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Monday
March 5, 1984

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Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Commodity Futures
Commodity Futures Trading Commission

Consumer Protection
Consumer Product Safety Commission

Electric Power
Federal Energy Regulatory Commission

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Pension Benefit Guaranty Corporation

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Foreign Banking
Comptroller of Currency

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General Services Administration

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Statement of Policy on Financial Qualifications for Electric Utilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of policy.

SUMMARY: On February 7, 1984, the U.S. Court of Appeals for the District of Columbia Circuit granted a petition by the New England Coalition on Nuclear Pollution (NECNP) which challenged the Commission's rule eliminating financial qualification review requirements for electric utilities. *New England Coalition on Nuclear Pollution* v. *NRC*, No. 82–1581 (D.C. Cir. Feb. 7, 1984). The court found that the rule was not adequately supported by its accompanying statement of basis and purpose, and remanded it to the agency.

In response to this decision the Commission intends to conduct an expedited financial qualification rulemaking to address the problems which the court perceived in the Commission's present rule. The Commission understands from the court's order that the mandate will issue no earlier than 45 days from the date of the court's decision, i.e., not before March 23, 1984. Until then, the present rule remains formally valid. Therefore, the Commission directs its Atomic Safety and Licensing Board and Atomic Safety and Licensing Appeal Panel to continue to treat the rule as valid. The Commission expects to complete an adequate response to the D.C. Circuit's decision before the court issues its mandate.

FOR FURTHER INFORMATION CONTACT: Carole F. Kagan, (202) 634–1493.

Commissioner Asselstine abstains.

Dated at Washington, DC this 27th day of February, 1984.

For the Commission.[1]

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 84–5743 Filed 3–2–84; 8:45 am]
BILLING CODE 7590–01–M

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1984–5]

Communications by Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date.

SUMMARY: On November 2, 1983 (48 FR 50502), the Commission published the text of revisions to 11 CFR 114.3 and 114.4 as transmitted to Congress. These regulations govern the ability of corporations and labor organizations to communicate with their restricted class and the general public in connection with a federal election.

The Commission announces that these regulations are effective as of March 5, 1984.

EFFECTIVE DATE: March 5, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463, (202) 523–4143 or toll-free (800) 424–9530.

SUPPLEMENTARY INFORMATION: 2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to implement Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. The Commission may finally prescribe the regulations in question after they have been before both Houses of Congress for 30 legislative days. The regulations made effective by this notice were transmitted to Congress on October 27, 1983. Thirty legislative days expired in the Senate on February 8, 1984, and in the House of Representatives on February 22, 1984.

[1] Commissioner Gilinsky was not present when this Statement of Policy was approved but had previously indicated his approval.

Announcement of Effective Date

11 CFR 114.3 and 114.4, and conforming amendments to 11 CFR 114.1 (a)(2)(i), (a)(2)(ii), the introductory text of (c) and (c)(2)(iv), 114.5(a) (2) and (1), 114.7 (a), (e) and (h), and 114.8 (h) and (i), as published at 48 FR 50502, are effective as of March 5, 1984.

Dated: February 28, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 84–5662 Filed 3–2–84; 8:45 am]
BILLING CODE 6715–01–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 84–7]

Rules, Policies and Procedures for Corporate Activities; Fiduciary Powers

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule simplifies the approval process for national banks seeking approval to exercise fiduciary powers. The rule eliminates the requirements that a bank file a formal application and publish notice in a newspaper. A notification procedure is substituted for the application. In addition, this final rule amends Part 5 to provide the Office with sufficient flexibility to handle unusual circumstances, and to delegate the approval authority for fiduciary powers to district offices. The final rule benefits national banks and the Office by reducing costs and burdens.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Manager, Policy, or Joseph W. Malott, National Bank Examiner/Policy Analyst, Bank Organization and Structure, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, SW., Washington, D.C. 20219 (202) 447–1184.

SUPPLEMENTARY INFORMATION:

Background

The Office's Corporate Activities Review and Evaluation (CARE) Program, described in 45 FR 68586,

dated October 15, 1980, involves a comprehensive review of the Office's rules, policies, procedures and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE Program are to minimize costs and burdens on applicants, the agency and the public; to provide a better understanding of polices; to modify or eliminate rules, policies, procedures, and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Proposal (12 CFR 5.26)

As part of the ongoing CARE program, the Office issued for public comment a notice of proposed rulemaking (48 FR 44083, September 27, 1983) that proposed to revise the application process a national bank uses to obtain approval to exercise fiduciary powers. The proposal replaced the application process with a notification process and eliminated the requirement that a bank publish notice of an application for fiduciary powers. The proposed rule provided that approval to exercise fiduciary powers could be considered granted 30 days after the bank's notice is received by the Office unless the bank is informed otherwise prior to that time. The proposal also set forth appropriate modifications to the Office's general rules of applicability (12 CFR 5.2 and 5.13) to provide the Office with sufficient flexibility to address unusual circumstances that may arise under the new procedures.

Summary of the Comments

Five comments were received concerning the notice of proposed rulemaking. All commenters supported the proposal.

One commenter suggested that the proposed rule's reference to requests for "limited" fiduciary powers was misleading. Since 1962, it has been the Office's policy to generally grant approval to exercise full fiduciary powers under 12 U.S.C. 92a(a), and to grant "limited" powers only in exceptional cases. This policy reduces the burden on applicants and the Office by generally eliminating the need for new applications and new approvals every time a bank with limited fiduciary powers desires to exercise a new power. Therefore, this final rule revises § 5.26(d) of the proposed rule to clearly state the longstanding Office policy of approving "limited" fiduciary powers only in exceptional cases.

Conforming Amendment to 12 CFR 5.3

In conjunction with the implementation of less burdensome procedures for obtaining approval to exercise fiduciary powers, the Office is delegating the authority to grant approval to District Deputy Comptrollers and District Administrators. The new delegations will reduce the time required to obtain approval in most cases by eliminating the time delays now associated with mailing information back and forth between the Office's Washington headquarters and the district offices. As the new delegations are internal procedural matters of the Office, they are adopted as final rules without prior notice and comment.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–602), the Secretary of the Treasury certifies that the revision of 12 CFR 5.26 will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

The Office has determined that this final rule is not a "major rule" and therefore, does not require a regulatory flexibility analysis.

List of Subjects in 12 CFR Part 5

National banks, Fiduciary powers.

Authority and Issuance

Accordingly, the Comptroller of the Currency amends 12 CFR Part 5 as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. By adding a new § 5.2(g) to read as follows:

§ 5.2 Rules of general applicability.

* * * * *

(g) The Office may delay or disapprove an application or notice submitted under 12 CFR Part 5 on any reasonable grounds the Office shall stipulate when such applications or notices, or the circumstances under which they are considered, are identified by the Office as unusual and warranting special processing.

3. By revising § 5.3(c)(3) to read as follows:

§ 5.3 Corporate activities processing and delegations.

* * * * *

(c) *District offices.*

* * * * *

(3)(i) Subject to the conditions set out in (c)(3)(ii) of this section, each District Administrator is authorized to approve (but not disapprove) the following applications:

(A) To establish domestic branches and seasonal agencies;

(B) To establish CBCT branches;

(C) To change locations of domestic branches and CBCT branches;

(D) To change locations of head offices for which applications must be filed, i.e., changes to locations outside the city, town or village limits of a head office, and changes to unauthorized branch locations within the city, town or village limits of a head office; and

(E) To exercise fiduciary powers.

(ii) Each of the following conditions must exist before a Deputy Comptroller for a District or District Administrator may approve an application to engage in any of the activities set out in (c)(3)(i) of this section:

(A) Applicant bank is not the subject of special supervisory concern and has not been otherwise identified by the Multinational Banking, Special Projects, Customer and Industry Affairs, or Chief National Bank Examiner Divisions as a bank requiring their review and comment;

(B) There have been no substantive protests of the application;

(C) There is no known question concerning the legality of the proposal;

(D) In the case of a bank under the supervision of the Multinational Banking Division, the Deputy Comptroller for Multinational Banking has recommended unconditional approval;

(E) The District Administrator has not noted any significant matters that would make review by the Washington office desirable; and

(F) Any additional requirements imposed by §§ 5.26, 5.30, 5.31, 5.40, and 5.42 of this part have been satisfied.

4. By adding a new § 5.13(e) to read as follows:

§ 5.13 Decisions.

* * * * *

(e) Voiding provision. The Office reserves the right to void as of the date granted, any approval inconsistent with law or regulation which was inadvertently granted through clerical error or material mistake of law or fact.

5. By revising § 5.26 to read as follows:

§ 5.26 Fiduciary Powers.

(a) *Authority:* 12 U.S.C. 92a.

(b) *Rules of general applicability.* Sections 5.8, 5.9, 5.10 and 5.11 do not apply to this section. Fiduciary activities

are subject to the provisions of 12 CFR Part 9.

(c) *Office approval.* The Comptroller of the Currency or an authorized delegate must approve the exercise of fiduciary powers by a national bank.

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the bank. Federal law (12 U.S.C. 92a.), however, requires national banks to seek the prior approval of the Office before offering such services to the public. The Office will grant a permit to exercise fiduciary powers to national banks operating in a satisfactory manner provided that the proposed activities will comply with applicable statutes and regulations and the bank will retain qualified trust management. Generally, the Office will issue permits only for full fiduciary powers. However, the Office may issue permits for limited powers in exceptional cases. A permit may be withheld, conditionally approved, or denied if it does not meet the above conditions. A permit may be delayed if the Office needs further information.

(e) *Procedure.* Banks must submit to the appropriate District Office a letter of intent to exercise fiduciary powers. The letter must be delivered by hand or registered mail, return receipt requested. The letter should contain: (1) A statement that full or limited powers (specify which powers) are requested; (2) an opinion of bank counsel that the proposed activities are not in contravention of state or local law (the citations of applicable laws should be included in the letter); (3) a statement that the capital and surplus of the national bank are not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising fiduciary powers; and (4) sufficient biographical information on proposed trust management to enable the Office to assess their qualifications.

(f) *Decision.* On or before the 30th day after the filing is received by the Office, a decision will be made to grant fiduciary powers or to delay, withhold, conditionally approve, or deny. If the applicant has not received notification on or before the 30th day after the filing was received that further consideration of the filing is required, the applicant may conclude that the request is approved and may proceed to exercise fiduciary powers after the 30th day. The applicant will be informed of the basis for a decision other than approval.

(g) *Permit.* Upon satisfaction of the above conditions, a permit will be issued evidencing approval to exercise fiduciary powers.

(h) *Commencement of business.* If approval is granted, the bank will normally be required to commence fiduciary activities within 18 months from the date of approval.

(i) *Fees.* No filing fee is required to establish a trust department. An investigation may be conducted and the applicant will be charged a fee in accordance with 12 CFR Part 8.

(j) *Forms.* None.

(Approval by the Office of Management and Budget under control number 1557-0034)

Dated: January 9, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-5866 Filed 3-2-84; 8:45 am]

BILLING CODE 4810-33-M

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12 CFR Part 28

[Docket No. 84-6]

Federal Branches and Agencies of Foreign Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is amending the definition of "Federal agency" in its regulation governing Federal branches and agencies of foreign banks. The amended definition states that Federal agencies may not accept deposits. This amendment is required by judicial decision, as discussed in the preamble.

EFFECTIVE DATE: March 5, 1984.

FOR FURTHER INFORMATION CONTACT: Richard H. Cleva, Attorney, Legal Advisory Services Division (202) 447-1880, or William A. Ryback, Director, International Banking Activity (202) 447-0413, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: This amendment changes the definition of a Federal agency to state that a Federal agency does not have the power to receive deposits. It also makes corresponding changes elsewhere in the regulation where deposit taking is mentioned. This change is necessary to conform the regulation to the requirements of the decision in *Conference of State Bank Supervisors* v. *Conover*, No. 81-2256, 715 F.2d 604 (D.C. Cir. 1983). Prior to this court decision, the Comptroller had interpreted sections 1(b)(1), 1(b)(5), and 4(d) of the International Banking Act of 1978, 12 U.S.C. 3101(1), 3101(5), and 3102(d), to prohibit Federal agencies from receiving deposits from citizens or residents of the United States but to permit them to receive foreign-source deposits. The court ruled that the International Banking Act prohibited Federal agencies from accepting any type of deposits. Accordingly, this amendment changes the regulation to state that Federal agencies may not accept deposits.

This amendment is required by the decision cited above and by court order. Accordingly, the Office for good cause finds that notice and comment are unnecessary under the provisions of 5 U.S.C. 553(b)(B). For the same reason, the Office also finds that these amendments may be effective immediately under 5 U.S.C. 553(d)(3).

Special Analyses

Since this amendment is not subject to notice and comment procedures under 5 U.S.C. 553, preparation of a regulatory flexibility analysis is not required. The Office of the Comptroller of the Currency has determined that the amendment is not a "major rule" as defined by Executive Order 12291 and, therefore, a regulatory impact analysis has not been prepared.

List of Subjects in 12 CFR Part 28

Foreign banking, Federal branches and Federal agencies of foreign banks.

Authority and Issuance

For the reasons given in the preamble, 12 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for 12 CFR Part 28 reads as follows:

Authority: Sections 4 and 13(a) of the International Banking Act of 1978 (Pub. L. 95-369), 12 U.S.C. 3101 *et seq.*

2. Section 28.2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 28.2 Definitions.

* * * * *

(b) A "Federal agency" is an office or place of business, licensed by the Comptroller and operated by a foreign bank in any State of the United States, which can engage in the business of banking but cannot exercise fiduciary powers or accept deposits. A Federal agency may, however, maintain credit balances.

(c) A "Federal branch" is an office or place of business, licensed by the Comptroller and operated by a foreign bank in any State of the United States, which can engage in the business of banking, including the exercise of fiduciary powers and the acceptance of deposits.

* * * * *

3. Section 28.101 is amended by revising 3. to read as follows:

§ 28.101 Policy statement on applicability of national banking laws to foreign banks operating at Federal branches and agencies in the United States.

* * * * *

3. *Rights and privileges.* Under the International Banking Act, Federal agencies cannot receive deposits and cannot exercise fiduciary powers. Limited Federal branches can accept only such types of deposits as are permissible to Edge Corporations pursuant to 12 U.S.C. 615 and 12 CFR Part 211. Apart from these exceptions or qualifications, Federal branches and agencies can engage in the same type of business and exercise the same powers as a national bank, subject to the conditions and requirements contained in the statutes and any implementing rules and regulations promulgated by the federal banking authorities.

The basic corporate and banking powers exercisable by a national bank are stated in a general way in 12 U.S.C. 24. In addition, a national bank is specifically authorized, under prescribed conditions, to hold real estate (12 U.S.C. 29); receive interest on loans and evidences of debt (12 U.S.C. 85 and 86); exercise trust powers (12 U.S.C. 92a); make real estate loans (12 U.S.C. 371); pay interest on time and savings deposits (12 U.S.C. 371b); accept drafts or bills of exchange drawn upon it (12 U.S.C. 372, 373); invest in an Edge Corporation (12 U.S.C. 618); and invest in a bank service corporation (12 U.S.C. 1861–1867).

* * * * *

4. Section 28.102 is revised to read as follows:

§ 28.102 Community Reinvestment Act is applicable to insured Federal branches.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) is based upon the principle that federally chartered or insured financial institutions must demonstrate that their deposit facilities" serve the convenience and needs, including the credit needs, of the communities where they are located. Federal agencies by definition cannot accept deposits; Limited Federal branches can accept only such deposits as are permissible to Edge Corporations (generally they will relate to international transactions); and other uninsured Federal branches cannot be engaged in domestic retail deposit activities requiring deposit insurance protection. Such offices of foreign banks thus have severe limitations imposed upon their deposit taking capabilities. The Comptroller believes that the Community Reinvestment Act was not intended to cover this class of institutions.

On the other hand, insured Federal branches can engage in significant domestic retail deposit activity. The Comptroller therefore believes it is appropriate to apply the Community Reinvestment Act, and the implementing regulation at 12 CFR part 25, to such offices of foreign banks. References in 12 CFR Part 25 to "board of directors" and "head office" shall, in the case of insured Federal branches of foreign banks, mean such branches and their designated management personnel.

Dated: February 2, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-5840 Filed 3-2-84; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-4-AD; Amdt. 39-4822]

Airworthiness Directives; Fairchild Models SA226-TC, SA227-AT, SA227-TT, and SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Fairchild Models SA226-TC, SA227-AT, SA227-TT, and SA227-AC airplanes, which requires visual inspection in the cockpit area for hydraulic leaks, oxygen line leakage or deterioration, and of the electrical wire bundles and components for support and proper installation. Reports have been received of hydraulic fluid accumulations and oxygen line leaks and blowouts on Fairchild Model SA227 airplanes. The detection and correction of these conditions will prevent the presence of flammable fluid, leaking oxygen, and a possible ignition source in the cockpit area.

EFFECTIVE DATE: March 9, 1984.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Service Bulletin 24-003 (SA227 series) dated March 21, 1983, and Service Bulletin 24-021 (SA226-TC) dated March 21, 1983, applicable to this AD may be obtained from Fairchild Aircraft Corp., P.O. Box 32486, San Antonio, Texas 78284. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Schilling, Airplane Certification Branch, ASW-150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone (817) 877-2598.

SUPPLEMENTARY INFORMATION: Numerous reports have been received of oxygen leaks in the cockpit area of Fairchild Models SA226-TC and SA227 series airplanes. On one aircraft, the oxygen line blew out at 9,000 feet and depleted the oxygen bottle. Numerous hydraulic fluid leaks at the brake master cylinders have caused accumulations of hydraulic fluid to collect in the containment bags prior to reaching the drains. The FAA believes that inspection and, if necessary, correction of these conditions could prevent the occurrence of fires in the cockpit area. In addition, the manufacturer has published Fairchild Service Bulletin 24-003 (SA227 series) dated March 21, 1983, and Service Bulletin 24-021 (SA226-TC) dated March 21, 1983, which provide instructions for inspection of wires and wire terminals within and below the generator control junction box (J-box), installation of an insulator on the side of this box and spiral wrapping of the wires in this area. This action will preclude shorts in the J-box area which could cause burning of installation and damage to oxygen lines in the forward cockpit area.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring compliance with Fairchild Service Bulletin 24-003 (SA227 series) dated March 21, 1983, and Service Bulletin 24-02 (SA226-TC) dated March 21, 1983, visual inspection in the cockpit area of hydraulic and oxygen lines for leakage or deterioration and of the electrical wire bundles and components for proper support and installation on Fairchild Models SA226-TC, SA227-AT, SA227-TT and SA227-AC airplanes. Because an emergency condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Fairchild (Swearingen): Applies to Models SA227-AT, SA227-TT and SA227-AC (all serial numbers) and Model SA226-TC (Serial Numbers TC398 and above), airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent cockpit fires, accomplish the following:

(a) Upon accumulation of 200 hours' time since new or within 50 hours' time-in-service after the effective date of this AD whichever occurs later and at each 200 hours' time-in-service thereafter:

(1) Visually inspect the hydraulic tubing for leakage in the vicinity of the cockpit side panels and behind the instrument panel on both sides of the aircraft. Open the hydraulic fluid containment bag to inspect the hydraulic lines. Apply maximum pilot effort to the brake pedals while inspecting the brake lines.

