergencies.

This existing rule requires in paragraph (i)(2) that mechanical escape facilities be provided and maintained for, ''. . . each slope that is part of a designated escapeway that is either inclined 18 degrees or more from the horizontal or is inclined 9 degrees or more from the horizontal and is greater than 1,000 feet in length.'' During informational meetings, MSHA became aware of a concern that existing paragraph (i)(2) would permit slopes of significant length and inclination to exist without any mechanical escape facilities. An example would be a slope of 900 feet inclined less than 18 degrees from the horizontal. It was suggested that such a slope could be particularly difficult for passage of injured persons under cold and icy conditions if mechanical escape facilities were not provided. In light of this concern, MSHA proposed to require that mechanical escape facilities be provided and maintained from the coal seam to the surface for each slope that is part of a designated escapeway and is inclined more than 9 degrees from the horizontal. The final rule adopts the proposal.

One commenter objected to proposed paragraph (i)(2) indicating that facilities are unnecessary in low angle slopes which are of short length. Other commenters believed that the 1992 standard was appropriate. Another commenter indicated support for the proposal as a way to enable persons to escape quickly in an emergency. This commenter also noted that escape can be very difficult in icy winter conditions in some slopes. After consideration of the comments received, MSHA concludes that the proposal was appropriate and the final rule adopts this aspect of the proposal.

One commenter suggested that proposed paragraph (i)(2) could be interpreted as requiring mechanical escape facilities for slopes that occur naturally underground. It was not MSHA's intent to apply paragraph (i)(2) to slopes other than from the coal seam to the surface. The final rule clarifies this and requires that mechanical escape facilities be provided for each slope from the coal seam to the surface that is part of a designated escapeway and is inclined more than 9 degrees from the horizontal.

Like the proposal, the final rule in paragraph(d)(5) revises the existing language dealing with the location of escapeways. It provides that escapes shall be located to follow the most direct, safe and practical route to the nearest mine opening suitable for the safe evacuation of miners. A question arose during an informational meeting as to whether MSHA intended that the existing rule eliminate the requirement that escapeways be routed to the ''nearest mine opening.'' It was not MSHA's intent to change this requirement from the previous standard. The existing requirement that the escapeway follow the most direct route to the surface would, in fact, require the route to go to the nearest mine opening. However, to eliminate any confusion that may exist, the final rule revises paragraph (d)(5) and adopts language similar to that in previous regulation, § 75.1704–2(a), that is, that the escapeway must follow the most direct, safe and practical route to the nearest mine opening suitable for the safe evacuation of miners.

One commenter stated that escapeways should not be permitted to pass an opening to be routed to a more distant opening. Another commenter stated that the nearest mine opening may not always be the safest due to roof conditions or other factors. MSHA acknowledges that the nearest mine opening may not always be the safest route to the surface. A number of factors affect whether or not the safest, most direct, practical route has been selected. These factors include roof conditions, travel height, fan location, physical dimensions of the mine opening, and similar considerations. For example, if bad roof conditions are present along the shortest direct route and those roof conditions are beyond reasonable control, then an alternate ''safe'' route designated by the mine operator may be appropriate. However, the presence of roof falls does not necessarily indicate that the passageway would not be suitable for evacuation if it is reasonable to rehabilitate the area. By way of another example, where coal seam thickness varies to the extreme, the shortest route may be through lower coal, making travel relatively slow and difficult. An alternate route through a high passageway may permit easier travel. Such an alternate route, although longer, may be more practical and therefore may be more appropriate. Similarly, there can be instances where the ''nearest mine opening'' may not be suitable for safe evacuation of miners. For example, an old mine shaft may not be safe for travel because of badly deteriorated conditions, such as a deteriorated shaft lining or deteriorated timbers, even though the shaft is still suitable for mine ventilation purposes.

As with the existing standard, mine development projections do not have to be altered to provide additional rooms, entries, or crosscuts for the sole purpose of providing a passageway to the nearest mine opening. However, the construction of ventilation controls such as stoppings, overcasts and undercasts, or the installation of an escape facility may be required to provide the most direct, safe and practical route to the surface.

One commenter suggested that MSHA should require an escapeway plan to be approved by the MSHA district manager to assure the most direct route to the surface. Existing standards require that escapeways be shown on the ventilation map. In addition, as with other regulations, inspectors assess whether escapeways follow the most direct, safe and practical route to the surface during each regular inspection. Accordingly, MSHA does not believe that an additional plan is necessary.

Existing paragraph (f) establishes the requirements for ventilation of the primary escapeway and identifies which equipment can be operated in the primary escapeway and the fire suppression requirements for this equipment. The final rule, like the proposal, modifies paragraph (f) to explicitly identify the equipment that is not permitted in the primary escapeway and to specify the types of fire suppression systems that are to be used and the conditions under which each is to be used on equipment permitted in the primary escapeway. This is done by replacing existing paragraphs (f)(1) and (f)(2) with paragraphs (f)(1) through (f)(7) in the final.

Existing paragraph (f)(1) requires that one escapeway that is ventilated with intake air be designated as the primary escapeway and prohibits certain equipment from being used in the primary escapeway in areas developed after November 15, 1992. Further, paragraph (f)(1) requires fire suppression systems on mobile equipment that is operated in the primary escapeway. The final rule transfers the part of existing paragraph (f)(1) that specifies the area of the primary escapeway affected to paragraph (f)(2).

The existing rule limited the installation or use of certain equipment in areas of the primary escapeway developed after November 15, 1992. Paragraph (f)(2) of the final rule modifies the existing rule for clarity and expands the application of certain requirements contained in paragraphs (f)(3) through (f)(7) to the entire primary escapeway except those areas of the primary escapeway developed prior to March 30, 1970 where separation of the primary escapeway from the belt and trolley haulage entries did not exist as of November 16, 1992. For areas of mines developed after September 15, 1992, (those areas covered by the existing rule) the provisions of paragraphs (f)(3) through (f)(7) will be effective as of March 11, 1997. For other areas covered by the rule, MSHA has provided for a 1 year phase in period to allow mine operators time to effectively plan and implement the necessary changes. The phase in period applies to areas of a primary escapeway developed between March 30, 1970 and November 16, 1992, and to areas of the primary escapeway developed prior to March 30, 1970 where separation of the belt and trolley haulage entries from the primary escapeway existed prior to November 16, 1992.

Paragraph (f)(3) prohibits certain equipment from the primary escapeway. Paragraphs (f)(4) and (f)(5) deal with fire protection for mobile equipment that is permitted in the primary escapeway and paragraph (f)(6) addresses a specific circumstance when mobile equipment may operate in a primary escapeway without a fire suppression system. Paragraph (f)(7), a provision added to the proposed language in response to comments, allows the use of designated emergency vehicles or ambulances in the primary escapeway.

One commenter suggested that the final rule should not provide an exception for all areas where separation of the primary escapeway from the belt and trolley haulage entry does not exist. The commenter recognized, however, that Congress granted an exemption from separation requirements for areas of the primary escapeway developed prior to March 30, 1970, the effective date of the Act. The intent of the proposal was to provide an exemption from the requirements of proposed paragraphs (f)(3) through (f)(6) for these same areas. The commenter points out that the proposal would have extended the exemption to other areas of the primary escapeway where, for one reason or another, separation did not exist on November 16, 1992, the effective date of the existing rule. The final rule modifies the proposal to clarify that the exemption only applies to those areas of the escapeway that were developed prior to March 30, 1970 and where separation did not exist on November 16, 1992.

Another commenter correctly interpreted proposed paragraph (f)(2) as extending the requirement that limits the types of equipment permitted in primary escapeways to areas of the mine developed prior to November 16, 1992. The commenter stated that the proposed regulation would pose great cost to the industry with no appreciable safety benefit derived. A review of the fire history relative to both stationary and mobile equipment indicates that fires can and do occur on this equipment. Mobile equipment by design is intended to provide flexibility in movement and is capable of operating anywhere in the mine. Although the accident reports do not specify whether the mobile equipment that caught fire was in the primary escapeway when the fire started, it is reasonable to conclude that at least some of these fires did occur in the primary escapeway. MSHA continues to believe that given the importance of the primary escapeway to the safety of miners, the extension of the requirements for operation of equipment in the primary escapeway is appropriate.

Paragraph (f)(3) lists the equipment that is not permitted in the primary escapeway. Under paragraph(f)(3)(i) of the final rule, operating diesel equipment without an automatic fire suppression system is prohibited in the primary escapeway unless it is attended, except as provided in paragraphs (f)(6) and (f)(7). One commenter stated that attended diesel equipment with a manual fire suppression system presents no fire hazard. Another commenter suggested that unattended diesel equipment should be prohibited. When diesel equipment is operated in the primary escapeway and is properly attended and equipped with a manual fire suppression system, the equipment operator can immediately respond to a fire, and the safety afforded by the existing standard is maintained. If the machine is shut off, however, attendance is not necessary. When diesel equipment is to be operated unattended, an automatic system is required to protect against fire.

One commenter stated that ''attended'' should be interpreted to mean that the operator is on or within sight of the vehicle. Another commenter urged that the standard be clarified to require that the operator be at the controls of the equipment. For the purposes of § 75.380(f), by ''attended'' MSHA means that the equipment operator would be on the mobile equipment or immediately adjacent to the equipment and be capable of activating the fire suppression system immediately in the event of a fire.

The existing standard permits equipment to be in the escapeway for purposes of transporting miners and materials and for maintaining the escapeway but does not expressly prohibit the haulage of coal in the primary escapeway. As a matter of clarification, the final rule specifically prohibits coal haulage in the primary escapeway unless incidental to cleanup and maintenance of the escapeway. One commenter supported the proposed prohibition of coal haulage noting that coal haulage would provide a ready source of fuel to a machinery-initiated fire. Several commenters expressed a concern that incidental coal haulage associated with cleanup and maintenance of the primary escapeway would be prohibited under the proposed standard. Cleanup and maintenance of the primary escapeway must be permitted. Therefore, the final rule modifies the proposal to permit mobile equipment to haul coal if incidental to cleanup and maintenance of the primary escapeway.

Paragraph (f)(3)(iii) prohibits compressors in the primary escapeway except as provided in subparagraphs (f)(3)(iii) (A) through (C). Subparagraph

(A) allows compressors necessary to maintain the escapeway in safe, travelable condition; (B) allows compressors that are components of equipment such as locomotives and rock dusting machines; and, (C) allows compressors of less than five horsepower due to the limited fire hazard associated with their operation.

One commenter described an incident involving a compressor in an intake airway, which was located in a fireproof enclosure but was improperly ventilated. According to the commenter, smoke and contaminants spread throughout the intake entry and reached the section, which was then evacuated. This illustrates the importance of providing adequate protection from the possible spread of smoke and contaminants associated with compressor fires or overheating.

Paragraph (f)(3)(iv) of the final rule adds battery chargers to the equipment included in the proposal that is permitted in the primary escapeway provided it is located on or near a working section and is moved as the section advances or retreats. In all other respects, paragraph (f)(3)(iv) of the final rule adopts the proposal. Under paragraph (f)(3)(iv), underground transformer stations, battery charging stations, substations, and rectifiers cannot be located in the primary escapeway except: (A) where necessary to maintain the escapeway in safe, travelable condition; and (B) battery chargers and rectifiers and power centers with transformers that are either dry-type or contain nonflammable liquid, provided they are located on or near a working section and are moved as the section advances or retreats. The first exception allows work to be performed in the primary escapeway to assure its integrity. The second provides for the locations of the described equipment at or near working sections if the equipment moves with the section. Equipment at or near working sections will normally be within a few crosscuts of the working face. In many cases, particularly with battery chargers, there may be no practical alternative to locating this equipment in the escapeway. In addition, § 75.340 provides additional protection when using underground electrical equipment.

Paragraph (f)(3)(v) of the final rule adopts the proposal and prohibits water pumps from being in the primary escapeway except as provided under paragraphs (f)(3)(v)(A) through (f)(3)(v)(F). The pumps that are permitted in the primary escapeway are the same ones that are excepted from the requirements of § 75.340 due to the low potential for fire associated with their operation. They include: water pumps necessary to maintain the escapeway in safe, travelable condition; submersible pumps; permissible pumps and associated permissible switchgear; pumps located on or near a working section that are moved as the section advances or retreats; pumps installed in anthracite mines; and small portable pumps. While the existing rule refers to the electrical equipment described in § 75.340 (a) and (b)(1), the final rule, like the proposal, lists the affected equipment for the convenience of the reader. Like § 75.340, paragraph (f)(3)(v) applies to water pumps and emulsion pumps when they are located on or near the working section and are moved as the section advances or retreats. One commenter agreed that pumps may be necessary to maintain and rehabilitate the primary escapeway but suggested that a time limit be placed on the length of time the pump is allowed to remain in the escapeway. MSHA believes that specific conditions at the mine will govern the amount of time required for any necessary pumping. Therefore, MSHA has not included the suggestion in the final rule since the decision relative to time must be made on a case-by-case basis, as appropriate.

Paragraph (f)(4) of the final rule adopts MSHA's proposal with one change. As proposed, paragraph (f)(4) would have required the use of fire suppression systems on mobile equipment operated in the primary escapeway, and would have allowed exceptions for continuous miners and as provided in § 75.380(f)(5)and (f)(6). The final rule adds an additional exception for emergency vehicles or ambulances as provided in § 75.380(f)(7). Unlike the existing standard, the final rule in paragraph (f)(4) permits certain mobile equipment operated in the primary escapeway to be protected with a manual fire suppression system instead of an automatic system, provided it is continuously attended by a person trained in the use and operation of the fire suppression system. MSHA believes that when a piece of equipment is operated in the primary escapeway and is properly attended and equipped with a manual fire suppression system, the equipment operator can immediately respond to the situation, and the safety afforded by the existing standard is maintained.

One commenter stated that no electrical, battery or diesel equipment, or other equipment such as compressors should be allowed in the primary escapeway, except for the purpose of maintenance of the escapeway, and that this equipment should have an appropriate fire suppression system. Because travel in the escapeway in certain mining systems is essential for safety given the design of the mining system used, the recommendation of the commenter has not been adopted in the final rule. Instead, the final rule provides that certain types of mining equipment can be operated in the primary escapeway provided the safety precautions set out in the standard are followed. One commenter stated that the rule should only apply to mobile equipment which is operated in the primary escapeway, since equipment not operating presents little or no hazard. MSHA agrees and has incorporated this clarification into the final rule.

Commenters indicated that it is sometimes necessary to withdraw face equipment, such as continuous miners, roof bolting machines and shuttle cars, into the primary escapeway for a short distance beyond the loading point. The equipment is sometimes parked and left there on down shifts or between shifts. MSHA notes that, as clarified, the final rule does not prohibit this practice. Because the equipment would be attended when operated and is provided with manual fire suppression, the equipment may be operated in the primary escapeway.

Following promulgation of the existing rule, some persons construed the requirement for an automatic fire suppression system to apply to electric face equipment. As explained in the preamble to the proposal, this was not the intent of MSHA. To clarify its intent, MSHA issued Program Policy Letter No. P92–V–4 on November 16, 1992, addressing the operation and location of equipment in primary escapeways. Under existing regulations in Subpart L—Fire Protection, face equipment is required to be protected by a manual fire suppression system. The final rule recognizes and generally conforms with this requirement. Other than for an exception to permit a situation such as the movement of continuous mining machines between sections without a continuous water supply, the final rule requires that when face machinery, equipped with a manual fire suppression system, is operated in the primary escapeway, it must be attended by a person trained in the proper function and use of the fire suppression system. The continuous mining machine exception recognizes that the fire suppression system for the continuous mining machine often relies on a water supply that may be impracticable to provide during equipment moves.

The final rule requires in paragraph (f)(4) that with exceptions for continuous mining machines and as provided in paragraphs (f)(5), (f)(6), and (f)(7), each piece of mobile equipment operated in primary escapeways shall: (1) be equipped with manually operated fire suppression systems installed in compliance with §§ 75.1107–3 through 75.1107–16 and be attended continuously; or (2) be equipped with an automatic fire suppression system that is capable of both automatic and manual activation and installed in compliance with §§ 75.1107–3 through 75.1107–16.

Under paragraph (f)(5) of the final rule, personnel carriers and small personnel conveyances designed and used solely for the transportation of personnel and small hand tools can be operated in the primary escapeway if either of the requirements under paragraphs (i) or (ii) are met. Paragraph (i) requires a multipurpose dry chemical type automatic fire suppression system capable of both manual and automatic activation. Paragraph (ii) provides an alternative for a class of small, battery powered, golf cart type, equipment used for transport of persons and small hand tools. In this case, fire extinguishers may be used in lieu of a fire suppression system.

Commenters questioned the need for automatic systems on the class of equipment consisting of small, battery powered, golf cart type equipment. One commenter suggested that a manual fire suppression system should be accepted. After a review of the issue, MSHA has concluded that some types of mobile equipment present a very limited fire hazard. In the case of small, battery operated, golf cart type, conveyances designed and used for the transport of personnel and small hand tools, considering the limited hazard, a trained operator provided with two 10 pound multi-purpose dry chemical fire extinguishers is equivalent in protection to a fire suppression system. Accordingly, as an alternative under paragraph (ii), small battery powered, golf cart type, equipment may be operated in the primary escapeway if provided with two 10 pound multi-purpose dry chemical fire extinguishers. Unlike diesel powered equipment, the golf cart type of equipment is shut off when not operating and, therefore, attendance is not an issue. The 10 pound units are standard size extinguishers and are appropriate for the equipment involved.

The system used in accordance with paragraph (i) must be suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory. The language was proposed as two paragraphs but has been combined in the final rule under paragraph (i) and an alternative has been added as paragraph (ii). The types of machinery which fall under paragraph (f)(5) are not required to meet the additional requirements of §§ 75.1107–3 through 75.1107–16. For example, it would be impractical and would not enhance safety to apply the minimum dry chemical poundage requirements of § 75.1107–9 to small equipment designed and used solely for personnel and small hand tools.

During informational meetings, it was suggested that the term ''dry chemical'' would be more accurate and appropriate than the term ''dry powder'' used in the existing standard. Like the proposal, the final rule adopts this language. MSHA received no comments on this proposed revision.

Paragraph (f)(6) of the final rule provides an exception to the general requirement and allows mobile equipment not provided with a fire suppression system to operate in the primary escapeway if no persons are inby other than persons directly engaged in the use or moving of the equipment. This provision of the final rule allows for the necessary movement of face equipment, such as between sections.

One commenter stated that the exemption provided in (f)(6) should be expanded to allow equipment that does not have a fire suppression system to be relocated provided monitoring equipment is utilized for carbon monoxide or smoke and two-way communication is available to notify appropriate persons. The final rule does not adopt this suggestion. During moves, equipment is often laboring at maximum capacity and there can be several machines operating simultaneously. Under these conditions, equipment fires can develop quickly and the products of combustion would be carried to inby workers by the ventilating current. By permitting only workers who are directly engaged in the operation or movement of the equipment, the final rule prevents other workers from being exposed to the hazards of a fire on the equipment being moved. Workers operating or engaged in moving the equipment will be in a position to quickly identify the hazard and take necessary action.

Another commenter objected to the provision stating that fire suppression should be required on all equipment in the primary escapeway. This suggestion has not been adopted in the final rule. MSHA does not agree that fire suppression is needed when no persons are inby or downstream of the equipment being moved. MSHA has concluded that either these machines should be equipped with fire suppression, or fire extinguishers as in (f)(5)(ii), or no persons should be inby the location where the equipment is being operated except those persons directly engaged in the operation or movement of the equipment.

Another commenter suggested that the wording of (f)(6) could be read to allow miners to work on a longwall face while equipment not equipped with fire suppression is operated anywhere in the primary escapeway. This is not permitted by the standard. By including the phrase, ''* * * except those persons directly engaged in using or moving the equipment'', the persons affected are only those persons in the immediate vicinity of the machine. With no persons working inby, the use of machinery without a fire suppression system would not expose persons to the hazard of toxic gases and fumes from a fire on the equipment. The language also would not permit persons to operate mobile equipment without a fire suppression system in the primary escapeway while miners are downstream working on a longwall face. The controlling factor is whether the persons inby are directly engaged in using or moving that particular piece of equipment. If they are, and no one else is inby, the equipment may be operated without a fire suppression system. For example, when moving a longwall shield, no one would be permitted to be inby the machine being used to move the shield if the machine is not provided with a fire suppression system except those persons moving the shield. This would include miners operating other pieces of equipment to move other shields.

Paragraph (f)(7) modifies the existing rule to include a new exemption to the requirement that mobile equipment operated in primary escapeways have a fire suppression system. Paragraph (f)(7) permits mobile equipment designated and used only as emergency vehicles or ambulances to operate in the primary escapeway without fire suppression systems. It was suggested to MSHA that certain types of emergency equipment, such as diesel powered ambulances, should be exempt from the requirements for fire suppression systems. Comments were received suggesting that ambulances should be exempt because space is extremely limited on these vehicles and because they are used infrequently. MSHA recognizes the potential benefit in the use of this type of equipment. Another commenter objected, foreseeing potential abuses of

the exemption by mine operators who would designate equipment as ambulances but use it as ordinary equipment. The final rule permits emergency vehicles to be operated in the primary escapeway without fire suppression systems only when this equipment is used only for medical emergencies.

This existing rule requires in paragraph (i)(2) that mechanical escape facilities be provided and maintained for, ''. . . each slope that is part of a designated escapeway that is either inclined 18 degrees or more from the horizontal or is inclined 9 degrees or more from the horizontal and is greater than 1,000 feet in length.'' During informational meetings, MSHA became aware of a concern that existing paragraph (i)(2) would permit slopes of significant length and inclination to exist without any mechanical escape facilities. An example would be a slope of 900 feet inclined less than 18 degrees from the horizontal. It was suggested that such a slope could be particularly difficult for passage of injured persons under cold and icy conditions if mechanical escape facilities were not provided. In light of this concern, MSHA proposed to require that mechanical escape facilities be provided and maintained from the coal seam to the surface for each slope that is part of a designated escapeway and is inclined more than 9 degrees from the horizontal. The final rule adopts the proposal.

One commenter objected to proposed paragraph (i)(2) indicating that facilities are unnecessary in low angle slopes which are of short length. Other commenters believed that the 1992 standard was appropriate. Another commenter indicated support for the proposal as a way to enable persons to escape quickly in an emergency. This commenter also noted that escape can be very difficult in icy winter conditions in some slopes. After consideration of the comments received, MSHA concludes that the proposal was appropriate and the final rule adopts this aspect of the proposal.

One commenter suggested that proposed paragraph (i)(2) could be interpreted as requiring mechanical escape facilities for slopes that occur naturally underground. It was not MSHA's intent to apply paragraph (i)(2) to slopes other than from the coal seam to the surface. The final rule clarifies this and requires that mechanical escape facilities be provided for each slope from the coal seam to the surface that is part of a designated escapeway and is inclined more than 9 degrees from the horizontal.

Section 75.382 Mechanical Escape Facilities

Because an escapeway route can sometimes be very long, the most safe, direct and practical route to the surface can sometimes involve the use of a mechanical escape device such as an automatic elevator or similar, but less sophisticated, device. Section 75.382 contains the requirements for mechanical escape facilities installed in escapeways under § 75.380 and § 75.381. The final rule contains a new requirement for certification of escape facility examinations, proposed as paragraph (g). The final rule does not retain the other proposed changes, paragraphs (h) and (i), that would have added recordkeeping and countersigning requirements.

Under paragraph (g) of the final rule, the designated examiner certifies by date, time, and initials that the mechanical escape facilities examination required by paragraph § 75.382(c) was performed. The certification must be located at or near the facility examined. Certification has long been an accepted practice in the mining industry for assuring that a required examination has been completed. One commenter agreed that certification is necessary and supported the revision. The commenter indicated that the facilities are often designated as escapeways and therefore there should be some assurance that the facilities have been examined and are ready for use. Also, in the case of mechanical escape facilities, if certification is not provided, precious time could be lost as the escape facility is tested prior to use to determine if it is functional and safe.

Under the proposed paragraphs (h) and (i), a record would have had to be made of the examination of the escape facility performed in accordance with § 75.382 (c). The results of the examination would be included in a record, including any deficiency found along with the corrective actions taken to correct the condition. One commenter supported the revision requiring records of deficiencies found during examinations as well as a record of corrective actions. Other commenters objected to additional records, noting that they would not enhance safety. After review of the comments, MSHA has concluded that certification will achieve the intended objective of assuring the safety of mechanical escape. Accordingly, the recordkeeping requirements proposed as paragraphs (h) and (i) are omitted from the final rule.

One commenter stated that many companies utilize mobile escape facilities to cover more than one mine if the mines are located in close proximity. The commenter believed that such an arrangement was not considered in the countersigning provisions of the proposal and stated, ''The effort required to go to each mine every week and track down the mine foreman would be burdensome and unnecessary.'' Paragraph (c) of the existing rule requires a weekly examination and a weekly test in which the hoist must be run through one complete cycle of operation to determine that it is operating properly. The final rule requires certification to be completed by the examiner. As indicated above, MSHA has concluded that certification will achieve the intended objective of assuring that the examinations have been conducted.

Additional comments were received recommending further modifications and additions to § 75.382. For example, a commenter recommended 2-way communication capability, with supplies and a holding area at the escape facility. These types of comments related to issues outside the scope of the rulemaking and were not addressed. Another commenter would have MSHA reinstate language from an earlier rule, alleging a reduction in protection. MSHA does not believe that there is a reduction in protection. Also, the final rule did not propose to change the existing requirement that the commenter claimed reduced protection, i.e., that a person trained to operate the mechanical escape facility always shall be available. MSHA notes that this issue is outside the scope of the rulemaking.

Section 75.383 Escapeway Maps and Drills

When a fire, explosion or other emergency necessitates an immediate evacuation of a mine the designated route for miners to leave the mine is the escapeway. During a mine fire, passageways, even those designated as escapeways, can become smoke filled and the ability to see can be drastically reduced. Therefore, it is vitally important that miners know the route of travel through the escapeway. Section 75.383 provides for the posting of escapeway maps so that they are available for miners to study and use during an emergency, if necessary. Section 75.383 also provides for miners to be trained in the escape route through escapeway drills. Escapeway drills in mines are similar to fire drills in schools and high rise buildings.

Existing paragraphs (a) and (b)(1) of § 75.383 deal with the escapeway map and drill requirements in areas where mechanized mining equipment is being

installed or removed. Based on comments received, the final rule contains 2 revisions to the proposal. The first allows the mine map to be readily accessible as an alternative to posting. The second requires that miners who are underground when any change is made to the escapeway map be immediately notified of the change. These revisions to the proposal are discussed below.

One commenter supported the requirements of (a) and (b)(1) noting the hazards and activities where mechanized mining equipment is being installed or removed. Another commenter stated that the requirement that the map be ''posted'' is impractical in some mines. The commenter stated that the rule should simply require that the map be maintained on the section to allow the map to be maintained in a map tube, or be covered. The commenter also indicated that a map tube could aid miners in a rapid escape since the map and tube could easily be taken with the miners during the escape. MSHA agrees that the maintenance of a posted map could be difficult in some conditions such as in wet or very low height mines. Accordingly, the final rule provides an option wherein the map may be either posted or be maintained in a location readily accessible to all miners. In specifying ''readily accessible'' MSHA intends that all miners be made aware of the map location and have access to review the map at any time. As an example, a map secured in a locked tool chest would not be acceptable.

One commenter objected to paragraph (a) in two respects. First, according to the commenter, the standard does not require maps to show the revised escapeway routes until the end of the shift on which the changes are made. The commenter believes that changes are projected in advance and therefore the maps should be updated immediately. Second, the commenter indicated that the requirement that miners must be informed of the changes before entering the mine does not address affected miners already underground. Many changes within escapeways are not known or planned well in advance. Often, such revisions are in response to changing conditions underground. MSHA does not believe that allowing a portion of one shift is an excessive amount of time to update the maps. MSHA does agree, however, that changes to the escapeways should be immediately brought to the attention of all miners who are underground at the time of a change. Accordingly, the final rule specifies that all affected miners already underground must be immediately notified of the change. This will assure that all affected miners are aware of the change from the time the change is implemented.

While agreeing that each miner's familiarity with escapeways is important, one commenter stated that requiring travel by foot in the escapeways could cause undue physical stress to some miners in low or steeply pitching seams. The commenter continued that the desired result could be obtained by requiring full participation in drills where transportation is provided and full participation in drills where transportation is not provided, unless that escapeway is equipped with a continuous, directional life line. MSHA notes that the standard does not require travel on foot. Transportation may be used for escapeway drills provided that the purpose of the standard can be achieved. That purpose is to assure that miners are familiar with the escapeway routes and, as specified in (b)(4), before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, changes in the routes of travel, and plans for diverting smoke from escapeways. Traveling an escapeway in a completely enclosed mantrip, such that the route could not be observed, would not meet the requirement. As to the concept of exempting drills in the alternate escapeway where mechanized transportation is unavailable if a directional lifeline exists, MSHA believes that certain minimum specifications for lifelines would be needed before such a compliance alternative could be considered. This would expand the scope of this rulemaking beyond the proposal.