(2) Visually inspect the brake reservoir vent area located on the forward pressure bulkhead in front of the pilot for signs of hydraulic fluid contamination.

(3) Before further flight, clean or replace any hydraulic fluid-contaminated structure, material, or equipment and replace any lines or tubing which leak or have stress cracks which could cause future leaks.

(4) Visually check oxygen lines for separation from moving components and for leakage using MIL-L-2556713 leak detector solution or equivalent as specified in Fairchild Maintenance Manual. Minimum clearance between oxygen lines and all moving parts should be at least 2 inches. Give particular attention to the fittings in the vicinity of the cockpit side panels and instrument panel area and the fittings on the oxygen supply line from the oxygen bottle to the cockpit. If leaks are found, prior to further flight correct as necessary. See Fairchild Maintenance Manual Section 35-00-06 (SA226) and Section 35-00-05 (SA227) for proper maintenance of lines and fittings.

Note.—FAA Advisory Circular 43.13-1A, Chapter 10, paragraph 393, and Chapter 8, paragraph 363, contains additional guidance pertaining to these inspections and corrective action.

(5) Visually inspect the electrical wires and their supports in the vicinity of the cockpit side panels and behind the instrument panel on both sides of the aircraft for contact or inadequate clearance between the wires and adjacent components including hydraulic and oxygen lines or structure. It is desirable to maintain a 6-inch clearance between oxygen tubing and electrical wires. If this is not possible, fasten all electrical wires securely so that they are not closer than 2 inches to the oxygen tubing. Add additional supports or reroute as necessary to prevent wire contact or chafing, which may damage the wire insulation, and clean any contamination from the bundles.

(b) Within the next 50 hours' time-in-service after the effective date of this AD:

(1) Visually inspect wires and wire terminations within and below the generator control junction box (J-box) for chafing or damage and replace any damaged wires.

(2) Install phenolic insulator on side of J-box and spiral wrap on wires in accordance with Fairchild Service Bulletin 24-003 (SA227 series) dated March 21, 1983, and Service Bulletin 24-021 (SA226-TC) dated March 21, 1983.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(e) An equivalent method of compliance with this AD may be used when approved by the Manager, Airplane Certification Branch, ASW-150, Southwest Region, FAA, Fort Worth, Texas 76101; telephone (817) 877-2070.

This amendment becomes effective on March 9, 1984.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on February 22, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-5793 Filed 3-2-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ACE-21]

Alteration of Transition Area; Boone, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Boone, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Boone Municipal Airport, Boone, Iowa, utilizing the Boone Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Dwaine Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Boone Municipal Airport, Boone, Iowa, is being established utilizing the Boone NDB as a navigational aid. The establishment of this new instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Boone, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On Pages 56768 and 56769 of the **Federal Register** dated December 23, 1983, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Boone, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., May 10, 1984, by altering the following transition area:

Boone, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Boone Municipal Airport (latitude 42°03'06" N, longitude 93°57'52" W) and within 3 miles each side of the 334° bearing from the Boone NDB (latitude 42°03'17" N, longitude 93°51'06" W), extending from the 5-mile radius to 8 miles northwest of the airport and within 3 miles each side of the 149° bearing from the Boone NDB, extending from the 5-mile radius to 7.5 miles southeast of the airport, and within 2.5 miles each side of the 049° bearing from the Boone NDB extending from the 5-mile radius to 6 miles northeast of the airport, excluding that portion which overlies the Ames, Iowa, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69))

Note.—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. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on February 24, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-5790 Filed 3-2-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

National Technical Information Service

15 CFR Part 17

Appeal Procedures Related To Licensing of Patents Under the Jurisdiction of the Department of Commerce

AGENCY: National Technical Information Service, Commerce.

ACTION: Final rule.

SUMMARY: This new subpart sets forth appellate procedures for patent licensing in the Department of Commerce. This regulation implements Pub. L. 96-517, The Patent and Trademark Amendments of 1980, and the General Services Administration Regulation in 41 CFR Part 101-4 dealing with federally owned inventions in the control of Federal agencies with the exception of the Tennessee Valley Authority. This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce. This rule was published for comment in the **Federal Register** on January 4, 1984. No comments were received within the 30-day comment period.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Michael R. Rubin, 202-377-5394.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce has delegated the responsibility of rendering decisions concerning the licensing of Department patents to the Director of the National Technical Information Service (NTIS). This rule deals with appeals to the Assistant Secretary from that Director's determinations pursuant to 41 CFR Part 101-4.

List of Subjects in 15 CFR Part 17

Inventions and patents, Appeal procedures.

PART 17—[AMENDED]

Subpart C is added to 15 CFR Part 17 as follows:

* * * * *

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

Sec.

17.21 Purpose.
17.22 Definitions.
17.23 Authority to grant licenses.
17.24 Persons who may appeal.
17.25 Procedures.
17.26 Adjudicatory.

Authority: 40 U.S.C. 486(c).

* * * * *

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

§ 17.21 Purpose.

This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce.

§ 17.22 Definitions.

(a) 41 CFR Part 101-4 shall mean the General Services Administration Final Rule concerning "Patents: Licensing of Federally Owned Inventions" which was originally published in the **Federal Register**, 47 FR 152, Friday, August 6, 1982 at pages 34148 through 34151.

(b) Director shall mean the Director of the National Technical Information Service, and operating agency within the U.S. Department of Commerce.

(c) Assistant Secretary means the Assistant Secretary for Productivity, Technology and Innovation who is an officer appointed by the President and confirmed by the Senate and is an official to whom the Director reports within the Department of Commerce.

§ 17.23 Authority to grant licenses.

The Director has been duly delegated authority to make any decision or determination concerning the granting, denial, interpretation, modification or termination of any license of any patent in the custody and control of the U.S. Department of Commerce. The decision and determination of the Director is final and conclusive on behalf of this Department unless the procedures for appeal set forth below are initiated.

§ 17.24 Persons who may appeal.

The following person(s) may appeal to the Assistant Secretary any decision or determination concerning the grant, denial, interpretation, modification or termination of a license:

(a) A person whose application for a license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice published in the **Federal Register** as required by 41 CFR 101-4.104-3(a)(1)(c)(i) or 101-4.104-3(b)(1)(i) and who can demonstrate to the satisfaction of the Assistant Secretary that such person may be damaged by the Director's determination.

§ 17.25 Procedures.

(a) Any appellant party(ies) who was denied a license by the Director under § 17.24(a) shall not be entitled to an adversary hearing. Such party(ies) shall file appropriate documents no later than 30 days from the receipt of the Director's decision unless the Assistant Secretary grants for good cause an extension of time. The notice, in concise and brief terms, should state the grounds for appeal and include copies of all pertinent documents. Accompanying the notice should be concise arguments as to why the Director's decision should be rejected or modified.

(b) The Assistant Secretary shall render a written opinion within 30 days of receiving all required documentation in a non-adversary appeal.

(c) Judicial review is available as the law permits.

§ 17.26 Adjudicatory.

(a) Any appellant party who seeks review of the Director's decision based upon a modification or termination of a license by the Director under § 17.24(b), or who has filed a timely objection and can demonstrate damages as provided in § 17.24(c), shall be entitled to an adversary hearing in accord with the provisions of the Administrative Procedures Act (5 U.S.C. 554-557). A

party may waive an adversary hearing by filing a written waiver with the Assistant Secretary.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Assistant Secretary shall appoint as promptly as possible an Administrative Law Judge who shall hold hearings no later than 45 days from the date of the appointment. The hearings will be conducted in conformity with the objectives of the Administrative Procedure Act. The Administrative Law Judge shall submit a written recommendation to the Assistant Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

(c) The Assistant Secretary shall render a final written decision on behalf of the Department based upon the appeal file which shall include the hearing record, exhibits, written submissions of the party(ies), and the recommendation of the Administrative Law Judge. The Assistant Secretary's decision shall include the reasons which form the basis of the determination. The final decision may uphold, overrule, or modify the Director's decision or take any action deemed appropriate.

(d) Judicial review is available as the law permits.

Dated: February 29, 1984.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 84-5853 Filed 3-2-84; 8:45 am]

BILLING CODE 3510-04-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 8918]

American Home Products Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: On February 7, 1984 the Federal Trade Commission modified the order issued against American Home Products Corp. (48 FR 19360) to permit the company to substantiate superiority or freedom-from-side-effects claims with competent and reliable scientific evidence, as is required of its competitors, Bristol-Myers Co. and Sterling Drug Co. Previously, the company was required to substantiate such claims with two or more well-controlled clinical investigations.

DATES: Modified Order To Cease and Desist issued April 8, 1983. Modifying Order issued February 7, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/PA, Robert C. Cheek, Washington, D.C. 20580, (202) 724-0727.

SUPPLEMENTARY INFORMATION: In the Matter of American Home Products Corporation, a corporation. Codification appearing at 48 FR 19360 remains unchanged.

List of Subjects in 16 CFR Part 13

Drugs, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[Docket No. 8918]

Order Modifying Order To Cease and Desist

In the matter of American Home Products Corporation, a corporation.

In response to the Commission's Order to Show Cause issued January 12, 1984, respondent American Home Products Corporation (AHP) and complaint counsel have consented to modify the Order of April 8, 1983 in this matter to allow AHP to make comparative analgesic efficacy claims under paragraph I(B) that are based on the reasonable basis standard for such claims established in the Comission's decisions in *Bristol-Myers Company*, Docket No. 8917 and *Sterling Drug, Inc.*, Docket No. 8919. The Commission agrees that such modification should be made.

Accordingly, it is hereby ordered that the Order be reopened and paragraph I(B) thereof be modified by adding the word "or" to the end of paragraph I(B)(2) and adding the following new paragraph I(B)(3):

3. Respondent, at the time such representation is made, possesses a reasonable basis for making that representation. A reasonable basis for such a representation shall consist of competent and reliable scientific evidence supporting it.

It is further ordered that with this modification, the Commission's stay of paragraph I(B) is hereby lifted and the entire Order as modified shall take effect 90 days from our January 12, 1984 order, as contemplated by our Stay order of April 8, 1983.

Issued: February 7, 1984.

By the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-5805 Filed 3-2-84; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket 5825]

Beltone Hearing Aid Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Order to set aside.

SUMMARY: The Final Cease and Desist Order issued against Beltone Hearing Aid Company in Docket 5825 (21 FR 1415) has been set aside in light of the Commission's dismissal of the complaint in *Beltone Electronics Corp.* (47 FR 31681), which challenged the use of the same exclusive dealing arrangements prohibited by the order in Docket 5825.

DATES: Final Order issued February 16, 1956. Order To Set Aside issued February 10, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Selig Merber, Washington, D.C. 20580, (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matter of Beltone Hearing Aid Company, a corporation. Codification appearing at 21 FR 1415 is deleted.

List of Subjects in 16 CFR Part 13

Hearing aids, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 3, 38 Stat. 731; 15 U.S.C. 14)

[Docket No. 5825]

Order To Set Aside Order To Cease and Desist

In the matter of Beltone Hearing Aid Co., a corporation.

On February 16, 1956, the Federal Trade Commission issued an order against Beltone Hearing Aid Company (currently known as Beltone Electronics Corporation) in Docket No. 5825 prohibiting Beltone, in the sale of its own brand name hearing aids, from imposing exclusive dealing arrangements upon its dealers.

However, on July 16, 1982, the Commission dismissed the complaint in *Beltone Electronics Corp.*, Docket No. 8929 challenging, among other things, Beltone's use of the same exclusive dealing arrangements prohibited by the order in Docket No. 5825.

On December 7, 1983, the Commission, pursuant to § 3.72(b) of the Commission's Rules of Practice, 16 CFR 3.72(b), issued to Beltone an order to show cause why the proceeding herein should not be reopened to set aside the final cease and desist order in Docket No. 5825, prohibiting Respondent's use of exclusive dealing arrangements. Respondent was provided an

opportunity to object to the proposed set aside of the order against it, and having failed to do so, is now deemed to have consented to such action. In view of the Commission decision in *Beltone*, the Commission believes that this set aside is in the public interest.

Accordingly,

It is hereby ordered that this matter be, and it hereby is, reopened and that the order herein shall be set aside as of the effective date of this order.

Issued: February 10, 1984.

By the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-5806 Filed 3-2-84; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Regulation of Risk of Strangulation Injury Associated With Certain Expandable Children's Enclosures Under Consumer Products Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a final rule to transfer from the Federal Hazardous Substances Act (FHSA) to the Consumer Product Safety Act (CPSA) regulation of a risk of death or injury by strangulation associated with certain expandable children's enclosures, sometimes called "corrals."[1] These products are made from criss-crossed slats of solid material, and may present a risk of strangulation if a child's neck becomes entrapped in an intersection of the slats.

The Commission finds that it is in the public interest to issue this rule because public notification and remedial action can be accomplished more effectively and more expeditiously under the CPSA than under the FHSA with regard to the risk of strangulation associated with the expandable children's enclosures which are subject to the rule and described in this notice.

EFFECTIVE DATE: March 5, 1984.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 15, 1983 (48 FR 27409), the Commission proposed a rule to transfer from the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*) to the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051 *et seq.*) regulation of a possible risk of strangulation that may be associated with certain expandable children's enclosures. These products are made from criss-crossed slats of solid material which are riveted at most crossings to form a continuous circular enclosure. These products are expandable to various diameters, and are intended to serve a purpose similar to that of a playpen: to confine a child within a restricted area, either indoors or outdoors.

When such a product is in use, the slats cross one another and form a series of V-shaped configurations at the top and bottom of the enclosure.

A. Background

In the years 1981 and 1982, the Commission received three reports of deaths of children associated with expandable enclosures. Investigations of these fatalities indicate that the children involved may have slipped while attempting to climb out of the enclosures, catching their necks in one of the V-shaped configurations formed by the crossings of the slats at the top of the enclosure. If a child's feet were not in contact with the ground, and if the angle formed by the crossing of the slats were sufficiently acute, the child's head might not pass through the opening. The weight of the body pressing the neck against the slats of the enclosure may block passage of air, resulting in death or injury by strangulation.

In addition to the three deaths associated with expandable enclosures, the Commission also received a report of a non-fatal accident associated with an expandable enclosure in 1980, in which irreversible brain damage may have resulted from oxygen deprivation after a child's neck became entrapped in the V-shaped opening between two of the slats at the top of an expandable enclosure.

The Commission also has information about four other incidents involving entrapment of children in expandable enclosures, one of which resulted in lacerations to the child's head; the other three incidents resulted in minor injuries or no injuries to the children involved. These four accidents occurred when children put their heads through a diamond-shaped opening formed by criss-crossed slats in the side of the enclosure.

The proposal to transfer regulation of the risk of suffocation injury which may be associated with expandable children's enclosures from the FHSA to the CPSA was published in accordance with provisions of section 30(d) of the CPSA (15 U.S.C. 2079(d)) which states:

> A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act * * * may be regulated under this Act [the CPSA] only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act.

In the notice proposing the transfer rule, the Commission expressed a preliminary finding that transfer of the risk of strangulation injury which may be associated with expandable children's enclosures is in the public interest because notification to consumers and corrective action could be accomplished more effectively and expeditiously by action under the CPSA in the event the Commission believes that such products present a hazard to the public.

B. Regulation Under FHSA

The risks of injury associated with expandable enclosures, described above, could be regulated by the Commission under provisions of the FHSA. The expandable enclosures described in this notice are "articles intended for use by children" as that phrase is used in sections 2(f)1(D) and 3(e) of the FHSA (15 U.S.C. 1261(f)(1)(D), 1262(e)). They may present a "mechanical hazard" as that term is defined in section 2(s) of the FHSA (15 U.S.C. 1261(s)). However, no rule issued under the FHSA to date is applicable to these products.

In accordance with provisions of section 3 (e) through (i) of the FHSA (15 U.S.C. 1262 (e), (f), (g), (h), (i)), the Commission could begin a proceeding for the issuance of a rule to declare that the expandable enclosures described in this notice present a mechanical hazard. If issued on a final basis, such a rule would have the effect of classifying these children's articles as "banned hazardous substances" as that term is used in section 2(q)(1)(A) of the FHSA (15 U.S.C. 1261(q)(1)(A)), and would prohibit the distribution or sale of these products in the United States, as well as their importation into this country. If a children's article presents an "imminent hazard," provisions of section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorize the Commission to issue an immediate order declaring the product

[1] Commissioner Terrence M. Scanlon voted against issuance of this rule and issued a dissenting statement, which is available in the Commission's public reading room, 8th floor, 1111 18th Street, N.W., Washington, D.C., or by calling the Office of the Secretary (301) 492-6800.

to be a banned hazardous substance pending completion of a proceeding to issue a banning rule.

A final rule issued under provisions of sections 3 (e) through (i) of the FHSA would also make the products in question subject to provisions of section 15 of the FHSA (15 U.S.C. 1274). That section authorizes the Commission to determine, after affording all interested persons opportunity for a hearing, that notification to the public of the hazard presented by a product which is a "banned hazardous substance" is necessary in order to adequately protect the public. That section also authorizes the Commission, after affording all interested persons opportunity for a hearing (which could be combined with a hearing regarding the need for public notification), to require the manufacturer, distributor or dealer of a product which is a banned hazardous substance to elect to repair or replace the product, or to refund the purchase price of the product.

However, the provisions of section 15 of the FHSA concerning public notification and corrective action would be applicable to the products which are the subject of this notice only if the Commission had first issued a rule under provisions of sections 3 (e) through (i) of the FHSA to announce the Commission's determination that the products present a mechanical hazard, unless the Commission publishes an order to declare that such products present an imminent hazard to the public health.

A proceeding to issue a rule under provisions of sections 3 (e) through (i) of the FHSA is initiated by publication of an advance notice of proposed rulemaking in the **Federal Register** to invite comments from all interested persons about the risk of injury associated with the product which is the subject of the proceeding and possible means of addressing that risk of injury, including voluntary standards now in existence or which might be developed. If, after consideration of all information received in response to the advance notice of proposed rulemaking, the Commission decides to continue the proceeding, publication of a second notice in the **Federal Register** is required to propose the rule and invite written comments on the proposal. The Commission must then analyze all comments received in response to the proposal; describe the costs and benefits of the rule; again consider alternative means to address the risk of injury, including voluntary standards; and publish a third notice in the **Federal Register** to issue the rule on a final basis.

In summary, the Commission is authorized under the FHSA to issue a regulation declaring expandable enclosures to be banned hazardous substances. The rulemaking must consist of three stages—an advance notice of proposed rulemaking with public comment, a notice of proposed rulemaking with public comment, and a final rule that analyzes the public comments and includes a detailed regulatory analysis. Once rulemaking is completed, a process that could take two or more years, the Commission could initiate a proceeding to seek public notice and recall of the banned enclosures, a process which itself would likely take about one year. In appropriate circumstances, the Commission could declare a product to be an imminent hazard to the public health, either before or during the rulemaking proceeding, which would have the effect of immediately banning the product and allowing the public notice and recall proceeding to be started. Whether or not a product is declared to be an imminent hazard, however, the rulemaking is expected to be continued.

B. Regulation Under CPSA

The CPSA has provisions for requiring public notification of substantial hazards which may be presented by these articles and for ordering corrective action to be taken with regard to them without the necessity of first completing a rulemaking proceeding.

Additionally, the CPSA has provisions which authorize the Commission in certain cases to obtain an administrative order for public notification of the hazard presented by a product and for repair, or replacement of the product, or refund of the purchase price of the product without any necessity of first completing a rulemaking proceeding. Under the FHSA, the Commission may not initiate a proceeding to obtain public notification or corrective action with regard to a hazard presented by a toy or children's article until the Commission has issued a final banning rule (unless the Commission publishes an order declaring the product to be an imminent hazard to the public health).

Section 15 of the CPSA (15 U.S.C. 2064) confers upon the Commission the authority to order public notification of the hazard presented by a product if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that notification is required in order to adequately protect the public from that substantial product hazard. Additionally, section 15 of the CPSA authorizes the Commission to order any manufacturer, importer, distributor, or retailer of a product to elect to repair or replace the product, or to refund the purchase price of the product, if the Commission determines, after affording all interested persons opportunity for a hearing, that the product presents a "substantial product hazard," and that issuance of such an order is in the public interest.

If the products described in this notice were subject to regulation under the CPSA, no requirement for rulemaking would exist in order to invoke the provisions of section 15 of that Act.

Additionally, provisions of section 12 of the CPSA (15 U.S.C. 2061) authorize the Commission to file an action in a United States district court against a manufacturer, importer, distributor, or retailer of a consumer product which presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund of the purchase price. The court also has authority to order a firm to undertake extensive notification efforts to advise purchasers and the general public of the nature of the risk and of the firm's obligation for remedial action. The Commission may file an action under section 12 of the CPSA without any requirement for having first undertaken a rulemaking proceeding. As noted above, no corresponding provisions exist in the FHSA.

In summary, under the CPSA, the Commission may regulate a product in one or more different ways. First, after giving interested persons an opportunity for a hearing, the Commission may order that notice and recall be provided by firms manufacturing, importing, or distributing a product that presents a substantial product hazard. Unlike the FHSA, there are no requirements that the product first be declared a banned hazardous substance or that it first be subject to a consumer product safety rule. Second, the Commission may file an action in a United States District Court if a product presents an imminent and unreasonable risk of death or severe personal injury. The court has the authority to order the recall of the product, its repair or replacement, or refund to the purchase price. Third, the Commission may undertake rulemaking to declare the product a banned hazardous product or to subject the product to a consumer product safety standard.

Because notification to the public of any hazard which may be presented by the products described in this notice and remedial action with regard to those products could be accomplished more effectively and expeditiously under the CPSA than under the FHSA, the Commission preliminarily determined that it would be in the public interest to regulate under the CPSA rather than the FHSA any risk of strangulation which may be associated with the expandable children's enclosures described in this notice and solicited written comments on a proposed transfer rule.

D. Comments on Proposal

In response to the proposal of June 15, 1983, the Commission received one comment from Juvenile Products Manufacturers Association, Inc. That comment set forth many objections to the proposed rule, and urged the Commission not to issue it on a final basis.

The first objection to the proposal made by this comment alleges that the transfer of regulation in this case is "solely for administrative convenience" of the Commission, and for that reason is prohibited by the recent decision of the U.S. Court of Appeals for the Fifth Circuit in *Gulf South Insulation et al.* v. *CPSC*, 701 F.2d 1137 (1983).

As noted in the comment, the notice proposing the transfer rule for expandable children's enclosures contained a discussion of the *Gulf South* decision, and a statement of the Commission's reasons for concluding that the court's interpretation of the provisions of section 30(d) of the CPSA in that case is not applicable to the proposed transfer rule now under consideration.

In the proposal of June 15, 1983, the Commission observed that the action reviewed in the *Gulf South* case was the issuance of a rule under the CPSA banning urea formaldehyde foam insulation. Because the product involved in the *Gulf South* case was not a toy or children's article, the procedures for issuance of the banning rule under the CPSA differed considerably from those required for issuing a ban under the FHSA. The Commission noted that in *Gulf South*, the court expressed particular concern about the "due process" considerations of regulating UF foam insulation under the CPSA as opposed to the FHSA.

However, in the case of a toy or children's article, such as expandable enclosures, the notice of proposal observed that the procedures required to issue a banning rule under the FHSA are almost identical to those required for such a rule under the CPSA.

The proposal also observed that if the Commission sought public notification or remedial action with regard to the risk of strangulation injury associated with expandable enclosures, provisions of section 15 of the CPSA (15 U.S.C. 2064) require an adjudicatory hearing before the Commission could issue any order to require notification of the public or remedial action. Such a hearing would afford any affected person or firm with the "due process" safeguards which the court apparently believed to be lacking in the *Gulf South* case.

Finally, in the notice proposing the transfer rule, the Commission observed that in *Gulf South*, the court had limited its discussion of the requirements of section 30(d) of the CPSA to products which are not "extremely dangerous." The notice of proposal stated that because expandable enclosures have been associated with the deaths of three children since 1981, they are beyond the scope of the discussion of section 30(d) in the *Gulf South* case.

The comment contends that the analysis of *Gulf South* set forth in the proposed transfer rule is faulty in several respects, and that the stress on "due process" protection is "misplaced." The comment states that the rulemaking and adjudicative proceedings of either the FHSA or the CPSA meet constitutional requirements for due process, but argues that the thrust of the *Gulf South* decision is that "the extra procedures of the FHSA, whatever they may be" cannot be discarded "simply for administrative convenience or speed."

The Commission rejects the contention made in the comment under consideration that the interpretation of section 30(d) of the CPSA enunciated in *Gulf South* prohibits issuance of a final transfer rule in this instance.

As stated above and in the notice of proposal, the Commission finds that transfer of regulation of the risk of strangulation injury associated with expandable enclosures is in the public interest because notification to the public and remedial action with regard to these products, if needed to protect the public from any hazard which they present, can be accomplished more expeditiously under the CPSA than under the FHSA. The Commission does not accept the comment's characterization on the basis of its public interest finding as one which is "solely for the administrative convenience" of the Commission.

The Commission finds that expeditious action to prevent death and permanent injury to young children is clearly distinguishable from action taken for "administrative convenience."

The Commission also rejects the contention expressed in this comment that the *Gulf South* decision requires the Commission to observe "the extra procedures of the FHSA" in this instance without regard to the purpose or end which those procedures are intended to serve. The Commission finds the opinion of the court in *Gulf South* to be totally devoid of any language which would support the mechanistic approach to application of section 30(d) of the CPSA advanced in this comment.

The comment also argues that the record of this proceeding contains no factual support for the Commission's statement in the proposal that children's enclosures are potentially "extremely dangerous" products and for that reason outside the scope of the discussion of section 30(d) of the CPSA in the *Gulf South* decision. The comment states that the Commission must perform an analysis of the various types of products which should be considered "extremely dangerous" and distinguish the hazards which they present from those involved with UF foam insulation before it may conclude that expandable enclosures are outside the scope of the discussion of section 30(d) in *Gulf South*.

As stated above and in the notice of proposal, the Commission has received reports of the deaths of three children and of one accident which may have resulted in permanent brain damage to a child, all associated with expandable enclosures and occurring since 1980. The Commission concludes that these reports provide adequate factual support for the statement in the notice of proposal that expandable enclosures are beyond the scope of the discussion of section 30(d) in the *Gulf South* opinion. The Commission rejects the contention made in the comment that it must perform an analysis of all of the various products which may be "extremely dangerous" before it can decide whether the particular products involved in this proceeding are outside the scope of the discussion of section 30(d) in *Gulf South*.

In the notice of June 15, 1983, the Commission stated that it was proposing the transfer of regulation of "the possible risk of strangulation" that may be associated with expandable enclosures. After consideration of the injury information discussed above, the Commission concludes that more than a "possible risk" of strangulation is involved with these products. Consequently, § 1145.13(a) of the rule issued below states that the Commission is transferring regulation of "the risk of strangulation that may be associated with expandable children's enclosures" to the CPSA from the FHSA.

E. Adequacy of FHSA

The comment expresses the view that the decision in *Gulf South* is not the only reason for continuing to regulate expandable enclosures under the FHSA. The comment states that as children's articles, expandable enclosures have always been regulated under the FHSA. The comment outlines the rulemaking and enforcement provisions of the FHSA applicable to children's articles, and urges the Commission to continue regulation of expandable enclosures under the FHSA because the comment contends that the FHSA contains all provisions needed by the Commission to assure the safety of children's products, and at the same time contains protection for manufacturers and the public.

The comment observes that in appropriate cases, section 3(e)(2) of the FHSA (15 U.S.C. 1262(e)(2)) authorizes the Commission to declare children's articles to be "imminent hazards," which has the effect of categorizing them as "banned hazardous substances" pending completion of a rulemaking proceeding.

The Commission considered the possibility of invoking the imminent hazard provisions of the FHSA before proposing the transfer rule (see 48 FR 27409) and again before deciding to issue this rule on a final basis. The Commission once more observes that some products may present a "substantial product hazard" warranting issuance of an order for public notification and corrective action under section 15 of the CPSA without amounting to an "imminent hazard" as that term is used in section 3(e)(2) of the FHSA. The Commission reaffirms the conclusion expressed in the notice of proposal that notwithstanding the "imminent hazard provisions" of section 3(e)(2) of the FHSA, use of the procedures of the CPSA may lead to more effective and expeditious notification and corrective action in the case of children's expandable enclosures than might be obtained by following the procedures of the FHSA.

The comment states that the Commission's proposal to transfer regulation of risks of strangulation injury associated with expandable enclosures to the CPSA was made "for no apparent reason other than the allegation that the procedures of the FHSA are more time consuming than those of the CPSA."

Again, the Commission does not accept this characterization of the basis for its finding of public interest in transferring regulation of expandable enclosures to the CPSA. As expressed in the proposal, and in this notice, the Commission's finding of public interest for the issuance of the transfer rule published below is that protection of the public from any hazard presented by expandable enclosures can be accomplished more effectively and expeditiously under the CPSA than under the FHSA. In reaching this conclusion, the Commission carefully considered the provisions of the FHSA and the CPSA before proposing the transfer rule, and again before deciding to issue the rule on a final basis.

F. Economic Impact on Small Businesses

The comment under consideration also objects to issuance of a final transfer rule because the Commission has not prepared an initial analysis of the anticipated effect of the proposed rule on small businesses in accordance with provisions of section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603).

The comment states that some of the firms which manufacture expandable enclosures are small entities (a term used in the RFA which includes small businesses). The comment alleges that if the transfer rule is issued on a final basis and action is taken under provisions of section 15 of the CPSA (15 U.S.C. 2064) to order public notification or corrective action with regard to any hazard presented by expandable enclosures, manufacturers of those products will lose procedural protections afforded by the rulemaking requirements of the FHSA. The comment argues that such a result will have a substantial impact on these firms.

As noted in this comment, section 605(b) of the RFA (5 U.S.C. 605(b)) provides that an agency is not required to prepare an initial analysis of the anticipated impact of a proposed rule if it certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small businesses.

In the proposal of June 15, 1983, the Commission made the certification required by section 605(b) of the RFA, stating that the rule, if issued on a final basis, will not impose any legal obligation on any person or firm. The proposal observed that if the Commission issues the rule on a final basis and then determines that it should act to address any risk of injury transferred by that rule, the Commission will be required to initiate and follow through to completion appropriate judicial or administrative proceedings under one or more sections of the CPSA before it can impose any obligation on any person or firm.

Although the comment contends that the proposal "indicates that the Commission intends to act pursuant to section 15 of the CPSA," neither the proposal nor the rule issued below will cause any action to be taken under section 15 of the CPSA or under any other provision of that act.

While the provisions of section 15 of the CPSA were discussed in the proposal and cited as a factor in the Commission's decision to propose the transfer rule, the notice of proposal also discussed the possibility of rulemaking under provisions of sections 7, 8, and 9 of the CPSA (15 U.S.C. 2056, 2057, 2058).

If the Commission undertakes any rulemaking proceeding under the CPSA with regard to any risk of strangulation injury associated with expandable enclosures, the Commission will comply with all applicable provisions of the RFA.

G. Desirability of Rulemaking

The comment under consideration also states that the Commission should address any risk of injury associated with expandable enclosures by rulemaking, or by reliance on voluntary action by manufacturers of these products. The comment states that because all expandable enclosures are of "generic design," any action taken by the Commission to address a risk of injury presented by any of these products will necessarily have an industry-wide effect.

Because the rulemaking provisions of the FHSA which are applicable to children's articles are substantially similar to the rulemaking provisions of the CPSA, the comment argues that no reason exists to transfer regulation from the FHSA to the CPSA.

In addition to the generic design of all expandable enclosures, the comment cites the following additional factors as supporting the desirability of rulemaking, as distinguished from adjudication, to address any risk of injury which may be associated with expandable enclosures:

1. Any action taken to address such risks of injury would be a change in existing law and public policy because those products are not now in violation of any standard or banning rule;

2. Adjudicative proceedings under section 15 of the CPSA would have a retroactive effect because they would be applicable to products already manufactured and sold; and

3. Adjudicative proceedings under provisions of section 15 of the CPSA would exclude various parties including consumers, consumer groups, pediatric experts, industry, and the public at large from participation.

The comment also states that several judicial decisions require the Commission to proceed by rulemaking rather than by adjudication if the Commission seeks to "change the law and establish rules of widespread application," citing three cases decided by the U.S. Court of Appeals for the Ninth Circuit: *Ford Motor Co.* v. *FTC*, 673 F.2d 1008 (1981); *Patel* v. *INS*, 638 F.2d 1199 (1980); and *Ruangswang* v. *INS*, 51 F.2d 39 (1978); and one decided by a U.S. District Court: *Pharmaceutical Manufacturers Association* v. *Finch*, 307 F. Supp. 858 (D. Del. 1970).

Finally, the comment urges the Commission to rely on voluntary action proposed by manufacturers of expandable enclosures to address any risks of injury presented by those products. The comment states that voluntary action by manufacturers would make the proposed transfer rule unnecessary because no further mandatory action of any kind would be needed.

The objections to issuance of a final transfer rule made in this portion of the comment assume that if the Commission issues such a rule, it will initiate one or more adjudicative provisions of section 15 of the CPSA, and take no other action.

As indicated by this comment, the possibility exists at this time that voluntary action could be taken by manufacturers of expandable enclosures which would eliminate the necessity for any type of regulatory activity by the Commission with regard to their products. In such an event, the Commission, after issuing a final transfer rule, would do nothing more.

The possibility also exists that after issuing the final transfer rule, the Commission might initiate one or more adjudicative proceedings under section 15 of the CPSA *and* begin a proceeding for the issuance of a consumer product safety rule applicable to children's expandable enclosures. The Commission may determine that one or more adjudicative proceedings under section 15 of the CPSA are needed to obtain public notification and remedial action with regard to products which are in channels of distribution and in the possession of consumers. At the same time, the Commission might also determine that issuance of a consumer product safety rule may be necessary to affect future production of such products.

In view of all possible actions which could be taken under various provisions of the CPSA, the Commission concludes that the cases and other authority cited in this comment do not preclude issuance of a final transfer rule in accordance with section 30(d) of the CPSA in this proceeding.

With regard to the contention made in this comment that various parties, including consumers, consumer groups, pediatric experts, industry, and the general public, would be excluded from participation in an adjudicative proceeding under section 15 of the CPSA, the Commission observes that before public notification or corrective action can be ordered under that section, the Commission must afford opportunity for a hearing to "interested persons, including consumers and consumer organizations." See sections 15 (c) and (d). Additionally, the Commission's rules of practice for adjudicative proceedings (16 CFR Part 1025), which govern hearings in proceedings under section 15 of the CPSA, provide at section 1025.17 for intervention by "any person who desires to participate as a party" in such a proceeding. See 16 CFR 1025.17(a). For these reasons, the Commission concludes that if it initiates any proceeding under section 15 of the CPSA concerning any expandable enclosure, all interested persons will have opportunity to participate in any hearing which may be conducted.

As noted above, the comment cites three decisions by the U.S. Court of Appeals for the Ninth Circuit in support of the contention that the Commission is obligated to proceed by rulemaking in this instance because any action taken with regard to children's expandable enclosures will have "widespread application."

However, the comment does not discuss two other cases in which the same court recently stated that the decision of whether to establish administrative policies by adjudication or by rulemaking lies with the discretion of the agency: *Saavedra* v. *Donovan*, 700 F.2d 496, at 499 (1983); and *Montgomery Ward & Co.* v. *FTC*, 691 F.2d 1322, at 1328 (1982). In both of these cases, the court stated that its authority to set aside an agency's decision to announce and implement policy by adjudication is limited to those instances in which such a decision amounts to an abuse of discretion by the agency.

The decisions in *Saavedra* and *Montgomery Ward* are consistent with those of the United States Supreme Court in *NLRB* v. *Bell Aerospace*, 416 U.S. 267 (1974); *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969); *FTC* v. *Universal-Rundle Corp.*, 387 U.S. 244 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411 (1958); and *SEC* v. *Chenery*, 332 U.S. 194 (1947).

The Commission has carefully considered the nature and severity of the risk of injury presented by children's expandable enclosures; provisions of the FHSA and the CPSA which could be invoked to address that risk of injury; the need of the public for protection from the risk of injury; the interests of manufacturers, importers, distributors, and retailers of children's expandable enclosures; all issues raised by the comment received in response to the proposed transfer rule; and applicable judicial decisions. After consideration of all these factors, the Commission concludes that to the extent that issuance of the final rule published below may result in the announcement or implementation of policy by adjudication, the decision to issue the rule is an exercise of sound discretion.