One commenter suggested an expansion of 75.383 to require: directional life lines in both escapeways; communications in both escapeways; numbering of all stoppings along escapeways; additional SCSR caches; hard hat stickers depicting escapeways and SCSR donning procedures; and other measures. While many of the suggestions may have merit, they are outside the scope of this rulemaking.

In the proposal, MSHA solicited comments on a concept to allow individual miners to opt out of escapeway drills for health reasons. One commenter indicated that a number of additional requirements would be needed to assure that any miners opting out would still remain familiar with the escapeways. After considering the comments received, MSHA has not included an option for miners to opt out of the escapeway drills. As one commenter pointed out, it is essential that each miner be familiar with the escapeways. MSHA concludes that a number of accommodations can be made to provide assistance to any miner experiencing difficulty during drills. As discussed above, mobile equipment may be used provided that the conveyance is not so enclosed that miners cannot observe the route. Operators can allow additional time for miners who may encounter difficulty. Also, assistance can be provided by other miners, particularly in difficult areas such as unusually steep grades. Such assistance would likely also be needed in an actual emergency and therefore the drills would be particularly instructive to all the miners participating in the drills.

MSHA believes that for areas where mechanized mining equipment is being installed or removed, providing escapeways and posting maps identifying these escapeways and conducting the drills specified in the standard are essential to maintain safety. These requirements help to assure that miners are familiar with escape routes so that should urgent escape become necessary, they can reach the surface as quickly as possible.

Section 75.384 Longwall and Shortwall Travelways

Modern mining methods include removing large blocks of coal in one continuous operation along a wall which can be several hundred feet long. This method is known as longwall or shortwall mining. To avoid trapping miners in the face area without a means of escape in the event of an emergency, there is a need to have a travelway on the side of the block of coal opposite the escapeways. Section 75.384 addresses the requirements for a travelway on the tailgate side of a longwall or shortwall, the location and marking of the travelway, and procedures to follow during a blockage of the travelway.

MSHA proposed no changes to the existing rule. Likewise, the final rule makes no changes to the existing rule. The preamble to the proposal explained that MSHA had received comment suggesting that the existing rule be modified to provide for additional involvement by miners when a roof fall or other blockage occurs that prevents travel in the tailgate travelway. MSHA believes that the existing procedures and regulations appropriately address the hazards and provide a sufficient opportunity for input and involvement for all interested parties. The preamble to the proposal contains a discussion of the existing procedures and regulations.

One commenter recommended several additions to existing § 75.384 while

agreeing that maintenance of a tailgate travelway is essential. The recommendations included requiring the tailgate travelway to be ventilated by intake air. The commenter noted that several mines presently ventilate in this manner, providing intake air splits at both headgate and tailgate. While this system has certain advantages, it is not feasible or practical in all cases.

Section 75.388 Boreholes in Advance of Mining.

Areas of a mine, or of an adjacent mine, can be located in close proximity to an advancing working place but can be inaccessible for a variety of reasons. These inaccessible areas of a mine can present hazards when mining proceeds inadvertently or improperly into these areas. Inaccessible areas may contain potentially dangerous accumulations of gases or water, which could result in explosions or inundations. To protect against these hazards, § 75.388 requires operators to drill boreholes into the coal before they extract it. In this manner, the operator can determine whether mining, if continued, will penetrate an area where unknown hazards may be present. Boreholes are not required when the area toward which mining is advancing is accessible and is properly examined.

The final rule revises requirements for the drilling of boreholes in advance of mining. It requires boreholes to be drilled in both ribs of advancing working places unless an alternative drilling plan is approved by the district manager in accordance with existing paragraph (g) of this section. Existing paragraph (c) requires that boreholes be drilled in at least one rib of advancing working places described in § 75.388 (a). Although MSHA did not intend any change in promulgating the existing language, comments indicated that some confusion existed. To address this issue, MSHA proposed to revise the existing standard and adopt language similar to the regulation which was in effect prior to 1992. The proposed revisions to § 75.388 (c) would have required bore holes to be drilled in one or both ribs of advancing working places described in § 75.388(a), ''. . . as may be necessary for adequate protection of miners in such working places.''

Several comments were received in response to the proposal. One commenter indicated that the proposed revision was unnecessary since the 1992 standard adequately indicated that more than one rib may need to be drilled. Another commenter stated that drilling one rib is always adequate since required drilling in adjacent places will assure that the entire area is explored by drilling. MSHA's experience is that working places are seldom developed at the same rate and some may lag by significant distances. In addition, entry or room centers are ordinarily in excess of the 20 foot drill hole depth specified in the standard. Thus, coverage over the entire width of the advancing section is not always provided as suggested by the commenter. Another example would be where an advance heading approaches an inaccurately mapped abandoned mine such that the unknown workings are approached near the undrilled ribline. An inundation could occur at the undrilled ribline as the working place advanced. To address these hazards, the final rule requires drilling of both ribs. If the workings were not discovered through drilling, multiple fatalities could result from inundations of water, methane, or oxygen deficient atmosphere (black damp). Accidents similar to this scenario have occurred and resulted in inundations of water, methane, or irrespirable atmospheres.

One commenter noted that 38 inundations of gases or water occurred between 1990 and 1994. MSHA notes that this number represents only those accidental cut-throughs which resulted in inundations. It should be noted that numerous additional accidental cut-throughs have occurred which did not result in inundations. Each of these additional accidental cut-throughs demonstrates the potential for a serious or fatal accident. The commenter stated that the number of inundations and the potential for multiple fatalities warrant a revision to the standard to require both ribs to be drilled. Similar comments and examples were heard during the public hearings. MSHA agrees.

MSHA concludes that in general, both ribs should be drilled; however, under some circumstances drilling of both ribs may be unnecessary. Moreover, MSHA recognizes that there are circumstances where it would be unnecessary to drill both ribs at all times. Thus, the final rule requires that both ribs be drilled unless the district manager grants approval for an alternative drilling pattern under existing paragraph (g). Under existing paragraph (g), an alternative drilling pattern may be approved which may not require drilling of both ribs. As with other plans which are subject to approval, requests for alternative drilling patterns will be reviewed on a case by case basis. After considering all comments received discussing this issue, MSHA has concluded that the hazard of an inundation is properly addressed by the final rule which retains sufficient flexibility for a site specific drilling pattern if the district manager can be satisfied that the alternative is suitable to the particular circumstances.

Another comment suggested that the minimum distances which trigger drilling as specified in § 75.388 (a)(1), (a)(2), and (a)(3) be revised to 100, 500, and 500 feet, respectively. In support of the suggestion, the commenter noted factors such as inaccurate old mine maps, unmapped mining over-boundary or outside the legal limits, lost maps or unknown mines, and less than diligent research by some operators. The minimum drilling distances in paragraph (a) were not proposed for revision and the final rule does not address them. However, it is important to note that the distances specified are the minimum at which drilling must begin if there is reasonable confidence in the position of the old workings. The distances specified provide a safety factor to account for slight mining overruns, mapping errors, small deliberate omissions, and similar factors in cases where the position of the old workings are known with reasonable certainty. In cases where old workings are known to exist but the position is unknown or known with little confidence, drilling would be necessary in excess of the minimum distances specified in (a) to assure compliance with the standard.

Section 75.389 Mining into Inaccessible Areas

While § 75.388 addresses the need to identify inaccessible areas to avoid accidentally drilling into an area containing a possible hazardous environment, § 75.389 establishes procedures for drilling into an inaccessible area that has been identified. Section 75.389 requires a separate plan be developed and approved for drilling into inaccessible areas. Paragraph (c) of the final rule clarifies that the requirements of § 75.389(c)(1), (c)(2) and (c)(3) do not apply to routine mining-through operations that are part of a retreat section ventilation system approved in accordance with § 75.371(f) and (x). The final rule retains the proposed language.

The preamble to the proposal pointed out that, based on comments received during informational meetings and other discussions, differing interpretations of the application of existing § 75.389 existed. Some persons were interpreting paragraph (c) as requiring, for example, the mine to be evacuated during the break-through of a pillar split in a retreating section. However, paragraphs (a) through (c) of § 75.389 were intended to apply during mining-through operations in areas subject to § 75.388

where hazards and potential hazards may be unknown. The final rule revises existing § 75.389(c) by adding an exception for routine mining-through operations that are a part of a retreat mining system approved in the mine ventilation plan. In some circumstances, the mining through occurs during routine mining into an area which is covered by an approved mine ventilation plan. In this case, the potential hazards have already been addressed in the mine ventilation plan. Requiring the operator to submit duplicate plans would not result in any safety benefit; therefore, the level of safety provided by the existing standard is maintained.

Petitions for Modification

Operators with petitions for modification that involve the standards revised in this rulemaking need to determine the status of those petitions before the effective date of the rule. If there are sections of this rule that are renumbered but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with petitions for modifications granted for standards that have been revised must comply with the new rule on its effective date. New petitions for modification of the final rule may be submitted under 30 CFR part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA district office.

Derivation Table

The following derivation table lists the number of each final standard and the number of the existing standard from which it is derived.

New section	Old section
75.301	Partly new, 75.301.
75.310(a)(3)	Partly new, 75.310(a)(3).
75.310(a)(4)	Partly new, 75.310(a)(4).
75.310(c)	Partly new, 75.310(c).
75.310(c)(1)	Partly new, 75.310(c).
75.310(c)(2)	75.310(c).
75.310(c)(3)	New.
75.310(c)(4)	Partly new, 75.310(c).
75.310(c)(4)(i)	75.310(c)(1).
75.310(c)(4)(ii)	75.310(c)(2).
75.310(c)(5)	New.
75.311(d)	Partly new, 75.311(d).
75.312(a)	Partly new, 75.312(a).
75.312(b)(1)	Partly new, 75.312(b)(1).
75.312(b)(1)(i)	New.
75.312(b)(1)(ii)	75.312(b)(1) through(b)(1)(ii).
75.312(c)	Partly new, 75.312(c).
75.312(d)	Partly new, 75.312(d).
75.312(f)(1)	75.312(f).
75.312(f)(2)	New.
75.312(g)(1)	Partly new, 75.312(g)(1).
75.312(g)(2)	New.
75.312(g)(3)	Partly new, 75.312(g)(3).
75.312(h)	Partly new, 75.312(h).
75.313(a)(1)	75.313(a)(1).
75.313(a)(2)	75.313(a)(2).
75.313(a)(3)	75.313(a)(3).
75.313(b)	75.313(b).
75.313(c)(1)	75.313(c)(1).
75.313(c)(2)	Partly new, 75.313(c)(2).
75.313(c)(3)	Partly new, 75.313(c)(3).
75.313(d)(1)(i)	Partly new, 75.313(d)(1)(i).
75.313(d)(1)(ii)	Partly new, 75.313(d)(1)(ii).
75.313(d)(2)	Partly new, 75.313(d)(2).
75.320(e)	New.
75.321(a)(1)	Partly new, 75.321(a).
75.321(a)(2)	Partly new, 75.321(a).
75.323(b)(1)	75.323(b)(1).
75.323(b)(1)(i)	75.323(b)(1)(i).
75.323(b)(1)(ii)	Partly new, 75.323(b)(1)(ii).
75.323(b)(1)(iii)	75.323(b)(1)(iii).
75.323(b)(2)	75.323(b)(2).
75.323(b)(2)(i)	75.323(b)(2)(i).
75.323(b)(2)(ii)	75.323(b)(2)(ii).
75.323(c)(1)	Partly new, 75.323(c)(1).
75.323(d)(2)(i)	Partly new, 75.323(d)(2)(i).
75.325(d)	Partly new, 75.325(d).
75.330(c)	New.
75.332(a)(1)	75.332(a)(1).
75.333(a)	Partly new, 75.333(a).
75.333(b)(1)	Partly new, 75.333(b)(1).
75.333(b)(3)	Partly new, 75.333(b)(3).
75.333(b)(4)	Partly new, 75.333(b)(4).
75.333(e)(1)(i)	Partly new, 75.333(e)(1).
75.333(e)(1)(ii)	Partly new, 75.333(e)(2).
75.333(h)	75.333(e)(1).
75.334(e)	Partly new, 75.334(e).

New section	Old section
75.334(f)(3)	Partly new, 75.334(f)(3).
75.340(a)	Partly new, 75.340(a).
75.342(a)(4)	Partly new, 75.342(a)(4).
75.342(a)(4)(i)	New.
75.342(a)(4)(ii)	New.
75.342(a)(4)(iii)	New.
75.344(a)	Partly new, 75.344(a).
75.344(a)(1)	Partly new, 75.344(b)(1).
75.344(a)(2)	Partly new, 75.344(a)(1).
75.344(a)(2)(i)	75.344(b)(2)(i).
75.344(a)(2)(ii)	75.344(b)(2)(ii).
75.344(b)	Partly new, 75.344(a)(2).
75.344(e)	New.
75.360(a)(1)	Partly new, 75.360(a)(1).
75.360(a)(2)	New.
75.360(b)	75.360(b).
75.360(b)(1)	Partly new, 75.360(b)(1).
75.360(b)(3)	Partly new, 75.360(b)(3).
75.360(b)(4)	Partly new, 75.360(b)(4).
75.360(b)(6)(i)	Partly new, 75.360(b)(6).
75.360(b)(6)(ii)	Partly new, 75.360(b)(6).
75.360(b)(8)	New.
75.360(b)(9)	New.
75.360(b)(10)	New.
75.360(e)	75.360(f).
75.360(f)	Partly new, 75.360(g).
75.360(g)	Partly new, 75.360(h).
75.362(a)(1)	Partly new, 75.362(a)(1).
75.362(a)(2)	New.
75.362(c)(1)	Partly new, 75.362(c)(1).
75.362(c)(2)	75.362(c)(2).
75.362(d)(1)(i)	New.
75.362(d)(1)(iii)	Partly new, 75.362(d)(1)(ii).
75.362(d)(2)	Partly new, 75.362(d)(2).
75.362(g)(1)	New.
75.362(g)(2)	New.
75.363	Partly new, 75.313, 75.361, 75.362.
75.364(a)(1)	Partly new, 75.364(a)(1).
75.364(a)(2)(i)	Partly new, 75.364(a)(2)(i).
75.364(a)(2)(ii)	Partly new, 75.364(a)(2)(ii).
75.364(a)(2)(iii)	Partly new, 75.364(a)(2)(iii).
75.364(a)(2)(iv)	Partly new, 75.364(a)(2)(iii).
75.364(h)	Partly new, 75.364(h).
75.364(i)	Partly new, 75.364(i).
75.370(a)(3)	Partly new, 75.370(a)(3).
75.370(a)(3)(i)	New.
75.370(a)(3)(ii)	75.370(a)(3).
75.370(a)(3)(iii)	Partly new, 75.370(a)(3).
75.370(b)	New.
75.370(c)(1)	Partly new, 75.370(b)(1).
75.370(c)(2)	75.370(b)(2).
75.370(f)	Partly new, 75.370(e).
75.370(f)(1)	New.
75.370(f)(2)	Partly new, 75.370(e).
75.370(f)(3)	Partly new, 75.370(e).
75.371(r)	Partly new, 75.371(r).
75.371(s)	Partly new, 75.371(s).
75.371(z)	Partly new, 75.371(z).
75.371(bb)	Partly new, 75.371(bb).
75.371(cc)	Partly new, 75.371(cc).
75.372(b)(3)	Partly new, 75.372(b)(3).
75.372(b)(19)	New.
75.372(b)(20)	New.
75.380(b)(1)	75.380(b)(1).
75.380(b)(2)	75.380(b)(2).
75.380(d)(3)	Partly new, 75.380(d)(3).
75.380(d)(4)(ii)	Partly new, 75.380(d)(4)(ii).
75.380(d)(4)(iii)	New.
75.380(d)(4)(iv)	New.
75.380(d)(5)	Partly new, 75.380(d)(5).
75.380(f)	Partly new, 75.380(f)(1).
75.380(f)(1)	Partly new, 75.380(f)(1).
75.380(f)(2)	Partly new, 75.380(f)(1).

New section	Old section
75.380(f)(3)	Partly new, 75.380(f)(1).
75.380(f)(4)	Partly new, 75.380(f)(2).
75.380(f)(5)	Partly new, 75.380(f)(2).
75.380(f)(6)	New.
75.380(f)(7)	New.
75.380(i)(2)	Partly new, 75.380(i)(2).
75.382(g)	New.
75.383(a)	Partly new, 75.383(a).
75.383(b)(1)	75.383(b)(1).
75.388(c)	Partly new, 75.388(c).
75.389(c)	New.
75.389(c)(1)	75.389(c)(1).

Redesignation Table

The following redesignation table lists the section number of the existing standard and the section number of the final standard which contain revised provisions derived from the corresponding existing section.

Old section	New section
75.310(a)(3)	75.310(a)(3).
75.310(a)(4)	75.310(a)(4).
75.310(c)	75.310(c).
75.310(c)	75.310(c)(1).
75.310(c)	75.310(c)(2).
75.310(c)	75.310(c)(4).
75.310(c)(1)	75.310(c)(4)(i).
75.310(c)(2)	75.310(c)(4)(ii).
75.311(d)	75.311(d).
75.312(a)	75.312(a).
75.312(b)(1)	75.312(b)(1), 75.312(b)(1)(ii).
75.312(b)(1)(i)	75.312(b)(1)(ii)(A).
75.312(b)(1)(ii)	75.312(b)(1)(ii)(B).
75.312(c)	75.312(c).
75.312(d)	75.312(d).
75.312(f)	75.312(f)(1).
75.312(g)(1)	75.312(g)(1).
75.312(g)(3)	75.312(g)(3).
75.312(h)	75.312(h).
75.313(c)(2)	75.313(c)(2).
75.313(c)(3)	75.313(c)(3).
75.313(d)(1)(i)	75.313(d)(1)(i).
75.313(d)(1)(ii)	75.313(d)(1)(ii).
75.321(a)	75.321(a)(1).
75.321(a)	75.321(a)(2).
75.323(b)(1)(ii)	75.323(b)(1)(ii).
75.323(c)(1)	75.323(c)(1).
75.323(d)(2)(i)	75.323(d)(2)(i).
75.325(d)	75.325(d).
75.333(a)	75.333(a).
75.333(b)(1)	75.333(b)(1).
75.333(b)(3)	75.333(b)(3).
75.333(b)(4)	75.333(b)(4).
75.333(e)(1)	75.333(e)(1)(i).
75.333(e)(1)	75.333(e)(1)(ii).
75.334(e)	75.334(e).
75.334(f)(3)	75.334(f)(3).
75.340(a)	75.340(a)
75.340(a)(1)	75.340(a)(1)(i).
75.340(a)(2)	75.340(a)(1)(ii).
75.340(a)(3)	75.340(a)(1)(iii).
75.340(a)(3)(i)	75.340(a)(1)(iii)(A).
75.340(a)(3)(ii)	75.340(a)(1)(iii)(B).
75.340(a)	75.340(a)(2).
75.340(a)(1)	75.340(a)(2)(i).
75.340(a)(2)	75.340(a)(2)(ii).
75.342(a)(4)	75.342(a)(4).
75.344(a)	75.344(a).
75.344(a)(1)	75.344(a)(2).
75.344(a)(2)	75.344(b).
75.344(b)(1)	75.344(a)(1).
75.344(b)(2)	75.344(a)(2).
75.344(b)(2)(i)	75.344(a)(2)(i).

Old section	New section
75.344(b)(2)(ii)	75.344(a)(2)(ii).
75.360(a)	75.360(a)(1).
75.360(b)	75.360(b).
75.360(b)(1)	75.360(b)(1).
75.360(b)(3)	75.360(b)(3).
75.360(b)(4)	75.350(b)(4).
75.360(b)(6)	75.360(b)(6)(i).
75.360(b)(6)	75.360(b)(6)(ii).
75.360(c)	75.360(c).
75.360(c)(1)	75.360(c)(1).
75.360(c)(3	75.360(c)(3).
75.360(e)	75.363.
75.360(f)	75.360(e).
75.360(g)	75.360(f).
75.360(h)	75.360(g).
75.362(a)(1)	75.362(a)(1).
75.363(a)(2)	75.363.
75.362(c)(1)	75.362(c)(1).
75.362(d)(1)(i)	75.362(d)(1)(ii).
75.362(d)(1)(ii)	75.362(d)(1)(iii).
75.362(d)(2)	75.362(d)(2).
75.362(g)	75.363.
75.362(h)	75.363.
75.364(a)(1)	75.364(a)(1).
75.364(a)(2)(i)	75.364(a)(2)(i).
75.364(a)(2)(ii)	75.364(a)(2)(ii).
75.364(a)(2)(iii)	75.364(a)(2)(iii).
75.364(h)	75.364(h).
75.364(i)	75.364(i).
75.370(a)(3)	75.370(a)(3).
75.370(a)(3)	75.370(a)(3)(ii).
75.370(a)(3)	75.370(a)(3)(iii).
75.370(b)(1)	75.370(c)(1).
75.370(b)(2)	75.370(c)(2).
75.370(e)	75.370(f).
75.370(e)	75.370(f)(2).
75.370(e)	75.370(f)(3).
75.371(r)	75.371(r).
75.371(s)	75.371(s).
75.371(z)	75.371(z).
75.371(bb)	75.371(bb).
75.371(cc)	75.371(cc).
75.372(b)(3)	75.372(b)(3).
75.380(d)(3)	75.380(d)(3).
75.380(d)(4)(ii)	75.380(d)(4)(ii).
75.380(d)(5)	75.380(d)(5).
75.380(f)	75.380(f).
75.380(i)(2)	75.380(i)(2).
75.383(a)	75.383(a).
75.388(c)	75.388(c).
75.389(c)(1)	75.389(c)(1).

III. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. No person may be required to respond to, or may be subjected to a penalty for failure to comply with, these information collection requirements until they have been approved and MSHA has announced the assigned OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. In accordance with § 1320.11(h) of the implementing regulations, OMB has 60 days from today's publication date in which to approve, disapprove, or instruct MSHA to make a change to the information collection requirements in this rule.

This final rule addresses comments submitted to OMB and MSHA on the collection of information requirements in the proposed rule. In revising the requirements from those that appeared in the proposed rule, MSHA has evaluated the necessity and usefulness of the collections of information; reevaluated MSHA's estimate of the information collection burden, including the validity of the underlying methodology and assumptions; and minimized the burden on respondents for the information collection requirements, to the extent possible. This final rule provides for the use of electronic storage and maintenance of records.

Benefits

In assessing costs and benefits of the ventilation rule, it is important to note that ventilation of underground coal mines is the primary method of preventing the accumulation of explosive methane gas, controlling harmful respirable dust, and assuring the quality of air miners breath. Because

of the potential for a large number of fatalities resulting from ventilation problems, MSHA has found it prudent to establish multiple safety factors and safety work practices to better assure adequate protection for miners. It is extremely difficult to specifically quantify safety benefits related to each safety factor. However, due to the close, confined nature of the workplace in an underground coal mine, failure of any safety factors or protective actions related to ventilation can have disastrous effects. The introduction of this rule lists some of those tragic mine accidents. In the restricted work environment of an underground coal mine, failure of a single safety factor or noncompliance with a safe work practice could jeopardize the well-being of all miners underground. The total effect of the provisions in this final rule in conjunction with MSHA's existing ventilation standards should decrease the occurrence of fatalities, injuries, accidents, and illnesses in underground coal mines.

With respect to this final rule, the Agency has identified nine fatalities and seven injuries which potentially could have been prevented by compliance with these provisions. In addition, the final rule contains provisions to better assure compliance with the respirable dust control parameters specified in the mine ventilation plan. Adherence to these parameters helps to maintain a work environment free of excessive levels of respirable dust, thereby improving long-term health protection for miners and potentially reducing the number of miners afflicted with coal workers' pneumoconiosis.

Some provisions clarify the intent of the existing rule. Such clarifications should increase the likelihood of compliance and thereby will help to increase the probability of preventing a fatality, injury, or non-injury accident. For the provisions which offer an alternative compliance option, the miners will be provided at least the same level of safety provided by an existing requirement. These provisions will facilitate compliance by the operator, thereby increasing the potential for the rule to reduce the probability of a ventilation-related explosion or accident.

In conclusion, the Agency determined that these provisions will increase the probability that compliance with the ventilation rule will prevent future ventilation-related accidents and generate a safer mining environment.

Compliance Costs and Economic Impact

MSHA has compared the costs associated with the existing requirements with the costs of the new requirements. Based upon the available data, MSHA estimates that compliance with the rule will produce net total per year costs of approximately $4.0 million for the mining industry. This $4.0 million is composed of approximately $0.6 million in net annualized costs (derived from $4.0 million one-time costs) and approximately $3.4 million net annual recurring costs.

With respect to large underground coal mines the net total per year costs will be approximately $3.0 million. This $3.0 million is composed of approximately $0.46 million in net annualized costs (derived from $3.0 million one-time costs) and approximately $2.54 million net annual recurring costs.

With respect to small underground coal mines the net total per year costs will be approximately $1.0 million. This $1.0 million is composed of approximately $0.14 million in net annualized costs (derived from $1.0 million one-time costs) and approximately $0.82 million net annual recurring costs.

Executive Order 12866 requires that regulatory agencies assess the impact to the government for any regulation determined to be a significant regulatory action. MSHA does not believe that this rule will create any significant cost impacts to the government. The regulation can be implemented under existing government practices without any substantial equipment or facility expenditures by the government.

The incremental compliance costs for all underground coal mines are listed by provision in Table I.

TABLE IV–1.—COMPLIANCE COSTS TO COMPLY WITH THE VENTILATION RULE FOR ALL UNDERGROUND COAL MINES

[In thousands of dollars]

Standard	First year costs	Annualized costs	Annual costs
75.301	(100)	(7)	(20)
75.310	329	47	(70)
75.311	.....	.....	.....
75.312	.....	.....	(1,121)
75.313	.....	.....	322
75.320	.....	.....	.....
75.321	250	35	40
75.323	.....	.....	.....
75.330	.....	.....	.....
75.333	.....	.....	.....
75.334	.....	.....	.....
75.340	63	9	
75.342	12	2	38
75.344	57	10	1,256
75.360	123	17	(1,556)
75.362	420	59	3,275
75.363	.....	.....	321
75.364	.....	.....	682
75.370	.....	.....	67
75.371	.....	.....	13
75.372	.....	.....	.....
75.380	2,839	436	51
75.382	.....	.....	13
75.388	.....	.....	53

TABLE IV–1.—COMPLIANCE COSTS TO COMPLY WITH THE VENTILATION RULE FOR ALL UNDERGROUND COAL MINES—Continued

[In thousands of dollars]

Standard	First year costs	Annualized costs	Annual costs
75.389.			
Total costs	3,993	608	3,364

Regulatory Flexibility Certification

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory standards. MSHA has not exempted small mines from any provision of the rule and small mines will benefit from some of the provisions and the alternative compliance methods.

MSHA determined that these revisions will not generate a substantial cost increase for small mines. The lack of a substantial cost increase for small mines, in conjunction with the fact that similar hazards exist in both large and small mining operations, indicates that regulatory relief is not warranted for small mining operations. Therefore, MSHA has determined that these provisions will not have a significantly adverse impact upon a substantial number of small entities.

The incremental costs for small and large mines are listed by provision in Table II.

TABLE IV–2.—COMPLIANCE COSTS TO COMPLY WITH THE VENTILATION RULE FOR SMALL AND LARGE UNDERGROUND COAL MINES

[In thousands of dollars]

Standard	First year costs		Annualized costs		Annual costs	
	Small	Large	Small	Large	Small	Large
75.301		(100)		(7)		(20)
75.310	273	56	39	8	(78)	8
75.311						
75.312						(1,121)
75.313					55	267
75.320						
75.321		250		35		40
75.323						
75.330						
75.333						
75.334						
75.340	4	59	1	8		
75.342	6	6	1	1	18	20
75.344		57		10	43	1,213
75.360	37	86	5	12	100	(1,656)
75.362	80	340	11	48	409	2,866
75.363					98	223
75.364					126	556
75.370					12	55
75.371					6	7
75.372						
75.380	585	2,254	89	347	6	45
75.382						13
75.388					25	28
75.389						
Total	985	3,008	146	462	820	2,544

List of Subjects in 30 CFR Part 75

Escapeways, Mine safety and health, Underground coal mines, Ventilation.

Dated: March 4, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 811.