H. Effective Date

The Administrative Procedure Act requires at 5 U.S.C. 553 that a "substantive rule" must be published at least 30 days before its effective date, unless the agency finds for good cause that an earlier effective date is needed, and publishes that finding with the final rule.

As previously stated, the rule issued below will not, by itself, impose any new requirement or obligation on any person or firm. The rule simply announces that if the Commission takes action with regard to certain children's expandable enclosures, it will do so under provisions of the CPSA rather than those of the FHSA. Any action the Commission might take would provide adequate notice and opportunity to respond.

For this reason, the requirement of 5 U.S.C. 553 for publication of a substantive rule at least 30 days before its effective date is not applicable. The rule issued below shall become effective immediately.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

Conclusion

The Commission concludes that if regulation of the risk of injury presented by certain expandable children's enclosures is necessary at all, it would be in the public interest to regulate such risk under the CPSA rather than under the FHSA. The FHSA would allow the product to be banned by a rulemaking procedure that would likely take at least two years. Following that, the Commission could, if appropriate begin a proceeding to order firms to give notice of the risk and to recall the product, a process which itself could

take about one year. Thus, if public notice and recall were found to be the appropriate remedies, it would take about three years to obtain these remedies under the FHSA. Although the process could be shortened, as discussed above, by declaring the product to be an imminent hazard to the public health, the Commission does not believe, based on presently available information, that that would be an appropriate approach. Moreover, an imminent hazard declaration would require a subsequent rulemaking to ban the product, and such a banning action is not appropriate or necessary here since it appears that manufacturers have voluntarily ceased production of the product. Under the CPSA, as discussed above, no rulemaking is necessary before public notice or recall is sought. Thus, if public notice or recall is found to be necessary because the product presents a substantial product hazard, either or both could be obtained at least two years sooner under the CPSA.

Therefore, after consideration of the proposal, written comment received in response to the proposal, and other relevant information, discussed above, the Commission hereby amends Part 1145 of Title 16 of the Code of Federal Regulations by adding a new § 1145.13 to read as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

§ 1145.13 Certain expandable children's enclosures; risk strangulation.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act, rather than under the Federal Hazardous Substances Act, the risk of strangulation that may be associated with expandable children's enclosures made from criss-crossed slats of solid material.

(b) Therefore, if the Commission finds regulation to be necessary, any such expandable children's enclosure shall be regulated only under one or more provisions of the Consumer Product Safety Act.

(Sec. 30(d), Pub. L. 92-573, 86 Stat. 1231, as amended Pub. L. 94-284, 90 Stat. 510, Pub. L. 97-35, 95 Stat. 703, 752 (15 U.S.C. 2079(d)))

Effective date: This amendment shall be effective on March 5, 1984.

Dated: February 28, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-5771 Filed 3-2-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM83-62-001 and 002; Order No. 352-A]

Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities; Order Denying Requests for Rehearing

Issued: February 29, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying requests for rehearing.

SUMMARY: On December 7, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 352 (48 FR 55429, December 13, 1983), a final rule amending § 35.14 of the Commission's regulations. The amended regulations broaden the treatment of purchased power expenses in the fuel cost adjustment clause used by electric utilities in jurisdictional rate schedules. Two requests for rehearing of Order 352 were filed. On February 6, 1984, the Commission issued an order granting rehearing for purposes of further consideration (49 FR 4936, February 9, 1984) in order to have sufficient time to consider the applications.

In summary, the rehearing applications allege that the Commission: (1) Erred in allowing fuel clause recovery of purchase expenses if the nature of the purchase changes from "economy" to "reliability" during its term; (2) erred in not requiring all costs avoided due to an economic purchase to be credited to the fuel clause; (3) erred in not requiring interest on all overcollections; (4) did not provide adequate enforcement mechanisms; and (5) erred in not requiring coordination sales revenue to be credited to the fuel clause. Rehearing is denied on all five issues.

The Commission also received a motion for clarification of: (1) The burden of proof assignment if a wholesale customer questions whether a purchase meets the conditions required by the rule for fuel clause treatment; and (2) whether the rule requires an after-the-fact evaluation of a purchase's economics using actual instead of forecasted avoided costs. The motion is denied.

EFFECTIVE DATE: February 29, 1984.

FOR FURTHER INFORMATION CONTACT: Wilbur C. Earley, (202) 357-8158 or Robert S. Angyal, (202) 357-8228.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) denies the requests for rehearing of Order No. 352.

I. Background

On December 7, 1983, the Commission issued Order No. 352, a final rule amending § 35.14 of the Commission 's regulations.[1] The amended regulations broaden the treatment of purchased power expenses in the fuel cost adjustment clause used by electric utilities in jurisdictional rate schedules. The new rule allows electric utilities to recover all expenses associated with purchased power of less than twelve months' duration through fuel clause adjustments if two conditions are met. First, the total cost of the purchase must be less than the buyer's total avoided variable cost. This is the rule's "economic criterion." And second, the purpose of the purchase must be solely to displace higher-cost generation. The second condition excludes reliability purchases, i.e., purchases made to maintain reserve levels or otherwise cure a capacity deficiency. This is the rule's "reserve capacity criterion." The amended regulations were effective on February 13, 1984.

On January 6, 1984, applications for rehearing of Order 352 were filed by Wholesale Customers and by Public Systems. In addition, Public Systems moved for clarification of certain aspects of the rule. On February 6, 1984, The Commission issued an Order Granting Rehearing for Purposes of Further Consideration in order to have sufficient time to consider the rehearing applications.[2]

The petitioners raised five objections to the final rule as grounds for rehearing. Upon review, the Commission finds that, for the reasons discussed below, none of the argument warrants amendment of the final rule.

II. Rehearing Issues

A. Interest on Overcollections

Under the amendments embodies in Order 352, non-fuel purchased power charges can be flowed through the fuel clause as long as a purchase is projected to satisfy the economic criterion at the time it starts. If, however, at the end of a purchase, the total purchase cost exceeds the avoided variable cost, the buyer must credit the excess amount to fuel clause collections in the first

[1] *Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities*, 3 FERC Stat. & Reg. ¶30,525 (1983), 48 FR 55429 (December 13, 1983).

[2] 49 FR 4936, February 9, 1984.

adjustment period after the end of the purchase. As long as the credit is made in the first post-purchase adjustment period, interest on the amount is not required.[3]

Public Systems argue that the Commission erred in not requiring interest on all overcollections. Public Systems fault our decision in three respects. First, they argue that there is no logical connection between a utility's bearing the excess costs of an uneconomic purchase and denying ratepayers the interest on overcollections. Second, they assert that the overcollections and associated interest could be substantial because purchases of up to one year's duration might be involved. And third, Public Systems contend that not requiring interest on overcollections is tantamount to a free loan to utilities and the Commission has thus created "an incentive for the utilities to guess wrong" about the economics of potential purchases.[4]

We are not persuaded by Public Systems' arguments. In attacking the logic of our decision, Public Systems quote a portion of Order No. 352 that bears repeating:

> Economic purchases under this rule are solely to lower costs. A purchasing utility is thus only trying to lower rates for its native load customers. If unforeseen circumstances render uneconomic what was intended to be an economic purchase, the utility's stockholders must pay the excess charges. We think the ratepayers should therefore forego the interest on the overcollections.[5]

The logic supporting our decision on the interest issue is a balancing of ratepayer and stockholder interests, just as is our decision on requiring post-purchase adjustments in the first place. There is absolutely no benefit to stockholders as a result of a utility's purchasing economic power and recovering the costs through fuel clause adjustments. If a purchase is actually economic, the utility recovers the costs incurred in making the transaction. If a purchase turns out to be uneconomic, the stockholders absorb the difference between the purchase cost and avoided costs. The utility would not even enjoy the time value of the excess collection because all money collected must be used to periodically pay the seller of the economic power.[6] Public Systems are wrong in their argument that the overcollections are free loans that create an incentive for utilities to guess wrong about the economics of potential purchases. There simply are no free loans. Even if there were, it would be irrational for a utility to intentionally guess wrong because the uneconomic portion of the purchase costs that it must absorb would certainly be greater than any avoided interest costs.

We think that the balance of interests that results from our decision is fair and equitable. We do not expect the economics of the purchases involved here to go bad very often. And if one does, stockholders have far greater risk exposure, and for no possible gain, than customers. The utility loses the entire amount of the excess above avoided costs that was collected, while customers lose only the interest. Moreover, we continue to think that any overcollections under the rule will not be significant. Public Systems assert that such amounts could be substantial and advance a worst-case hypothetical example. They offer no evidence, however, on the propensity of economic purchases to go bad or the degree to which such purchases are likely to be uneconomic.

The Commission denies rehearing on this issue. We think that, on balance, the benefits that customers are likely to enjoy as a result of this rule's eliminating a disincentive from a utility's pursuing a least-cost purchasing strategy will far outweigh the value of foregone interest on any excess collections. The rule does, of course, require utilities to pay interest on any credits not made in the first post-purchase adjustment, thus giving them an incentive to make refunds promptly.

B. Fuel Clause Recovery if the Nature of a Purchase Changes From "Economy" to "Reliability"

The reserve capacity criterion of the rule must, at the outset of a purchase, be projected to be satisfied for the duration of the purchase. Non-fuel charges may continue to be recovered through the fuel clause if, during the term of the purchase, the reserve capacity criterion is not satisfied without the capacity involved in the purchase.

Public Systems argue that if the nature of a purchase changes from economy to reliability, the non-fuel charges should not be recovered through the fuel clause, but rather should be borne by a utility's stockholders. Public Systems feel that the Commission's reasoning on this issue shows concern for protecting stockholders but little concern for the penalties and burdens imposed on customers.

We disagree and stand by our reasoning in Order No. 352.[7] We recognized that if the capacity involved in an economic power purchase is required for reliability reasons after a purchase starts, the utility could receive a subsidy from customers for the period of insufficient reserves. We also pointed out, however, that subsidies could flow the other way as well. Suppose a utility was making a reliability purchase not reflected in base rates with a total cost less than its avoided costs. If, during the transaction, the purchase is no longer needed for reliability reasons, it would then become an economy purchase and shareholders would be subsidizing customers. The likelihood of either of these possibilities, however, seems small.

Order No. 352 also discussed why disallowing fuel clause recovery of non-fuel charges if the nature of a purchase changes could be inequitable to the buying utility's stockholders. Public Systems thought that our explanation was deficient. We will expand upon it.

The purpose of a particular purchase—i.e., economy or reliability—affects how the purchaser views the prices of the energy and capacity components. If the utility has a reserve deficiency, it needs to buy capacity only. Thus, the utility will search for the cheapest capacity available. The associated energy price is not important because it probably will not be incurred. With an economy purchase, on the other hand, the buyer is concerned with whether the total cost of the purchase is less than avoided costs. The mix of the purchase cost—capacity and energy—is not important.[8]

Suppose a utility has made an economic purchase that qualifies under the rule for fuel clause cost recovery. The purchase will likely involve relatively expensive capacity but very low-cost energy. Now assume there is an unexpected outage on the buyer's

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[3] Section 35.14(a)(12)(iv) of the amended regulations. 48 FR 55437.

[4] Public Systems characterize the excess collections as "charges which were not properly recoverable under the wholesale fuel clause." Request for rehearing at 7. This is wrong. The amended regulations allow a utility to recover the costs of an economic power purchase through the fuel clause as long as the purchase, when initiated, is projected to be economic. § 35.14(a)(12)(iii). There is thus nothing improper in a utility's collecting such costs even if the purchase eventually turns out to be uneconomic.

[5] 48 FR 55433, quoted in Request for rehearing at 7.

[6] An "overcollection" here is thus not an over-recovery of incurred costs.

[7] See 48 FR at 55432–55433.

[8] Prior to this rulemaking, the purchaser *would* care about the mix of capacity and energy charges because the Commission's old regulations did not allow capacity and other non-energy charges to be recovered through the fuel clause. This tended to distort the economics of a utility's decision to purchase power. See the discussion in the Notice of Proposed Rulemaking in this docket, 4 FERC Stat. & Reg. ¶ 32,315 at 32,602–04 (1983). Under the new rule, that distortion is removed.

system such that the reserve capacity criterion is not satisfied without the purchase, but the capacity involved in the purchase is sufficient to satisfy the reserve criterion. If the rule disallows the non-fuel costs of the purchase, the buyer's stockholders will absorb the non-fuel charges.

As our original order made clear, shareholders should be at risk for reliability deficiencies. But the level of non-fuel costs involved in an economic purchase is potentially greater than the cost of a capacity-only purchase that could be made to correct a reserve deficiency. Public Systems' suggestion creates a perverse situation. The utility that attempted to lower ratepayer costs by making an economy purchase is "rewarded" by paying a higher capacity deficiency penalty than if the economic purchase had not been made. This could be a deterrent to economic purchases, and is thus contrary to the intent of this rulemaking.

The buyer in this situation could minimize its losses by purchasing some very cheap capacity solely to satisfy its reserve capacity criterion independently of the economy purchase. The economy purchase costs could then continue to be recovered through the fuel clause. Stockholders will have to absorb the capacity charges of the second purchase, but those charges are likely to be much less than the nonfuel charges of the economy purchase. In this case, the effect of disallowing fuel clause recovery of nonfuel charges is that stockholders are hurt by the amount of the reliability purchase's capacity charges. Ratepayers were not helped and system reliability was increased unnecessarily and uneconomically. We see no sense in this. The aim of this rule is to promote economic efficiency, not diminish it or needlessly penalize stockholders.

Another consideration here is that in the event of an unplanned outage that causes a reserve deficiency, the benefit to ratepayers of an economy purchase with capacity would probably increase. The loss of a system generation resource would probably cause the costs of serving load to increase. As a result, the difference between the buyer's avoided costs and the purchase cost—i.e., the purchase's benefit—would correspondingly increase. Forcing stockholders to absorb the non-fuel charges of the purchase would unduly further enlarge the ratepayers' benefits.

Public Systems also argue that allowing fuel clause recovery of the non-fuel charges of an economy-turned-reliability purchase could result in an over-recovery of costs if the reliability purchase costs were already contained in base rates. We agree, but note that the benefits (or subsidies) could go the other way as well. Consider the case where a utility experiences an outage during an economic purchase. As discussed above, the benefits of the purchase to ratepayers would probably increase because of the higher costs of serving load that are caused by the outage. If the increased benefit is greater than the reliability purchase cost estimates in base rates, customers are better off even if the purchase is allowed continued fuel clause treatment. If not, then the utility would over-recover. Again, the likelihood of either possibility seems small. In most cases, we would expect economy purchases to serve only economy purposes for their duration.

For the reasons stated above and in Order No. 352, we will continue to require that the reserve capacity criterion need only be satisfied and be projected to be satisfied for the transaction period when a purchase is initiated in order for a purchase of economic power to be accorded fuel clause treatment. As we said in Order No. 352, if experience proves our reasoning to be erroneous, we are not precluded from revisiting this issue.

C. Fuel Clause Crediting of Avoided Costs

Public Systems argue that the final rule could result in the over-recovery of expenses because some of the costs avoided due to an economic purchase might be included in the buying utility's fixed base rates. As a result, the utility avoids certain costs but ratepayers do not. To avoid such an over-recovery, Public Systems recommend that the rule be modified to require that all costs avoided due to an economic power purchase be credited against the purchase costs in fuel clause adjustments.

Public Systems' argument is correct in principle but of little practical significance. When a utility displaces its own generation with an economic purchase, the lion's share of savings will be in direct fuel expenses. Even most avoided start-up costs will be for fuel. One hundred percent of fuel cost savings are passed on to customers through fuel clause adjustments. There may be some non-fuel operation and maintenance ("O&M") costs that are avoided due to a purchase, but they are likely to be minimal in relation to the fuel savings, all of which are passed on to customers. We would therefore not expect any uncredited avoided costs to adversely affect the economics of a purchase from the consumer's perspective, i.e., the fuel cost savings will be greater than any uncredited avoided costs. Consumers will still be better off.

Public systems present a hypothetical example that implies that uncredited avoided costs could be substantial where a utility is displacing a purchase included in base rates with a purchase that would receive fuel clause treatment. The example, however, rests on either a fallacy or a misunderstanding of the new rule, and therefore warrants discussion.

The example is as follows:

> Assume that Utility A has entered into a two-year purchase of economic power from Utility B under which delivery volumes may be adjusted periodically. Pursuant to the rule, Utility A would be required to recover the non-fuel costs of the purchase through its base rates. Now assume that Utility C offers power on a month-to-month basis at a rate which is lower than that offered by Utility B, and therefore Utility A arranges to make a purchase from Utility C which displaced deliveries under its arrangement with Utility B. The purchase from Utility C would qualify for fuel clause recovery in part because the cost of the purchase from Utility B would constitute an "avoided cost" under the rule. If the suspension of deliveries from Utility B permits Utility A to avoid certain charges which would otherwise be paid to Utility B, then Utility A will over-recover its actual purchased power expense, because the projected costs of the expected purchases from Utility B are still included in Utility A's base rates, despite the fact that Utility A has avoided those costs.[9]

The costs of the purchase from Utility B that would be included in Utility A's base rates are any non-fuel energy charges and possibly a capacity or reservation charge. Any non-fuel energy charges would be intended to recover the seller's miscellaneous incremental O&M, perhaps through a percentage adder, and are likely to be relatively small. Capacity or reservation charges for such coordination transactions are typically levied on a take-or-pay basis. Since the buyer is committed to paying them, such reservation charges are not avoidable.[10] Thus, the extent of any uncredited avoided costs would be relatively small non-fuel energy charges estimated in base rates.

On the other hand, if the capacity or reservation charges in Public Systems' example are avoidable on a month-to-month basis, then the purchase costs would be eligible for fuel clause recovery under the rule rather than having to be estimated in base rates. The rule's twelve-month purchase

[9] Request for rehearing at 5–6 (footnote omitted).

[10] Public Systems make this very same point in their petition when arguing a different issue. *See* Request for rehearing at 13.

period limitation on economic purchases eligible for fuel clause treatment relates to the period a buyer is committed to incur charges. Obviously, this would be the same basis a potential buyer would use in examining the economics of a prospective transaction. If Utility A in Public Systems' example is committed to buy power and incur charges from Utility B only on a month-to-month basis, the purchase costs would be eligible for fuel clause treatment as a series of monthly purchases. When economic purchase charges are recovered in fuel clause adjustments, no over-recovery would result when unanticipated purchases are substituted for planned transactions.