2. Subpart D of part 75 is revised to read as follows:

Subpart D—Ventilation

Sec.
75.300 Scope.
75.301 Definitions.
75.302 Main mine fans.
75.310 Installation of main mine fans.
75.311 Main mine fan operation.
75.312 Main mine fan examinations and records.
75.313 Main mine fan stoppage with persons underground.
75.320 Air quality detectors and measurement devices.
75.321 Air quality.
75.322 Harmful quantities of noxious gases.
75.323 Actions for excessive methane.
75.324 Intentional changes in the ventilation system.
75.325 Air quantity.
75.326 Mean entry air velocity.
75.327 Air courses and trolley haulage systems.
75.330 Face ventilation control devices.
75.331 Auxiliary fans and tubing.
75.332 Working sections and working places.
75.333 Ventilation controls.
75.334 Worked-out areas and areas where pillars are being recovered.
75.335 Construction of seals.
75.340 Underground electrical installations.
75.341 Direct-fired intake air heaters.
75.342 Methane monitors.
75.343 Underground shops.
75.344 Compressors.
75.350 Air courses and belt haulage entries.
75.351 Atmospheric monitoring system (AMS).
75.352 Return air courses.
75.360 Preshift examination.
75.361 Supplemental examination.
75.362 On-shift examination.
75.363 Hazardous conditions; posting, correcting and recording.
75.364 Weekly examination.
75.370 Mine ventilation plan; submission and approval.
75.371 Mine ventilation plan; contents.
75.372 Mine ventilation map.
75.373 Reopening mines.
75.380 Escapeways; bituminous and lignite mines.
75.381 Escapeways; anthracite mines.
75.382 Mechanical escape facilities.
75.383 Escapeway maps and drills.
75.384 Longwall and shortwall travelways.
75.385 Opening new mines.
75.386 Final mining of pillars.
75.388 Boreholes in advance of mining.
75.389 Mining into inaccessible areas.

§ 75.300 Scope.

This subpart sets requirements for underground coal mine ventilation.

§ 75.301 Definitions.

In addition to the applicable definitions in § 75.2, the following definitions apply in this subpart.

Air course. An entry or a set of entries separated from other entries by stoppings, overcasts, other ventilation control devices, or by solid blocks of coal or rock so that any mixing of air currents between each is limited to leakage.

Incombustible. Incapable of being burned.

Intake air. Air that has not yet ventilated the last working place on any split of any working section, or any worked-out area, whether pillared or nonpillared.

Intrinsically safe. Incapable of releasing enough electrical or thermal energy under normal or abnormal conditions to cause ignition of a flammable mixture of methane or natural gas and air of the most easily ignitable composition.

Noncombustible Structure or Area. Describes a structure or area that will continue to provide protection against flame spread for at least 1 hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent.

Noncombustible Material. Describes a material which when used to construct a ventilation control results in a control that will continue to serve its intended function for 1 hour when subjected to a fire test incorporating an ASTM E119–88 time/temperature heat input, or equivalent.

Return air. Air that has ventilated the last working place on any split of any working section or any worked-out area whether pillared or nonpillared. If air mixes with air that has ventilated the last working place on any split of any working section or any worked-out area, whether pillared or nonpillared, it is considered return air. For the purposes of § 75.507–1, air that has been used to ventilate any working place in a coal producing section or pillared area, or air that has been used to ventilate any working face if such air is directed away from the immediate return is return air. Notwithstanding the definition of intake air, for the purpose of ventilation of structures, areas or installations that are required by this subpart D to be ventilated to return air courses, and for ventilation of seals, other air courses may be designated as return air courses by the operator only when the air in these air courses will not be used to ventilate working places or other locations, structures, installations or areas required to be ventilated with intake air.

Worked-out area. An area where mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses, and intake air courses.

§ 75.302 Main mine fans.

Each coal mine shall be ventilated by one or more main mine fans. Booster fans shall not be installed underground to assist main mine fans except in anthracite mines. In anthracite mines, booster fans installed in the main air current or a split of the main air current may be used provided their use is approved in the ventilation plan.

§ 75.310 Installation of main mine fans.

(a) Each main mine fan shall be—

(1) Installed on the surface in an incombustible housing;

(2) Connected to the mine opening with incombustible air ducts;

(3) Equipped with an automatic device that gives a signal at the mine when the fan either slows or stops. A responsible person designated by the operator shall always be at a surface location at the mine where the signal can be seen or heard while anyone is underground. This person shall be provided with two-way communication with the working sections and work stations where persons are routinely assigned to work for the majority of a shift;

(4) Equipped with a pressure recording device or system. Mines permitted to shut down main mine fans under § 75.311 and which do not have a pressure recording device installed on main mine fans shall have until March 11, 1997 to install a pressure recording device or system on all main mine fans. If a device or system other than a circular pressure recorder is used to monitor main mine fan pressure, the monitoring device or system shall provide a continuous graph or continuous chart of the pressure as a function of time. At not more than 7-day intervals, a hard copy of the continuous graph or chart shall be generated or the record of the fan pressure shall be stored electronically. When records of fan pressure are stored electronically, the system used to store these records shall be secure and not susceptible to alteration and shall be capable of storing the required data. Records of the fan pressure shall be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners;

(5) Protected by one or more weak walls or explosion doors, or a combination of weak walls and explosion doors, located in direct line with possible explosive forces;

(6) Except as provided under paragraph (e) of this section, offset by at least 15 feet from the nearest side of the mine opening unless an alternative method of protecting the fan and its associated components is approved in the ventilation plan.

(b)(1) If an electric motor is used to drive a main mine fan, the motor shall operate from a power circuit independent of all mine power circuits.

(2) If an internal combustion engine is used to drive a main mine fan—

(i) The fuel supply shall be protected against fires and explosions;

(ii) The engine shall be installed in an incombustible housing and be equipped with a remote shut-down device;

(iii) The engine and the engine exhaust system shall be located out of direct line of the air current exhausting from the mine; and

(iv) The engine exhaust shall be vented to the atmosphere so that the exhaust gases do not contaminate the mine intake air current or any enclosure.

(c) If a main mine fan monitoring system is used under § 75.312, the system shall—

(1) Record, as described in paragraph (a)(4) the mine ventilating pressure;

(2) Monitor bearing temperature, revolutions per minute, vibration, electric voltage, and amperage;

(3) Provide a printout of the monitored parameters, including the mine ventilating pressure within a reasonable period, not to exceed the end of the next scheduled shift during which miners are underground; and

(4) Be equipped with an automatic device that signals when—

(i) An electrical or mechanical deficiency exists in the monitoring system; or

(ii) A sudden increase or loss in mine ventilating pressure occurs.

(5) Provide monitoring, records, printouts, and signals required by paragraphs (c)(1) through (c)(4) at a surface location at the mine where a responsible person designated by the operator is always on duty and where signals from the monitoring system can be seen or heard while anyone is underground. This person shall be provided with two-way communication with the working sections and work stations where persons are routinely assigned to work for the majority of a shift.

(d) Weak walls and explosion doors shall have cross-sectional areas at least equal to that of the entry through which the pressure from an explosion underground would be relieved. A weak wall and explosion door combination shall have a total cross-sectional area at least equal to that of the entry through which the pressure from an explosion underground would be relieved.

(e) If a mine fan is installed in line with an entry, a slope, or a shaft—

(1) The cross-sectional area of the pressure relief entry shall be at least equal to that of the fan entry;

(2) The fan entry shall be developed out of direct line with possible explosive forces;

(3) The coal or other solid material between the pressure relief entry and the fan entry shall be at least 2,500 square feet; and

(4) The surface opening of the pressure relief entry shall be not less than 15 feet nor more than 100 feet from the surface opening of the fan entry and from the underground intersection of the fan entry and pressure relief entry.

(f) In mines ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.

§ 75.311 Main mine fan operation.

(a) Main mine fans shall be continuously operated, except as otherwise approved in the ventilation plan, or when intentionally stopped for testing of automatic closing doors and automatic fan signal devices, maintenance or adjustment of the fan, or to perform maintenance or repair work underground that cannot otherwise be made while the fan is operating.

(b) Except as provided in paragraph (c) of this section, when a main mine fan is intentionally stopped and the ventilating quantity provided by the fan is not maintained by a back-up fan system—

(1) Only persons necessary to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be made while the fan is operating, shall be permitted underground;

(2) Mechanized equipment shall be shut off before stopping the fan; and

(3) Electric power circuits entering underground areas of the mine shall be deenergized.

(c) When a back-up fan system is used that does not provide the ventilating quantity provided by the main mine fan, persons may be permitted in the mine and electric power circuits may be energized as specified in the approved ventilation plan.

(d) If an unusual variance in the mine ventilation pressure is observed, or if an electrical or mechanical deficiency of a main mine fan is detected, the mine foreman or equivalent mine official, or in the absence of the mine foreman or equivalent mine official, a designated certified person acting for the mine foreman or equivalent mine official shall be notified immediately, and appropriate action or repairs shall be instituted promptly.

(e) While persons are underground, a responsible person designated by the operator shall always be at a surface location where each main mine fan signal can be seen or heard.

(f) The area within 100 feet of main mine fans and intake air openings shall be kept free of combustible material, unless alternative precautions necessary to provide protection from fire or other products of combustion are approved in the ventilation plan.

(g) If multiple mine fans are used, the mine ventilation system shall be designed and maintained to eliminate areas without air movement.

(h) Any atmospheric monitoring system operated during fan stoppages shall be intrinsically safe.

§ 75.312 Main mine fan examinations and records.

(a) To assure electrical and mechanical reliability of main mine fans, each main mine fan and its associated components, including devices for measuring or recording mine ventilation pressure, shall be examined for proper operation by a trained person designated by the operator. Examinations of main mine fans shall be made at least once each day that the fan operates, unless a fan monitoring system is used. No examination is required on any day when no one, including certified persons, goes underground, except that an examination shall be completed prior to anyone entering the mine.

(b)(1) If a main mine fan monitoring system is used, a trained person designated by the operator shall—

(i) At least once each day review the data provided by the fan monitoring system to assure that the fan and the fan monitoring system are operating properly. No review is required on any day when no one, including certified persons, goes underground, except that a review of the data shall be performed prior to anyone entering the underground portion of the mine. Data reviewed should include the fan pressure, bearing temperature, revolutions per minute, vibration, electric voltage, and amperage; and

(ii) At least every 7 days—

(A) Test the monitoring system for proper operation; and

(B) Examine each main mine fan and its associated components to assure electrical and mechanical reliability of main mine fans.

(2) If the monitoring system malfunctions, the malfunction shall be corrected, or paragraph (a) of this section shall apply.

(c) At least every 31 days, the automatic fan signal device for each main mine fan shall be tested by stopping the fan. Only persons

necessary to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be made while the fan is operating, shall be permitted underground. Notwithstanding the requirement of § 75.311(b)(3), underground power may remain energized during this test provided no one, including persons identified in § 75.311(b)(1), is underground. If the fan is not restarted within 15 minutes, underground power shall be deenergized and no one shall enter any underground area of the mine until the fan is restarted and an examination of the mine is conducted as described in § 75.360 (b) through (e) and the mine has been determined to be safe.

(d) At least every 31 days, the automatic closing doors in multiple main mine fan systems shall be tested by stopping the fan. Only persons necessary to evaluate the effect of the fan stoppage or restart, or to perform maintenance or repair work that cannot otherwise be made while the fan is operating, shall be permitted underground. Notwithstanding the provisions of § 75.311, underground power may remain energized during this test provided no one, including persons identified in § 75.311(b)(1), is underground. If the fan is not restarted within 15 minutes, underground power shall be deenergized and no one shall enter any underground area of the mine, until the fan is restarted and an examination of the mine is conducted as described in § 75.360 (b) through (e) and the mine has been determined to be safe.

(e) Circular main mine fan pressure recording charts shall be changed before the beginning of a second revolution.

(f)(1) *Certification.* Persons making main mine fan examinations shall certify by initials and date at the fan or another location specified by the operator that the examinations were made. Each certification shall identify the main mine fan examined.

(2) Persons reviewing data produced by a main mine fan monitoring system shall certify by initials and date on a printed copy of the data from the system that the review was completed. In lieu of certification on a copy of the data, the person reviewing the data may certify electronically that the review was completed. Electronic certification shall be by handwritten initials and date in a computer system so as to be secure and not susceptible to alteration.

(g)(1) *Recordkeeping.* By the end of the shift on which the examination is made, persons making main mine fan examinations shall record all uncorrected defects that may affect the operation of the fan that are not corrected by the end of that shift. Records shall be maintained in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(2) When a fan monitoring system is used in lieu of the daily fan examination—

(i) The certified copies of data produced by fan monitoring systems shall be maintained separate from other computer-generated reports or data; and

(ii) A record shall be made of any fan monitoring system malfunctions, electrical or mechanical deficiencies in the monitoring system and any sudden increase or loss in mine ventilating pressure. The record shall be made by the end of the shift on which the review of the data is completed and shall be maintained in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(3) By the end of the shift on which the monthly test of the automatic fan signal device or the automatic closing doors is completed, persons making these tests shall record the results of the tests. Records shall be maintained in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(h) *Retention period.* Records, including records of mine fan pressure and the certified copies of data produced by fan monitoring systems, shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

§ 75.313 Main mine fan stoppage with persons underground.

(a) If a main mine fan stops while anyone is underground and the ventilating quantity provided by the fan is not maintained by a back-up fan system—

(1) Electrically powered equipment in each working section shall be deenergized;

(2) Other mechanized equipment in each working section shall be shut off; and

(3) Everyone shall be withdrawn from the working sections and areas where mechanized mining equipment is being installed or removed.

(b) If ventilation is restored within 15 minutes after a main mine fan stops, certified persons shall examine for methane in the working places and in other areas where methane is likely to accumulate before work is resumed and before equipment is energized or restarted in these areas.

(c) If ventilation is not restored within 15 minutes after a main mine fan stops—

(1) Everyone shall be withdrawn from the mine;

(2) Underground electric power circuits shall be deenergized. However, circuits necessary to withdraw persons from the mine need not be deenergized if located in areas or haulageways where methane is not likely to migrate to or accumulate. These circuits shall be deenergized as persons are withdrawn; and

(3) Mechanized equipment not located on working sections shall be shut off. However, mechanized equipment necessary to withdraw persons from the mine need not be shut off if located in areas where methane is not likely to migrate to or accumulate.

(d)(1) When ventilation is restored—

(i) No one other than designated certified examiners shall enter any underground area of the mine until an examination is conducted as described in § 75.360(b) through (e) and the area has been determined to be safe. Designated certified examiners shall enter the underground area of the mine from which miners have been withdrawn only after the fan has operated for at least 15 minutes unless a longer period of time is specified in the approved ventilation plan.

(ii) Underground power circuits shall not be energized and nonpermissible mechanized equipment shall not be started or operated in an area until an examination is conducted as described in § 75.360(b) through (e) and the area has been determined to be safe, except that designated certified examiners may use nonpermissible transportation equipment in intake airways to facilitate the making of the required examination.

(2) If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(e) Any atmospheric monitoring system operated during fan stoppages shall be intrinsically safe.

§ 75.320 Air quality detectors and measurement devices.

(a) Tests for methane shall be made by a qualified person with MSHA approved detectors that are maintained in permissible and proper operating condition and calibrated with a known

methane-air mixture at least once every 31 days.

(b) Tests for oxygen deficiency shall be made by a qualified person with MSHA approved oxygen detectors that are maintained in permissible and proper operating condition and that can detect 19.5 percent oxygen with an accuracy of ±0.5 percent. The oxygen detectors shall be calibrated at the start of each shift that the detectors will be used.

(c) Handheld devices that contain electrical components and that are used for measuring air velocity, carbon monoxide, oxides of nitrogen, and other gases shall be approved and maintained in permissible and proper operating condition.

(d) An oxygen detector approved by MSHA shall be used to make tests for oxygen deficiency required by the regulations in this part. Permissible flame safety lamps may only be used as a supplementary testing device.

(e) Maintenance of instruments required by paragraphs (a) through (d) of this section shall be done by persons trained in such maintenance.

§ 75.321 Air quality.

(a)(1) The air in areas where persons work or travel, except as specified in paragraph (a)(2) of this section, shall contain at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide, and the volume and velocity of the air current in these areas shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dusts, smoke, and fumes.

(2) The air in areas of bleeder entries and worked-out areas where persons work or travel shall contain at least 19.5 percent oxygen, and carbon dioxide levels shall not exceed 0.5 percent time weighted average and 3.0 percent short term exposure limit.

(b) Notwithstanding the provisions of § 75.322, for the purpose of preventing explosions from gases other than methane, the following gases shall not be permitted to accumulate in excess of the concentrations listed below:

(1) Carbon monoxide (CO)—2.5 percent

(2) Hydrogen (H_2)—.80 percent

(3) Hydrogen sulfide (H_2S)—.80 percent

(4) Acetylene (C_2H_2)—.40 percent

(5) Propane (C_3H_8)—.40 percent

(6) MAPP (methyl-acetylene-propylene-propodiene)—.30 percent

§ 75.322 Harmful quantities of noxious gases.

Concentrations of noxious or poisonous gases, other than carbon dioxide, shall not exceed the current threshold limit values (TLV) as specified and applied by the ACGIH. Detectors or laboratory analysis of mine air samples shall be used to determine the concentrations of harmful, noxious, or poisonous gases.

§ 75.323 Actions for excessive methane.

(a) *Location of tests.* Tests for methane concentrations under this section shall be made at least 12 inches from the roof, face, ribs, and floor.

(b) *Working places and intake air courses.*

(1) When 1.0 percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mechanized mining equipment is being installed or removed—

(i) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be deenergized, and other mechanized equipment shall be shut off;

(ii) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane to less than 1.0 percent; and

(iii) No other work shall be permitted in the affected area until the methane concentration is less than 1.0 percent.

(2) When 1.5 percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mechanized mining equipment is being installed or removed—

(i) Everyone except those persons referred to in § 104(c) of the Act shall be withdrawn from the affected area; and

(ii) Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.

(c) *Return air split.* (1) When 1.0 percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location at which the split is used to ventilate seals or worked-out areas changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than 1.0 percent.

(2) When 1.5 percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location where the split is used to ventilate seals or worked-out areas—

(i) Everyone except those persons referred to in § 104(c) of the Act shall be withdrawn from the affected area;

(ii) Other than intrinsically safe AMS, equipment in the affected area shall be deenergized, electric power shall be disconnected at the power source, and other mechanized equipment shall be shut off; and

(iii) No other work shall be permitted in the affected area until the methane concentration in the return air is less than 1.0 percent.

(d) *Return air split alternative.* (1) The provisions of this paragraph apply if—

(i) The quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater;

(ii) The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches 1.5 percent, and the methane content is monitored as specified in § 75.351; and

(iii) Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.

(2) When 1.5 percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas—

(i) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air below 1.5 percent;

(ii) Everyone except those persons referred to in § 104(c) of the Act shall be withdrawn from the affected area;

(iii) Except for intrinsically safe AMS, equipment in the affected area shall be deenergized, electric power shall be disconnected at the power source, and other mechanized equipment shall be shut off; and

(iv) No other work shall be permitted in the affected area until the methane concentration in the return air is less than 1.5 percent.

(e) *Bleeders and other return air courses.* The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than as described in paragraphs (c) and (d) of this section, shall not exceed 2.0 percent.

§ 75.324 Intentional changes in the ventilation system.

(a) A person designated by the operator shall supervise any intentional change in ventilation that—

(1) Alters the main air current or any split of the main air current in a manner that could materially affect the safety or health of persons in the mine; or

(2) Affects section ventilation by 9,000 cubic feet per minute of air or more in bituminous or lignite mines, or 5,000 cubic feet per minute of air or more in anthracite mines.

(b) Intentional changes shall be made only under the following conditions:

(1) Electric power shall be removed from areas affected by the ventilation change and mechanized equipment in those areas shall be shut off before the ventilation change begins.

(2) Only persons making the change in ventilation shall be in the mine.

(3) Electric power shall not be restored to the areas affected by the ventilation change and mechanized equipment shall not be restarted until a certified person has examined these areas for methane accumulation and for oxygen deficiency and has determined that the areas are safe.

§ 75.325 Air quantity.

(a)(1) In bituminous and lignite mines the quantity of air shall be at least 3,000 cubic feet per minute reaching each working face where coal is being cut, mined, drilled for blasting, or loaded. When a greater quantity is necessary to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dusts, smoke, and fumes, this quantity shall be specified in the approved ventilation plan. A minimum air quantity may be required to be specified in the approved ventilation plan for other working places or working faces.

(2) The quantity of air reaching the working face shall be determined at or near the face end of the line curtain, ventilation tubing, or other ventilation control device. If the curtain, tubing, or device extends beyond the last row of permanent roof supports, the quantity of air reaching the working face shall be determined behind the line curtain or in the ventilation tubing at or near the last row of permanent supports.

(3) If machine mounted dust collectors or diffuser fans are used, the approved ventilation plan shall specify the operating volume of the dust collector or diffuser fan.

(b) In bituminous and lignite mines, the quantity of air reaching the last open crosscut of each set of entries or rooms on each working section and the quantity of air reaching the intake end of a pillar line shall be at least 9,000 cubic feet per minute unless a greater quantity is required to be specified in the approved ventilation plan.

(c) In longwall and shortwall mining systems—

(1) The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face of each longwall, unless the operator demonstrates that a lesser air quantity will maintain continual compliance with applicable methane and respirable dust standards. This lesser quantity shall be specified in the approved ventilation plan. A quantity greater than 30,000 cubic feet per minute may be required to be specified in the approved ventilation plan.

(2) The velocity of air that will be provided to control methane and respirable dust below applicable standards on each longwall or shortwall and the locations where these velocities will be provided shall be specified in the approved ventilation plan. The locations specified shall be at least 50 feet but no more than 100 feet from the headgate and tailgate, respectively.

(d) Ventilation shall be maintained during installation and removal of mechanized mining equipment. The approved ventilation plan shall specify the minimum quantity of air, the locations where this quantity will be provided and the ventilation controls required.

(e) In anthracite mines, the quantity of air shall be as follows:

(1) At least 1,500 cubic feet per minute reaching each working face where coal is being mined, unless a greater quantity is required to be specified in the approved ventilation plan.

(2) At least 5,000 cubic feet per minute passing through the last open crosscut in each set of entries or rooms and at the intake end of any pillar line, unless a greater quantity is required to be specified in the approved ventilation plan.

(3) When robbing areas where air currents cannot be controlled and air measurements cannot be obtained, the air shall have perceptible movement.

§ 75.326 Mean entry air velocity.

In exhausting face ventilation systems, the mean entry air velocity shall be at least 60 feet per minute reaching each working face where coal is being cut, mined, drilled for blasting, or loaded, and to any other working places as required in the approved ventilation plan. A lower mean entry air velocity may be approved in the ventilation plan if the lower velocity will maintain methane and respirable dust concentrations below the applicable levels. Mean entry air velocity shall be determined at or near the inby end of the line curtain, ventilation tubing, or other face ventilation control devices.

§ 75.327 Air courses and trolley haulage systems.

(a) In any mine opened on or after March 30, 1970, or in any new working section of a mine opened before that date, where trolley haulage systems are maintained and where trolley wires or trolley feeder wires are installed, an authorized representative of the Secretary shall require enough entries or rooms as intake air courses to limit the velocity of air currents in the haulageways to minimize the hazards of fires and dust explosions in the haulageways.

(b) Unless the district manager approves a higher velocity, the velocity of the air current in the trolley haulage entries shall be limited to not more than 250 feet per minute. A higher air velocity may be required to limit the methane content in these haulage entries or elsewhere in the mine to less than 1.0 percent and provide an adequate supply of oxygen.

§ 75.330 Face ventilation control devices.

(a) Brattice cloth, ventilation tubing and other face ventilation control devices shall be made of flame-resistant material approved by MSHA.

(b)(1) Ventilation control devices shall be used to provide ventilation to dilute, render harmless, and to carry away flammable, explosive, noxious, and harmful gases, dusts, smoke, and fumes—

(i) To each working face from which coal is being cut, mined, drilled for blasting, or loaded; and

(ii) To any other working places as required by the approved ventilation plan.

(2) These devices shall be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced unless an alternative distance is specified and approved in the ventilation plan. Alternative distances specified shall be capable of maintaining concentrations of respirable dust, methane, and other harmful gases below the levels specified in the applicable sections of this chapter.

(c) When the line brattice or any other face ventilation control device is damaged to an extent that ventilation of the working face is inadequate, production activities in the working place shall cease until necessary repairs

are made and adequate ventilation is restored.

§ 75.331 Auxiliary fans and tubing.

(a) When auxiliary fans and tubing are used for face ventilation, each auxiliary fan shall be—

(1) Permissible, if the fan is electrically operated;

(2) Maintained in proper operating condition;

(3) Deenergized or shut off when no one is present on the working section; and

(4) Located and operated to avoid recirculation of air.

(b) If a deficiency exists in any auxiliary fan system, the deficiency shall be corrected or the auxiliary fan shall be deenergized immediately.

(c) If the air passing through an auxiliary fan or tubing contains 1.0 percent or more methane, power to electrical equipment in the working place and to the auxiliary fan shall be deenergized, and other mechanized equipment in the working place shall be shut off until the methane concentration is reduced to less than 1.0 percent.

(d) When an auxiliary fan is stopped—

(1) Line brattice or other face ventilation control devices shall be used to maintain ventilation to affected faces; and

(2) Electrical equipment in the affected working places shall be disconnected at the power source, and other mechanized equipment shall be shut off until ventilation to the working place is restored.

§ 75.332 Working sections and working places.

(a)(1) Each working section and each area where mechanized mining equipment is being installed or removed, shall be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls.

(2) When two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be on a separate split of intake air.

(3) For purposes of this section, a set of mining equipment includes a single loading machine, a single continuous mining machine, or a single longwall or shortwall mining machine.

(b)(1) Air that has passed through any area that is not examined under §§ 75.360, 75.361 or 75.364 of this subpart, or through an area where second mining has been done shall not be used to ventilate any working place. Second mining is intentional retreat mining where pillars have been wholly or partially removed, regardless of the amount of recovery obtained.

(2) Air that has passed by any opening of any unsealed area that is not examined under §§ 75.360, 75.361 or 75.364 of this subpart, shall not be used to ventilate any working place.

§ 75.333 Ventilation controls.

(a) For purposes of this section, ''doors'' include any door frames.

(b) Permanent stoppings or other permanent ventilation control devices constructed after November 15, 1992, shall be built and maintained—

(1) Between intake and return air courses, except temporary controls may be used in rooms that are 600 feet or less from the centerline of the entry from which the room was developed including where continuous face haulage systems are used in such rooms. Unless otherwise approved in the ventilation plan, these stoppings or controls shall be maintained to and including the third connecting crosscut outby the working face;

(2) To separate belt conveyor haulageways from return air courses, except where belt entries in areas of mines developed before March 30, 1970, are used as return air courses;

(3) To separate belt conveyor haulageways from intake air courses when the air in the intake air courses is used to provide air to active working places. Temporary ventilation controls may be used in rooms that are 600 feet or less from the centerline of the entry from which the rooms were developed including where continuous face haulage systems are used in such rooms. When continuous face haulage systems are used, permanent stoppings or other permanent ventilation control devices shall be built and maintained to the outby most point of travel of the dolly or 600 feet from the point of deepest penetration in the conveyor belt entry, whichever distance is closer to the point of deepest penetration, to separate the continuous haulage entry from the intake entries;

(4) To separate the primary escapeway from belt and trolley haulage entries, as required by § 75.380(g). For the purposes of § 75.380(g), the loading point for a continuous haulage system shall be the outby most point of travel of the dolly or 600 feet from the point of deepest penetration, whichever distance is less; and

(5) In return air courses to direct air into adjacent worked-out areas.

(c) Personnel doors shall be constructed of noncombustible material and shall be of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between air courses, and shall be installed as follows in permanent stoppings constructed after November 15, 1992:

(1) The distance between personnel doors shall be no more than 300 feet in seam heights below 48 inches and 600 feet in seam heights 48 inches or higher.

(2) The location of all personnel doors in stoppings along escapeways shall be clearly marked so that the doors may be easily identified by anyone traveling in the escapeway and in the entries on either side of the doors.

(3) When not in use, personnel doors shall be closed.

(d) Doors, other than personnel doors, constructed after November 15, 1992, that are used in lieu of permanent stoppings or to control ventilation within an air course shall be:

(1) Made of noncombustible material or coated on all accessible surfaces with flame-retardant material having a flame-spread index of 25 or less, as tested under ASTM E162–87.

(2) Of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

(3) Installed in pairs to form an airlock. When an airlock is used, one side of the airlock shall remain closed. When not in use, both sides shall be closed.

(e)(1)(i) Except as provided in paragraphs (e)(2), (e)(3) and (e)(4) of this section all overcasts, undercasts, shaft partitions, permanent stoppings, and regulators, installed after March 11, 1997, shall be constructed in a traditionally accepted method and of materials that have been demonstrated to perform adequately or in a method and of materials that have been tested and shown to have a minimum strength equal to or greater than the traditionally accepted in-mine controls. Tests may be performed under ASTM E72–80 Section 12—Transverse Load-Specimen Vertical, load only, or the operator may conduct comparative in-mine tests. In-mine tests shall be designed to demonstrate the comparative strength of the proposed construction and a traditionally accepted in-mine control.

(ii) All overcasts, undercasts, shaft partitions, permanent stoppings, and regulators, installed after November 15, 1992, shall be constructed of noncombustible material. Materials that are suitable for the construction of overcasts, undercasts, shaft partitions, permanent stoppings, and regulators include concrete, concrete block, brick, cinder block, tile, or steel. No ventilation controls installed after

November 15, 1992, shall be constructed of aluminum.

(2) In anthracite mines, permanent stoppings may be constructed of overlapping layers of hardwood mine boards, if the stoppings are a minimum 2 inches thick.

(3) When timbers are used to create permanent stoppings in heaving or caving areas, the stoppings shall be coated on all accessible surfaces with a flame-retardant material having a flame-spread index of 25 or less, as tested under ASTM E162–87, ''Surface Flammability of Materials Using a Radiant Heat Energy Source.''

(4) In anthracite mines, doors and regulators may be constructed of overlapping layers of hardwood boards, if the doors, door frames, and regulators are a minimum 2 inches thick.

(f) When sealants are applied to ventilation controls, the sealant shall have a flame-spread index of 25 or less under ASTM E162–87.

(g) Before mining is discontinued in an entry or room that is advanced more than 20 feet from the inby rib, a crosscut shall be made or line brattice shall be installed and maintained to provide adequate ventilation. When conditions such as methane liberation warrant a distance less than 20 feet, the approved ventilation plan shall specify the location of such rooms or entries and the maximum distance they will be developed before a crosscut is made or line brattice is installed.

(h) All permanent ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.

§ 75.334 Worked-out areas and areas where pillars are being recovered.

(a) Worked-out areas where no pillars have been recovered shall be—

(1) Ventilated so that methane-air mixtures and other gases, dusts, and fumes from throughout the worked-out areas are continuously diluted and routed into a return air course or to the surface of the mine; or

(2) Sealed.

(b)(1) During pillar recovery a bleeder system shall be used to control the air passing through the area and to continuously dilute and move methane-air mixtures and other gases, dusts, and fumes from the worked-out area away from active workings and into a return air course or to the surface of the mine.

(2) After pillar recovery a bleeder system shall be maintained to provide ventilation to the worked-out area, or the area shall be sealed.

(c) The approved ventilation plan shall specify the following:

(1) The design and use of bleeder systems;

(2) The means to determine the effectiveness of bleeder systems;

(3) The means for adequately maintaining bleeder entries free of obstructions such as roof falls and standing water; and

(4) The location of ventilating devices such as regulators, stoppings and bleeder connectors used to control air movement through the worked-out area.

(d) If the bleeder system used does not continuously dilute and move methane-air mixtures and other gases, dusts, and fumes away from worked-out areas into a return air course or to the surface of the mine, or it cannot be determined by examinations or evaluations under § 75.364 that the bleeder system is working effectively, the worked-out area shall be sealed.

(e) Each mining system shall be designed so that each worked-out area can be sealed. The approved ventilation plan shall specify the location and the sequence of construction of proposed seals.

(f) In place of the requirements of paragraphs (a) and (b) of this section, for mines with a demonstrated history of spontaneous combustion, or that are located in a coal seam determined to be susceptible to spontaneous combustion, the approved ventilation plan shall specify the following:

(1) Measures to detect methane, carbon monoxide, and oxygen concentrations during and after pillar recovery, and in worked-out areas where no pillars have been recovered, to determine if the areas must be ventilated or sealed.

(2) Actions that will be taken to protect miners from the hazards of spontaneous combustion.

(3) If a bleeder system will not be used, the methods that will be used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dusts, and fumes in the worked-out area.

§ 75.335 Construction of seals.

(a)(1) Each seal constructed after November 15, 1992, shall be—

(i) Constructed of solid concrete blocks at least 6 by 8 by 16 inches, laid in a transverse pattern with mortar between all joints;

(ii) Hitched into solid ribs to a depth of at least 4 inches and hitched at least 4 inches into the floor;

(iii) At least 16 inches thick. When the thickness of the seal is less than 24 inches and the width is greater than 16 feet or the height is greater than 10 feet, a pilaster shall be interlocked near the center of the seal. The pilaster shall be at least 16 inches by 32 inches; and

(iv) Coated on all accessible surfaces with flame-retardant material that will minimize leakage and that has a flame-spread index of 25 or less, as tested under ASTM E162–87, ''Surface Flammability of Materials Using a Radiant Heat Energy Source.''

(2) Alternative methods or materials may be used to create a seal if they can withstand a static horizontal pressure of 20 pounds per square inch provided the method of installation and the material used approved in the ventilation plan. If the alternative methods or materials include the use of timbers, the timbers also shall be coated on all accessible surfaces with flame-retardant material having a flame-spread index 25 or less, as tested under ASTM E162–87.

(b) A sampling pipe or pipes shall be installed in each set of seals for a worked-out area. Each pipe shall—

(1) Extend into the sealed area a sufficient distance (at least 15 feet) to obtain a representative sample from behind the seal;

(2) Be equipped with a cap or shut-off valve; and

(3) Be installed with the sampling end of the pipe about 12 inches from the roof.

(c)(1) A corrosion-resistant water pipe or pipes shall be installed in seals at the low points of the area being sealed and at all other locations necessary when water accumulation within the sealed area is possible; and

(2) Each water pipe shall have a water trap installed on the outby side of the seal.

§ 75.340 Underground electrical installations.

(a) Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas or be equipped with a fire suppression system meeting the requirements of § 75.1107–3 through § 75.1107–16.

(1) When a noncombustible structure or area is used, these installations shall be—

(i) Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or

(ii) Ventilated with intake air that is monitored for carbon monoxide or smoke by an AMS installed and operated according to § 75.351. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or

(iii) Ventilated with intake air and equipped with sensors to monitor for heat and for carbon monoxide or smoke. Monitoring of intake air ventilating battery charging stations shall be done

with sensors not affected by hydrogen. The sensors shall deenergize power to the installation, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors that will automatically close when either of the following occurs:

(A) The temperature in the noncombustible structure reaches 165 °F; or

(B) The carbon monoxide concentration reaches 10 parts per million above the ambient level for the area, or the optical density of smoke reaches 0.022 per meter. At least every 31 days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.

(2) When a fire suppression system is used, these installations shall be—

(i) Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or

(ii) Ventilated with intake air that is monitored for carbon monoxide or smoke by an AMS installed and operated according to § 75.351. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen.

(b) This section does not apply to—

(1) Rectifiers and power centers with transformers that are either dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;

(2) Submersible pumps;

(3) Permissible pumps and associated permissible switchgear;

(4) Pumps located on or near the section and that are moved as the working section advances or retreats;

(5) Pumps installed in anthracite mines; and

(6) Small portable pumps.

§ 75.341 Direct-fired intake air heaters.

(a) If any system used to heat intake air malfunctions, the heaters affected shall switch off automatically.

(b) Thermal overload devices shall protect the blower motor from overheating.

(c) The fuel supply shall turn off automatically if a flame-out occurs.

(d) Each heater shall be located or guarded to prevent contact by persons and shall be equipped with a screen at the inlet to prevent combustible materials from passing over the burner units.

(e) If intake air heaters use liquefied fuel systems—

(1) Hydrostatic relief valves installed on vaporizers and on storage tanks shall be vented; and

(2) Fuel storage tanks shall be located or protected to prevent fuel from leaking into the mine.

(f) Following any period of 8 hours or more during which a heater does not operate, the heater and its associated components shall be examined within its first hour of operation. Additionally, each heater and its components shall be examined at least once each shift that the heater operates. The examination shall include measurement of the carbon monoxide concentration at the bottom of each shaft, slope, or in the drift opening where air is being heated. The measurements shall be taken by a person designated by the operator or by a carbon monoxide sensor that is calibrated with a known concentration of carbon monoxide and air at least once every 31 days. When the carbon monoxide concentration at this location reaches 50 parts per million, the heater causing the elevated carbon monoxide level shall be shut down.

§ 75.342 Methane monitors.

(a)(1) MSHA approved methane monitors shall be installed on all face cutting machines, continuous miners, longwall face equipment, loading machines, and other mechanized equipment used to extract or load coal within the working place.

(2) The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required on the longwall shearing machine may be approved in the ventilation plan.

(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

(4) Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known air-methane mixture at least once every 31 days. To assure that methane monitors are properly maintained and calibrated, the operator shall:

(i) Use persons properly trained in the maintenance, calibration, and permissibility of methane monitors to calibrate and maintain the devices.

(ii) Maintain a record of all calibration tests of methane monitors. Records shall be maintained in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(iii) Retain the record of calibration tests for 1 year from the date of the test. Records shall be retained at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and the representative of miners.

(b)(1) When the methane concentration at any methane monitor reaches 1.0 percent the monitor shall give a warning signal.

(2) The warning signal device of the methane monitor shall be visible to a person who can deenergize the equipment on which the monitor is mounted.

(c) The methane monitor shall automatically deenergize the machine on which it is mounted when—

(1) The methane concentration at any methane monitor reaches 2.0 percent; or

(2) The monitor is not operating properly.

§ 75.343 Underground shops.

(a) Underground shops shall be equipped with an automatic fire suppression system meeting the requirements of § 75.1107–3 through § 75.1107–16, or be enclosed in a noncombustible structure or area.

(b) Underground shops shall be ventilated with intake air that is coursed directly into a return air course.

§ 75.344 Compressors.

(a) Except compressors that are components of equipment such as locomotives and rock dusting machines and compressors of less than 5 horsepower, electrical compressors including those that may start automatically shall be:

(1) Continuously attended by a person designated by the operator who can see the compressor at all times during its operation. Any designated person attending the compressor shall be capable of activating the fire suppression system and deenergizing or shutting-off the compressor in the event of a fire; or,

(2) Enclosed in a noncombustible structure or area which is ventilated by intake air coursed directly into a return air course or to the surface and equipped with sensors to monitor for heat and for carbon monoxide or smoke. The sensors shall deenergize power to the compressor, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors to automatically enclose the noncombustible structure or area when either of the following occurs:

(i) The temperature in the noncombustible structure or area reaches 165 °F.

(ii) The carbon monoxide concentration reaches 10 parts per million above the ambient level for the area, or the optical density of smoke reaches 0.022 per meter. At least once every 31 days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, and each smoke sensor shall be tested to determine that it functions correctly.

(b) Compressors, except those exempted in paragraph (a), shall be equipped with a heat activated fire suppression system meeting the requirements of 75.1107–3 through 75.1107–16.

(c) Two portable fire extinguishers or one extinguisher having at least twice the minimum capacity specified for a portable fire extinguisher in § 75.1100–1(e) shall be provided for each compressor.

(d) In addition to electrical compressors, this section shall apply to diesel compressors.

(e) Notwithstanding the requirements of § 75.1107–4, upon activation of any fire suppression system used under paragraph (b) of this section, the compressor shall be automatically deenergized or automatically shut off.

§ 75.350 Air courses and belt haulage entries.

In any coal mine opened after March 30, 1970, the entries used as intake and return air courses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working places. Whenever an authorized representative of the Secretary finds, in the case of any coal mine opened on or prior to March 30, 1970, that has been developed with more than two entries, that the conditions in the entries, other than belt haulage entries, are such as to permit adequately the coursing of intake or return air through such entries:

(a) The belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate, active working places, and

(b) When the belt haulage entries are not necessary to ventilate the active working places, the operator of such mine shall limit the velocity of the air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to assure that air therein shall contain less than 1.0 volume per centum of methane.

§ 75.351 Atmospheric monitoring system (AMS).

(a) *Minimum requirements.* An AMS shall consist of sensors to monitor the mine atmosphere and instruments at a surface location designated by the operator to receive information from the monitoring sensors. Each AMS installed in accordance with §§ 75.323(d)(1)(ii), 75.340(a)(2) and 75.362(f) shall do the following:

(1) Monitor for circuit continuity and sensor function, and identify at the designated surface location any activated or malfunctioning sensor.

(2) Signal a designated surface location at the mine when any interruption of circuit continuity occurs or any sensor malfunctions.

(3) Signal affected working sections and the designated surface location when—

(i) The carbon monoxide concentration at any carbon monoxide sensor reaches 5 parts per million above the established ambient level for that area; or

(ii) The methane concentration at any methane monitoring station exceeds the maximum allowable concentration as specified for that location in § 75.323.

(4) Activate alarms at a designated surface location and affected working sections when the carbon monoxide concentration at any carbon monoxide sensor reaches 10 parts per million above the established ambient level for the area or when the optical density of smoke at any smoke sensor reaches 0.05 per meter.

(b) *Return splits.* (1) If used to monitor return air splits under § 75.362(f), AMS sensors shall monitor the mine atmosphere for percentage of methane in each return split of air from each working section between the last working place, or longwall or shortwall face, ventilated by that air split and the junction of that return air split with another air split, seal, or worked-out area. If auxiliary fans and tubing are used, the sensor also shall be located outby the auxiliary fan discharge.

(2) If used to monitor air splits under § 75.323(d)(1)(ii), AMS sensors shall monitor the mine atmosphere at the following locations:

(i) In the return air course opposite the section loading point or, if auxiliary fans and tubing are used, in the return air course outby the auxiliary fans and a point opposite the section loading point.

(ii) Immediately inby the location where the split of air meets another split of air, or inby the location where the split of air is used to ventilate seals or worked-out areas.

(c) *Electrical installations.* If used to monitor the intake air ventilating underground transformer stations, battery charging stations, substations, rectifiers, or water pumps under § 75.340(a)(2), at least one sensor shall be installed to monitor the mine atmosphere for carbon monoxide or smoke at least 50 feet and no more than 100 feet downstream in the direction of air flow.

(d) *Signals and alarms.* (1) A person designated by the operator shall be at a surface location where the signals and alarms from the AMS can always be seen or heard while anyone is underground. This person shall have access to two-way communication with working sections and with other identifiable duty stations underground. A mine map showing the underground monitoring system shall be posted at the surface location.

(2) If a signal from any AMS sensor is activated, the monitor producing the signal shall be identified, an examination shall be made to determine the cause of the activation, and appropriate action shall be taken.

(e) *Sensors.* (1) Each carbon monoxide sensor shall be capable of detecting carbon monoxide in air at a level of ±1 part per million throughout the operating range.

(2) Each methane sensor shall be capable of detecting 1.0 percent methane in air with an accuracy of ±0.2 percent methane.

(3) Each smoke sensor shall be capable of detecting the optical density of smoke with an accuracy of ±0.005 per meter.

(f) *Testing and calibration.* At least once every 31 days—

(1) Each carbon monoxide sensor shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate an alarm;

(2) Each smoke sensor shall be functionally tested;

(3) Each methane sensor shall be calibrated with a known methane-air mixture; and

(4) Each oxygen sensor shall be calibrated with air having a known oxygen concentration.

(g) *Intrinsic Safety.* Components of AMS installed in areas where permissible equipment is required shall be intrinsically safe.

(h) *Recordkeeping.* If a signal device or alarm is activated, a record shall be made of the date, time, type of sensor, and the reason for its activation. Also the maximum concentration detected at

the sensor producing the signal shall be recorded.

(i) Retention period. Records shall be retained for at least 1 year at a surface location at the mine and made available for inspection by authorized representatives of the Secretary and representatives of miners.

§ 75.352 Return air courses.

Entries used as return air courses shall be separated from belt haulage entries by permanent ventilation controls.

§ 75.360 Preshift examination.

(a)(1) Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. The operator shall establish the 8-hour intervals of time subject to the required preshift examinations. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the established 8-hour period.

(2) Preshift examinations of areas where pumpers are scheduled to work or travel shall not be required prior to the pumper entering the areas if the pumper is a certified person and the pumper conducts an examination for hazardous conditions, tests for methane and oxygen deficiency and determines if the air is moving in its proper direction in the area where the pumper works or travels. The examination of the area must be completed before the pumper performs any other work. A record of all hazardous conditions found by the pumper shall be made and retained in accordance with § 75.363.

(b) The person conducting the preshift examination shall examine for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction at the following locations:

(1) Roadways, travelways and track haulageways where persons are scheduled, prior to the beginning of the preshift examination, to work or travel during the oncoming shift.

(2) Belt conveyors that will be used to transport persons during the oncoming shift and the entries in which these belt conveyors are located.

(3) Working sections and areas where mechanized mining equipment is being installed or removed, if anyone is scheduled to work on the section or in the area during the oncoming shift. The scope of the examination shall include the working places, approaches to worked-out areas and ventilation controls on these sections and in these areas, and the examination shall include tests of the roof, face and rib conditions on these sections and in these areas.

(4) Approaches to worked-out areas along intake air courses and at the entries used to carry air into worked-out areas if the intake air passing the approaches is used to ventilate working sections where anyone is scheduled to work during the oncoming shift. The examination of the approaches to the worked-out areas shall be made in the intake air course immediately inby and outby each entry used to carry air into the worked-out area. An examination of the entries used to carry air into the worked-out areas shall be conducted at a point immediately inby the intersection of each entry with the intake air course.

(5) Seals along intake air courses where intake air passes by a seal to ventilate working sections where anyone is scheduled to work during the oncoming shift.

(6)(i) Entries and rooms developed after November 15, 1992, and developed more than 2 crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to reach a working section where anyone is scheduled to work during the oncoming shift; and,

(ii) Entries and rooms developed after November 15, 1992, and driven more than 20 feet off an intake air course without a crosscut and without permanent ventilation controls where intake air passes through or by these entries or rooms to reach a working section where anyone is scheduled to work during the oncoming shift.

(7) Where unattended diesel equipment is to operate or areas where trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

(8) High spots along intake air courses where methane is likely to accumulate, if equipment will be operated in the area during the shift.

(9) Underground electrical installations referred to in § 75.340(a), except those pumps listed in § 75.340 (b)(2) through (b)(6), and areas where compressors subject to § 75.344 are installed if the electrical installation or compressor is or will be energized during the shift.

(10) Other areas where work or travel during the oncoming shift is scheduled prior to the beginning of the preshift examination.

(c) The person conducting the preshift examination shall determine the volume of air entering each of the following areas if anyone is scheduled to work in the areas during the oncoming shift:

(1) In the last open crosscut of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed. The last open crosscut is the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(2) On each longwall or shortwall in the intake entry or entries at the intake end of the longwall or shortwall face immediately outby the face and the velocity of air at each end of the face at the locations specified in the approved ventilation plan.

(3) At the intake end of any pillar line—

(i) If a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) If a split system is used, in the intake entries of each split immediately inby the split point.

(d) The district manager may require the certified person to examine other areas of the mine or examine for other hazards during the preshift examination.

(e) *Certification.* At each working place examined, the person doing the preshift examination shall certify by initials, date, and the time, that the examination was made. In areas required to be examined outby a working section, the certified person shall certify by initials, date, and the time at enough locations to show that the entire area has been examined.

(f) *Recordkeeping.* A record of the results of each preshift examination, including a record of hazardous conditions and their locations found by the examiner during each examination and of the results and locations of air and methane measurements, shall be made on the surface before any persons, other than certified persons conducting examinations required by this subpart, enter any underground area of the mine. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the certified person who made the examination or by a person designated by the operator. If the record is made by someone other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. A record shall also be made by a certified person of the action taken to correct hazardous conditions found during the preshift

examination. All preshift and corrective action records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(g) *Retention period.* Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

§ 75.361 Supplemental examination.

(a) Except for certified persons conducting examinations required by this subpart, within 3 hours before anyone enters an area in which a preshift examination has not been made for that shift, a certified person shall examine the area for hazardous conditions, determine whether the air is traveling in its proper direction and at its normal volume, and test for methane and oxygen deficiency.

(b) *Certification.* At each working place examined, the person making the supplemental examination shall certify by initials, date, and the time, that the examination was made. In areas required to be examined outby a working section, the certified person shall certify by initials, date, and the time at enough locations to show that the entire area has been examined.

§ 75.362 On-shift examination.

(a) (1) At least once during each shift, or more often if necessary for safety, a certified person designated by the operator shall conduct an on-shift examination of each section where anyone is assigned to work during the shift and any area where mechanized mining equipment is being installed or removed during the shift. The certified person shall check for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction.

(2) A person designated by the operator shall conduct an examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. In those instances when a shift change is accomplished without an interruption in production on a section, the examination shall be made anytime within 1 hour of the shift change. In those instances when there is an interruption in production during the shift change, the examination shall be made before production begins on a section. Deficiencies in dust controls shall be corrected before production begins or resumes. The examination shall include air quantities and velocities, water pressures and flow rates, excessive leakage in the water delivery system, water spray numbers and orientations, section ventilation and control device placement, and any other dust suppression measures required by the ventilation plan. Additional measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

(b) During each shift that coal is produced, a certified person shall examine for hazardous conditions along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, if the examination is conducted within 3 hours before the oncoming shift.

(c) Persons conducting the on-shift examination shall determine at the following locations:

(1) The volume of air in the last open crosscut of each set of entries or rooms on each section and areas where mechanized mining equipment is being installed or removed. The last open crosscut is the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses.

(2) The volume of air on a longwall or shortwall, including areas where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall.

(3) The velocity of air at each end of the longwall or shortwall face at the locations specified in the approved ventilation plan.

(4) The volume of air at the intake end of any pillar line—

(i) Where a single split of air is used in the intake entry furthest from the return air course immediately outby the first open crosscut outby the line of pillars being mined; or

(ii) Where a split system is used in the intake entries of each split immediately inby the split point.

(d) (1) A qualified person shall make tests for methane—

(i) At the start of each shift at each working place before electrically operated equipment is energized; and

(ii) Immediately before equipment is energized, taken into, or operated in a working place; and

(iii) At 20-minute intervals, or more often if required in the approved ventilation plan at specific locations, during the operation of equipment in the working place.

(2) These methane tests shall be made at the face from under permanent roof support, using extendable probes or other acceptable means. When longwall or shortwall mining systems are used, these methane tests shall be made at the shearer, the plow, or the cutting head. When mining has been stopped for more than 20 minutes, methane tests shall be conducted prior to the start up of equipment.

(e) If auxiliary fans and tubing are used, they shall be inspected frequently.

(f) During each shift that coal is produced and at intervals not exceeding 4 hours, tests for methane shall be made by a certified person or by an atmospheric monitoring system (AMS) in each return split of air from each working section between the last working place, or longwall or shortwall face, ventilated by that split of air and the junction of the return air split with another air split, seal, or worked-out area. If auxiliary fans and tubing are used, the tests shall be made at a location outby the auxiliary fan discharge.

(g) *Certification.* (1) The person conducting the on-shift examination in belt haulage entries shall certify by initials, date, and time that the examination was made. The certified person shall certify by initials, date, and the time at enough locations to show that the entire area has been examined.

(2) The person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan shall certify by initials, date, and time that the examination was made.

§ 75.363 Hazardous conditions; posting, correcting and recording.

(a) Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purposes of conducting examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition, other than one detected during a preshift examination or an examination conducted following a fan stoppage and restart under § 75.313(d)(1)(i), shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in

section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the condition may enter the posted area.

(b) A record shall be made of any hazardous condition found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found and shall include the nature and location of the hazardous condition and the corrective action taken. This record shall not be required for shifts when no hazardous conditions are found or for hazardous conditions found during the preshift or weekly examinations inasmuch as these examinations have separate recordkeeping requirements.

(c) The record shall be made by the certified person who conducted the examination or a person designated by the operator. If made by a person other than the certified person, the certified person shall verify the record by initials and date by or at the end of the shift for which the examination was made. Records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(d) *Retention period*. Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

§ 75.364 Weekly examination.

(a) *Worked-out areas*. (1) At least every 7 days, a certified person shall examine unsealed worked-out areas where no pillars have been recovered by traveling to the area of deepest penetration; measuring methane and oxygen concentrations and air quantities and making tests to determine if the air is moving in the proper direction in the area. The locations of measurement points where tests and measurements will be performed shall be included in the mine ventilation plan and shall be adequate in number and location to assure ventilation and air quality in the area. Air quantity measurements shall also be made where the air enters and leaves the worked-out area. An alternative method of evaluating the ventilation of the area may be approved in the ventilation plan.

(2) At least every 7 days, a certified person shall evaluate the effectiveness of bleeder systems required by § 75.334 as follows:

(i) Measurements of methane and oxygen concentrations and air quantity and a test to determine if the air is moving in its proper direction shall be made where air enters the worked-out area.

(ii) Measurements of methane and oxygen concentrations and air quantity and a test to determine if the air is moving in the proper direction shall be made immediately before the air enters a return split of air.

(iii) At least one entry of each set of bleeder entries used as part of a bleeder system under § 75.334 shall be traveled in its entirety. Measurements of methane and oxygen concentrations and air quantities and a test to determine if the air is moving in the proper direction shall be made at the measurement point locations specified in the mine ventilation plan to determine the effectiveness of the bleeder system.

(iv) In lieu of the requirements of paragraphs (a)(2)(i) and (iii) of this section, an alternative method of evaluation may be specified in the ventilation plan provided the alternative method results in proper evaluation of the effectiveness of the bleeder system.

(b) *Hazardous conditions*. At least every 7 days, an examination for hazardous conditions at the following locations shall be made by a certified person designated by the operator:

(1) In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

(2) In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

(3) In each longwall or shortwall travelway in its entirety, so that the entire travelway is traveled.

(4) At each seal along return and bleeder air courses and at each seal along intake air courses not examined under § 75.360(b)(5).

(5) In each escapeway so that the entire escapeway is traveled.

(6) On each working section not examined under § 75.360(b)(3) during the previous 7 days.

(7) At each water pump not examined during a preshift examination conducted during the previous 7 days.

(c) *Measurements and tests*. At least every 7 days, a certified person shall—

(1) Determine the volume of air entering the main intakes and in each intake split;

(2) Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms, in the return of each split of air immediately before it enters the main returns, and where the air leaves the main returns; and

(3) Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.

(d) Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons referred to in § 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

(e) The weekly examination may be conducted at the same time as the preshift or on-shift examinations.

(f) (1) The weekly examination is not required during any 7 day period in which no one enters any underground area of the mine.

(2) Except for certified persons required to make examinations, no one shall enter any underground area of the mine if a weekly examination has not been completed within the previous 7 days.

(g) *Certification*. The person making the weekly examinations shall certify by initials, date, and the time that the examination was made. Certifications and times shall appear at enough locations to show that the entire area has been examined.

(h) *Recordkeeping*. At the completion of any shift during which a portion of a weekly examination is conducted, a record of the results of each weekly examination, including a record of hazardous conditions found during each examination and their locations, the corrective action taken, and the results and location of air and methane measurements, shall be made. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the person making the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by the initials and date by or at the end of the shift for which the examination was made. The record shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(i) *Retention period*. Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized

representatives of the Secretary and the representative of miners.

§ 75.370 Mine ventilation plan; submission and approval.

(a) (1) The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine. The ventilation plan shall consist of two parts, the plan content as prescribed in § 75.371 and the ventilation map with information as prescribed in § 75.372. Only that portion of the map which contains information required under § 75.371 will be subject to approval by the district manager.

(2) The proposed ventilation plan and any revision to the plan shall be submitted in writing to the district manager. When revisions to a ventilation plan are proposed, only the revised pages, maps, or sketches of the plan need to be submitted. When required in writing by the district manager, the operator shall submit a fully revised plan by consolidating the plan and all revisions in an orderly manner and by deleting all outdated material.

(3) (i) The mine operator shall notify the representative of miners at least 5 days prior to submission of a mine ventilation plan and any revision to a mine ventilation plan. If requested, the mine operator shall provide a copy to the representative of miners at the time of notification. In the event of a situation requiring immediate action on a plan revision, notification of the revision shall be given, and if requested, a copy of the revision shall be provided, to the representative of miners by the operator at the time of submittal;

(ii) A copy of the proposed ventilation plan, and a copy of any proposed revision, submitted for approval shall be made available for inspection by the representative of miners; and

(iii) A copy of the proposed ventilation plan, and a copy of any proposed revision, submitted for approval shall be posted on the mine bulletin board at the time of submittal. The proposed plan or proposed revision shall remain posted until it is approved, withdrawn or denied.

(b) Following receipt of the proposed plan or proposed revision, the representative of miners may submit timely comments to the district manager, in writing, for consideration during the review process. A copy of these comments shall also be provided to the operator by the district manager upon request.

(c) (1) The district manager will notify the operator in writing of the approval or denial of approval of a proposed ventilation plan or proposed revision. A copy of this notification will be sent to the representative of miners by the district manager.