There remains one final point concerning Pulic Systems' argument on this issue. A precise matching of all costs and revenues is impossible in a regulatory framework that includes fixed rates. Such precision is attainable only by using comprehensive cost-of-service adjustment clauses. We are not now prepared to go to that length and we doubt that customer groups would favor such a change. Fixed rates do serve a performance incentive function. On a more limited scale, Public Systems' suggestion of crediting all avoided costs to fuel clause adjustments would require that all non-fuel generation O&M costs be recovered through the fuel clause.[11] As the discussion above indicates, we do not think the effect of any potential uncredited avoided costs are substantial enough to warrant such further expansion of the fuel clause.[12]

D. Enforcement Mechanisms

Public Systems think that the new rule will likely be difficult to enforce and have therefore recommended three additional data reporting and retention requirements that will permit wholesale customers to verify that their supplier utility is complying with the rule. First, for any billing period in which fuel clause adjustments include economic power purchase costs, the wholesale customers' bills should identify each purchase, the volumes of power and the amount of non-fuel charges. Second, that all data, including worksheets, pertinent to such economic purchases be made available to customers. And third, the result of all Commission audits that examine fuel clause recovery of economic power purchases be furnished to the affected utility's wholesale customers and that all records examined in the audit be retained at least until the end of the affected utility's next wholesale rate case.

In response to Public Systems' request for the results of Commission audits, we note that audit reports prepared by the Office of the Chief Accountant are available to the public. With respect to the concern over record retention, Public Systems misread our rule. They state that under it, "the utility is only required to retain pertinent records until completion of the audit."[13] The rule is completely silent on the issue of record retention. Public Systems are apparently referring to our statement in the rule's preamble in which we pointed out (in response to concerns about enforcement of the rule) that it will be necessary for a utility, in order to demonstrate to the Commission's auditors compliance with the new rule, to retain the appropriate records until audited. 48 FR at 55433.

The Commission is not persuaded that the suggested mechanisms should be incorporated in the final rule. Public Systems' concerns apply equally to the fuel clause's operation before its amendment by the new rule. Fuel costs and non-fuel energy charges associated with certain purchases were allowed to be recovered through fuel clause adjustments.[14] We are not aware of any complaints alleging widespread verification problems under the old rule and Public Systems have not suggested that such problems exist. Nor have Public Systems demonstrated that the limited expansion permitted by the new rule of the purchased power costs recoverable through fuel clause adjustments is likely to create any significant verification problems. In light of the burden that these proposals could create, we decline to adopt them.[15]

E. Fuel Clause Crediting of Sales Revenue

Both Public Systems and Wholesale Customers contend that the Commission erred in not requiring that all revenues from economic power sales be credited to fuel clause adjustments. The basic thrust of Public Systems' argument is that our failure to order fuel clause revenue crediting is inequitable to consumers and perpetuates a defect in the regulatory process. Wholesale Customers' contention is that it produces rates higher than necessary and is therefore inconsistent with the objective of the rule and unlawful.

The Commission will not require revenue crediting through the fuel clause at this time. We will respond to some of the petitioners contentions further below. But first, we will deal with the heart of this issue that apparently eluded the petitioners, although it was discussed in our original order.[16] The objective of this rulemaking is very narrow and has been very well defined: to remove a potential distortion from a utility's decision to take advantage of economic purchase opportunities.[17] The Commission is trying to affect purchasing behavior for the benefit of customers, although the new rule may eliminate some subsidies from investors to ratepayers that might have existed under the old rule. The purchase costs may be flowed through the fuel clause only if costs are lowered, thereby benefitting consumers. The change in our rules does not give electric utilities any increased opportunity to profit from sales. We therefore see no need in this rulemaking to change the treatment of sales revenue. Moreover, there is no logical or legal nexus between the treatment of purchase costs and that of sales revenue requiring identical or symmetric policies.[18]

While the discussion above sets out our reasoning for not requiring fuel clause revenue crediting, we nonetheless will address some of the petitioner's arguments. Their basic concerns are over who—stockholders or ratepayers—are entitled to the profits of bulk power coordination sales, whether electric utilities need any pecuniary incentives to enter such transactions, and the current policy of treating coordination sales revenue on an estimated basis in rate cases.

The Commission shares these concerns. Indeed, we have observed that:

> To the extent a utility receives more revenue from opportunity sales than it estimated, the company's stockholders collect the excess; if revenue is less than estimated,

[11] Our fuel clause mechanism makes adjustments to rates in a current period for changes in certain costs compared to a base period. This is done by subtracting the base period costs (F_b our fuel clause) from current period costs (F_m). In order for any avoided non-fuel generation O&M costs to be reflected in fuel clause adjustments (F_m—F_b), the rate case estimate for such costs would have to be included in F_b and current period actual costs in F_m. This effectively removes generation non-fuel O&M costs from the fixed rate framework

[12] Moreover, the rule reduces the chance that utilities might over-recover purchase costs by removing economic purchases of less than twelve months from the rate case estimation framework.

[13] Request for rehearing at 10.

[14] 18 CFR 35.14 (1983).

[15] As we noted in the Preamble to the final rule, if it appears after an audit, or at any other time, that a utility is not complying with the terms of its fuel clause, the Commission has plenary authority to enforce the Federal Power Act and its regulations under the Act. 48 FR at 55433.

[16] 48 FR 55434.

[17] This was discussed in both the Notice of Proposed Rulemaking (4 FERC Stat. & Reg. ¶ 32,315 at 32,604 (1983)) and Order No. 352 (48 FR at 55430).

[18] In addition, we can see no reasons why revenue crediting should be required under our new rule, but not the old one. Nor do petitioners suggest any such reasons.

the stockholders lose money. This situation encourages a company to underestimate opportunity sales revenue. The encouragement of less than best estimates is a distortion of the regulatory process.[19]

But this is not the proper time to address these issues. We set out in this rulemaking to eliminate one regulatory bias, and thereby to lower the cost of electricity to customers. We are aware of no rule of law requiring us to solve all problems at once. Moreover, identifying a problem and finding solutions are separate things. For example, it is not clear whether, if we were to require revenue crediting, incentives would be necessary to encourage economic transactions. Wholesale Customers point to a few commenters who felt that incentives are not needed.[20] Their petition does not, however, accurately reflect the flavor of the discussion on this issue. Comments were almost evenly divided between those who recommended either no revenue crediting or further study of the issue and those who favored revenue crediting.[21] Indeed, the extent of the controversy over this problem is best illustrated by the fact that the two parties requesting rehearing disagree as to its solution. Public Systems, while urging that revenue crediting should be required, recognize that, if this is done, it may be necessary for the Commission to allow utilities to retain a portion of net profits as an incentive to engage in interchange sales.[22] Wholesale Customers, on the other hand, vehemently oppose such incentives.[23]

Obviously, there is controversy over this issue. And it is not a controversy that can be settled on theoretical grounds. It is essentially an empirical question. We are in the process of obtaining quantitative evidence to resolve the issue. The Commission recently approved the first filing in our bulk power market experiment program.[24] One of the goals of the program is to find ways to maximize the number of coordination transactions, which will result in lower costs of generation and thereby lower customer rates. We will allow revenue treatments in approved experiments that allow us to empirically test the proposition that utility managers respond to incentives by increasing coordination sales efforts. What the Commission seeks is the level of incentive that will lower customers' bills the maximum amount.[25] It seems clear to us that the more prudent course is not to make any decisions on fuel clause revenue crediting until after we see some of the experiments' results, rather than act now.[26]

Wholesale Customers also contend that our failure to require revenue crediting through fuel clause adjustments in this rule "would reverse the Commission's precedent requiring full revenue crediting."[27] Wholesale Customers are wrong. The case cited in support of Wholesale Customers' argument involved the crediting of *estimated* revenues to the company's cost of service study in a rate case context.[28]

[19] Opinion No. 146, *Public Service Company of New Mexico*, 20 FERC ¶61,290 at 61,548 (1982).

[20] Request for rehearing at 4–6.

[21] The Commission received 28 comments on the revenue crediting issue. Eleven were against it, arguing that sales incentives are needed. Three recommended further study. Three said revenue should be credited only to the extent purchase costs are reflected in the fuel clause and four recommended partial crediting on some other basis. Seven recommended full revenue crediting.

[22] Request for rehearing at 16, n. 1.

[23] Request for rehearing at 3–6, 11–13.

[24] Opinion No. 203, *Public Service Company of New Mexico*, 25 FERC ¶ 61,469 (1983)

[25] *See* Opinion 203 at 62,054–57.

[26] Our recent Opinion No. 203 established a limited-term, real-world experiment, limited in geographic scope, whose results will be rigorously analyzed to ascertain, among other things, whether the sort of revenue crediting demanded here by Public Systems works better than the current estimation process. It thus seems peculiar that Public Systems quote to us the reasons we gave in Opinion No. 203 for undertaking the experiment as grounds for finding our refusal to institute revenue crediting here to be "troubling and disappointing." Request for rehearing at 16. In the next breath, Public Systems state that they "are unaware of reasons why corrective action should be deferred." *Id.* It seems obvious to us that our very recent institution of a limited experiment, to empirically test whether what Public Systems demand is indeed "corrective action," is good reason for declining to make the major, permanent, and industry-wide change they demand. As we stated in Opinion No. 203, "[s]uch a change would be premature. * * * Unless circumstances change, major and permanent changes in our regulation of coordination transactions will be unlikely before the results of the experiment are reviewed." Opinion No. 203 at 62,041.

Wholesale Customers go even further than Public Systems, claiming that it would be "unlawful" for us not to require revenue crediting here. Request for rehearing at 7. To support that contention, they cite several cases as support for the proposition that the Commission is obligated by law to prescribe the lowest possible rate consistent with the maintenance of adequate service. They then state that only by requiring revenue crediting can the Commission produce the lowest possible rate. *Id.* at 7–8.

Wholesale Customers submit no evidence to support the latter statement. What is notable by its omission is any recognition of the fact that our Opinion No. 203 experiment is specifically designed to test *whether* revenue crediting, combined with an incentive to sell power, does lower rates for customers. As we explain there, "[w]hat we seek to discover is * * * the level of incentive that will lower customers' bills the maximum amount." Opinion No. 203 at 62,057. Until the results are in, it will be an open question whether Wholesale Customers are correct.

[27] Request for rehearing at 11.

[28] *Public Service Company of New Mexico*, Initial Decision of Presiding Administrative Law Judge, 13 FERC ¶ 63,041, (1980), *Aff'd in pertinent part*, Opinion No. 133, 17 FERC ¶ 61,123 (1981).

[29] Request for rehearing at 17.

[30] 48 FR at 55433 and 55434, Dec. 13, 1983.

III. Motions for Clarification

A. Burden of Proof

Public Systems move for clarification of the rule with respect to the assignment of proof in the event that a wholesale customer challenges its supplier utility's recovery of economic power purchase costs through the fuel clause.[29] The final rule is merely an incremental expansion of the types of costs that can be given fuel clause treatment. It does not purport to alter existing rules about assignment of the burden of proof, nor does it do so. There thus is no need to clarify the rule. We shall therefore deny the motion.

B. After-the-fact Evaluations of a Purchase's Economics

Public Systems also move for clarification of how the economic criterion of the rule is to be applied after a purchase ends. Their concern is that reading paragraph (iv) of § 35.14(a)(12) of the new regulations in conjunction with paragraph (iii) of the same subsection might suggest that the comparison required is the actual cost of the purchase and the avoided variable cost *projected* at the time the purchase was initiated. As the preamble to the final rule indicates, the Commission's intent is that the after-the-fact evaluation of a purchase compare the actual cost of the purchase and the costs actually avoided as a result of the purchase.[30] We do not think that the regulations need to be revised. paragraphs (iii) and (iv) must be read separately. The purpose of paragraph (iii) is to require that the economic criterion be satisfied on a projected basis before charges are flowed through the fuel clause. Paragraph (iv) governs post-purchase adjustments. The Post-purchase test would be meaningless if actual costs were not required. Moreover, the definitions of the terms "total cost of the purchase" and "total avoided variable cost" set out in paragraphs (ii) and (iii) § 35.14(a)(11) of the new regulations could not reasonably be read to mean projected or estimated costs. The motion is denied.

IV. The Commission Orders

A. The requests for rehearing and motions for clarification are denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5811 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-6589]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, phone (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 287-0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Missouri: Chariton	Unincorporated areas	290073A	Jan. 12, 1984, emergency	Apr. 19, 1983.
Oklahoma: Grady	East Ninnekah, town of	405382 (New)	....do	
Pennsylvania: Clearfield	Union, township of	421531	....do	Jan. 17, 1975, Oct. 22, 1976, and Dec. 28, 1979.
Texas: Brazoria	Holiday Lakes, town of [1]	485517 (New)	Jan. 12, 1984, emergency, Jan. 12, 1984, regular	
Ohio: Jefferson	Rayland, village of	390301D	Mar. 11, 1975, emergency, Nov. 16, 1983, regular, Nov. 16, 1983, suspended, Jan. 12, 1984, reinstated.	Mar. 22, 1974 and May 28, 1976.
Delaware: Sussex	Frankford, town of	100037B	July 17, 1975, emergency, Sept. 16, 1981, regular, Sept. 16, 1981, suspended, Jan. 13, 1984, reinstated.	Sept. 13, 1974 and Dec. 12, 1975.
Illinois:				
Putman	Standard, village of	171012	Jan. 16, 1984, emergency	
Lake	Tower Lakes, village of	170393C	May 5, 1975, emergency, Mar. 2, 1981, regular, Mar. 2, 1981, suspended, Jan. 20, 1984, reinstated.	Apr. 5, 1974, Dec. 27, 1974, and Mar. 5, 1976.
Virginia: Pulaski	Pulaski, town of	510126A	Nov. 8, 1973, emergency, Aug. 1, 1978, regular, Aug. 1, 1978, suspended, Jan. 13, 1984, reinstated.	Aug. 2, 1974 and Apr. 9, 1976.
Texas: Randall	Timbercreek Canyon, village of [2]	485518 (New)	Jan. 26, 1984, emergency, Jan. 26, 1984, regular	
Illinois: Moultrie	Unincorporated areas	170998	Jan. 31, 1984, emergency	
Georgia: Hall	Unincorporated areas	130466	Jan. 31, 1984, emergency, Jan. 31, 1984, regular	Nov. 2, 1983.
Pennsylvania: Butler	Buffalo, township of	421416B	July 7, 1975, emergency, Jan. 18, 1984, regular, Jan. 18, 1984, suspended, Jan. 30, 1984, reinstated.	Sept. 20, 1974 and Aug. 27, 1976.
West Virginia: Mingo	Williamson, city of	540138C	Apr. 2, 1975, emergency, Jan. 18, 1984, regular, Jan. 18, 1984, suspended, Jan. 20, 1984, reinstated.	May 31, 1974, Sept. 24, 1976, and Jan. 16, 1981.
New York: Dutchess	Rhinebeck, village of	361999	Feb. 9, 1984, emergency	
West Virginia: Ohio	Triadelphia, town of	540150B	July 16, 1975, emergency, Jan. 18, 1984, regular, Jan. 18, 1984, suspended, Feb. 8, 1984, reinstated.	Feb. 8, 1974 and Feb. 27, 1976.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Alaska: Ranglles-Petersburg Division.	Petersburg, city of	020074C	July 25, 1975, emergency, June 1, 1982, regular, Sept. 16, 1982, suspended, Feb. 2, 1984, reinstated.	June 14, 1974 and Feb. 4, 1977.
North Carolina: Northampton	Severn, town of	370422	Feb. 13, 1984	Nov. 3, 1978.
New York:				
Herkimer	Danube, town of	360300	Feb. 14, 1984	Apr. 5, 1974 and June 18, 1976.
Genesee	Corfu, village of	361498A	Oct. 31, 1975, emergency, Jan. 18, 1984, suspended, Feb. 11, 1984, reinstated.	Nov. 15, 1974 and Jan. 16, 1976.
Pennsylvania: Tioga	Deerfield, township of	421176	Feb. 16, 1984	Aug. 30, 1974 and May 21, 1976.
Wisconsin:				
Portage	Whiting, village of	550607	Feb. 15, 1984, emergency, Feb. 15, 1984, regular	Oct. 9, 1981.
Waukesha	Pewaukee, village of	550489	Mar. 24, 1975, emergency, June 15, 1982, regular, Jan. 18, 1984, suspended, Feb. 17, 1984, reinstated.	June 15, 1982.
Pennsylvania: Greene	Dunkard, township of	422431B	Feb. 22, 1984	Jan. 10, 1975 and Jan. 16, 1981.
Missouri: Atchison	Unincorporated areas	290009A	Feb. 22, 1984	Jan. 15, 1984.
Florida: Pinellas	Tarpon Springs, city of	120259B	Aug. 24, 1970, emergency, May 14, 1971, regular, Dec. 5, 1983, suspended, Feb. 21, 1984, reinstated..	June 15, 1971, Jan. 7, 1977 and June 1, 1983.
Pennsylvania: Bedford	Union, township of	421352A	Apr. 29, 1975, emergency, Sept. 14, 1976, suspended, Feb. 22, 1984, reinstated..	Jan. 3, 1975 and Nov. 30, 1979.
REGION I				
Connecticut: New London	Noank Fire District	090129B	Jan. 5, 1984 suspension withdrawn	Feb. 21, 1975 and Sept. 17, 1980.
Massachusetts: Bristol	New Bedford, city of	255216B	do	July 9, 1976.
REGION II				
New Jersey:				
Somerset	Bed Minster, township of	340427B	do	July 26, 1974 and June 24, 1977.
Sussex	Byram, township of	340557A	do	Feb. 28, 1975.
Monmouth:	Deal, borough of	340292B	do	Jan. 14, 1972, Feb. 21, 1975, and Mar. 5, 1976.
Ocean	Lavallete, borough of	340379D	do	June 11, 1971, July 1, 1974, and Apr. 16, 1976.
Hunterdon	Lebanon, township of	340510A	do	Jan. 31, 1975
Monmouth	Long Branch, city of	340307C	do	May 31, 1974, May 5, 1976, and Jan. 13, 1978.
Ocean	Mantoloking, borough of	340383B	do	May 31, 1974 and Sept. 30, 1977.
Ocean	Seaside Park, borough of	345319D	do	Aug. 17, 1971, July 1, 1974, Sept. 5, 1975, and Mar. 19, 1976.
New York:				
Wayne	Macedon, town of	361230C	do	Dec. 20, 1974, Sept. 10, 1976, and Jan. 14, 1977.
Saratoga	Mechanicville, city of	360721B	do	Apr. 5, 1974 and June 11, 1976.
Dutchess	Poughkeepsie, city of	360222B	do	June 28, 1974 and July 9, 1976.
Saratoga	Round Lake, village of	360726B	do	Apr. 12, 1974 and July 2, 1976.
Nassau	Valley Stream, village of	360495B	do	Oct 15, 1976.
REGION III				
Delaware: Sussex	Unincorporated areas	100029C	do	Dec. 13, 1974, Oct. 6, 1976, and Oct. 1, 1983.
Pennsylvania:				
Allegheny	Bridgeville, borough of	420018B	do	Feb. 8, 1974 and Apr. 9, 1976.
Bucks	Silverdale, borough of	422338A	do	Jan. 3, 1975.
REGION IV				
South Carolina:				
Charleston	Unincorporated areas	455413E	do	Apr. 27, 1971, May 25, 1973, July 1, 1974, Nov. 12, 1976, and Oct. 1, 1983.
Do	North Charleston, city of	450042B	do	Apr. 27, 1971, May 25, 1973, July 1, 1974, and Jan. 17, 1975.
REGION V				
Illinois:				
Mason	Bath, village of	170464B	do	Dec. 17, 1983 and Apr. 16, 1976.
Gallatin	Junction, village of	170245C	do	Dec. 28, 1973, Sept. 26, 1975, and Jan. 25, 1980.
Dekalb	Sycamore, city of	170191B	do	Apr. 5, 1974 and Jan. 9, 1976.
Indiana:				
Jackson	Unincorporated areas	180405B	do	Mar. 17, 1978.
Jackson	Medora, town of	180098B	do	Nov. 23, 1973 and Dec. 26, 1975.
Ohio:				
Jefferson	Unincorporated areas	390294C	do	June 10, 1977 and May 28, 1982.
Hamilton	Terrace Park, village of	390633C	do	Feb. 8, 1974, Oct. 8, 1976, and Aug. 12, 1977.
Wood	Unincorported areas	390809B	do	Feb. 17, 1978.
Wisconsin: Polk	Osceola, village of	550336B	do	May 25, 1974 and Feb. 13, 1976.
REGION IX				
Nevada: Washoe	Reno, city of	320020B	do	Mar. 29, 1974 and Apr. 1, 1977.
REGION III				
Pennsylvania:				
Blair	Blair, township of	421386A	Jan. 18, 1984, suspension withdrawn	Nov. 22, 1974.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Allegheny	Fawn, township of	421285B	do	Nov. 29, 1974 and Feb. 5, 1982.
Chester	West Marlborough, township of	422279A	do	Dec. 13, 1974.
REGION IV				
Florida: Sarasota	Venice, city of	125154C	do	July 31, 1971, July 1, 1974, Feb. 20, 1976, and Aug. 15, 1980.
North Carolina: Haywood	Hazelwood, township of	370123B	do	Mar. 8, 1974, Aug. 27, 1976, and Jan. 6, 1983.
REGION V				
Indiana:				
Posey	Mount Vernon, city of	180389B	do	Feb. 1, 9, 1974 and July 30, 1976.
Miami	Peru, city of	180168B	do	Jan. 16, 1974 and Oct. 11, 1976.
Wabash	Wabash, city of	180271C	do	June 7, 1974, July 30, 1976, and Oct. 12, 1979.
Michigan: Oakland	Highland, township of	260650A	do	Jan. 18, 1984.
Wisconsin:				
Waukesha	Lac La Belle, village of	550565B	do	Jan. 31, 1975 and Sept. 21, 1979.
Columbia	Wyocena, village of	550066C	do	Apr. 12, 1974, Oct. 10, 1975, and Jan 26, 1979.
REGION VI				
Louisiana: Caddo Parish	Shreveport, city of	220036	do	Jan. 3, 1975 and Jan. 9, 1976.
New Mexico: Dona Ana	Las Cruces, city of	355332D	do	June 11, 1971, July 1, 1974, July 15, 1976, May 6, 1977, and Jan. 12, 1982.
REGION VII				
Missouri: Callaway	Cedar City, city of	290050B	do	Oct. 18, 1974 and Feb. 2, 1977.
REGION II				
New Jersey: Bergen	River Edge, borough of	340068A	Feb. 1, 1984, suspension withdrawn	June 18, 1976.
New York:				
Herkimer	Ilion, village of	360308B	do	Feb. 8, 1974 and June 11, 1976.
Oneida	Utica, city of	360558A	do	Apr. 24, 1975.
REGION III				
Pennsylvania:				
Chester	East Brandywine, township of	421476B	do	Oct. 18, 1974 and Apr. 30, 1976.
Chester	East Nantmeal, township of	421481B	do	Dec. 20, 1974 and May 7, 1976.
West Virginia: Mercer	Princeton, city of	540128C	do	July 19, 1974, June 11, 1976, and July 28, 1978.
REGION IV				
Georgia: Catoosa and Walker	Fort Oglethorpe, city of	130248B	do	Mar. 8, 1974 and Oct. 22, 1976.
South Carolina: Charleston	Meggett, town of	450040B	do	Oct. 25, 1974 and May 11, 1978.
REGION V				
Illinois:				
Calhoun	Unincorporated areas	170018B	do	Jan. 10, 1975 and Jan. 20, 1978.
Gallatin	do	170900B	do	Nov. 15, 1978.
Jersey	do	170312B	do	Dec. 27, 1974 and Jan. 27, 1978.
Mason	do	170463B	do	Jan. 31, 1975 and Nov. 17, 1978.
Woodford	do	170730B	do	Jan. 20, 1978.
Ohio:				
Hamilton	Cleves, village of	390211B	do	July 23, 1976 and Sept. 2, 1977.
Ottawa	Marblehead, village of	390748A	do	Apr. 18, 1975.
REGION VIII				
Colorado: El Paso	Manitou Springs, city of	080063B	do	Mar. 29, 1974 and Feb. 21, 1975.
REGION XI				
Nevada:				
Elko	Carlin, city of	320009B	do	May 3, 1974.
Do	Elko, city of	320010B	do	Feb. 1, 1974 and Aug. 20, 1976.
Do	Unincorporated areas	320027B	do	July 11, 1978.
REGION X				
Oregon: Lane	Veneta, city of	410128B	do	Mar. 22, 1974 and Jan. 16, 1976.