(2) If the district manager denies approval of a proposed plan or revision, the deficiencies of the plan or revision shall be specified in writing and the operator will be provided an opportunity to discuss the deficiencies with the district manager.

(d) No proposed ventilation plan shall be implemented before it is approved by the district manager. Any intentional change to the ventilation system that alters the main air current or any split of the main air current in a manner that could materially affect the safety and health of the miners, or any change to the information required in § 75.371 shall be submitted to and approved by the district manager before implementation.

(e) Before implementing an approved ventilation plan or a revision to a ventilation plan, persons affected by the revision shall be instructed by the operator in its provisions.

(f) The approved ventilation plan and any revisions shall be—

(1) Provided upon request to the representative of miners by the operator following notification of approval;

(2) Made available for inspection by the representative of miners; and

(3) Posted on the mine bulletin board within 1 working day following notification of approval. The approved plan and revisions shall remain posted on the bulletin board for the period that they are in effect.

(g) The ventilation plan for each mine shall be reviewed every 6 months by an authorized representative of the Secretary to assure that it is suitable to current conditions in the mine.

§ 75.371 Mine ventilation plan; contents.

The mine ventilation plan shall contain the information described below and any additional provisions required by the district manager:

(a) The mine name, company name, mine identification number, and the name of the individual submitting the plan information.

(b) Planned main mine fan stoppages, other than those scheduled for testing, maintenance or adjustment, including procedures to be followed during these stoppages and subsequent restarts (see § 75.311(a)) and the type of device to be used for monitoring main mine fan pressure, if other than a pressure recording device (see 75.310(a)(4)).

(c) Methods of protecting main mine fans and associated components from the forces of an underground explosion if a 15-foot offset from the nearest side of the mine opening is not provided (see § 75.310(a)(6)); and the methods of protecting main mine fans and intake air openings if combustible material will be within 100 feet of the area surrounding the fan or these openings (see § 75.311(f)).

(d) Persons that will be permitted to enter the mine, the work these persons will do while in the mine, and electric power circuits that will be energized when a back-up fan system is used that does not provide the ventilating quantity provided by the main mine fan (see § 75.311(c)).

(e) The locations and operating conditions of booster fans installed in anthracite mines (see § 75.302).

(f) Section and face ventilation systems used, including drawings illustrating how each system is used, and a description of each different dust suppression system used on equipment on working sections.

(g) Locations where the air quantities must be greater than 3,000 cubic feet per minute (see § 75.325(a)(1)).

(h) In anthracite mines, locations where the air quantities must be greater than 1,500 cubic feet per minute (see § 75.325(e)(1)).

(i) Working places and working faces other than those where coal is being cut, mined, drilled for blasting or loaded, where a minimum air quantity will be maintained, and the air quantity at those locations (see § 75.325(a)(1)).

(j) The operating volume of machine mounted dust collectors or diffuser fans, if used (see § 75.325(a)(3)).

(k) The minimum mean entry air velocity in exhausting face ventilation systems where coal is being cut, mined, drilled for blasting, or loaded, if the velocity will be less than 60 feet per minute. Other working places where coal is not being cut, mined, drilled for blasting or loaded, where at least 60 feet per minute or some other minimum mean entry air velocity will be maintained (see § 75.326).

(l) The maximum distance if greater than 10 feet from each working face at which face ventilation control devices will be installed (see § 75.330(b)(2)). The working places other than those where coal is being cut, mined, drilled for blasting or loaded, where face ventilation control devices will be used (see § 75.330(b)(1)(ii).

(m) The volume of air required in the last open crosscut or the quantity of air reaching the pillar line if greater than 9,000 cubic feet per minute (see § 75.325(b)).

(n) In anthracite mines, the volume of air required in the last open crosscut or the quantity of air reaching the pillar line if greater than 5,000 cubic feet per minute (see § 75.325(e)(2)).

(o) Locations where separations of intake and return air courses will be built and maintained to other than the third connecting crosscut outby each working face (see § 75.333(b)(1)).

(p) The volume of air required at the intake to the longwall sections, if different than 30,000 cubic feet per minute (see § 75.325(c)).

(q) The velocities of air on a longwall or shortwall face, and the locations where the velocities must be measured (see § 75.325(c)(2)).

(r) The minimum quantity of air that will be provided during the installation and removal of mechanized mining equipment, the location where this quantity will be provided, and the ventilation controls that will be used. (see § 75.325(d)).

(s) The locations and frequency of the methane tests if required more often by § 75.362(d)(1)(iii) (see § 75.362 (d)(1)(iii).

(t) The locations where samples for ''designated areas'' will be collected, including the specific location of each sampling device, and the respirable dust control measures used at the dust generating sources for these locations (see § 70.208 of this chapter).

(u) The methane and dust control systems at underground dumps, crushers, transfer points, and haulageways.

(v) Areas in trolley haulage entries where the air velocity will be greater than 250 feet per minute and the velocity in these areas (see § 75.327(b)).

(w) Locations where entries will be advanced less than 20 feet from the inby rib without a crosscut being provided where a line brattice will be required. (see § 75.333(g)).

(x) A description of the bleeder system to be used, including its design (see § 75.334).

(y) The means for determining the effectiveness of bleeder systems (see § 75.334(c)(2)).

(z) The locations where measurements of methane and oxygen concentrations and air quantities and tests to determine whether the air is moving in the proper direction will be made to evaluate the ventilation of nonpillared worked-out areas (see § 75.364 (a)(1)) and the effectiveness of bleeder systems (see § 75.364 (a)(2)(iii). Alternative methods of evaluation of the effectiveness of bleeder systems (§ 75.364 (a)(2)(iv)).

(aa) The means for adequately maintaining bleeder entries free of obstructions such as roof falls and standing water (see § 75.334(c)(3)).

(bb) The location of ventilation devices such as regulators, stoppings and bleeder connectors used to control air movement through worked-out areas (see § 75.334(c)(4)). The location and sequence of construction of proposed seals for each worked-out area. (see § 75.334(e)).

(cc) In mines with a demonstrated history of spontaneous combustion: a description of the measures that will be used to detect methane, carbon monoxide, and oxygen concentration during and after pillar recovery and in worked-out areas where no pillars have been recovered (see § 75.334(f)(1); and, the actions which will be taken to protect miners from the hazards associated with spontaneous combustion (see § 75.334(f)(2). If a bleeder system will not be used, the methods that will be used to control spontaneous combustion, accumulations of methane-air mixtures, and other gases, dusts, and fumes in the worked-out area (see § 75.334(f)(3)).

(dd) The location of all horizontal degasification holes that are longer than 1,000 feet and the location of all vertical degasification holes.

(ee) If methane drainage systems are used, a detailed sketch of each system, including a description of safety precautions used with the systems.

(ff) A description of the methods and materials to be used to seal worked-out areas if those methods or materials will be different from those specified by § 75.335(a)(1).

(gg) The alternative location for the additional sensing device if the device will not be installed on the longwall shearing machine (see § 75.342(a)(2)).

(hh) The ambient level in parts per million of carbon monoxide, and the method for determining the ambient level, in all areas where carbon monoxide sensors are installed.

(ii) The distance that separation between the primary escapeway and the belt or track haulage entries will be maintained if other than to the first connecting crosscut outby the section loading point (see § 75.380(g)).

(jj) In anthracite mines, the dimensions of escapeways where the pitch of the coal seam does not permit escapeways to be maintained 4 feet by 5 feet and the locations where these dimensions must be maintained (see § 75.381(c)(4)).

§ 75.372 Mine ventilation map.

(a)(1) At intervals not exceeding 12 months, the operator shall submit to the district manager 3 copies of an up-to-date map of the mine drawn to a scale of not less than 100 nor more than 500 feet to the inch. A registered engineer or a registered surveyor shall certify that the map is accurate.

(2) In addition to the informational requirements of this section the map may also be used to depict and explain plan contents that are required in § 75.371. Information shown on the map to satisfy the requirements of § 75.371 shall be subject to approval by the district manager.

(b) The map shall contain the following information:

(1) The mine name, company name, mine identification number, a legend identifying the scale of the map and symbols used, and the name of the individual responsible for the information on the map.

(2) All areas of the mine, including sealed and unsealed worked-out areas.

(3) All known mine workings that are located in the same coalbed within 1,000 feet of existing or projected workings. These workings may be shown on a mine map with a scale other than that required by paragraph (a) of this section, if the scale does not exceed 2,000 feet to the inch and is specified on the map.

(4) The locations of all known mine workings underlying and overlying the mine property and the distance between the mine workings.

(5) The locations of all known oil and gas wells and all known drill holes that penetrate the coalbed being mined.

(6) The locations of all main mine fans, installed backup fans and motors, and each fan's specifications, including size, type, model number, manufacturer, operating pressure, motor horsepower, and revolutions per minute.

(7) The locations of all surface mine openings and the direction and quantity of air at each opening.

(8) The elevation at the top and bottom of each shaft and slope, and shaft and slope dimensions, including depth and length.

(9) The direction of air flow in all underground areas of the mine.

(10) The locations of all active working sections and the four-digit identification number for each mechanized mining unit (MMU).

(11) The location of all escapeways.

(12) The locations of all ventilation controls, including permanent stoppings, overcasts, undercasts, regulators, seals, airlock doors, haulageway doors and other doors, except temporary ventilation controls on working sections.

(13) The direction and quantity of air—

(i) Entering and leaving each split;

(ii) In the last open crosscut of each set of entries and rooms; and

(iii) At the intake end of each pillar line, including any longwall or shortwall.

(14) Projections for at least 12 months of anticipated mine development, proposed ventilation controls, proposed bleeder systems, and the anticipated location of intake and return air courses, belt entries, and escapeways.

(15) The locations of existing methane drainage systems.

(16) The locations of all atmospheric monitoring system sensors.

(17) Contour lines that pass through whole number elevations of the coalbed being mined. These lines shall be spaced at 10-foot elevation levels unless a wider spacing is permitted by the district manager.

(18) The location of proposed seals for each worked-out area.

(19) The entry height, velocity and direction of the air current at or near the midpoint of each belt flight where the height and width of the entry are representative of the belt haulage entry.

(20) The location and designation of air courses that have been redesignated from intake to return for the purpose of ventilation of structures, areas or installations that are required by this subpart D to be ventilated to return air courses, and for ventilation of seals.

(c) The mine map required by § 75.1200 may be used to satisfy the requirements for the ventilation map, provided that all the information required by this section is contained on the map.

§ 75.373 Reopening mines.

After a mine is abandoned or declared inactive, and before it is reopened, mining operations shall not begin until MSHA has been notified and has completed an inspection.

§ 75.380 Escapeways; bituminous and lignite mines.

(a) Except in situations addressed in § 75.381, § 75.385 and § 75.386, at least two separate and distinct travelable passageways shall be designated as escapeways and shall meet the requirements of this section.

(b) (1) Escapeways shall be provided from each working section, and each area where mechanized mining equipment is being installed or removed, continuous to the surface escape drift opening or continuous to the escape shaft or slope facilities to the surface.

(2) During equipment installation, these escapeways shall begin at the projected location for the section loading point. During equipment removal, they shall begin at the location of the last loading point.

(c) The two separate and distinct escapeways required by this section shall not end at a common shaft, slope, or drift opening, except that multiple compartment shafts or slopes separated by walls constructed of noncombustible material may be used as separate and distinct passageways.

(d) Each escapeway shall be—

(1) Maintained in a safe condition to always assure passage of anyone, including disabled persons;

(2) Clearly marked to show the route and direction of travel to the surface;

(3) Maintained to at least a height of 5 feet from the mine floor to the mine roof, excluding the thickness of any roof support, except that the escapeways shall be maintained to at least the height of the coalbed, excluding the thickness of any roof support, where the coalbed is less than 5 feet. In areas of mines where escapeways pass through doors, the height may be less than 5 feet, provided that sufficient height is maintained to enable miners, including disabled persons, to escape quickly in an emergency. In areas of mines developed before November 16, 1992, where escapeways pass over or under overcasts or undercasts, the height may be less than 5 feet provided that sufficient height is maintained to enable miners, including disabled persons, to escape quickly in an emergency. When there is a need to determine whether sufficient height is provided, MSHA may require a stretcher test where 4 persons carry a miner through the area in question on a stretcher;

(4) Maintained at least 6 feet wide except—

(i) Where necessary supplemental roof support is installed, the escapeway shall not be less than 4 feet wide; or

(ii) Where the route of travel passes through doors or other permanent ventilation controls, the escapeway shall be at least 4 feet wide to enable miners to escape quickly in an emergency, or

(iii) Where the alternate escapeway passes through doors or other permanent ventilation controls or where supplemental roof support is required and sufficient width is maintained to enable miners, including disabled persons, to escape quickly in an emergency. When there is a need to determine whether sufficient width is provided, MSHA may require a stretcher test where 4 persons carry a miner through the area in question on a stretcher, or

(iv) Where mobile equipment near working sections, and other equipment essential to the ongoing operation of longwall sections, is necessary during normal mining operations, such as material cars containing rock dust or roof control supplies, or is to be used for the evacuation of miners off the section in the event of an emergency. In any instance, escapeways shall be of sufficient width to enable miners, including disabled persons, to escape quickly in an emergency. When there is a need to determine whether sufficient width is provided, MSHA may require a stretcher test where 4 persons carry a miner through the area in question on a stretcher;

(5) Located to follow the most direct, safe and practical route to the nearest mine opening suitable for the safe evacuation of miners; and

(6) Provided with ladders, stairways, ramps, or similar facilities where the escapeways cross over obstructions.

(e) Surface openings shall be adequately protected to prevent surface fires, fumes, smoke, and flood water from entering the mine.

(f) *Primary escapeway.* (1) One escapeway that is ventilated with intake air shall be designated as the primary escapeway.

(2) Paragraphs (f)(3) through (f)(7) of this section apply as follows:

(i) To all areas of a primary escapeway developed on or after November 16, 1992;

(ii) Effective as of March 11, 1997, to all areas of a primary escapeway developed between March 30, 1970 and November 16, 1992; and

(iii) Effective as of March 11, 1997, to all areas of the primary escapeway developed prior to March 30, 1970 where separation of the belt and trolley haulage entries from the primary escapeway existed prior to November 16, 1992.

(3) The following equipment is not permitted in the primary escapeway:

(i) Unattended operating diesel equipment without an automatic fire suppression system.

(ii) Mobile equipment hauling coal except for hauling coal incidental to cleanup or maintenance of the primary escapeway.

(iii) Compressors, except—

(A) Compressors necessary to maintain the escapeway in safe, travelable condition;

(B) Compressors that are components of equipment such as locomotives and rock dusting machines; and

(C) Compressors of less than five horsepower.

(iv) Underground transformer stations, battery charging stations, substations, and rectifiers except—

(A) Where necessary to maintain the escapeway in safe, travelable condition; and

(B) Battery charging stations and rectifiers and power centers with

transformers that are either dry-type or contain nonflammable liquid, provided they are located on or near a working section and are moved as the section advances or retreats.

(v) Water pumps, except—

(A) Water pumps necessary to maintain the escapeway in safe, travelable condition;

(B) Submersible pumps;

(C) Permissible pumps and associated permissible switchgear;

(D) Pumps located on or near a working section that are moved as the section advances or retreats;

(E) Pumps installed in anthracite mines; and

(F) Small portable pumps.

(4) Mobile equipment operated in the primary escapeway, except for continuous miners and as provided in paragraphs (f)(5), (f)(6), and (f)(7) of this section, shall be equipped with a fire suppression system installed according to §§ 75.1107–3 through 75.1107–16 that is—

(i) Manually operated and attended continuously by a person trained in the systems function and use, or

(ii) A multipurpose dry chemical type capable of both automatic and manual activation.

(5) Personnel carriers and small mobile equipment designed and used only for carrying people and small hand tools may be operated in primary escapeways if—

(i) The equipment is provided with a multipurpose dry chemical type fire suppression system capable of both automatic and manual activation, and the suppression system is suitable for the intended application and is listed or approved by a nationally recognized independent testing laboratory, or,

(ii) Battery powered and provided with two 10 pound multipurpose dry chemical portable fire extinguishers.

(6) Notwithstanding the requirements of paragraph (f)(3)(i), mobile equipment not provided with a fire suppression system may operate in the primary escapeway if no one is inby except those persons directly engaged in using or moving the equipment.

(7) Notwithstanding the requirements of paragraph (f)(3)(i), mobile equipment designated and used only as emergency vehicles or ambulances, may be operated in the primary escapeway without fire suppression systems.

(g) Except where separation of belt and trolley haulage entries from designated escapeways did not exist before November 15, 1992, the primary escapeway shall be separated from belt and trolley haulage entries for its entire length, to and including the first connecting crosscut outby each loading point except when a greater or lesser distance for this separation is specified and approved in the ventilation plan and does not pose a hazard to miners.

(h) *Alternate escapeway.* One escapeway shall be designated as the alternate escapeway. The alternate escapeway shall be separated from the primary escapeway for its entire length, except that the alternate and primary escapeways may be ventilated from a common intake air shaft or slope opening.

(i) Mechanical escape facilities shall be provided and maintained for—

(1) Each shaft that is part of a designated escapeway and is greater than 50 feet in depth; and

(2) Each slope from the coal seam to the surface that is part of a designated escapeway and is inclined more than 9 degrees from the horizontal.

(j) Within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities provided under paragraph (i) of this section shall be operational at the bottom of shaft and slope openings that are part of escapeways.

(k) Except where automatically activated hoisting equipment is used, the bottom of each shaft or slope opening that is part of a designated escapeway shall be equipped with a means of signaling a surface location where a person is always on duty when anyone is underground. When the signal is activated or the evacuation of persons underground is necessary, the person shall assure that mechanical escape facilities are operational as required by paragraph (j) of this section.

(l) (1) Stairways or mechanical escape facilities shall be installed in shafts that are part of the designated escapeways and that are 50 feet or less in depth, except ladders may be used in shafts that are part of the designated escapeways and that are 5 feet or less in depth.

(2) Stairways shall be constructed of concrete or metal, set on an angle not to exceed 45 degrees from the horizontal, and equipped on the open side with handrails. In addition, landing platforms that are at least 2 feet by 4 feet shall be installed at intervals not to exceed 20 vertical feet on the stairways and equipped on the open side with handrails.

(3) Ladders shall be constructed of metal, anchored securely, and set on an angle not to exceed 60 degrees from the horizontal.

(m) A travelway designed to prevent slippage shall be provided in slope and drift openings that are part of designated escapeways, unless mechanical escape facilities are installed.

§ 75.381 Escapeways; anthracite mines.

(a) Except as provided in §§ 75.385 and 75.386, at least two separate and distinct travelable passageways shall be designated as escapeways and shall meet the requirements of this section.

(b) Escapeways shall be provided from each working section continuous to the surface.

(c) Each escapeway shall be—

(1) Maintained in a safe condition to always assure passage of anyone, including disabled persons;

(2) Clearly marked to show the route of travel to the surface;

(3) Provided with ladders, stairways, ramps, or similar facilities where the escapeways cross over obstructions; and

(4) Maintained at least 4 feet wide by 5 feet high. If the pitch or thickness of the coal seam does not permit these dimensions to be maintained other dimensions may be approved in the ventilation plan.

(d) Surface openings shall be adequately protected to prevent surface fires, fumes, smoke, and flood water from entering the mine.

(e) *Primary escapeway.* One escapeway that shall be ventilated with intake air shall be designated as the primary escapeway.

(f) *Alternate escapeway.* One escapeway that shall be designated as the alternate escapeway shall be separated from the primary escapeway for its entire length.

(g) Mechanical escape facilities shall be provided—

(1) For each shaft or slope opening that is part of a primary escapeway; and

(2) For slopes that are part of escapeways, unless ladders are installed.

(h) Within 30 minutes after mine personnel on the surface have been notified of an emergency requiring evacuation, mechanical escape facilities shall be operational at the bottom of each shaft and slope opening that is part of an escapeway.

(i) Except where automatically activated hoisting equipment is used, the bottom of each shaft or slope opening that is part of a primary escapeway shall be equipped with a means of signaling a surface location where a person is always on duty when anyone is underground. When the signal is activated or the evacuation of personnel is necessary, the person on duty shall assure that mechanical escape facilities are operational as required by paragraph (h) of this section.

§ 75.382 Mechanical escape facilities.

(a) Mechanical escape facilities shall be provided with overspeed, overwind, and automatic stop controls.

(b) Every mechanical escape facility with a platform, cage, or other device shall be equipped with brakes that can stop the fully loaded platform, cage, or other device.

(c) Mechanical escape facilities, including automatic elevators, shall be examined weekly. The weekly examination of this equipment may be conducted at the same time as a daily examination required by § 75.1400–3.

(1) The weekly examination shall include an examination of the headgear, connections, links and chains, overspeed and overwind controls, automatic stop controls, and other facilities.

(2) At least once each week, the hoist shall be run through one complete cycle of operation to determine that it is operating properly.

(d) A person trained to operate the mechanical escape facility always shall be available while anyone is underground to provide the mechanical escape facilities, if required, to the bottom of each shaft and slope opening that is part of an escapeway within 30 minutes after personnel on the surface have been notified of an emergency requiring evacuation. However, no operator is required for automatically operated cages, platforms, or elevators.

(e) Mechanical escape facilities shall have rated capacities consistent with the loads handled.

(f) Manually-operated mechanical escape facilities shall be equipped with indicators that accurately and reliably show the position of the facility.

(g) Certification. The person making the examination as required by paragraph (c) of this section shall certify by initials, date, and the time that the examination was made. Certifications shall be made at or near the facility examined.

§ 75.383 Escapeway maps and drills.

(a) A map shall be posted or readily accessible to all miners in each working section, and in each area where mechanized mining equipment is being installed or removed. The map shall show the designated escapeways from the working section to the location where miners must travel to satisfy the escapeway drill specified in paragraph (b)(1) of this section. A map showing the main escapeways shall be posted at a surface location of the mine where miners congregate, such as at the mine bulletin board, bathhouse, or waiting room. All maps shall be kept up to date, and any changes in route of travel, locations of doors, or directions of airflow shall be shown on the maps by the end of the shift on which the changes are made, and affected miners shall be informed of the changes before entering the underground areas of the mine. Miners underground on a shift when any such change is made shall be immediately notified of the change.

(b) (1) At least once every 90 days, each miner, including miners with working stations located between working sections and main escapeways, shall participate in a practice escapeway drill. During this drill, each miner shall travel the primary or alternate escapeway from the miner's working section or area where mechanized mining equipment is being installed or removed, to the area where the split of air ventilating the working section intersects a main air course, or 2,000 feet outby the section loading point, whichever distance is greater. Other miners shall participate in the escapeway drill by traveling in the primary or alternate escapeway for a distance of 2,000 feet from their working station toward the nearest escape facility or drift opening. An escapeway drill shall not be conducted in the same escapeway as the immediately preceding drill.

(2) At least once every 6 weeks and for each shift, at least two miners on each coal producing working section who work on that section, accompanied by the section supervisor, shall participate in a practice escape drill and shall travel the primary or alternate escapeway from the location specified in paragraph (b)(1) of this section, to the surface, to mechanical escape facilities, or to an underground entrance to a shaft or slope to the surface. Systematic rotation of section personnel shall be used so that all miners participate in this drill. An escapeway drill shall not be conducted in the same escapeway as the immediately preceding drill.

(3) At least once every 6 weeks, at least two miners on each maintenance shift and a supervisor, shall participate in a practice escape drill and shall travel the primary or alternate escapeway from the location specified in paragraph (b)(1) of this section, to the surface, to mechanical escape facilities, or to an underground entrance to a shaft or slope to the surface. Systematic rotation of maintenance personnel and working sections shall be used so that all miners participate in this drill and the escapeways from all sections are traveled. An escapeway drill shall not be conducted in the same escapeway as the immediately preceding drill.

(4) Before or during practice escapeway drills, miners shall be informed of the locations of fire doors, check curtains, changes in the routes of travel, and plans for diverting smoke from escapeways.

(c) The practice escapeway drills may be used to satisfy the evacuation specifications of the fire drills required by § 75.1101–23.

§ 75.384 Longwall and shortwall travelways.

(a) If longwall or shortwall mining systems are used and the two designated escapeways required by § 75.380 are located on the headgate side of the longwall or shortwall, a travelway shall be provided on the tailgate side of that longwall or shortwall. The travelway shall be located to follow the most direct and safe practical route to a designated escapeway.

(b) The route of travel shall be clearly marked.

(c) When a roof fall or other blockage occurs that prevents travel in the travelway—

(1) Work shall cease on the longwall or shortwall face;

(2) Miners shall be withdrawn from face areas to a safe area outby the section loading point; and

(3) MSHA shall be notified.

(d) Work may resume on the longwall or shortwall face after the procedures set out in §§ 75.215 and 75.222 are implemented.

§ 75.385 Opening new mines.

When new mines are opened, no more than 20 miners at a time shall be allowed in any mine until a connection has been made between the mine openings, and these connections shall be made as soon as possible.

§ 75.386 Final mining of pillars.

When only one mine opening is available due to final mining of pillars, no more than 20 miners at a time shall be allowed in the mine, and the distance between the mine opening and working face shall not exceed 500 feet.

§ 75.388 Boreholes in advance of mining.

(a) Boreholes shall be drilled in each advancing working place when the working place approaches—

(1) To within 50 feet of any area located in the mine as shown by surveys that are certified by a registered engineer or registered surveyor unless the area has been preshift examined;

(2) To within 200 feet of any area located in the mine not shown by surveys that are certified by a registered engineer or registered surveyor unless the area has been preshift examined; or

(3) To within 200 feet of any mine workings of an adjacent mine located in

the same coalbed unless the mine workings have been preshift examined.

(b) Boreholes shall be drilled as follows:

(1) Into the working face, parallel to the rib, and within 3 feet of each rib.

(2) Into the working face, parallel to the rib, and at intervals across the face not to exceed 8 feet.

(3) At least 20 feet in depth in advance of the working face, and always maintained to a distance of 10 feet in advance of the working face.

(c) Boreholes shall be drilled in both ribs of advancing working places described in paragraph (a) of this section unless an alternative drilling plan is approved by the District Manager in accordance with paragraph (g) of this section. These boreholes shall be drilled—

(1) At an angle of 45 degrees to the direction of advance;

(2) At least 20 feet in depth; and

(3) At intervals not to exceed 8 feet.

(d) When a borehole penetrates an area that cannot be examined, and before mining continues, a certified person shall, if possible, determine—

(1) The direction of airflow in the borehole;

(2) The pressure differential between the penetrated area and the mine workings;

(3) The concentrations of methane, oxygen, carbon monoxide, and carbon dioxide; and

(4) Whether water is impounded within the penetrated area.

(e) Unless action is taken to dewater or to ventilate penetrated areas, boreholes shall be plugged with wooden plugs or similar devices when—

(1) Tests conducted at the boreholes show that the atmosphere in the penetrated area contains more than 1.0 percent methane, less than 19.5 percent oxygen, or harmful concentrations of carbon monoxide, carbon dioxide or other explosive, harmful or noxious gases;

(2) Tests for methane, oxygen, carbon monoxide, and carbon dioxide cannot be made because air from mine workings is flowing into the penetrated area; or

(3) Water is discharging through the boreholes from the penetrated area into the mine workings.

(f) If mining is to be conducted within 50 feet above or below an inaccessible area of another mine, boreholes shall be drilled, as necessary, according to a plan approved by the district manager.

(g) Alternative borehole patterns that provide the same protection to miners as the pattern established by paragraphs (b) and (c) of this section may be used under a plan approved by the district manager.

§ 75.389 Mining into inaccessible areas.

(a) (1) The operator shall develop and follow a plan for mining into areas penetrated by boreholes drilled under § 75.388.

(2) Mining shall not resume into any area penetrated by boreholes until conditions in the penetrated area can be determined under § 75.388 and the plan for mining-through into the area has been approved by the district manager.

(3) A copy of the procedures to be followed shall be posted near the site of the mining-through operations and the operator shall explain these procedures to all miners involved in the operations.

(b) The procedures specified in the plan shall include—

(1) The method of ventilation, ventilation controls, and the air quantities and velocities in the affected working section and working place;

(2) Dewatering procedures to be used if a penetrated area contains a water accumulation; and

(3) The procedures and precautions to be followed during mining-through operations.

(c) Except for routine mining-through operations that are part of a retreat section ventilation system approved in accordance with § 75.371(f) and (x), the following provisions shall apply:

(1) Before and during mining-through operations, a certified person shall perform air quality tests at intervals and at locations necessary to protect the safety of the miners.

(2) During mining-through operations, only persons involved in these operations shall be permitted in the mine; and

(3) After mining-through, a certified person shall determine that the affected areas are safe before any persons enter the underground areas of the mine.

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Part IV

Securities and Exchange Commission

17 CFR Part 210, et al.

Phase-One Recommendations of Task Force on Disclosure Simplification; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 232, 239, 240, and 249

[Release Nos. 33–7271 and 34–36922; S7–6–96]

RIN 3235–AG75

Phase-One Recommendations of Task Force on Disclosure Simplification

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission has thus far considered certain of the recommendations contained in the Task Force on Disclosure Simplification's Report (''Task Force Report''), the publication of which the Commission is authorizing today. The Commission now proposes to eliminate a number of rules and forms that may no longer be necessary or appropriate for the protection of investors, and to propose other minor or technical rule changes or corrections. Other proposals designed to improve the disclosure process, both for investors and those subject to the Commission's disclosure requirements, may be forthcoming in future releases following the Commission's further consideration of the remaining Task Force recommendations. Accordingly, by issuing this release, the Commission does not intend to express any view on the merits of any of the Task Force's recommendations not addressed in this release.

DATES: Comments should be submitted on or before April 10, 1996.

ADDRESSES: All comments concerning the rule proposals should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street NW., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–6–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, Douglas G. Tanner, Office of Chief Accountant, Division of Corporation Finance at (202) 942–2960 or M. Kathleen Haller, Division of Corporation Finance, at (202) 942–1977.

SUPPLEMENTARY INFORMATION: In order to begin implementing certain of the recommendations of the Task Force on Disclosure Simplification that it has so far considered, the Commission today is proposing the elimination of Rules 3–16,[1] 4–05,[2] 4–06,[3] and 4–10 (b) through (h)[4] of Regulation S–X,[5] Industry Guide 1,[6] Rule 148[7] under the Securities Act of 1933 (''Securities Act''),[8] Regulation B[9] (including Forms 1–G and 3–G and Schedules A, B, C, and D thereunder[10]), Rules 445,[11] 446,[12] 447[13] and 494[14] of Regulation C under the Securities Act,[15] Regulation F,[16] (including Form 1–F[17]), Securities Act Rules 702(T)[18] and 703(T),[19] Form 701,[20] Rule 13a–17[21] under the Securities Exchange Act of 1934 (''Exchange Act''),[22] Exchange Act Rules 15d–17,[23] 16b–1(c)[24] and 16b–4,[25] General Instruction I of Form 10–K,[26] and Form 10–C.[27] In addition, amendments are being proposed to the following rules and forms: Item 501[28] and Item 601(b)[29] of Regulations S–B[30] and S–K,[31] Rule 252(h)(2)[32] of Regulation A,[33] Rules 402,[34] 406,[35] 464,[36] 471,[37] 472[38] and 473[39] of Regulation C, Rule 504[40] of Regulation D,[41], Rule 902[42] of Regulation S,[43] Rule 311[44] of Regulation S–T,[45] Form F–6,[46] Form F–7,[47] Form F–8,[48] Form F–9,[49] Form F–10,[50] Form F–80,[51] and Exchange Act Rules 12b–11,[52] 13a–13,[53] 14d–1,[54] 15d–13,[55] 16a–3,[56] and 24b–2.[57]

I. Background

Chairman Arthur Levitt organized the Task Force on Disclosure Simplification (''Task Force'') in August 1995 to review forms and rules relating to capital-raising transactions, periodic reporting pursuant to the Exchange Act, proxy solicitations, and tender offers and beneficial ownership reports under the Williams Act. The goal was to simplify the disclosure process and to make regulation of capital formation more effective and efficient where consistent with investor protection.

In the course of its review, the Task Force met with issuing companies, investor groups, underwriters, accounting firms, law firms and others who participate daily in the capital markets (''industry participants''). The Task Force prepared a report summarizing its findings and setting forth recommendations and suggestions of areas for further Commission study. The Task Force Report was presented to the Commission at an open meeting on March 5, 1996.[58]

The Task Force has recommended that the Commission eliminate or modify many rules and forms, as well as simplify several key aspects of securities offerings. Having had the opportunity to consider a relatively small number of those recommendations, the Commission has determined to implement some of the Task Force Report's recommendations by proposing for public comment the elimination of 45 rules and 4 forms in conjunction with the publication of the Task Force

[1] 17 CFR 210.3–16.
[2] 17 CFR 210.4–05.
[3] 17 CFR 210.4–06.
[4] 17 CFR 210.4–10(a) through (h).
[5] 17 CFR Part 210.
[6] 17 CFR 229.801(a) and 229.802(a).
[7] 17 CFR 230.148.
[8] 15 U.S.C. 77a *et seq.*
[9] 17 CFR 230.300 through 230.346.
[10] Referenced in 17 CFR 239.101.
[11] 17 CFR 230.445.
[12] 17 CFR 230.446.
[13] 17 CFR 230.447.
[14] 17 CFR 230.494.
[15] 17 CFR 230.400 through 230.494.
[16] 17 CFR 230.651 through 230.656.
[17] 17 CFR 239.300.
[18] 17 CFR 230.702(T).
[19] 17 CFR 230.703(T).
[20] 17 CFR 239.701.
[21] 17 CFR 240.13a–17.
[22] 15 U.S.C. 78a *et seq.*
[23] 17 CFR 240.15d–17.
[24] 17 CFR 240.16b–1.
[25] 17 CFR 240.16b–4.
[26] 17 CFR 249.310.
[27] 17 CFR 249.310c.
[28] 17 CFR 229.501.
[29] 17 CFR 228.601(b) and 17 CFR 229.601(b).
[30] 17 CFR Part 228.
[31] 17 CFR Part 229.
[32] 17 CFR 230.252(h)(2).
[33] 17 CFR 230.251 through 230.263.
[34] 17 CFR 230.402.
[35] 17 CFR 230.406.
[36] 17 CFR 230.464.
[37] 17 CFR 230.471.
[38] 17 CFR 230.472.
[39] 17 CFR 230.473.
[40] 17 CFR 230.504.
[41] 17 CFR 230.501 through 230.508.
[42] 17 CFR 230.902.
[43] 17 CFR 230.901 through 230.904.
[44] 17 CFR 232.311.
[45] 17 CFR Part 232.
[46] 17 CFR 239.36.
[47] 17 CFR 239.37.
[48] 17 CFR 239.38.
[49] 17 CFR 239.39.
[50] 17 CFR 239.40.
[51] 17 CFR 239.41.
[52] 17 CFR 240.12b–11.
[53] 17 CFR 240.13a–13.
[54] 17 CFR 240.14d–1.
[55] 17 CFR 240.15d–13.
[56] 17 CFR 240.16a–3.
[57] 17 CFR 240.24b–2.
[58] The Report is available for inspection and copying in the Commission's public reference room. The Report also is posted on the Commission's Internet web site (http://www.sec.gov). Persons interested in commenting on the Report may do so by referring to File No. S7–6–96.

Report. A number of other revisions, including minor and technical amendments, also are being proposed. Other proposals designed to improve the disclosure process, both for investors and those subject to the Commission's disclosure requirements, may be forthcoming in future releases following the Commission's further consideration of the Task Force recommendations.

The Commission is taking the first step towards implementation of certain of the Task Force recommendations by proposing the elimination or amendment of the rules and forms enumerated below. By issuing these proposals for public comment simultaneously with the publication of the Task Force Report, the Commission does not intend to indicate either approval or disapproval of any of the remaining recommendations or suggestions in the Task Force Report that it has not yet fully considered.

II. Non-Financial Disclosure

A. Securities Act Rules

1. Regulation B (Rules 300–346), and Accompanying Schedules A, B, C, and D, and Forms 1–G and 3–G

Regulation B provides a conditional, limited exemption from Securities Act registration for offerings of ''fractional undivided interests'' in oil or gas rights of up to $250,000 per offering. A precursor to Regulation B was adopted by the Federal Trade Commission in 1934;[59] Regulation B was last substantially revised in 1972.[60]

In order to qualify for the Regulation B exemption, an offeror of fractional undivided interests in certain specified oil or gas rights must file an offering sheet with the Commission at least ten days prior to commencing the offering. The offering sheet must contain the information specified by Schedules A, B, C, or D, depending on the distinct type of oil/gas interest, as well as on whether the enterprise is producing or non-producing. These schedules require some detailed information concerning the nature and amount of the interests offered; the legal rights and obligations created by such interests; a description of the property in question; for producing interests, a history of the oil/gas production activities in the field in question; and, for non-producing interests, a description of plans for the drilling of wells, including the estimated costs and method of financing such drilling. However, Regulation B does not require any offeror to furnish current or past financial statements.

Regulation B also requires an offeror to submit two post-offering reports: Form 1–G and Form 3–G. Form 1–G, which is filed with the Commission, requires disclosure of information pertaining to each sale of the offered securities. Form 3–G, which is sent to each purchaser as well as filed with the Commission, includes more detailed information pertaining to the offering's results, including the actual cost of drilling, and expenses incurred in the selling effort.

Between 1966 and 1977, the Commission received 6,904 Regulation B filings. This relatively large number of Regulation B filings appears to have corresponded with a spurt of oil/gas drilling activity and related financing triggered by the energy crisis of the mid 1970s. In 1975 alone, the Commission received 625 Regulation B offering sheets pertaining to $35.4 million in total sales.

However, by 1977 the number of Regulation B offering sheets received by the Commission had dropped to 96, covering only $7.3 million in aggregate sales of oil/gas securities. Since then, the number of Regulation B offering sheets filed has steadily declined, from 94 such filings in 1980, to 13 in 1985, 7 in 1990, 4 in 1992, and, finally, 0 in 1995. Moreover, since enactment of Regulation B's reporting requirements in 1972, the Commission has received only one each of Form 1–G and Form 3–G.

Comment is requested as to whether Regulation B (and accompanying schedules and forms) continues to be useful to investors and issuers. Does the availability of other exemptions, such as the limited offering exemption from registration set forth in Regulation D, or the private placement exemption under Section 4(2) of the Securities Act,[61] render Regulation B obsolete?

2. Regulation F (Rules 651–656) and Accompanying Form 1–F

Regulation F provides a conditional limited exemption from Securities Act registration for assessments levied on assessable stock and for resales of forfeited assessable stock. The Commission promulgated Regulation F in 1959[62] at the same time that it enacted Securities Act Rule 136.[63] Rule 136(c) defines ''assessable stock'' to mean ''stock which is subject to resale by the issuer * * * in the event of a failure of the holder of such stock to pay any assessment levied thereon.'' Thus, assessable stock is stock, the purchase of which triggers an annual obligation to pay an amount, termed an ''assessment,'' to the issuer in addition to the original offering price. If the buyer fails to pay the levied assessment after receiving a notice of delinquency from the issuer, the issuer can reclaim the original stock and resell it, usually at an auction.

Under Rule 136, both the levying of an assessment on assessable stock and the resale of forfeited assessable stock constitute the issuance of securities, which trigger registration requirements under the Act. Regulation F establishes a partial conditional exemption from registration for these transactions. In order to qualify for the exemption, a company must be incorporated or have its principal business operations in the United States. In addition, a company cannot claim more than $300,000 in exempted assessable stock transactions for any one calendar year. Form 1–F requires disclosure of pertinent information about the issuer; its 10% beneficial stockholders; its directors and officers; its levied assessments, resales of forfeited assessable stock, and other unregistered securities issued during the preceding year; and its current proposed assessments or resales of forfeited assessable stock.

It appears that only two types of companies have issued assessable stock: mining companies and water extraction/delivery companies, also known as mutual water companies. Since the promulgation of Regulation F, approximately 40 such companies have filed a total of 234 1–F forms. Most of these filings occurred between 1967 and 1982. Only 32 Form 1–F filings have occurred between 1983 and 1995. Ten companies were responsible for those filings. Since 1992, only three companies have filed a total of 10 1–F forms with the Commission.

One reason for the recent steady decline of Form 1–F filings appears to be the availability of more beneficial limited offering exemptions, particularly the Rule 504 exemption. In 1982, the Commission adopted its first version of Rule 504. Following that year, the annual number of Form 1–F submissions steadily decreased from 9 in 1982, to 6 in 1983, 3 in 1984, 0 in 1985 and 1986, and an average filing rate of 2–3 for the years 1987 to 1995. Virtually all Regulation F companies have been non-reporting companies. Accordingly, such companies are eligible to claim a Rule 504 exemption.

Comment is requested as to whether Regulation F (and accompanying schedules and forms) continues to be

[59] Release No. 33–185 (June 30, 1934).

[60] Release No. 33–5314 (October 11, 1972) [37 FR 23829].

[61] 15 U.S.C. 77d(2).

[62] Release No. 33–4121 (July 30, 1959) [24 FR 6385].

[63] 17 CFR 230.136.

useful to investors and issuers. Does the availability of other exemptions, such as the limited offering exemption from registration set forth in Regulation D, or the private placement exemption under Section 4(2) of the Securities Act, render Regulation F obsolete?

3. Securities Act Rule 148

Rule 148 was originally designed to be a counterpart to Rule 144 and, as such, to provide a safe harbor for the resales of certain categories of securities acquired in bankruptcy proceedings. Included in these categories are securities issued under the Federal Bankruptcy Act, portfolio securities sold under the Securities Investors Protection Act (SIPA), and issuances of debtor securities in circumstances where the Federal Deposit Insurance Corporation (FDIC) has been appointed receiver of the debtor's assets.

In 1978, the Bankruptcy Act was repealed and replaced with the Bankruptcy Code, which provides an exemption from Securities Act registration as well as a safe harbor for the resales of securities received under a plan of reorganization. Through no-action letters, the Commission has taken the position that Rule 148 is applicable only to resales of securities that were issued under the repealed Bankruptcy Act, but not to resales of securities under the 1978 Bankruptcy Code.

Comment is requested as to whether Rule 148 continues to serve a useful purpose (*e.g.*, in connection with securities sold under the SIPA and/or where the FDIC has been appointed receiver of the debtor's assets). Commenters also should consider whether the rule be retained for securities issued under the repealed Bankruptcy Act.

4. Securities Act Rules 445, 446, and 447

The Task Force has recommended that the Commission eliminate Rules 445, 446 and 447, which govern registration statements filed in connection with securities to be offered through competitive bidding (*e.g.*, by means of a solicitation of competitive proposals from underwriters). These rules were put into place in the late 1940s principally to accommodate registered public utility holding companies and their subsidiaries (''registered holding companies''). These companies were subject to Rule 50 under the Public Utility Holding Company Act of 1935 (''PUHCA''), which required that their securities be sold through competitive bids.

Rules 445, 446 and 447 appear to be rarely used at present. A review of Commission filings shows that there was only one competitive bid filing in 1994, and no competitive bid filings in 1995. One reason for the lack of filings under these rules may be that, beginning in 1982, the Commission began to relax the restrictive bidding requirements of PUHCA Rule 50 in recognition of the fact that these procedures often precluded registered holding companies from obtaining the benefits of the Securities Act Rule 415 shelf registration procedure, placing them at a disadvantage compared to other issuers in getting access to the capital markets on short notice. In 1994, the Commission determined that competitive bidding was no longer necessary to prevent abuses in the issuance and sale of securities by these companies and rescinded Rule 50.[64]

Comment is requested as to whether Rules 445, 446, and 447 continue to be useful in capital raising transactions. Comment also is requested as to whether other Commission rules, such as Rule 430A (which eliminates the need for alternative prospectus cover pages),[65] are adequate to accommodate the distribution of securities through today's competitive bidding practices.

5. Securities Act Rule 494

Rule 494 was adopted in 1951 to accommodate a then common practice of advertising securities issued by foreign national governments.[66] The rule limits such ''newspaper prospectuses'' for foreign government securities to advertisements appearing in newspapers, magazines and other periodicals that are distributed by second class mail. However, the practice appears to have fallen into disuse.

Comment is requested as to whether Rule 494 continues to serve a useful purpose. Should this rule be retained, in whole or in part, in light of contemporary practices relating to offerings of foreign government securities?

B. Exchange Act Rules

1. Paragraph (c) of Exchange Act Rule 16b–1

This rule exempts the acquisition of securities resulting from a reorganization of a railroad or other carrier approved by the Interstate Commerce Commission (''ICC''), an agency that was abolished as of January 1, 1996. The function of approving such reorganizations has now been transferred to the Surface Transportation Board, an independent agency of the Department of Transportation.

Comment is requested as to whether the exemption provided by this rule continues to serve a useful purpose. In addition, comment is solicited as to whether the exemption provided by this rule should continue to be administered by the Surface Transportation Board, as ICC's successor, or whether it should be treated similarly to the other Section 16(b) exemptive provisions that are administered by the Commission.

2. Exchange Act Rule 16b–4

Rule 16b–4 provides an exemption from the requirements of Section 16(b) for certain holding company redemption transactions. There appear to be few situations where a holding company owns securities in only one company and desires to exchange its own shares through a redemption for those of such company, and there appear to be few, if any, situations in which the rule is invoked.

Commenters should address whether the exemption provided by this rule has been invoked with any degree of frequency. Comment is also requested as to whether the rule generally serves a useful purpose, and should be retained in whole or in part; if retained, for what purpose.

C. Disclosure Requirements

1. Item 501(b) of Regulation S–K

Item 501(b) of Regulation S–K currently requires that registrants provide a cross-reference sheet immediately following the facing page in prospectuses, showing the location of the information required to be included in response to the items in the form. This cross-reference sheet requirement is in addition the Regulation S–K Item 502(g) provision that registrants include a reasonably detailed table of contents.[67] In light of the table of contents requirement, the Commission proposes to eliminate the cross-reference sheet requirement.

Comment is requested as to whether the table of contents provides an adequate road map to the prospectus so that the cross-reference sheet could be eliminated entirely. Commenters who object to total elimination should specify how the cross-reference sheet should be modified to reflect their concerns.

[64] Release No. 35–26031 (April 20, 1994) [59 FR 21922].

[65] 17 CFR 230.430A.

[66] Release No. 33–3425 (August 27, 1951) [16 FR 8820].

[67] References to the cross reference sheet would be deleted from Securities Act Rule 472.

2. Item 501(c)(8) of Regulation S–K [68]

This proposed revision, which eliminates a red ink requirement for the required prospectus caption ''Subject to Completion'', would conform the requirements of Regulation S–K with those of Regulation S–B, which has no requirements relating to the color of the caption. Comment is solicited on whether the color of the caption serves a significant purpose.

3. Exhibits

The Commission proposes to delete the following from the required list of exhibits in Regulation S–K and Regulation S–B [69] because the information in each such exhibit either appears to be infrequently used or is otherwise available. The specific exhibits proposed to be eliminated are: Opinion regarding discount on capital shares (Exhibit 6); [70] Opinion regarding liquidation preference (Exhibit 7); Statement regarding computation of per share earnings (Exhibit 11); Material foreign patents (Exhibit 14); and Information from reports furnished to state insurance regulatory authorities (Exhibit 28).[71]

Comment is solicited on whether any of these exhibits provides information material to investors and other market participants. Does the statement regarding computation of per share earnings provide useful information not otherwise provided in Commission filings? Commenters should address whether the availability of foreign patent documentation or documents filed with insurance regulators is sufficient, or whether they should continue to be filed with securities disclosure documents.

4. Industry Guide 1

Guide 1 requires disclosure of the principal sources of electric and gas revenues and the classes of services offered by the registrant in certain registration statements as well as annual reports on Form 10–K. In addition, if equity securities are being registered and will be issued at a price below book value per share, Guide 1 requires disclosure of the effects, if any, on the registrant's business of issuing such shares at a price below the underlying book value per share. The Commission proposes to eliminate Guide 1 because the information requested by the Guide also appears to be within the coverage of other rules of the Commission, including Items 101 and 303 of Regulation S–K.[72]

Comment is requested on whether any aspect of the information required by Guide 1 is not furnished by affected issuers pursuant to other Commission rules, and if not, whether maintaining a separate Guide 1 would be necessary or appropriate and in the interests of investors.

D. Forms

1. Form 701

The Commission proposes to delete expired Form 701 (Notice of sales pursuant to an exemption under Section 701) and the rules that required its filing (Securities Act Rules 702(T) and 703(T)) in order to remove them from the Code of Federal Regulations. By their terms, Rules 702(T) and 703(T), and thus Form 701, were effective only until 1993. Commenters who believe that this form should be re-instated should provide specific reasons as to the bases for their views.

2. Form F–6

Commission is proposing to eliminate Items 3(e) and 4(a) of Form F–6, governing the registration of depositary shares evidenced by American Depositary Receipts (''ADRs''), because the elicited information appears to be of little use to investors or the marketplace at large.

Item 3(e) of Form F–6 requires the registrant to include, as an exhibit, the name of each dealer known to the registrant who has deposited shares against issuance of ADRs, proposes to deposit shares or participated in a plan to deposit shares, within the past six months. Under Item 4(a) of Form F–6, a registrant must undertake to provide semi-annual updated information generally concerning dealers depositing shares in the facility and the number of shares issued/cancelled during the covered period. However, because the base number of outstanding shares is not normally publicly available, the information regarding semi-annual adjustments to that number appears to be of little use.

Comment is requested as to whether any information provided by Item 3(e) or 4(a) serves any useful purpose, whether to the issuers of the underlying shares (particularly where the ADR facility is unsponsored), ADR purchasers, or the markets in which these securities are traded.

3. Form 10–C

The Commission proposes to eliminate Form 10–C and Rules 13a–17 and 15d–17, which require issuers registered under the Exchange Act and quoted in Nasdaq to report changes in corporate name to the Commission and the NASD, or an aggregate increase or decrease of a class of securities outstanding that exceeds 5% of the amount of securities of the class outstanding. In proposing the elimination of this form, the Commission notes that the information regarding changes in number of shares outstanding typically is reflected in an issuer's financial statements. Comment is requested as to whether the Form 10–C provides material information not otherwise provided. Commenters who favor retention of Form 10–C should be specific with respect to the reasoning for their position.

III. Financial Disclosure

The Commission also proposes to implement certain of the recommendations in the Task Force Report relating to accounting disclosure rules, as set forth below. These rules were identified as being largely duplicative of generally accepted accounting principles (''GAAP'') or other Commission rules. Accordingly, maintaining separate Commission rules would appear unnecessary.

The proposed changes are not intended to alter current accounting standards or disclosure practices. Comment is requested on whether any of the proposed changes would have the effect of altering current accounting standards or disclosure practices, and if so, how.

1. Rule 3–16 of Regulation S–X

Rule 3–16(a) of Regulation S–X sets forth the requirement that a registrant, which has emerged from a significant reorganization, disclose in its financial statements a brief explanation of such reorganization. In addition, if the registrant is about to emerge from a reorganization, Rule 3–16(b) of Regulation S–X requires a balance sheet giving effect to the plan of reorganization with separate presentation of the registrant's balance sheet before the reorganization, the changes to be effected in the reorganization, and the balance sheet of the registrant after the reorganization. Registrants have historically satisfied the requirements of Rule 3–16(b) with pro forma financial information.

[68] 17 CFR 229.501(c)(8).

[69] Item 601(b) of Regulation S–B and Regulation S–K.

[70] This exhibit currently is not required in Regulation S–B; consequently, no change is necessary.

[71] Regulation S–T Rule 311(c), providing that exhibits filed by electronic filers pursuant to paragraph (b)(28) may be filed in paper under cover of Form SE [17 CFR 239.64, 249.444, 269.8] would be eliminated.

[72] 17 CFR 229.101 and 229.303, respectively.

In November 1990, the AICPA issued SOP 90–7, ''Financial Reporting by Entities in Reorganization Under the Bankruptcy Code,'' which prescribes the accounting and financial statement presentation for entities in bankruptcy reorganization and for entities which have emerged from bankruptcy. ARB 43, Section 210 of the Financial Reporting Codification, and SAB Topic 5:S prescribes the accounting and financial statement disclosures for quasi-reorganizations. Further, Article 11 of Regulation S–X requires pro forma financial information whenever consummation of events or transactions occurs or is probable and for which disclosure of pro forma financial information would be material to investors.

The Commission proposes to eliminate Rule 3–16 of Regulation S–X because the information requested by that Rule also appears to be within the scope of Article 11 and the disclosure requirements of the other accounting literature discussed above. Comment is requested on whether there are any reorganizations within the scope of Rule 3–16 which would be outside the scope of SOP 90–7, ARB 43, Section 210 of the Financial Reporting Codification, and SAB 78 [SAB Topic 5:S], for which disclosure of the information required by Rule 3–16 would be material to investors. In addition, comment is requested on whether the information required by Rule 3–16 would be required to be disclosed in whole or in part by the items discussed above, and if so, whether maintaining a separate rule is necessary or appropriate to ensure full and fair disclosure.

2. Rule 4–05 of Regulation S–X

The Commission proposes to eliminate Rule 4–05 of Regulation S–X, relating to current assets and current liabilities when a company's operating cycle is longer than one year, because Chapter 3A of ARB 43 and current accounting practices, requires the same presentation and information. Comment is requested on whether there would be any material loss of information in financial statements if Rule 4–05 of Regulation S–X were to be eliminated.

3. Rule 4–06 of Regulation S–X

The Commission proposes to eliminate Rule 4–06 of Regulation S–X, which currently provides that reacquired indebtedness of a registrant must be deducted from the appropriate liability caption on the registrant's balance sheet. This rule is believed by some to be unnecessary because GAAP, including APB 26 and SFAS 76, requires that such items be considered extinguished and deducted from the appropriate caption on the balance sheet. Further, with respect to the provisions of Rule 4–06 relating to reacquired indebtedness held for pension and other special funds, SFAS 87 and SFAS 106 prescribe the definition of, and accounting for, plan assets for pension plans and other post employment benefit plans, which are treated as issuer liabilities.

Comment is requested on whether maintaining a separate Commission Rule 4–06 is necessary or appropriate in light of applicable GAAP, and the needs of users of registrant financial statements.

4. Rule 4–10 of Regulation S–X

The requirements of the successful efforts accounting method followed by oil and gas producers are set forth in paragraphs (b) through (h) of Rule 4–10 of Regulation S–X. As a result of the Commission's action to supersede the FASB's determination to designate successful efforts as the method of accounting to be applied uniformly by all oil and gas producers,[73] specific rules for both the successful efforts and full cost accounting methods were maintained in Regulation S–X.

The successful efforts method of accounting codified into Rule 4–10 appears to be duplicative of the accounting standards adopted by the FASB in SFAS 19. Because of such duplication, the Commission proposes to eliminate the portions of Rule 4–10 which duplicate SFAS 19—paragraph (b) through (h) of the Rule. Comment is requested on whether there are any significant differences between paragraphs (b) through (h) of Rule 4–10 and the requirements of SFAS 19 and, if not, whether maintaining separate Commission rules is necessary or appropriate.

IV. Miscellaneous Minor and Technical Changes

The Commission proposes to make the following technical changes to certain rules and forms under the Securities Act and the Exchange Act. Comment is sought on the necessity or appropriateness of each of the proposed changes.

- Correct a number of out-of-date cross references in certain Securities Act rules and forms.[74]
- Allow the addition or withdrawal of a delaying notation under Regulation A[75] or the filing of a delaying or other amendment under Rule 473[76] by facsimile transmission, so as to provide issuers with additional flexibility in filing documents with the Commission.
- Modify and clarify signature requirements to allow manual, typed, duplicated or faxed signatures on paper filings, with a manual signature retention requirement for typed, duplicated or faxed signatures.[77] This proposal would clarify existing rules, as well as extend to paper filers the option of filing typed signature pages, thus providing comparable treatment to both paper and electronic filers.[78] The proposed language would retain the five-year manual signature retention requirement of Regulation S–T Rule 302(b). Comment is requested specifically as to whether the five-year retention period is necessary, or whether all signature retention requirements, including those in Regulation S–T, should be reduced to a shorter period, such as three or four years.
- Revise provisions in Rule 406 of Regulation C and Exchange Act Rule 24b–2 to emphasize the fact that confidential treatment requests should not be submitted electronically, but rather, should be submitted in paper. This is intended to minimize the chances of a confidential document being erroneously submitted as part of a public filing.
- Modify Rule 504 of Regulation D[79] so that the rule itself states that there is no information delivery requirement in connection with Rule 504 offerings. This is intended to eliminate confusion resulting from the current language of Regulation D.
- Update the Regulation S definition of ''Designated Offshore Securities Market'' to include markets that have been recognized as such by the Division of Corporation Finance pursuant to delegated authority since the adoption of the regulation.[80]
- Eliminate provisions exempting small life and mutual life insurance companies from filing quarterly financial results on Form 10–Q and Form 10–QSB.[81] The exemption for small life insurance companies expired

[73] Accounting Series Release No. 253 (August 31, 1978) [43 FR 40688].

[74] Proposed amendments to Rule 406, 464 and 473 of Regulation C and Forms F–7, F–8, F–9, F–10 and F–80.

[75] Proposed amendment to 17 CFR 230.252(h)(2).

[76] 17 CFR 230.473.

[77] Proposed amendments to Rule 402 and 471 of Regulation C, and Exchange Act Rules 12b–11, 14d–1 and 16a–3.