[1] This is a newly incorporated community which was contained entirely in Brazoria County, Texas. Since the community is complaint (60.3(d)) and was part of a Regular Program community, it has been entered directly into the Regular Program. The Town will use Brazoria County's map in the interim for insurance purposes. (Brazoria County: Community No. 485458C; Hazard ID date: 10-27-78; and Regular Entry date: 5-07-71).

[2] This is a newly incorporated community which was contained entirely in Randall County, Texas. Since the community is complaint and was part of a Regular Program Community, it has been entered directly into the Regular Program. The Village will use the County's map in the interim for insurance purposes. (Randall County: Community No. 480532; Hazard Area ID date: 9-30-82; Regular Program entry: 9-30-82).

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: February 27, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-5692 Filed 3-2-84; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-6538]

Final Flood Elevation Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: The Federal Emergency Management Agency has published a list which included the final flood elevation determination for the Unincorporated areas of Marion County, Oregon. As a result of recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of final flood elevation determination for the Unincorporated areas of Marion County, Oregon, published at 48 FR 50720, on November 3, 1983, should be deleted. This notice will serve to delete Marion County, Oregon from that list.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: As a result of recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of final flood elevation determination for the Unincorporated areas of Marion County, Oregon, published at 48 FR 50720, on November 3, 1983, should be deleted. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; E.O. 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: February 22, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-5691 Filed 3-2-84; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register
Vol. 49, No. 44
Monday, March 5, 1984

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 350

Special Reporting Basis for Insured Savings Banks; Withdrawal of Proposed Rule

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of proposed rule.

SUMMARY: Notice is hereby given of withdrawal of the proposed addition of Part 350 to 12 CFR Chapter III, which would have required that insured savings banks modify the basis upon which FDIC Reports of Condition and Income are prepared. It is the FDIC Board Policy to withdraw proposed regulations that have not been implemented within nine months of the proposal date. This proposed Part 350 has been outstanding for a period in excess of that permitted by Board Policy. Additionally, after consideration of public comments and other factors, the Board of Directors has determined that implementation of this Proposed Part 350 is inappropriate at this time.

FOR FURTHER INFORMATION CONTACT: Paul L. Sachtleben, Projects and Planning Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4761.

SUPPLEMENTARY INFORMATION: The Corporation hereby gives notice that it has withdrawn a proposal (47 FR 23743, June 1, 1982) to adopt 12 CFR Part 350, which would have implemented changes in the basis of reporting financial information to the FDIC by insured savings banks.

Two major provisions were contained within the proposed rule, current value-based accounting and loss deferral accounting. Current value-based accounting would have required all debt and equity securities acquired after January 1, 1983, to be marked to market on a quarterly basis. The loss deferral provision would have allowed insured savings banks, effective January 1, 1983, the option to defer losses on the dispositions of financial assets acquired prior to January 1, 1983. Ninety-six comment letters were received in response to the proposed regulation, which was published in the June 1, 1982 **Federal Register**. An analysis of these comments follows:

Writer category	Number of responses	Current value-based accounting		Loss deferral accounting	
		For	Against	For	Against
Savings banks	60	14	46	31	28
Commercial banks	19	4	15	4	15
Other	17	5	10	8	8
Total	96	23	71	43	51

The majority of responses opposed both the current value-based accounting and loss deferral provisions of the proposed regulation, although savings banks as a group did slightly favor the loss deferral accounting provision.

Supporters of the proposed regulation generally believed that such a rule would provide savings banks with additional time and flexibility in their efforts to restructure assets. Those writers opposed to the Part 350 proposal provided a number of reasons for their position, the most prevalent of which asserted that the proposal would (1) impose additional cost burdens, (2) force short-term investments, (3) misrepresent financial condition, (4) violate generally accepted accounting principles, (5) establish an accounting method which is too piecemeal, (6) place under investment constraints upon management, (7) provide an inadequate response to savings bank needs, (8) increase earnings volatility, and (9) place commercial banks at a competitive disadvantage relative to savings banks.

Having considered all available information and the comments that were submitted, the Corporation has determined at this time to formally withdraw this proposed regulation. Nevertheless, the FDIC believes that the concept of current value-based accounting does have merit, and that further analysis of this accounting technique is warranted.

By order of the Board of Directors, dated February 21, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–5190 Filed 3–2–84; 8:45 am]
BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–NM–123–AD]

Airworthiness Directives: CASA Models C–212CB and C–212CC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspection, replacement, and/or modification of certain components on CASA Model C–212–CB and C–212–CC airplanes, as necessary, to correct certain unsafe conditions. The recent entry of these airplanes into this country and the anticipated entry of additional ones into the U.S. Register necessitates AD action at this time to ensure that these airplanes maintain an acceptable level of safety. This notice refers to numerous unsafe conditions related to the aircraft systems and structure.

DATES: Comments must be received no later than April 24, 1984.

ADDRESSES: The applicable service information and copies may be obtained from Contrucciones Aeronautics, S.A., Getafe, Madrid, Spain, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Anderson, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Way South, Seattle, Washington, telephone (206) 431–2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA–public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83–NM–123–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The Civil Authority of Spain has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions which may exists or develop or CASA–212 airplanes registered in this country. These conditions may be corrected by complying with thirteen separate mandatory service bulletins. The unsafe conditions and corrective actions are described as follows:

A. *Fuse Installation and Substitution.* A new 5 amp fuse is added to protect the DC generating circuit and an existing 50 amp fuse is replaced with a 35 amp fuse to prevent a fire hazard.

B. *Replacement of Rudder/Elevator-to-Shaft Attach Fittings.* New design rudder and elevator-to-shaft fittings are installed to prevent the ball joints from disconnecting with a resulting loss of rudder and elevator control.

C. *Replacement of the Wing Flap Hydraulic Cylinder.* A new design hydraulic cylinder is installed which has design features to prevent failure of the wing flap retraction system.

D. *Modification of the Flight Deck Floor Reinforcements.* The flight deck floor reinforcement is modified to prevent interference with flight controls.

E. *Replacement of Wing Flap Hydraulic System Relief Valve.* A new design safety valve stem is installed to avoid stem distortion and ensure correct operation of the system.

F. *Replacement of Wing Flap Control Hinge Bearing.* A stainless steel self-lubricating bearing is installed to prevent corrosion and seizure failures.

G. *Installation of Safety Rings on the Elevator Shaft.* Safety rings are installed on the elevator shaft assembly to prevent movement of supports.

H. *Fuel Shutoff Valve Installation.* A new design electrical fuel shut-off valve is installed to prevent fuel from going forward of the fire wall and creating a fire hazard in the event the propellor feathering control is locked.

I. *Replacement of Nuts in Wing Splice Joint.* Correct nuts are installed in the outer wing to center section splice to ensure proper joint strength.

J. *Replacement of Engine Mount Bolts.* The existing engine mount bolts may be too short. Longer NAS bolts are installed to ensure propr fit and strength.

K. *Modification of Rudder Hinge Fittings.* The rudder hinge fittings are modified to preclude interference which would prevent the rudder surface from completing its normal travel.

L. *Increasing Inboard-Outboard Wing Flap Attachments to Higher Torque Values.* The torque value on the attachment nuts at the wing flap pivot points is increased to prevent structural damage due to loose joints.

M. *Reducing Control Rod Clerarance.* The clearance space of the engine air screen control rods is reduced at the firewall penetration point to ensure firewall integrity.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the previously mentioned corrective actions.

It is estimated that 31 airplanes would be affected by this AD, that it would take approximately 500 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $15,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $1,085,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

CASA: Applies to CASA Model 212 series airplanes, certificated in all categories, as indicated in the applicability statement of each of the following service bulletins. Compliance is required within the time interval specified in each of the following paragraphs after the effective date of this AD, unless already accomplished:

A. To prevent damage to the DC generating circuit, within the next 200 hours time in service, install a new 5 amp fuse and replace the existing 50 amp fuse with a 35 amp fuse in accordance with CASA Service Bulletin 212–24–22 dated November 7, 1979.

B. To prevent the loss of rudder and elevator control, within the next 200 hours time in service, replace the rudder and elevator-to-shaft attach fittings with new design fittings in accordance with CASA Service Bulletin 212–27–12 R3 dated June 12, 1980.

C. To prevent damage to the wing flap actuation system within the next 200 hours time in service, replace the hydraulic cylinder with a new design cylinder in accordance with CASA Service Bulletin 212–27–13 dated December 17, 1980.

D. To prevent interference with flight controls, within the next 200 hours time in service, modify the flight deck floor structure in accordance with CASA Service Bulletin 212–27–14 dated November 18, 1980.

E. To prevent damage to the wing flap hydraulic system, within the next 200 hours time in service, replace the hydraulic system relief valve with a new design valve in accordance with CASA Service Bulletin 212–27–15 RI dated November 30, 1981.

F. To prevent bearing failures, within the next 200 hours time in service, replace the existing wing flap control hinge bearings with a stainless steel bearing in accordance with CASA Service Bulletin 212–27–19 dated July 1, 1982.

G. To prevent relative displacement between the elevator shaft support fittings and the elevator shaft, within the next 500 hours time in service, install safety rings in accordance with CASA Service Bulletin 212–27–23 dated October 7, 1982.

H. To prevent the risk of a fire from fuel collecting forward of the nacelle fire wall, within the next 500 hours time in service, install electric fuel shut-off values in accordance with CASA Service Bulletin 212–28–11 RI dated September 2, 1981.

I. To ensure proper joint strength, within the next 200 hours time in service, replace the existing nuts in the outer wing-to-center wing section splice in accordance with CASA Service Bulletin 212–51–01 dated July 7, 1981.

J. To ensure proper fitting, within the next 200 hours time in service, replace the existing engine mount bolts with longer bolts in accordance with CASA Service Bulletin 212–51–02 dated September 22, 1981.

K. To ensure proper rudder travel, within the next 200 hours time in service, replace the rudder hinge fittings with new fittings in accordance with CASA Service Bulletin 212–55–07 dated July 1, 1982.

L. To prevent damage to the wing flap structure, within the next 200 hours time in service, retorque the attachment fitting fasteners in accordance with CASA Service Bulletin 212–57–12 dated September 22, 1981.

M. To ensure engine fire wall integrity, within the next 200 hours time in service, reduce the clearance space between the engine screen control rods and the fire wall at the penetration point in accordance with CASA Service Bulletin 212–73–03 RI dated July 14, 1982.

N. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

O. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities since few CASA Model 212 airplanes are operated by small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington on February 24, 1984.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 84–6791 Filed 3–2–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 83–AWA–13]

Proposed Alteration of VOR Federal Airways Badger, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter several VOR Federal Airways in the vicinity of Badger, WI. The Badger VORTAC is scheduled for decommissioning in 1984. The Timmerman, WI, VORTAC, located east of the Badger VORTAC will be upgraded to a high altitude facility and all airways will be transferred from Badger to Timmerman. This action alters the descriptions of 20 airways that have Badger in their descriptions. Airspace Docket 83–AWA–27 also contains airways and jet routes that are affected by the Badger VORTAC decommissioning.

DATES: Comments must be received on or before April 16, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 83–AWA–13, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

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, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AWA–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. 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. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of serveral VOR Federal Airways located in the vicinity of Badger, WI. The Badger VORTAC is scheduled for decommissioning in 1984. Twenty airways that have Badger in their descriptions will be altered to include Timmerman Airport, Milwaukee, WI. Airspace Docket 83–AWA–27 also contains airways and jet routes that are affected by the Badger VORTAC decommissioning. Airspace actions are: realign airways where necessary, delete or renumber certain airways and establish/extend airways in order to maintain airway continuity. Also, action will be taken to upgrade Dells, WI, VORTAC, and Timmerman's three letter identification will be changed from "MWC" to "LJT." Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–2 [Amended]

By deleting the words "Badger, WI;" and substituting the words "Tmmerman, WI;".

V-7 [Amended]

By deleting the words "INT Chicago Heights 358° and Green Bay, WI, 166° radials;".

V-9 [Amended]

By deleting the words "Pontiac, Il; INT Pontiac 008° and Joliet, IL, 316° radials; INT Rockford, IL, 136° and Badger, WI, 209° radials; Badger; Oshkosh, WI;" and substituting the words "Pontiac, IL, INT Pontiac 322° T (329° M) and Rockford, IL, 180° T (179° M) radials; Rockford: Janesville, WI; Madison, WI; Oshkosh, WI;".

V-10 [Amended]

By deleting the words "to Chicago O'Hare, IL." and substituting the words "INT Bradford 056° T (052° M) and Joliet, IL, 351° T (349° M) radials."

V-24 [Amended]

After "via Waukon, IA" add "; Janesville, WI; to Northbrook, IL".