[78] *See* Rule 302 of Regulation S–T [17 CFR 232.302].

[79] Proposed amendment to 17 CFR 230.504.

[80] Proposed amendment to Rule 902 of Regulation S.

[81] Proposed amendment to Exchange Act Rules 13a–13 and 15d–16.

by its terms on December 20, 1983, and the exemption for mutual life companies was meant to track the small life insurance companies exemption.

• Eliminate a general instruction to Form 10–K[82] referring to filings on Form S–18, which form was replaced by other small business forms in 1992.

V. General Request for Comment

Any interested persons wishing to submit comment on any of the proposals set forth in this release, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–6–96; this file number should be included on the subject line if E-mail is used. Comment is specifically requested as to whether any of the rules or forms that have been proposed to be eliminated provide disclosure that is material to investors, issuers or other market participants, the states or any other entity. Comment also is requested on any competitive burdens that might result from the adoption of any of the proposals. All comments will be considered by the Commission in complying with its responsibility under Section 23(a) of the Exchange Act.[83] Comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

VI. Cost-Benefit Analysis

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid the Commission in its evaluation of the costs and benefits that may result from the changes proposed in this release. It is anticipated that these proposals will benefit those with filing obligations by simplifying or clarifying current rules and by eliminating rules and forms that are outdated or rarely used for other reasons. No detrimental effects to investors are expected. However, it is not believed that the changes outlined herein will affect significantly the overall costs and burdens associated with filing requirements generally.

VII. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments are to eliminate certain rules and forms and make minor revisions to the Commission's rules to correct or modernize them.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined by the Commission's rules. It is not expected that increased reporting, recordkeeping and compliance burdens would result from the changes. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose additional burdens on small business issuers.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, Mail Stop 3–7, 450 Fifth Street, N.W., Washington, D.C. 20549.

VIII. Paperwork Reduction Act

The staff has consulted with the Office of Management and Budget (''OMB'') and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 (''the Act'')(44 U.S.C. 3501 *et seq.*). It is anticipated that the proposals to eliminate certain exhibits from Item 601(b) of Regulations S–K and S–B[84] would reduce the existing information collection requirements that are associated with the forms identified in the exhibit tables in those regulations. The net reduction for all affected information collection requirements would be an estimated 62,663 hours, or about .3% of the total burden hours associated with current requirements.

With respect to the proposal to eliminate certain requirements within Form F–6,[85] the supporting statement indicates that registrants no longer would be required to furnish the name of each dealer known to it or depositary who: 1) has deposited shares against the issuance of ADRs within the past six months, 2) proposes to deposit shares against issuance of ADRs, or 3) assisted or participated in the creation of the plan of the issuance of the ADRs or the selection of the deposited securities. This proposal would reduce the total information burden of affected registrants (currently 339 hours) by approximately .1 hour per submission, for a total reduction of 33.9 hours for all submissions.

The Commission solicits comment: concerning whether the proposed change in collection of information is necessary; on the accuracy of the Commission's estimate of the burden of the proposed changes to the collection of information; on the quality, utility and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–6–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IX. Statutory Basis for the Proposals

The foregoing amendments are proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act.

[82] General Instruction I.

[83] 15 U.S.C. 78w(a).

[84] The titles of the affected information collection requirements are ''Regulation S–K'' and ''Regulation S–B.''

[85] This information collection is entitled ''Form F–6.''

List of Subjects in 17 CFR Parts 210, 228, 229, 230, 232, 239, 240, and 249

Accountants, Confidential business information, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

§ 210.3–16 [Removed and reserved]

2. By removing and reserving § 210.3–16.

§ 210.4–05 [Removed and reserved]

3. By removing and reserving § 210.4–05.

§ 210.4–06 [Removed and reserved]

4. By removing and reserving § 210.4–06.

§ 210.4–10 [Amended]

5. By amending § 210.4–10 by removing the heading preceding paragraph (b), removing paragraphs (b) through (h) and redesignating paragraphs (i) and (j) as paragraphs (b) and (c).

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

6. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.60 [Amended]

7. By amending § 228.601 (Item 601 of Regulation S–B) in the exhibit table, by removing and reserving exhibit numbers (7), (11), (14), and (28), and by removing and reserving paragraphs (b)(7), (b)(11), (b)(14), and (b)(28).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.501 [Amended]

9. By amending § 229.501 (Item 501 Regulation S–K) by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and in newly designated paragraph (b)(8) by removing the words ‘‘, in red ink’’.

§ 229.601 [Amended]

10. By amending § 229.601 (Item 601 of Regulation S–K) in the exhibit table, by removing and reserving exhibit numbers (6), (7), (11), (14) and (28), and by removing and reserving paragraphs (b)(6), (b)(7), (b)(11), (b)(14) and (b)(28).
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§§ 229.801 and 229.802 [Amended]

11. By amending § 229.801 and § 229.802 by removing and reserving paragraph (a) in both sections, and by removing Industry Guide 1.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

12. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.148 [Removed and reserved]

13. By removing and reserving § 230.148.

14. By amending § 230.252 by revising paragraph (h)(2) to read as follows:

§ 230.252 Offering statement.

* * * * *

(h) Amendments.

(1) * * *

(2) An amendment to include a delaying notation pursuant to paragraph (g)(2) or to remove one pursuant to paragraph (g)(3) of this section after the initial filing of an offering statement may be made by telegram, letter or facsimile transmission. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by filing a signed copy. Such confirmation shall not be deemed an amendment.

§§ 230.300–230.346 [Removed and reserved]

15. By removing the undesignated center heading—Regulation B—and removing and reserving §§ 230.300 through 230.346 (Regulation B) (The undesignated center heading ‘‘Attention Electronic Filers’’ and the paragraph immediately following remain unchanged).

16. By amending § 230.402 by removing the word ‘‘manually’’ from the fourth sentence of paragraph (a), and from the fourth sentence of paragraph (c), and by revising paragraph (e) to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(e) *Signatures.* Where the Act or the rules thereunder, including paragraphs (a) and (c) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the registrant for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

17. By amending § 230.406 by revising the heading ‘‘Preliminary Note’’ to read ‘‘Preliminary Notes’’, by designating the preliminary note as preliminary note 1, adding preliminary note 2, removing from paragraph (a) the words ‘‘or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form’’, and removing paragraph (j) to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

Preliminary Notes: (1) * * *

(2) All confidential treatment requests shall be submitted in paper format only, whether or not the filer is an electronic filer. *See* Rule 101(c)(1)(i) of Regulation S–T (§ 232.101(c)(1)(i) of this chapter).

* * * * *

§§ 230.445–230.447 [Removed and reserved]

18. By removing the undesignated center heading Competitive Bids and removing and reserving §§ 230.445 through 230.447.

§ 230.464 [Amended]

19. By amending § 230.464 by revising the heading to read ''Effective date of post-effective amendments to registration statements filed on Form S–8 and on certain Forms S–3, S–4, F–2 and F–3.'' and by removing from the introductory text the words ''or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form'' and from paragraph (b) the words ''or a Form F–4 registration statement complying with General Instruction F of that Form''.

20. By amending § 230.471 by designating the text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.471 Signatures to amendments.

(a) * * *

(b) Where the Act or the rules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the registrant for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

21. By amending § 230.472 by revising the second sentence of paragraph (b) to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(b) * * * Each such copy of the amended prospectus shall be accompanied by a copy of the cross reference sheet required by Rule 481(a) (§ 230.481(a)), where applicable, if the amendment of the prospectus resulted in any change in the accuracy of the cross reference sheet previously filed. * * *

* * * * *

22. By amending § 230.473 by revising the second sentence of paragraph (c) and by removing from paragraph (d) the words ''or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form'' to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(c) * * * Any such amendment filed after the filing of the registration statement, any amendment altering the proposed date of public sale of the securities being registered, or any amendment filed pursuant to paragraph (b) of this section may be made by telegram, letter or facsimile transmission. * * *

* * * * *

§ 230.494 [Removed and reserved]

23. By removing and reserving § 230.494.

24. By amending § 230.504 by revising paragraph (b)(1) to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met.* (1) To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502(a).

* * * * *

§§ 230.651–230.656 [Removed and reserved]

25. By removing the undesignated center heading and by removing and reserving §§ 230.651 through 230.656 (Regulation F).

§ 230.702 [Amended]

26. By removing § 230.702(T).

§ 230.703 [Amended]

27. By removing § 230.703(T).

§ 230.902 [Amended]

28. By amending § 230.902 at the end of paragraph (a)(1) before the word ''and'', add the words ''the Helsinki Stock Exchange; the Alberta Stock Exchange; the Oslo Stock Exchange; the Mexico Stock Exchange; and the Istanbul Stock Exchange;''.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

29. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

§ 232.311 [Amended]

30. By amending § 232.311 by removing paragraph (c) and redesignating paragraphs (d) through (i) as paragraphs (c) through (h).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

31. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77f, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

32. By amending Form F–6 (referenced in § 239.36) by removing Items 3(e) and 4(a) and by redesignating Item 3(f) as Item 3(e) and Items 4(b) and 4(c) as Items 4(a) and 4(b).

[Note: The text of Form F–6 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 239.37 [Amended]

33. By amending Form F–7 (referenced in § 239.37) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

[Note: The text of Form F–7 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 239.38 [Amended]

34. By amending Form F–8 (referenced in § 239.38) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

[Note: The text of Form F–8 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 239.39 [Amended]

35. By amending Form F–9 (referenced in § 239.39) in Part I, Item 3 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

[Note: The text of Form F–9 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 239.40 [Amended]

36. By amending Form F–10 (referenced in § 239.40) in Part I, Item 4 by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

[Note: The text of Form F–10 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 239.41 [Amended]

37. By amending Form F–80 (referenced in § 239.41) in Part I, Item 3

by removing the words ''Rule 24 of the Commission's Rules of Practice'' from the second sentence and inserting ''Item 10(d) of Regulation S–K'' in its place.

[Note: The text of Form F–80 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 239.101 [Removed and reserved]

38. By removing and reserving § 239.101 and by removing Schedules A, B, C, D and Forms 1–G and 3–G referenced in that section.

§ 239.300 [Removed and reserved]

39. By removing and reserving § 239.300 and by removing Form 1–F.

§ 239.701 [Removed and reserved]

40. By removing and reserving § 239.701 and by removing Form 701.

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

41. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

42. By amending § 240.12b–11 by removing the word ''manually'' from paragraph (b) and by revising paragraph (d) to read as follows:

§ 240.12b–11 Number of copies; signatures; binding.

* * * * *

(d) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder, including paragraph (b) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

43. By amending § 240.13a–13 by revising the section heading and paragraph (c) to read as follow:

§ 240.13a–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this Chapter).

* * * * *

(c) Part I of the quarterly reports on Form 10–Q or Form 10–QSB need not be filed by mining companies not in the production stage but engaged primarily in the exploration for the development of mineral deposits other than oil, gas or coal, if all of the following conditions are met:

(1) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of not more than eight months over the three-year period shall not be a violation of this condition.

(2) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

* * * * *

§ 240.13a–17 [Removed and reserved]

44. By removing and reserving § 240.13a–17.

45. By amending § 240.14d–1 by revising paragraph (d) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(d) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

46. By amending § 240.15d–13 by revising the section heading and paragraph (c) to read as follow:

§ 240.15d–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this Chapter).

* * * * *

(c) Part I of the quarterly reports on Form 10–Q or Form 10–QSB need not be filed by mining companies not in the production stage but engaged primarily in the exploration for the development of mineral deposits other than oil, gas or coal, if all of the following conditions are met:

(1) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of not more than eight months over the three-year period shall not be a violation of this condition.

(2) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

* * * * *

§ 239.15d–17 [Removed and reserved]

47. By removing and reserving § 240.15d–17.

48. By amending § 240.16a–3 by revising paragraph (i) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(i) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

§ 240.16b–1 [Amended]

49. By amending § 240.16b–1 by removing paragraph (c).

§ 240.16b–4 [Removed and reserved]

50. By removing and reserving § 240.16b–4.

51. By amending § 240.24b–2 by adding a preliminary note preceding the text of paragraph (a) and by removing paragraph (g), to read as follows:

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

Preliminary Note

Confidential treatment requests shall be submitted in paper format only, whether or not the filer is required to submit a filing in electronic format.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

52. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

§ 249.310 [Amended]

53. By amending Form 10–K (referenced in § 249.310) by removing general instruction I. and redesignating general instruction J. as general instruction I.

[Note: The text of Form 10–K does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

§ 249.310c [Removed and reserved]

54. By removing and reserving § 249.310c and by removing Form 10–C.

Dated: March 5, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5607 Filed 3–8–96; 8:45 am]

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Monday
March 11, 1996

Part V

Department of Transportation

Federal Highway Administration

Intelligent Transportation Systems; Early Deployment Planning Program; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Systems; Early Deployment Planning Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for information.

SUMMARY: The FHWA is announcing its procedures for implementing the Intelligent Transportation System (ITS) Early Deployment Planning Program. This Program is intended to provide assistance to State and local transportation agencies and Metropolitan Planning Organizations (MPOs) for the development of multi-year strategic deployment plans for ITS in major metropolitan areas. The assistance will take the form of grants which provide funding for planning studies, and development and documentation of strategic deployment plans. The goal is to fund up to 10 metropolitan area studies to be initiated in FY 1996, based on availability of funding.

DATES: Information regarding an area's interest in requesting Early Deployment Planning Program grants should be submitted by May 10, 1996.

ADDRESSES: Federal Highway Administration Division Office in the appropriate State. See Appendix A for a listing of Division Office addresses.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, Office of Traffic Management and ITS Applications, Federal Highway Administration, HTV–3, 400 7th Street SW., Washington, D.C. 20590, 202–366–9228.

SUPPLEMENTARY INFORMATION: The Intelligent Transportation Systems Act of 1991, Part B of Title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), established and provided funding, including planning grants, for ITS activities. Secs. 6055(b) and 6058(b), Pub. L. 102- 240, 105 Stat. 1914, 2192, 2194 (1991)(as amended by the National Highway System Designation Act of 1995, Pub. L. 104–59, 109 Stat. 568 (1995)). Section 6055(b) provides for grants to State and local governments for feasibility and planning studies to develop and implement intelligent transportation systems. The Early Deployment Planning Program implements the planning grants section of the ISTEA. The Early Deployment Planning Program is designed to accelerate the application of ITS technologies in metropolitan areas that have demonstrated a readiness to seriously pursue deployment of ITS applications. Those areas that are ready to participate in the Early Deployment Planning Program will typically have the following general characteristics:

(a) An understanding of local needs,

(b) A demonstrated commitment to good transportation management,

(c) A cooperative relationship between agencies, and

(d) A general understanding of the type of ITS user services which will address local needs.

The Early Deployment Planning Program is intended to provide assistance to these metropolitan areas to develop a strategic deployment plan for ITS that would:

(a) Identify and document applicable ITS user services,

(b) Establish system performance criteria,

(c) Assess the functions and requirements of the system,

(d) Identify and evaluate potential technologies on the basis of performance, compatibility, flexibility, and cost,

(e) Assess potential funding and implementation options, including use of private sector resources, and

(f) Identify time frames for implementation.

The Early Deployment Planning (EDP) Program has targeted the 75 largest metropolitan areas (listed in Appendix B) for development of ITS strategic plans. Sixty-six EDP studies have been completed or are currently underway. Areas not appearing on the appended list but which meet the general characteristics described earlier and which satisfactorily respond to the information requested will also be considered for participation in the Early Deployment Planning Program. Metropolitan areas that demonstrate their readiness and are selected for funding will be contacted for development of a grant proposal. Funds will be obligated through the State Transportation Agency, in cooperation with the MPO, by execution of the grant. Early Deployment Planning funds are available at a maximum Federal share of 80 percent with a 20 percent match from non-Federal sources. Funds will be added to the State's obligation ceiling in the amount of the ITS contribution to approved Early Deployment Planning projects. The goal is to fund up to 10 metropolitan area studies in FY 1996, with priority being given to metropolitan areas listed in Appendix B that have not yet received funding for EDP studies. At this time the FHWA does not anticipate future solicitations for EDP study proposals under this program.

Recipients of Early Deployment Planning Program grants will be evaluated and selected based on responses to this notice by State or local agencies supplying the following information:

A. Information Requested

States and metropolitan areas that are ready to pursue ITS technologies for areawide applications should respond to this announcement by notifying their local FHWA Division Office. The expressions of interest should include the following information:

1. A general explanation of local transportation needs. This may include a description of (a) the broad-based transportation problems in the area (e.g., congestion, safety, commercial traffic), and/or (b) the unique transportation needs of the area (e.g., tourist centers, major employment centers, restrictive topography, or environmental issues).

2. An indication of the local agencies' commitment to good transportation management. This may include a description of (a) current traffic and transit management systems and their capabilities, (b) resource commitments for transportation operations, maintenance, and staffing, (c) transportation projects underway, planned or completed which will support traffic/transit management and/or ITS in the area, and/or (d) an indication of the intent to actively pursue ITS deployment after completion of the planning study.

3. Demonstration of a cooperative relationship between agencies. This may be shown by (a) an expression of interest submitted by a lead agency with endorsements from the other agencies involved in the project, (b) a joint letter of interest from a broad range of agencies (highway, transit, tollway, city, state, MPO, etc.) in the area, and/or (c) descriptions of past or planned joint projects with other agencies.

4. A statement demonstrating a general understanding of the type of ITS user services applicable to the area for its future transportation system (in the next ten years). Areas are encouraged to take a needs-based approach and focus on a broad range of applicable ITS services. Interested agencies are referred to the FHWA publication ''IVHS Planning and Project Deployment Process'' for a suggested approach.

5. Estimated project cost and potential funding sources for the matching portion of the project cost.

The information provided in a State or local agency's expression of interest regarding items one through five will form the basis of the evaluation criteria. The information will be used by FHWA

and Federal Transit Administration (FTA) personnel to determine the area's current state of readiness, its current capabilities, and appropriateness for participation in the ITS Early Deployment Planning Program.

B. General Selection Procedures

Based on the expressions of interest and review of all information available, the FHWA Region Offices will arrange in priority order the areas that they have determined to be ready. Initial selection will be made by a national team (composed of FHWA and FTA headquarters and field personnel) based on available funds. When initial selections are made, selected parties will be asked to prepare a more detailed proposal, which will form the basis for the commitment of funding through execution of a cooperative agreement. Approved study agreements will include a requirement to produce a report which may be given wide distribution in order to assist others who are interested in deployment of ITS services. Implementation of recommendations from the report will be monitored and evaluated.

If a selected area chooses to advertise for consultant services to develop their strategic deployment plan, they are encouraged to consider Small and Disadvantaged Business Enterprise (SBE/DBE) firms, and Historically Black Colleges and Universities (HBCU).

Assistance Provided by FHWA

Technical assistance is available from the FHWA and other sources regardless of the status of an individual metropolitan area relative to ITS deployment. Even though an individual metropolitan area may not be ready to participate in the Early Deployment Planning Program, technical assistance can be provided, as needed, in development of long range strategic plans for deployment of ITS user services. The local FHWA Division Offices will be able to identify specific areas where technical assistance is available.

Appendix A—List of FHWA Division Office Addresses

Alabama (HDA–AL), Mr. Joe D. Wilkerson, Administrator, 500 Eastern Blvd., Suite 200, Montgomery, AL 36117–2018
Alaska (HDA–AK), Mr. Robert E. Ruby, Administrator, 709 W. Ninth Street, Room 851, Juneau, AK 99802–1648
Arizona (HDA–AZ), Mr. Robert E. Hollis, Administrator, 234 N. Central Ave., Suite 330, Phoenix, AZ 85004
Arkansas (HDA–AR), Mr. William D. Richardson, Administrator, Federal Office Bldg., Room 3128, 700 West Capitol Avenue, Little Rock, AR 72201–3298
California (HDA–CA), Mr. Fred J. Hempel, Administrator, 980 9th Street, Suite 400, Sacramento, CA 95814–2724
Colorado (HDA–CO), Mr. George H. Osborne, Administrator, 555 Zang Street, Room 250, Lakewood, CO 80228
Connecticut (HDA–CT), Mr. Donald J. West, Administrator, 628–2 Hebron Ave., Suite 303, Glastonbury, CT 06033
Delaware (HDA–DE), Mr. John J. Gilbert, Administrator, 300 South New Street, Room 2101, Dover, DE 19901–6726
District of Columbia (HDA–DC), Mr. Arthur J. Hill, Administrator, Union Center Plaza, Suite 750, 820 First Street, NE., Washington, D.C. 20002
Florida (HDA–FL), Mr. Jennings R. Skinner, Administrator, 227 N. Bronough St., Room 2015, Tallahassee, FL 32301
Georgia (HDA–GA), Mr. Larry Dreihaup, Administrator, 1720 Peachtree Road NW., Suite 300, Atlanta, GA 30367
Hawaii (HDA–HI), Mr. Abraham Y. Wong, Administrator, Prince Jonah Kuhio Kalanianaole Federal Building, 300 Ala Moana Blvd., Room 3202, Honolulu, HI 96850
Idaho (HDA–ID), Mr. Jack T. Coe, Administrator, 3050 Lakeharbor Lane, Suite 126, Boise, ID 83703
Illinois (HDA–IL), Mr. Michael A. Cook, Administrator, 3250 Executive Park Drive, Springfield, IL 62705
Indiana (HDA–IN), Mr. Arthur A. Fendrick, Administrator, 575 N. Pennsylvania Street, Room 254, Indianapolis, IN 46204–1576
Iowa (HDA–IA), Mr. Ronald R. Salmons, Assistant Division Administrator, 105 Sixth Street, Ames, IA 50010–6337
Kansas (HDA–KS), Mr. David R. Geiger, Administrator, 3300 South Topeka Boulevard, Suite 1, Topeka, KS 66611–2237
Kentucky (HDA–KY), Mr. Paul E. Toussaint, Administrator, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, KY 40602
Louisiana (HDA–LA), Mr. William A. Sussman, Administrator, Federal Building, Room 255, 750 Florida Street, Baton Rouge, LA 70821
Maine (HDA–ME), Mr. Paul L. Lariviere, Administrator, Edmund S. Muskie Federal Building, 40 Western Avenue, Room 614, Augusta, ME 04330
Maryland (HDA–MD), Ms. Susan J. Binder, Administrator, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, MD 21211
Massachusetts (HDA–MA), Mr. Peter C. Markle, Administrator, 55 Broadway—10th Floor, Cambridge, MA 02142
Michigan (HDA–MI), Mr. A George Ostensen, Administrator, Federal Building, Room 207, 315 West Allegan Street, Lansing, MI 48933
Minnesota (HDA–MN), Mr. Alan R. Steger, Administrator, Metro Square Bldg., Suite 490, Seventh & Robert Streets, St. Paul, MN 55101
Mississippi (HDA–MS), Ms. Phyllis E. Young, Administrator, 666 North Street, Suite 105, Jackson, MS 39202-3199
Missouri (HDA–MO), Mr. Gerald J. Reihsen, Administrator, P.O. Box 1787, Jefferson City, MO 65102
Montana (HDA–MT), Mr. Henry D. Honeywell, Administrator, Federal Office Building, 301 S. Park St., Drawer 10056, Helena, MT 59626–0056
Nebraska (HDA–NE), Mr. Ronald W. Carmichael, Administrator, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, NE 68508–3851
Nevada (HDA–NV), Mr. John T. Price, Administrator, 705 North Plaza Street, Suite 220, Carson City, NV 89701
New Hampshire (HDA–NH), Ms. Kathleen O. Laffey, Administrator, Federal Building, Room 204, 279 Pleasant Street, Concord, NH 03301
New Jersey (HDA–NJ), Mr. Dennis L. Merida, Administrator, 840 Bear Tavern Road, Suite 310, Trenton, NJ 08628–1019
New Mexico (HDA–NM), Mr. Reuben S. Thomas, Administrator, 604 W. San Mateo Road, Santa Fe, NM 87505
New York (HDA–NY), Mr. Harold J. Brown, Administrator, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue & North Pearl Street, Albany, NY 12207
North Carolina (HDA–NC), Mr. Nicholas L. Graf, Administrator, 310 New Bern Avenue, Suite 410, Raleigh, NC 27601
North Dakota (HDA–ND), Mr. Thomas Kelly, Administrator, 1471 Interstate Loop, Bismarck, ND 58501–0567
Ohio (HDA–OH), Mr. William C. Jones, Administrator, 200 North High Street, Room 328, Columbus, OH 43215
Oklahoma (HDA–OK), Mr. James K. Erickson, Administrator, 715 S. Metropolitan, Suite 700, Oklahoma City, OK 73108
Oregon (HDA–OR), Mr. David G. Reilly, Assistant Division Administrator, The Equitable Center, Suite 100, 530 Center Street, NE., Salem, OR 97301
Pennsylvania (HDA–PA), Mr. Manuel A. Marks, Administrator, 228 Walnut Street, Room 558, Harrisburg, PA 17101–1702
Puerto Rico (HDA–PR), Mr. Nelson Castellanos, Administrator, Frederico Degetau Federal Building & U.S. Courthouse, Carlos Chardon Street, Room 329, Hato Rey, PR 00918
Rhode Island (HDA–RI), Mr. Gordon G. Hoxie, Administrator, 380 Westminster Mall, 5th Floor, Providence, RI 02903
South Carolina (HDA–SC), Mr. Robert J. Probst, Administrator, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 758, Columbia, SC 29201
South Dakota (HDA–SD), Mr. Donald F. Kamnikar, Administrator, P.O. Box 700, Pierre, SD 57501–0700
Tennessee (HDA–TN), Mr. Dennis C. Cook, Administrator, 249 Cumberland Bend Drive, Nashville, TN 37228
Texas (HDA–TX), Mr. Curtis D. Reagan, Administrator, Federal Office Building, 300 East Eighth Street, Room 826, Austin, TX 78701
Utah (HDA–UT), Mr. Michael G. Richie, Administrator, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118
Vermont (HDA–VT), Mr. William Fung, Engineering Coordinator, Federal Building, 87 State Street, Montpelier, VT 05602
Virginia (HDA–VA), Mr. Roberto Fonseca-Martinez, Administrator, 1504 Santa Rosa Road, Suite 205, Richmond, VA 23229
Virgin Islands (HVI–01), Administrator, U.S. Federal Building & Courthouse, Charlotte Amalie, Room 281, St. Thomas, VI 00801

Washington (HDA–WA), Mr. Gene K. Fong, Administrator, Suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, WA 98501
West Virginia (HDA–WV), Mr. David E. Bender, Administrator, 550 Eagan Street, Suite 300, Charleston, WV 25301
Wisconsin (HDA–WI), Mr. James E. St. John, Administrator, 567 D'Onofrio Drive, Madison, WI 53719
Wyoming (HDA–WY), Mr. Frederick A. Behrens, Administrator, 1916 Evans Avenue, Cheyenne, WY 82001–3764

Appendix B—75 Largest Metropolitan Areas By Population

New York, Northern New Jersey, Long Island, NY–NJ[1]
Los Angeles, Anaheim, Riverside, CA
Chicago, Gary, Lake County, IL–IN–WI[1]
San Francisco, Oakland, San Jose, CA[1]
Philadelphia, Wilmington, Trenton, PA–NJ[1]
Detroit, Ann Arbor, MI[1]
Boston, Lawrence, Salem, MA–NH[1]
Washington, D.C.[1]
Dallas, Fort Worth, TX[1]
Houston, Galveston, Brazoria, TX
Miami, Fort Lauderdale, FL
Atlanta, GA[1]
Cleveland, Akron, Lorain, OH[1]
Seattle, Tacoma, WA[1]
San Diego, CA[1]
Minneapolis, St. Paul, MN–WI
St. Louis, MO–IL[1]
Baltimore, MD[1]
Pittsburgh, Beaver Valley, PA[1]
Phoenix, AZ[1]
Tampa, St. Petersburg, Clearwater, FL[1]
Denver, Boulder, CO[1]
Cincinnati, Hamilton, OH–KY–IN
Milwaukee, Racine, WI
Kansas City MO–KS[1]
Sacramento, CA[1]
Portland, Vancouver, OR–WA[1]
Norfolk, Virginia Beach, Newport, VA[1]
Columbus, OH[1]
San Antonio, TX[1]
Indianapolis, IN[1]
New Orleans, LA[1]
Buffalo, Niagara Falls, NY[1]
Charlotte, Gastonia, Rock Hill, NC[1]
Providence, Pawtucket, Fall River, RI[1]
Hartford, New Britain, Middletown, CT[1]
Orlando, FL[1]
Salt Lake City, Odgon, UT[1]
Rochester, NY[1]
Nashville, TN[1]
Memphis, TN[1]
Oklahoma City, OK
Louisville, KY–IN[1]
Dayton, Springfield, OH[1]
Greensboro, Winston-Salem, High Point, NC[1]
Birmingham, AL[1]
Jacksonville, FL[1]
Albany, Schenectady, Troy, NY
Richmond, Petersburg, VA[1]
West Palm Beach, Boca Raton, Delray, FL
Honolulu, HI[1]
Austin, TX[1]
Las Vegas, NV[1]
Raleigh-Durham, NC[1]
Scranton, Wilkes, Barre, PA[1]
Tulsa, OK
Grand Rapids, MI[1]
Allentown, Bethlehem, Easton, PA–NJ
Fresno, CA
Tucson, AZ[1]
Syracuse, NY[1]
Greenville, Spartanburg, SC[1]
Omaha, NE–IA[1]
Toledo, OH
Knoxville, TN
El Paso, TX[1]
Harrisburg, Lebanon, Carlisle, PA
Bakersfield, CA
New Haven, Meriden, CT[1]
Springfield, MA[1]
Baton Rouge, LA
Little Rock, North Little Rock, AR
Charleston, SC[1]
Youngstown, Warren, OH–PA
Wichita, KS

(Secs. 6055(b) and 6058(b), Pub. L. 102–240, 105 Stat. 1914, 2192, 2194; 23 U.S.C.; 49 CFR 1.48)

Issued on: March 4, 1996.