V-30 [Amended]

By deleting the words "From Badger, WI, INT Badger 102° and Pullman, MI, 303° radials; Pullman, including a S alternate via INT Badger 121° and Pullman 282° radials; Litchfield, MI;" and substituting the words "From Timmerman, WI: INT Timmerman 175° T (174° M) and Pullman, MI, 303° T (303° M) radials; Pullman; Litchfield, MI;"

V-63 [Amended]

By deleting the words "Janesville, WI; Badger, WI; Oshkosh, WI;" and substituting the words "Janesville, WI; Madison, WI; Oshkosh, WI;".

V-69 [Amended]

By deleting the words "Joliet, IL; Kedzie, IL, RBN." and substituting the words "to Joliet, IL."

V-92 [Amended]

By deleting the words "From Joliet, IL, Chicago Heights, IL;" and substituting the words "From INT Chicago Heights, IL, 358° T (356° M) and Chicago O'Hare, IL, 123° T (122° M) radials; Chicago Heights;".

V-97 [Amended]

By deleting the words "From Chicago-O'Hare, IL; INT Chicago-O'Hare 316° and Janesville, WI, 112° radials; Hanesville; Lone Rock, WI, including a W alternate via INT Janesville 281° and Lone Rock 147° radials; Nodine, MN;" and substituting the words "From Northbrook, IL; Janesville, WI; Lone Rock, WI; Nodine, MN;".

V-116 [Amended]

By deleting the words "to Joliet, IL. From INT Keller, MI, 256° and Knox, IN, 335° radials; Keeler;" and substituting the words "Joliet, IL; to INT Joliet 065° T (065° M) and Dupage, IL, 127° T (127° M) radials. From Chicago O'Hare, IL; INT Chicago O'Hare 089° T (089° M) and Keeler, MI, 256° T (256° M) radials; Keeler;".

V-170 [Amended]

By deleting the words "INT Dells 097° and Badger, WI, 307° radials; Badger; INT Badger 102° and Pullman, MI, 303° radials; Pullman;" and substituting the words "INT Dells 117° T (114° M) and Timmerman, WI, 273° T (270° M); Timmerman; INT Timmerman 129° T (128° M) and Pullman, MI, 285° T (284° M) radials; Pullman;".

V-172 [Amended]

By deleting the words "INT Polo 088° and DuPage, IL, 283° radials; DuPage; Chicago-O'Hare, IL;" and substituting the words "INT Polo 088° T (088° M) and Chicago O'Hare, IL, 269° T (267° M) radials; Chicago O'Hare;".

V-173 [Amended]

By deleting the words "INT Roberts 008° and Joliet, IL, 067° radials; Kedzie, IL, RBN." and substituting the words "INT Roberts 008° T (09° M) and Joliet, IL, 067° T (065° M) radials."

V-191 [Amended]

By deleting the words "INT Northbrook 332° and Badger, WI, 182° radials; Badger; Oshkosh, WI;" and substituting the words "Timmerman, WI; Oshkosh, WI;".

V-217 [Amended]

By deleting the words "From Chicago O'Hare, IL: INT Chicago O'Hare 019° and Badger, WI, 137° radials; INT Chicago Heights, IL, 358° and Milwaukee 121° radials; Badger; Green Bay, WI;" and substituting the words "From Janesville, WI; via Timmerman, WI; Green Bay, WI;"

V-227 [Amended]

By deleting the words "Pontiac, IL; INT Pontiac 332° and Rockford, IL, 180° radials; to Rockford." and substituting the words "Pontiac, IL; INT Pontiac 008° T (005° M) and Chicago O'Hare, IL, 237° T (235° M) radials."

V-228 [Amended]

By deleting the words "From Northbrook, IL; INT Northbrook, IL," and substituting the words "From Stevens Point, WI, via Dells, WI; Madison, WI; Janesville, WI; Northbrook, IL; INT Northbrook."

V-422 [Amended]

By deleting the words "From Chicago Heights, IL," and substituting the words "From INT Chicago O'Hare, IL, 124° T (122° M) and Chicago Heights, IL, 358° T (356° M) radials; Chicago Heights;".

V-429 [Amended]

By deleting the words "INT Joliet 351° and Chicago O'Hare, IL 237° radials; Chicago O'Hare." and substituting the words "INT Joliet 351° T (349° M) and Chicago O'Hare, IL, 237° T (235° M) radials."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Note.—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. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on February 27, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-5789 Filed 3-2-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 83-AWA-27]

Proposed Alteration of VOR Federal Airways and Jet Routes Badger, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter several VOR Federal Airways and Jet Routes in the vicinity of Badger, WI. The Badger VORTAC is scheduled for decommissioning in 1984. The Timmerman, WI, VORTAC, located east of the Badger VORTAC, will be upgraded to a high altitude facility and all airways and jet routes will be transferred from Badger to Timmerman. This action alters the descriptions of four VOR airways and nine jet routes that have Badger in their descriptions. Airspace Docket 83-AWA-13 also contains the airways that are affected by the Badger VORTAC decommissioning.

DATES: Comments must be received on or before April 16, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 83-AWA-27, Federal Aviation Administration, 2300 East Devon, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT-230), Airspace—Rules and Aeronautical Information

Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

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, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AWA–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. 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. 11–2 which describes the application procedure.

The Proposal

The FAA is considering amendments to § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of several VOR Federal Airways and Jet Routes located in the vicinity of Badger, WI. The Badger VORTAC is scheduled for decommissioning in 1984. Four airways and nine jet routes that have Badger in their descriptions will be altered to include Timmerman, WI, in their descriptions. Timmerman VORTAC is located east of Badger, on the Lawrence J. Airport, Milwaukee, WI. Airspace Docket 83–AWA–13 also contains the airways that are affected by the Badger VORTAC decommissioning. Airspace actions are: realign airways where necessary, delete or renumber certain airways and establish/extend airways in order to maintain airway continuity. Also, action will be taken to upgrade the Dells, WI, VORTAC and Timmerman's three letter identification will be changed from "MWC" to "LJT." Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

§ 71.123

V–127 [Revised]

From Bradford, IL, via Polo, IL; to Rockford, IL.

V–177 [Amended]

By deleting the words "Stevens Point, WI, including a west alternate via Dells, WI; Wausau, WI;" and substituting the words "Stevens Point; Wausau, WI;".

V–262 [Reserved]

From Peoria, IL, via Bradford, IL; to Joliet, IL.

V–341 [Revised]

From Cedar Rapids, IA, via Dubuque, IA; Madison, WI; to Oshkosh, WI.

§ 75.100

J–16 [Amended]

By deleting the words "Badger, WI;" and substituting the words "Timmerman, WI;".

J–34 [Amended]

By deleting the words "Badger, WI; INT of Badger 098° and Carleton, MI, 297° radials;" and substituting the words "Timmerman, WI; INT Timmerman 099° T (098° M) and Carleton, MI, 297° T (300° M) radials;".

J–36 [Amended]

By deleting the words "Nodine, MN; INT Nodine 116° and Badger, WI, 271° radials; Badger; INT Badger 086° and Flint, MI, 278° radials; Flint;" and substituting the words "Nodine, MN; INT Nodine 116 °T (112° M) and Timmerman, WI, 275° T (271° M) radials; Timmerman; INT Timmerman 087° T (085° M) and Flint, MI, 278° T (281° M) radials; Flint;".

J–68 [Amended]

By deleting the words "From Gopher, MI, INT Gopher 109° and Dells, WI, 310° radials; Dells; Badger, WI; INT Badger 086° and Flint, MI, 278° radials; Flint;" and substituting the words "From Gopher, WI, via INT Gopher 109° T (103° M) and Dells, WI, 301° T (307° M); Dells; Timmerman, WI; INT Timmerman 084° T (082° M) and Flint, MI, 278° T (281° M) radials; Flint;".

J–70 [Amended]

By deleting the words "INT Gopher 109° and the Badger, WI, 312° radials; Badger; Pullman, MI;" and substituting the words "INT Gopher 109° T (103° M) and Timmerman, WI, 309° T (308° M) radials; Timmerman; Pullman, MI;".

J–89 [Amended]

By deleting the words "Badger, WI;" and substituting the words "Timmerman, WI;".

J–101 [Amended]

By deleting the words "Badger, WI;" and substituting the words "Timmerman, WI;".

J–105 [Amended]

By deleting the words "to Badger, WI." and substituting the words "to Timmerman, WI."

J–538 [Revised]

From Kenora, ON, Canada; Duluth, MN; Dells, WI; to Timmerman, WI. The airspace within Canada is excluded.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, Janaury 12, 1983)); and 14 CFR 11.65)

Note.—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. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on February 27, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-5788 Filed 3-2-84; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Federal Hazardous Substances Act Exemption for Unlabeled Containers; Proposed Revocation

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed revocation.

SUMMARY: The Commission is proposing to revoke an exemption provision that covers the shipment of unlabeled containers from a packaging to a labeling firm. The Commission believes, preliminarily, that the exemption is unnecessary because it is not aware of any such shipments. In addition, such a shipment would not violate the provisions of the applicable statute, the Federal Hazardous Substances Act.

DATES: Comments on the proposal are due no later than April 4, 1984. The revocation is proposed to become effective 30 days after it is published in the Federal Register in final form.

ADDRESSES: Send comments to: Office of the Secretary, 1111 18th Street NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Charles Jacobson, Directorate for Administrative Litigation and Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

SUPPLEMENTARY INFORMATION:

A. Introduction

Under the Federal Hazardous Substances Act (FHSA), the Consumer Product Safety Commission enforces statutory provisions and regulations that prohibit the movement in interstate commerce of certain products that are not labeled as prescribed ("misbranded hazardous substances"). 15 U.S.C. 1261(p) and 1263. An existing FHSA regulation exempts from these labeling requirements products that are being shipped from one establishment where they are packaged to a different establishment where they will be properly labeled. 16 CFR 1500.84.

In order to qualify for the exemption, the firms that are shipping and receiving the as-yet-unlabeled hazardous substances must have a written agreement between them. Since the agreement must be kept by the firms for two years after shipment, and since copies of the agreement must be made available to the Commission upon request, these exemption provisions fall within the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.* The Commission is prohibited from enforcing these provisions unless they have been "cleared" by the Office of Management and Budget. However, the Commission has decided preliminarily that the entire exemption is unnecessary. Therefore, rather than requesting OMB clearance for the provisions, the Commission is proposing to revoke the exemption.

B. Background

In December 1965 the Food and Drug Administration, the agency that then administered and enforced the FHSA (before its amendment in 1966, the Federal Hazardous Substances Labeling Act), issued the exemption for unlabeled containers described in *Introduction.* 30 FR 16200-01 (Dec. 29, 1965); 21 CFR 191.64. The preamble to this exemption stated (in its entirety):

> After consideration of inquiries and representations received from regulated industry, and other relevant information, the Commissioner of Food and Drugs has concluded that within the conditions set forth below it is not necessary for the adequate protection of the public health and safety for a packing firm to label filled containers of household articles subject to the Federal Hazardous Substances Labeling Act prior to shipment to a distributor firm if such articles are properly labeled by the distributor firm prior to retail distribution.

In 1973, when the Commission took over administration and enforcement of the FHSA, it reissued this exemption provision, in essentially identical form. 38 FR 27012 (Sept. 27, 1973); 16 CFR 1500.84.

C. Discussion

There are at least two reasons why the Commission believes, preliminarily, that the exemption provision of 16 CFR 1500.84 is unnecessary:

1. The Commission has no evidence that the exemption has ever been used. While unlabeled foods or drugs might well be packaged in one establishment and then shipped to another establishment for labeling, we do not believe that this is an industry practice for any hazardous substances that are regulated under the FHSA. Rather, the Commission's understanding is that all hazardous substances are labeled at the packaging establishment. If this characterization of existing practices is incorrect, the Commission would like to hear from the industry about examples of hazardous substances that are packaged and labeled in two different establishments.

2. Even if a firm did ship a packaged hazardous substance to a different establishment for labeling, the Commission nevertheless believes preliminarily that the exemption is unnecessary. The FHSA prohibits movement in interstate commerce of misbranded hazardous substances, and such substances—by definition—must be "* * * intended, or packaged in a form suitable, for use in the household or by children * * *." 15 U.S.C. 1261(p). If any unlabeled hazardous substance were being shipped to an establishment for the purpose of being labeled, it would be unlikely to fall within this definition. In its unlabeled state, it would not be suitable for use in a household or by children. In addition, it would not be intended to be used by ultimate consumers because it is intended, rather, to be labeled first. In short, the Commission would not enforce the FHSA against any products that the exemption is designed to protect, and no exemption is necessary.

Aside from the substantive issues concerning revocation of the exemption provision, there are two additional matters that it raises:

1. *Impact on small businesses.* The Regulatory Flexibility Act (RFA) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small business. 5 U.S.C. 603. The RFA also provides that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The revocation proposed below, if issued on a final basis, will not affect any small entities because no business (including any small business) is acting within its provisions. No entities other than businesses would be affected. Therefore, the Commission hereby certifies that the revocation will not have a significant economic impact on a substantial number of small entities.

2. *Environmental considerations.* The revocation proposed below falls generally within the categories of Commission actions described in 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. In addition, the Commission has concluded that there are no significant effects associated with the proposal. For both

reasons, neither an environmental assessment nor an environemental impact statement is required.

Therefore, pursuant to provisions of the Administrative Procedure Act (5 U.S.C. 553) and the Federal Hazardous Substances Act (secs. 3(c), 10(a), 74 Stat. 374, 15 U.S.C. 1262, 1269, as amended), the Consumer Product Safety Commission proposes that section 1500.84 of Title 16, Chapter II, Subchapter C of the Code of Federal Regulations be revoked, removed, and reserved.

All interested parties are invited to submit written comments on this proposal to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments must be received no later then April 4, 1984, and received comments may be seen in the Office of the Secretary, 8th Floor, 1111 18th Street NW., Washington, D.C., during normal working hours.

Effective date: The revocation is proposed to become effective 30 days after it is published in final form in the **Federal Register**.

Authority: 5 U.S.C. 553; 15 U.S.C. 1262, 1269.

List of Subjects in 16 CFR Part 1500

Consumer protection, labeling, exemptions.

Dated: February 28, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-5773 Filed 3-2-84; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Part 1701

Prescription Drugs Distributed To Prescribing Practitioners; Withdrawal of Proposed Statement of Policy and Interpretation

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Consumer Product Safety Commission withdraws a proposed rule that would have required all prescription drugs that are subject to a child-resistant packaging standard and that are distributed to physicians and other prescribing practitioners to be in child-resistant packaging if the immediate packages in which the drugs are distributed by the manufacturer are intended to be the packages in which the drugs are dispensed to the consumer. The proposal is being withdrawn because the Commission lacks data concerning the costs and benefits of such a rule and the available data are not sufficient to establish the portion of reported ingestions that may involve drugs being distributed by practitioners in packaging that is not child-resistant.

DATE: The withdrawal of the proposal is effective March 5, 1984.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 492-6400.

SUPPLEMENTARY INFORMATION: Section 3 of the Poison Prevention Packaging Act of 1970 ("the act"), 15 U.S.C. 1472, authorizes the establishment of standards requiring "special packaging" for certain household substances in order to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances. "Special packaging" is packaging that is designed or constructed to be (1) significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly (15 U.S.C. 1471(4)). A household substance is one which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household.

In the **Federal Register** April 16, 1973 (38 FR 9431, 9432), a regulation (now 16 CFR 1700.14(a)(1)) was issued that requires that all oral prescription human drugs be supplied in special packaging.

The Commission's policies concerning the manufacturer's distribution of prescription drugs in noncomplying packaging intended for consumer use have been different, depending on whether the manufacturer distributed the drug to a pharmacy or to a prescribing practitioner. The Commission has codified a statement (16 CFR 1701.1) of its long-standing policy that when prescription drugs are distributed by manufacturers to pharmacies in packages that are intended to be dispensed directly to consumers, all immediate containers of such drugs must meet the standards for special packaging. Whether a manufacturer intends that a package will be the one in which the drugs are dispensed to the consumer can be determined from the type of package, whether the ancillary instructions provided on the package (such as for storage or handling) are intended for consumers, and other factors.

However, the previous policy of the Commission, and of the Food and Drug Administration which preceded the Commission in administering the Poison Prevention Packaging Act of 1970, was that such drugs could be distributed to prescribing practitioners in either complying or noncomplying packaging. The reason that this policy was followed in the past was that since, under section 4(b) of the act, the prescribing practitioner has the discretion to prescribe drugs for consumers in noncomplying packaging, there was no apparent need to require that the drug be distributed to the practitioner in complying packaging. The policy of not requiring drugs subject to child-resistant packaging standards to be in child-resistant packaging when consumer packages of such drugs are distributed to physicians or other prescribing practitioners has been the subject of much debate over the years. A strong argument can be made that the opposite interpretation is more consistent with the terms of the PPPA. The legislative history of the act shows that it was the intent of the act for special packaging to be the rule and not the exception. Futhermore, it seems that the practitioners would be more likely to dispense these drugs in child-resistant packaging if that were the form of packaging supplied to the practitioner. For these reasons, the Commission previously proposed to change its policy so that manufacturers of thses drugs would be required to package them in child-resistant packaging if the drugs were furnished to the practitioner in packages intended to be dispensed to the consumer. 43 FR 12029; March 23, 1978.

The Commission received 15 comments in response to the proposal to change its policy applicable to manufacturers supplying drugs in consumer packages to practitioners. Comments from a university medical center, two pharmaceutical associations, and a pharmacists' association supported the proposed change in policy. The remaining comments, from the Pharmaceutical Manufacturers Association and various pharmaceutical manufacturers, either opposed the issuance of the proposed policy change or suggested modifications to the rule.

In the comments which were received in response to the proposed statement of policy, 2 comments raised the question of whether unit package samples of eight units or less which do not contain an amount of drug which would be harmful to a 25-pound child would automatically comply with the special packaging requirement. The response to these comments is that such packaging would comply.

The vast majority of physicians' samples are packaged in unit packaging.

Unit packaging is packaging in which each dosage unit, e.g., a tablet or a capsule, is individually packaged in such a way as to protect the integrity of the product. A unit package may or may not be attached to other individual unit packages or packaged in an outer carton. The most common types of unit packaging used for physicians' samples are blister packaging or strip packaging.

The protocol for determining the child-resistance of special packaging (16 CFR 1700.20) contains special provisions for defining a package failure for unit packaging. For containers other than unit packaging, a failure occurs when any child opens the special packaging or gains access to its contents during the test. In the case of unit packaging, however, a test failure occurs when any child opens or gains access to the number of individual units which constitute the amount that may produce serious personal injury or serious illness to a 25-pound child, or to more than 8 individual units, whichever number is lower.