Rodney E. Slater,

Federal Highway Administration.

[FR Doc. 96–5742 Filed 3–8–96; 8:45 am]

BILLING CODE 4910–22–P

[1] Metropolitan areas that have received ITS Early Deployment Planning funding through prior announcements.

federal register

Monday
March 11, 1996

Part VI

Department of Education

Tribally Controlled Postsecondary Vocational Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year 1996; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.245]

Tribally Controlled Postsecondary Vocational Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

The Secretary intends to distribute all funds available under this program through this competitive grant process and, therefore, it is anticipated that no funds would be reserved to fund additional training equipment costs at a later date.

The Secretary wishes to highlight for potential applicants that this program can help to further the National Education Goals. Specifically, the Tribally Controlled Postsecondary Vocational Institutions Program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: A tribally controlled postsecondary vocational institution, as defined in 34 CFR 410.5, that meets the requirements in 34 CFR 410.2 is eligible for an award under this program.

Deadline for Transmittal of Applications: April 10, 1996.

Available Funds: $2,919,000 for the first 12 months. Funding for the second, third, fourth, and fifth years of the project period for any grant awarded under this competition is subject to the availability of funds and to a grantee meeting the requirements in 34 CFR 75.253.

Applicants should note that Congress has not yet enacted final appropriations for Department of Education programs for fiscal year 1996. As a result of final action, funds available for this competition could be reduced or even eliminated.

Estimated Range of Awards: $1,054,000–$1,800,000 (funding for first 12 months).

Estimated Average Size of Awards: $1,459,500 (funding for first 12 months).

Estimated Number of Awards: A minimum of 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: 5 years.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(4) 34 CFR Part 81 (General Education Provisions Act— Enforcement).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR Parts 400 and 410.

Content of the Application: To receive an institutional support grant under the Tribally Controlled Postsecondary Vocational Institutions Program, an applicant must include the following information in the application:

(a) Documentation showing that the institution is eligible according to the requirements in 34 CFR 410.2.

(b) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(c) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in 34 CFR 410.30.

(d) The institution's Indian student count.

(e) A comprehensive development plan that must address—

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies the institution's distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve, and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors that could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (e)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (e)(6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve the institution's goals and objectives, including personnel, finances, equipment, and facilities.

(11) A detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Carl D. Perkins Vocational and Applied Technology Education Act (Act). The statement must include information on allowable expenses listed in 34 CFR 410.30.

(12) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. If only one or two applicants are eligible, the Secretary selects each eligible applicant. The amount of each grant is determined by the quality of the application, based on the selection criteria, and the respective needs of the applicants. If there are more than two elibible applicants, the Secretary ranks each application using the selection criteria. The Secretary funds two or more applicants. The number of grants made and the amount of each grant is determined by taking into account the quality of the applications and the respective needs of the applicants.

The program regulations in 34 CFR 410.21 assign a maximum of 85 points for these criteria. Further, under 34 CFR 410.20(b) the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Institutional goals and objectives.* (15 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan.* (30 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementation strategy.* (25 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

Additional Factors: After evaluating applications according to the criteria in 34 CFR 410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

In addition to the criteria in 34 CFR 410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.245), Washington, DC 20202–4725.

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.245), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other

Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

e. Notice to all Applicants.

An applicant may submit information on a photostatic copy of the forms in Appendix A. However, each of the pertinent documents must each have an original ink signature. All applicants must submit ONE *original signed application,* including ink signatures on all forms and assurances and SIX *copies of the application.* Please mark each application as original or copy. No grant may be awarded unless a *completed* application form has been received.

For Further Information Contact: Roberta Lewis, U.S. Department of Education, 600 Independence Avenue, SW. (Room 4523—MES), Washington, DC 20202–7242. Telephone (202) 205–5680. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web (at http://www.ed.gov/money.htm). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 2397–2397h.

Dated: March 6, 1996.

Jon Weintraub,

Acting Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000–01–P

Appendix A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 4 5
TITLE: Tribally Controlled Postsecondary Vocational Institutions Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE_____
b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, 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 the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

APPENDIX A

Part II—Budget Information

Instructions for Part II—Budget Information Sections A and B—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for both local and out of State travel of Project Staff. Include funds for at least one trip for two people to attend the Project Director's Workshop.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a cost of $5,000 or more per unit.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period.

6. *Contractual:* Show the amount to be used for: (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. *Construction:* Not Applicable

8. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants and capital expenditures.

9. *Total Direct Cost:* Show the total for Lines 1 through 8.

10. *Indirect Costs:* Indicate the rate and amount of indirect costs.

(Note: Except for grants to Federally recognized Indian tribes, the indirect cost rate cannot exceed 8% of the total direct charges.)

11. *Training/stipend Cost:* Indicate cost per student and number of hours of instruction (minimum wage is the basis for amount per hour—$4.25).

12. *Total Costs:* Show total for lines 9 through 11.

Instructions for Part III—Budget Narrative

Prepare a detailed Budget Narrative for each year of the project that justifies, and/or clarifies the budget figures shown in Section A. Explain:

1. How personnel costs are calculated—provide yearly and/or hourly rates; for other than full-time staff, provide hours per day, week, month, and year.

2. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other costs that may appear unusual;

3. How the major cost items relate to the proposed project activities (refer to application page);

4. The costs of the project's evaluation component;

5. What matching occurs in each budget category.

Please limit this section to no more than five pages.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the *selection criteria*. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly requests you limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively *ALL* pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that:

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (EDGAR Sec. 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria, such as commitment and resources.

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by O.
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
- ☐ a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action:
- ☐ a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type:
- ☐ a. initial filing
- b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

13. Type of Payment *(check all that apply)*:
- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e. deferred
- ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues 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. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

BILLING CODE 4000–01–C

Notice To All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the Federal Register and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional and discouraged.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the requirements of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous preapplication consultation is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we will request the project directors and evaluators of funded projects to attend an annual project directors meeting, you should include annual trips for each to Washington, D.C., in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as ''conditions.'' These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's

success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, ''Assurances—Non-Construction Programs,'' simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the Federal Register, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act) (Public Law 101–392, 104 Stat. 753 (1990) 20 U.S.C. §§ 2301 *et seq.* (Supp. IV) 1992).

(2) State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education Final Regulations, 34 CFR Parts 400 and 410.

(3) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

[FR Doc. 96–5714 Filed 3–8–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
March 11, 1996

Part VII

The President

Presidential Determination 96–12—Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy

Memorandum of February 29, 1996—Delegation of Responsibility for Consultations and Submission of a Written Policy Justification Under Section 604(b(1) and Section 604(b)(5) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996

Presidential Determination 96–13—Certification for Major Narcotics Producing and Transit Countries

Presidential Determination 96–14—Assistance Program for the New Independent States of the Former Soviet Union

Federal Register
Vol. 61, No. 48
Monday, March 11, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96–12 of February 28, 1996

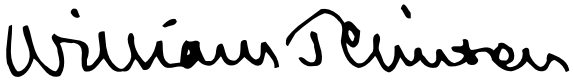
Presidential Determination on the Proposed Agreement for Cooperation Between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and the Argentine Republic Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153 (b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
Washington, February 28, 1996.

[FR Doc. 96–5909
Filed 3–8–96; 8:45 am]
Biling code 4710–10–M

Presidential Documents

Memorandum of February 29, 1996

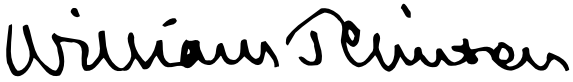
Delegation of Responsibility for Consultations and Submission of a Written Policy Justification Under Section 604(b)(1) and Section 604(b)(5) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions vested in the President by section 604(b)(1) and 604(b)(5) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107).

Any reference in this memorandum to provisions of any Act related to the subject of this memorandum shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provisions.

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



THE WHITE HOUSE,
Washington, February 29, 1996.

[FR Doc. 96–5910
Filed 3–8–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–13 of March 1, 1996

Certification for Major Narcotics Producing and Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, (''the Act''), I hereby determine and certify that the following major drug producing and/or major drug transit countries/territories have cooperated fully with the United States, or taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances:

The Bahamas, Belize, Bolivia, Brazil, Cambodia, China, Dominican Republic, Ecuador, Guatemala, Haiti, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in me by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following countries:

Lebanon, Pakistan, and Paraguay.

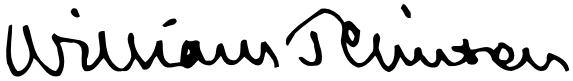
Information on these countries, as required under section 490(b)(3) of the Act, is attached.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in section 490(b).

Afghanistan, Burma, Colombia, Iran, Nigeria, and Syria.

I have made there determinations, taking into account the factors set forth in section 490 of the Act and based on the information contained in the International Narcotics Control Strategy Report of 1996. Because the performance of these countries varies, I have attached an explanatory statement in each case.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, March 1, 1996.

[FR Doc. 96–5911
Filed 3–8–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

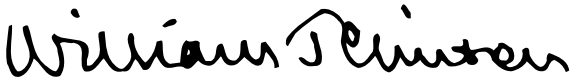
Presidential Determination No. 96–14 of March 1, 1996

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (d) under the heading ''Assistance for the New Independent States of the Former Soviet Union'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107), I hereby determine that it is in the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the Federal Register.



THE WHITE HOUSE
Washington, March 1, 1996.

[FR Doc. 96–5912
Filed 3–8–96; 8:45 am]
Billing Code 4710–10–M

federal register

Monday
March 11, 1996

Part VIII

The President

Notice of March 8, 1996—Continuation of Iran Emergency

Federal Register
Vol. 61, No. 48
Monday, March 11, 1996

Presidential Documents

Title 3—

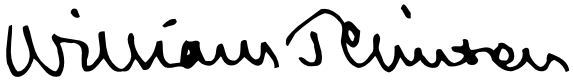
The President

Notice of March 8, 1996

Continuation of Iran Emergency

On March 15, 1995, by Executive Order No. 12957, I declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, I issued Executive Order No. 12959 imposing more comprehensive sanctions to further respond to this threat.

Because the actions and policies of the Government of Iran continue to threaten the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 1996. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. Because the emergency declared by Executive Order No. 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order No. 12170, this renewal is distinct from the emergency renewal of November 1995. This Notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
March 8, 1996.

[FR Doc. 96–5946
Filed 3–8–96;10:56 am]
Billing code 3195–01–P

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Federal Register

Vol. 61, No. 48

Monday, March 11, 1996

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FEDERAL REGISTER PAGES AND DATES, MARCH

7979–8204 1
8205–8466 4
8467–8850 5
8851–9088 6
9089–9320 7
9321–9588 8
9589–9898 11

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6867 8843
6868 8847
6869 8849

Executive Orders:
12131 (Amended by EO 12991) 9587
12957 (Continued by Notice of March 8, 1996) 9897
12959 (See Notice of March 8, 1996) 9897
12990 8467
12991 9587

Administrative Orders:
Memorandums:
February 29, 1996 9889
Notices:
March 8, 1996 9897
Presidential Determinations:
No. 96–10 of February 23, 1996 8463
No. 96–11 of February 23, 1996 8465
No. 96–12 of February 28, 1996 9887
No. 96–13 of March 1, 1996 9891
No. 96–14 of March 1, 1996 9893

4 CFR

28 9089

5 CFR

315 9321

7 CFR

29 9589
31 9589
32 9589
51 9589
52 9589
53 9589
54 9589
56 9589
58 9589
70 9589
160 9589
301 8205
319 8205
457 8851
1487 8207
1491 8207
1492 8207
1495 8207

Proposed Rules:
52 9654
916 8225
917 8225

8 CFR

242 8858

9 CFR

Proposed Rules:
1 9371
3 9371
301 9655
304 9655
305 9655
306 9655
307 9655
310 8892
318 .....8892, 9655
319 8892
325 9655
381 .....8892, 9655

12 CFR

366 9590

Proposed Rules:
3 9114
208 9114
225 9114
325 9114
703 8499

13 CFR

Ch. III 7979
107 7985
115 7985
120 7985
121 7986
125 7986

14 CFR

25 9533
39 .....8209, 8211, 9090, 9092, 9097, 9098, 9371, 9599, 9601, 9604, 9606, 9607
71 .....8859, 9612
121 9612

Proposed Rules:
39 .....8892, 8896, 8897, 9119
71 .....8899, 9655, 9656, 9657, 9658

15 CFR

785 8471

Proposed Rules:
923 9746
926 9746
927 9746
928 9746
932 9746
933 9746

16 CFR

Proposed Rules:
405 8499

17 CFR

Proposed Rules:
210....9848
228....9848
229....9848
230....9848
232....9848
239....9848
240....9848
249....9848

18 CFR

154....9613
157....8213
201....8860
284....8860, 8870

19 CFR

10....7987
113....7987
148....9638

Proposed Rules:
101....8001

20 CFR

368....8213

21 CFR

5....8214, 8472, 9639
73....7990
101....8752
123....9100
136....8781
137....8781
139....8781
164....9323
172....8797
180....7990
310....9570
332....8836
510....8872
520....8872
522....8872
524....8872
880....8432
890....8432
1240....9100

Proposed Rules:
2....8002
54....8502
70....8372
73....8372
74....8372
80....8372
81....8372
82....8372
101....8372, 8750, 8900
178....8372
201....8372
312....8502
314....8502
320....8502
330....8450, 8502
601....8502
701....8372
807....8502
812....8502
814....8502
860....8502
886....9373
1300....8503
1301....8503
1302....8503
1303....8503
1304....8503
1305....8503
1306....8503
1307....8503
1308....8503
1309....8503
1310....8503
1311....8503
1312....8503
1313....8503
1316....8503

22 CFR

40....9325
514....8215

23 CFR

1313....9101

Proposed Rules:
1210....9120

24 CFR

5....9040, 9536
35....9064
92....9036
202....8458
243....9536
842....9536
880....9040
881....9040
882....9040
883....9040
884....9040
885....9040
886....9040
889....9040
904....9040
941....8712
942....9536
950....8712
955....9052
960....9040
962....8814
965....8712
968....8712
982....9040
983....9040
984....8814

Proposed Rules:
250....8901
251....8901
256....8901

26 CFR

1....7991, 9326
20....7991
25....7991
31....9639
602....9336

Proposed Rules:
1....9377, 9659, 9660
301....9660

28 CFR

52....8472

29 CFR

1901....9228
1902....9228
1910....9228
1915....9228
1926....9228
1928....9228
1950....9228
1951....9228

Proposed Rules:
1910....9381
1915....9381
1926....9381

30 CFR

75....9764

Proposed Rules:
250....8534, 8901
251....8901
256....8901
906....8534
936....8536

31 CFR

500....9343
535....8216

Proposed Rules:
357....8420

32 CFR

23....9344
216....0346
706....9104, 9105, 9107

Proposed Rules:
324....8003

33 CFR

4....9264
100....8216, 8217, 8218
130....9264
131....9264
132....9264
137....9264
138....9264
165....8219, 8220, 9348

Proposed Rules:
100....8227, 8229

34 CFR

75....8454
345....8158

40 CFR

52....7992, 7995, 8873, 9350, 9639, 9642, 9644
70....8875
80....8221
112....9646
114....9646
117....9646
152....8876
167....8221
180....9355
185....9357
271....9108
300....7996

Proposed Rules:
52....8008, 8009, 8901, 9125, 9639, 9642, 9644
63....9383, 9532
70....9125, 9661
82....9014
89....9131
90....9131
91....9131
122....8229
123....8229
180....8174, 8901, 8903, 9399
264....9532
265....9532
266....9532
300....8012, 9403
403....8229
501....8229
745....9064

41 CFR

101–71....9110

Proposed Rules:
60–741....9532

42 CFR

57....9532
58....9532

Proposed Rules:
440....9405

43 CFR

Proposed Rules:
Ch. II....8537
14....8538

44 CFR

61....8222
64....7997, 8474

46 CFR

Proposed Rules:
108....8539
110....8539
111....8539
112....8539
113....8539
161....8539
381....9670

47 CFR

0....8475
2....8475
5....8475
21....8475
22....8475
23....8475
25....8475
61....8879
64....8879
73....7999, 8000, 8475, 8880, 8881, 9359, 9360, 9648
76....9361, 9648
78....8475
80....8475
90....8475, 8478
94....8475
95....8475

Proposed Rules:
2....8905
25....8905
73....8014, 8230, 9410, 9411
76....9411, 9671
87....8905

48 CFR

213....9532

49 CFR

382....9546
383....9546
390....9546
391....9546
392....9546
671....9650
1201....9112
1262....9112

Proposed Rules:
171....8328
173....8328
178....8328
191....9132
192....8231, 9132
193....8231
195....8231, 9415
229....8881
571....9135

572.....9135
Ch. X.....9413
1201.....9138
1262.....9138
1312.....9419

50 CFR

17.....9651
260.....9368
261.....9368
262.....9368
263.....9368
264.....9368
265.....9368
266.....9368
267.....9368
285.....8223
290.....8224
351.....9369
380.....8483
650.....8490
651.....8492
655.....8496
661.....8497
672.....8888
675 .....8497, 9498, 8888, 8889, 9113, 9370
683.....8890

Proposed Rules:

17 .....8014, 8016, 8018
23.....8019
260.....9420
651.....8540
663.....8021
675.....8023
686.....8564

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Tuna, Atlantic bluefin fisheries; published 3-4-96

ENVIRONMENTAL PROTECTION AGENCY
Water programs:
Oil discharge program; Federal regulatory review; published 3-11-96

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Pioneer's preference rules; regulatory review; published 2-9-96
Radio stations; table of assignments:
Texas; published 2-5-96
Wyoming; published 2-5-96
Television broadcasting:
Telecommunications Act of 1996--
Sexually explicit adult programming; scrambling or blocking; published 3-11-96
Television stations; table of assignments:
South Dakota; published 2-5-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal regulatory review; published 2-9-96
Lobbying of personnel; requirements; CFR part removed; published 2-9-96

INTERIOR DEPARTMENT
Land Management Bureau
Minerals management:
Oil and gas leasing--
Heavy oil; development promotion and royalty reduction; published 2-8-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Interim listing priority guidance; published 3-11-96

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; published 2-9-96
Vessels; small passenger inspection and certification; published 1-10-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Domestic, flag, supplemental, commuter, and on-demand operations; operating requirements; editorial and terminology changes
Correction; published 3-11-96
Airworthiness directives:
Airbus; published 2-23-96
Boeing; published 2-23-96
European Joint Aviation Requirements; normal, utility, acrobatic, and commuter category airplanes--
Systems and equipment standards; correction; published 2-28-96
Jetstream; published 2-12-96
McDonnell Douglas; published 2-12-96
SAAB; published 2-12-96
Airworthiness standards:
European Joint Aviation Requirements; normal, utility, acrobatic, and commuter category airplanes--
Airframe standards; published 2-9-96
Flight standards; published 2-9-96
Powerplant standards; published 2-9-96
Systems and equipment standards; published 2-9-96
Transport category airplanes--
Discrete gust load design requirements; published 2-9-96

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Federal regulatory review:
Loans under Rail Passenger Service Act of 1970 and regulations under Railroad Revitalization and Regulatory Reform Act of 1976; CFR parts removed; published 2-9-96

TRANSPORTATION DEPARTMENT
Federal Transit Administration
Temporary local match waiver for Sections 9 and 18; CFR part removed; published 3-11-96

TREASURY DEPARTMENT
Customs Service
Organizations and functions; field organization, ports of entry, etc.:
International Criminal Police Organization; port of entry designation; published 3-11-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Olives grown in California; comments due by 3-21-96; published 2-20-96
Onions grown in--
Texas; comments due by 3-21-96; published 2-20-96

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Citrus canker; comments due by 3-22-96; published 1-22-96

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Housing--
Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT
Rural Business and Cooperative Development Service
Program regulations:
Housing--
Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT
Rural Housing and Community Development Service
Program regulations:
Housing--
Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Housing--
Section 515 rural rental housing loans; comments due by 3-18-96; published 1-17-96

AGRICULTURE DEPARTMENT
Import quotas and fees:
Dairy products; comments due by 3-18-96; published 1-18-96

COMMERCE DEPARTMENT
Freedom of Information and Privacy Acts; implementation; comments due by 3-22-96; published 2-21-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 3-21-96; published 2-20-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Defense Authorization Act; implementation; comments due by 3-22-96; published 2-21-96

EDUCATION DEPARTMENT
Special education and rehabilitative services:
Projects with industry program; comments due by 3-22-96; published 1-22-96

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
Washington; comments due by 3-18-96; published 2-16-96
Air quality implementation plans; approval and promulgation; various States:
Florida; comments due by 3-22-96; published 2-21-96
Michigan; comments due by 3-22-96; published 2-21-96
South Carolina; comments due by 3-18-96; published 2-16-96
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
New Mexico; comments due by 3-18-96; published 2-16-96

Clean Air Act:
Acid rain program--
Nitrogen oxides emissions reduction program; comments due by 3-19-96; published 2-2-96
Hazardous waste:
Identification and listing--
Petroleum refining process wastes; land disposal restrictions; comments due by 3-21-96; published 2-13-96
State underground storage tank program approvals--
Maine; comments due by 3-22-96; published 2-21-96
Rhode Island; comments due by 3-21-96; published 2-20-96
Water pollution control:
Water quality standards--
Sacramento River, San Joaquin River, and San Francisco Bay and Delta, CA; surface waters; protection criteria; comments due by 3-19-96; published 12-20-95

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services
Common and private carrier paging, licensing procedures; competitive bidding; comments due by 3-18-96; published 2-16-96
Radio stations; table of assignments:
Arkansas; comments due by 3-21-96; published 2-6-96
Television broadcasting:
Cable television systems--
Cable home wiring; comments due by 3-18-96; published 2-16-96
Telephone and cable telecommunications inside wiring, customer premises equipment; harmonization; comments due by 3-18-96; published 2-1-96

FEDERAL DEPOSIT INSURANCE CORPORATION

General policy:
Fitness for employment; minimum standards; comments due by 3-18-96; published 2-15-96

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:
Audit program revision; comments due by 3-18-96; published 2-1-96

GENERAL ACCOUNTING OFFICE

Bid protest process; comments due by 3-22-96; published 2-21-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Defense Authorization Act; implementation; comments due by 3-22-96; published 2-21-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
Food labeling--
Nutrient content claims; general principles; comments due by 3-20-96; published 12-21-95
Nutrient content claims; general principles; correction; comments due by 3-20-96; published 3-6-96
Human subjects, protection; informed consent; comments due by 3-21-96; published 12-22-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

Organization, functions, and authority delegations:
Senior Biomedical Research Service; comments due by 3-22-96; published 2-21-96

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:
Federal and Indian leases; oil valuation; comments due by 3-19-96; published 12-20-95

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Colorado; comments due by 3-20-96; published 3-5-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Defense Authorization Act; implementation; comments due by 3-22-96; published 2-21-96

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 3-18-96; published 2-15-96

RAILROAD RETIREMENT BOARD

Public information availability; fee schedule; comments due by 3-18-96; published 1-18-96

STATE DEPARTMENT

Removal of alien enemies brought to U.S.; World War II reparations; and disposal of surplus property in foreign areas; CFR parts removed; comments due by 3-22-96; published 2-21-96

TRANSPORTATION DEPARTMENT

Coast Guard

Federal regulatory review:
Electrical engineering requirements for merchant vessels; comments due by 3-18-96; published 2-2-96
Regattas and marine parades:
Annual National Maritime Week Tugboat Races; comments due by 3-18-96; published 1-17-96

TRANSPORTATION DEPARTMENT

Ticketless travel; passenger notices; comments due by 3-19-96; published 1-19-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 3-19-96; published 1-19-96
Beech; comments due by 3-22-96; published 2-9-96
Bellanca, Inc.; comments due by 3-20-96; published 1-22-96
Cessna; comments due by 3-21-96; published 1-22-96
Jetstream; comments due by 3-22-96; published 1-19-96
Class E airspace; comments due by 3-18-96; published 1-31-96
Colored Federal Airways; comments due by 3-21-96; published 2-6-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Meetings:
Mirror systems safety; comments due by 3-22-96; published 2-7-96

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:
Backup witholding, statement mailing requirements, and due diligence; comments due by 3-20-96; published 12-21-95
Income taxes:
Family and Medical Leave Act; cafeteria plans operation; comments due by 3-20-96; published 12-21-95
Loans to plan participants; comments due by 3-20-96; published 12-21-95
Tax exempt section 501(c)(5) organizations; requirements; comments due by 3-20-96; published 12-21-95

TREASURY DEPARTMENT

Government Securities Act of 1986; large position rules financial responsibility and reporting and recordkeeping requirements amendments; comments due by 3-18-96; published 12-18-95

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2196/P.L. 104–113

National Technology Transfer and Advancement Act of 1995 (Mar. 7, 1996; 110 Stat. 775)

Last List March 7, 1996

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–026–00003–4)	5.50	Jan. 1, 1995
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
700–1199	(869–026–00005–1)	20.00	Jan. 1, 1995
1200–End, 6 (6 Reserved)	(869–026–00006–9)	23.00	Jan. 1, 1995
7 Parts:			
0–26	(869–026–00007–7)	21.00	Jan. 1, 1995
27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–026–00009–3)	21.00	Jan. 1, 1995
52	(869–026–00010–7)	30.00	Jan. 1, 1995
53–209	(869–026–00011–5)	25.00	Jan. 1, 1995
210–299	(869–026–00012–3)	34.00	Jan. 1, 1995
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
400–699	(869–026–00014–0)	21.00	Jan. 1, 1995
700–899	(869–026–00015–8)	23.00	Jan. 1, 1995
900–999	(869–026–00016–6)	32.00	Jan. 1, 1995
1000–1059	(869–026–00017–4)	23.00	Jan. 1, 1995
1060–1119	(869–026–00018–2)	15.00	Jan. 1, 1995
1120–1199	(869–026–00019–1)	12.00	Jan. 1, 1995
1200–1499	(869–026–00020–4)	32.00	Jan. 1, 1995
1500–1899	(869–026–00021–2)	35.00	Jan. 1, 1995
1900–1939	(869–026–00022–1)	16.00	Jan. 1, 1995
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–026–00024–7)	40.00	Jan. 1, 1995
2000–End	(869–026–00025–5)	14.00	Jan. 1, 1995
8	(869–026–00026–3)	23.00	Jan. 1, 1995
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–026–00029–8)	30.00	Jan. 1, 1995
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–026–00031–0)	15.00	[6] Jan. 1, 1993
400–499	(869–026–00032–8)	21.00	Jan. 1, 1995
500–End	(869–026–00033–6)	39.00	Jan. 1, 1995
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
1–199	(869–026–00035–2)	12.00	Jan. 1, 1995
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–026–00037–9)	28.00	Jan. 1, 1995
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–026–00040–9)	35.00	Jan. 1, 1995
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
60–139	(869–026–00043–3)	27.00	Jan. 1, 1995
140–199	(869–026–00044–1)	13.00	Jan. 1, 1995
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1995
1200–End	(869–026–00046–8)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–026–00047–6)	15.00	Jan. 1, 1995
300–799	(869–026–00048–4)	26.00	Jan. 1, 1995
800–End	(869–026–00049–2)	21.00	Jan. 1, 1995
16 Parts:			
0–149	(869–026–00050–6)	7.00	Jan. 1, 1995
150–999	(869–026–00051–4)	19.00	Jan. 1, 1995
1000–End	(869–026–00052–2)	25.00	Jan. 1, 1995
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[7] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–026–00116–2)	27.00	July 1, 1995
1926	(869–026–00117–1)	35.00	July 1, 1995
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–026–00124–3)	32.00	July 1, 1995
191–399	(869–026–00125–1)	38.00	July 1, 1995
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
*1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

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