The Commission staff estimates that over 75% of physicians' samples are packaged in unit packaging and that most if not all of this unit packaging would contain not more than 8 individual units. The Commission's staff also believes that the majority of products distributed as physicians' samples would be of a low enough toxicity that more than 8 units would be required to cause serious injury or illness to a 25-pound child. Therefore, it seems likely that the majority of physicians' samples already comply.

After considering the comments and other available information, the Commission concluded that issuance of the proposed policy at this time is not appropriate because information currently available does not establish that there is a significant risk to young children as a result of present packaging practices for physicians' samples. Furthermore, the Commission lacks data on the costs and benefits of the proposed policy change. Since the Commission lacks data showing that the proposed policy change is needed, the Commission has decided to withdraw the proposal.[1] If information becomes available in the future showing risks to young children associated with physicians dispensing samples without child-resistant packaging, the Commission at that time could propose an appropriate policy change based on the new information.

The Commission would also like to point out that, regardless of the type of packaging supplied to the practitioner by the sample manufacturer, the PPPA establishes that a dispensing practitioner is responsible for placing drugs they supply to consumers in child-resistant packaging unless the practitioner decides that child-resistant packaging is not appropriate in a particular case. The Commission believes that the purpose of 15 U.S.C. 1473(b), which allows medical practitioners to order that prescribed substances subject to PPPA requirements be dispensed in noncomplying packaging, is to allow practitioners to see that persons, such as the elderly and handicapped, who cannnot use substances in complying packaging, can have these substances in non-complying packaging.

Conclusion

Therefore, for the reasons explained above, the Commission withdraws the proposal of March 23, 1978 (43 FR 12029) to issue a new § 1701.2 in title 16 of the CFR.

List of Subjects in 16 CFR Part 1701

Consumer protection, Hazardous materials, Infants and children, Packaging and containers, Poison prevention, and Prescription drugs.

Dated: February 28, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-5772 Filed 3-2-84; 8:45 am]

BILLING CODE 6355-01-M

[1] The withdrawal notice was approved by Chairman Nancy Harvey Steorts and Commissioners Stuart M. Statler and Terrence M. Scanlon. Commissioner Saundra B. Armstrong, who was not a member of the Commission when this matter was previously considered, abstained from voting on it.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 12

[Docket No. RM83-56-000]

Application for License, Permit, and Exemption From Licensing for Water Power Projects

Issued: February 24, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing applications for license, preliminary permit, and exemption from licensing for hydroelectric projects. This rulemaking would: (1) Clarify and revise many of the Commission's regulations that govern hydroelectric applications; (2) amend 18 CFR Part 4 to incorporate Commission decisions into these regulations; and (3) reorganize several sections of 18 CFR Part 4 to integrate the regulations governing exemption applications into Subpart D of 18 CFR Part 4.

DATES: Comments must be in writing and received by the Secretary of the Commission by May 4, 1984.

ADDRESSES: All filings should refer to Docket No. RM83-56-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Joseph H. Long, Division of Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing applications for license, preliminary permit, and exemption from licensing for hydroelectric projects. This rulemaking would accomplish three major objectives. First, it would clarify and revise many of the Commission's regulations that govern hydroelectric applications, which are set forth in 18 CFR Part 4. Second, it would amend Part 4 to incorporate Commission decisions into the regulations. Third, it would reorganize several sections of Part 4 to integrate the regulations governing exemption applications into Subpart D of Part 4. Subpart D prescribes the general procedural rules for filing applications, the rules of competition, and the rules for selection among competing applications.

The rule would revise §§ 4.30 through 4.35, 4.40, 4.41, 4.50, 4.51, 4.60, 4.61, 4.70, 4.71, 4.80 through 4.83, 4.90 through 4.94, 4.101 through 4.107, and 4.201. It would add new §§ 4.36, 4.37, 4.38, 4.84, 4.95, and 4.96.

II. Background

During the past six years, the Commission has undertaken a broad program of promulgating new rules amending most of its regulations governing hydroelectric applications. The Commission did this (1) to implement new Congressionally mandated programs exempting certain

types of projects from part or all of Part I of the Federal Power Act (the "Act"); (2) to ease the compliance burden of applicants; (3) to make the rules of competition as fair as possible; and (4) to expedite the processing of applications.

A chronology of the key rulemakings implementing these objectives is as follows. On September 11, 1978, the Commission issued the so-called "short-form" application procedures [1] for all "minor" projects.[2]

On October 22, 1979, the Commission issued procedures applicable to both preliminary permit (permit) and license applications that simplify the procedures for application for a permit, amendment to a permit, and cancellation of a permit.[3]

On November 19, 1979, the Commission issued rules that established application procedures for licensing major projects that are located at existing dams.[4]

The Commission has also issued a series of rules to govern development of specialized kinds of hydroelectric facilities. The Commission established procedures to exempt from part or all of Part I of the Act any small conduit hydroelectric facility that has a generating capacity of 15 megawatts (MW) or less.[5] Similarly, the Commission issued rules on November 7, 1980, setting forth procedures to exempt from licensing and other requirements of the Act any small hydroelectric power projects having a proposed generating capacity of 5 MW or less.[6]

On October 29, 1981, the Commission issued rules designed to expedite the processing of applications for permits and licenses.[7]

Also, on November 6, 1981, the Commission issued additional rules that eased the burden on applicants for several types of licenses.[8]

On November 6, 1981, the Commission issued rules that adopted the "short-form" application procedures for major projects of 5 MW or less, and revised the "short-form" procedures.[9]

On February 18, 1982, the Commission issued rules that exempted two categories of small hydroelectric power projects from the licensing requirements of Part I of the Act.[10]

And finally, on August 27, 1982, the Commission issued rules that amended regulations governing case-by-case exemption of small hydroelectric power projects.[11]

In the past three years, especially as a result of the new exemption provisions, the Commission has received hundreds of hydroelectric applications, far more than in any comparable period. In light of the experience of processing these applications, the Commission finds that it is necessary to revisit Part 4 regulations governing hydroelectric applications to make numerous amendments required as a result of implementing the new rules described above, to reflect more clearly Commission interpretations of specific regulations, and to reorganize several sections concerning exemption applications.

While there are some substantive changes proposed, this rule basically is not intended to institute any new program or implement any new Congressional mandate. Rather, it proposes to reexamine all of Part 4 in light of developments over the past three or four years. This reexamination has led to the decision to propose comprehensive reorganization and revisions to almost every section in Part 4.[12]

III. Reorganization of Subpart D

Under the Commission's regulations governing hydroelectric applications, Subpart D (§§4.30–4.35) of Part 4 sets forth the general procedural rules for filing an application for a preliminary permit or a license. Subpart D prescribes: (1) Who may apply for a permit or a license (§ 4.30); (2) the general procedural requirements for a permit or a license application to be "accepted for filing" (§ 4.31); (3) the required specifications for maps and drawings to be submitted with an application (§ 4.32); (4) the requirements for filing a competing application for a permit or a license, or a notice of intent to file such a competing application (§ 4.33); (5) the rules of preference used by the Commission in selecting among competing applications for the same or mutually exclusive project (§ 4.33); (6) the conditions under which a hearing on a hydroelectric application will be held by the Commission (§ 4.34); and (7) the conditions under which an amendment to an application will result in the assignment of a new date of "acceptance for filing" of an application (§ 4.35).

Several sections of Subparts J and K of Part 4 direct exemption applicants to follow the procedural rules of Subpart D, usually with some modification of those rules. Subpart J (§§ 4.90–4.94) sets forth the rules governing application for exemption of a small conduit hydroelectric facility. Subpart K (§§ 4.101–4.113) sets forth the rules governing application for case-specific exemption of a small hydroelectric power project of 5 MW or less (§§ 4.100–4.108), and the rules governing categorical exemption of certain small hydroelectric power projects (§§ 4.109–4.113).

In order to reduce cross-referencing from Subparts J and K to Subpart D, this rule proposes to include applications for exemption from licensing under the procedural rules of Subpart D. Several sections of Subparts J and K would therefore be removed from the regulations since these provisions would

[1] Regulations Governing Applications for Short-form License (Minor), 43 FR 40215 (Sept. 11, 1978) (Docket No. RM78-9-000, Order No. 11).

[2] Projects with installed capacity of 1.5 MW or less are considered to be "minor"; projects with installed capacity of greater than 1.5 MW are considered to be "major."

[3] Regulations Prescribing General Provisions for Preliminary Permit and License Applications; and Regulations Governing Applications for Amendments to and Cancellation of Permits, 44 FR 61328 (Oct. 25, 1979) (Docket No. RM79-23-000, Order No. 54).

[4] Regulations Governing Applications for License for Major Projects—Existing Dams, 44 FR 75383 (Dec. 20, 1979) (Docket No. RM79-36-000, Order No. 59).

[5] Exemptions of Small Conduit Hydroelectric Facilities from Part I of the Federal Power Act, 45 FR 28085 (Apr. 28, 1980) (Docket No. RM79-35-000, Order No. 76).

[6] Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of Five Megawatts or Less, 45 FR 76115 (Nov. 18, 1980) (Docket No. RM80-65-000, Order No. 106).

[7] Revisions to Certain Regulations Governing Applications for Preliminary Permit and License for Water Power Projects, 46 FR 55245 (Nov. 9, 1981) (Docket No. RM81-15-000, Order No. 183).

[8] Application for License for Major Unconstructed Projects and Major Modified Projects; Application for License for Transmission Lines Only; and Application for Amendment to License, 46 FR 55926 (Nov. 13, 1981). (Docket No. RM80-39-000, Order No. 184).

[9] Application for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less, 46 FR 55944 (Nov. 13, 1981) (Docket No. RM81-10-000, Order No. 185).

[10] Exemption from the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less, 47 FR 4232 (Jan. 29, 1982) (Docket No. RM81-7-000, Order No. 202).

[11] Amendments to Regulations Governing Case-by-Case Exemption From All or Part of Part I of the Federal Power Act for Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less, 47 FR 38506 (Sept. 1, 1982), amended 47 FR 42720 (Sept. 29, 1982) (Docket No. RM82-2-000, Order No. 255).

[12] To afford the Commission an opportunity to reconsider the categorical exemption rules, on June 15, 1983, the Commission stayed §§ 4.109–4.113 (48 FR 29474) (Order No. 202-C). Because of the stay, the Commission does not propose, at this time, to address regulations governing categorical exemptions. That will be done in a separate rulemaking docket.

now be covered in Subpart D. The Commission believes that this reorganization will clarify both the procedural rules for filing exemption applications and the rules of competition for authority to develop and operate projects at the same or mutually exclusive sites.

Subpart D would be reorganized as follows:

Proposed § 4.30 would state that Subpart D applies to applications for a permit, a license, and an exemption from licensing. Proposed § 4.30 also would contain definitions for Part 4.

Proposed § 4.31 would state who may file an initial or a competing application for a permit, a license, or an exemption.

Proposed § 4.32 would state the conditions under which the Commission would not accept an initial or competing application for a permit, license, or exemption from licensing.

Proposed § 4.33 would state certain limitations under which the Commission would not accept a permit, license, or exemption application filing.

Proposed § 4.34 would state the conditions under which an applicant could petition the Commission for a hearing concerning an application, or under which the Commission would order such a hearing on its own accord.

Proposed § 4.35 would state the rules for assigning a new "acceptance for filing" date to an application for a permit, license, or exemption from licensing when certain types of amendments are made to these applications.

Proposed § 4.36 would state the special filing requirements and deadlines for filing competing applications, and would state the requirements governing the comparisons of plans of development that applicants for license or exemption from licensing must make.

Proposed § 4.37 would state the rules that the Commission uses to select one application from among all those competing for the same or mutually exclusive project.

Proposed § 4.38 would state the requirements for pre-filing consultation with other agencies.

Proposed § 4.39 would state the requirements for preparing and submitting maps and plans.

IV. Derivation and Distribution Tables

The derivation table indicates how the proposed regulations are derived from the existing regulations. The distribution table indicates where the existing regulations are located in the proposed regulations.

DERIVATION TABLE

Proposed section	Current section
§ 4.30:	
(a)	N/A
(b)(1)	§ 4.33(a) amended
(b)(2)	§ 4.91(a)
(b)(3)	§ 4.91(b)
(b)(4)(i)	§ 4.50(b)(1)
(b)(4)(ii)	§ 4.91(c)
(b)(4)(iii)	§ 4.102(a)
(b)(5)	N/A
(b)(6)(i)	§ 4.50(b)(2)
(b)(6)(ii)	§ 4.102(b)
(b)(7)	§ 4.50(b)(3)
(b)(8)	§ 4.102(d)
(b)(9)	§§ 4.91(d) and 4.102(c)
(b)(10)	§ 4.33(a)
(b)(11)	§ 4.40(b)(1) §§ 4.50(b)(4) and 4.60(b)(1)
(b)(12)	§ 4.102(m)
(b)(13)	§ 4.102(g)
(b)(14)	§ 4.40(b)(3)
(b)(15)	§ 4.40(b)(2)
(b)(16)	§ 4.50(b)(5)
(b)(17)	§ 4.60(b)(3)
(b)(18)	§ 4.50(b)(6)
(b)(19)	§§ 4.40(b)(4), 4.50(b)(7) and 4.60(b)(2)
(b)(20)(i)	§ 4.91(e)
(b)(20)(ii)	§ 4.102(e)
(b)(21)	§ 4.102(i)
(b)(22)	§ 4.102(h)
(b)(23)	§ 4.102(j)
(b)(24)	§ 4.102(k)
(b)(25)	§ 4.102(f)
(b)(26)	§ 4.91(f)
(b)(27)	§ 4.102(l)
§ 4.31:	
(a)	§ 4.33(a)
(b)	§ 4.92(a)
(c)	§ 4.103(b)
§ 4.32:	
(a)(1)	§ 4.30(d)
(a)(2)	N/A
(a)(3)	N/A
(a)(4)	§ 4.31(a)(2)
(b)(1)	§ 4.31(b)
(b)(2)	§§ 4.92(b)(2) and 4.107(a)(2)
(c)(1)	§ 4.31(c)(1)
(c)(2)(i)	§ 4.31(c)(2)
(c)(2)(ii)	§§ 4.93(a)(1) and 4.105(b)(1)
(c)(3)	§ 4.31(c)(3)
(d)(1)	§§ 4.31(d)(1), 4.93(a)(1) and 4.105(b)(1)
(d)(2)	§ 4.31(d)(2)
(e)	§ 4.31(e)
(f)	§ 4.31(f)
(g)	§ 4.31(g)
(h)	§ 4.31(h)
(i)	N/A
§ 4.33:	
(a)	§ 4.30(b)
(b)	§ 4.30(c)
(c)	§ 4.104(c)
(d)	§ 4.104(a)
(e)	§ 4.104(b)
(f)	N/A
§ 4.36:	
(a)	§ 4.33(a)
(b)	§§ 4.33(a), and 4.104(c)(2) (iii) and (iv)
(c)	§ 4.33(d)
§ 4.37:	
(a)	§ 4.33(f)
(b)	§ 4.33(g)
(c)	§ 4.33(h)
(d)	§ 4.104(e)
(e)	§ 4.33(i)
§ 4.38	N/A
§ 4.39	§ 4.32

DISTRIBUTION TABLE

Current section	Proposed section
§ 4.30:	
(a)	§ 4.31(a)
(b)	§ 4.33(a)
(c)	§ 4.33(b)
(d)	§ 4.32(a)
§ 4.31:	
(a)(1)	N/A
(a)(2)	§ 4.32(a)(4)
(b)	§ 4.32(b)
(c)	§ 4.32(c)
(d)	§ 4.32(d)
(e)	§ 4.32(e)
(f)	§ 4.32(f)
(g)	§ 4.32(g)
(h)	§ 4.32(h)
§ 4.32	§ 4.39
§ 4.33:	
(a)	§ 4.30(b) (1) and (9)
(a)(1)–(e)	§ 4.36
(f)	§ 4.37(a)
(g)	§ 4.37(b)
(h)	§ 4.37(c)
(i)	§ 4.37(e)
§ 4.34	§ 4.34
§ 4.35	§ 4.35
§ 4.40:	
(a)	§ 4.40(a)
(b)	§ 4.30(b)
(c)	§ 4.40(b)
(d)	§ 4.38
§ 4.41	§ 4.41
§ 4.50:	
(a)	§ 4.50(a)
(b)	§ 4.30(b)
(c)	§ 4.50(b)
§ 4.51	§ 4.51
§ 4.60:	
(a)	§ 4.60(a)
(b)	§ 4.30(b)
(c)	§ 4.60(b)
§ 4.61:	
(a)(1)	§ 4.38
(a)(2)(i)	§ 4.32(b)
(b)–(f)	§ 4.61(b)–(f)
§ 4.70	§ 4.70
§ 4.71	§ 4.71
§ 4.80	§ 4.80
§ 4.81	§ 4.81
§ 4.82	§ 4.82
§ 4.83	§ 4.83
§ 4.90	§ 4.90
§ 4.91	§ 4.30(b)
§ 4.92:	
(a)	§ 4.31(b)
(b)	§ 4.32(b)(2)
(c)(1)–(c)(6)	§ 4.92(a)–(f)
§ 4.93:	
(a)(1)	§ 4.32
(b)(2)	§ 4.93(a)
(b)	§ 4.34
(c)	§ 4.93(b)
(d)	§ 4.93(c)
(e)	§ 4.93(d)
(f)	§ 4.93(e)
(g)	§ 4.93(f)
§ 4.94	§ 4.94
§ 4.101	§ 4.101
§ 4.102	§ 4.30(b)
§ 4.103:	
(a)	§ 4.103(a)
(b)	§ 4.31(c)
(c)	§ 4.103(b)
(d)	§ 4.103(c)
§ 4.104:	
1st paragraph	Deleted
(a)	§ 4.33(d)
(b)	§ 4.33(e)
(c)	§§ 4.33(c) and 4.36(b)
(d)	§ 4.36(d)
(e)	§ 4.37(d)
§ 4.105:	
(a)	Deleted
(b)(1)	§ 4.32
(b)(2)	§ 4.34
(b)(3)	§ 4.105(b)(1)
(b)(4)	(b)(2)
(b)(5)	(b)(3)
(b)(6)	(b)(4)
§ 4.106	§ 4.106
§ 4.107:	
(a)(1)	§ 4.107(a)
(a)(2)	§ 4.32
(b)	§ 4.107(b)

V. Filing of Competing Applications

A. Elimination of Notices of Intent

The Commission normally allows approximately 60 days after the first public notice of an initial application for a prospective applicant to file a competing application for the same or mutually exclusive site.[13] If a prospective applicant needs additional time to prepare and submit its application, except for a competing application for a permit for three types of projects,[14] it can file a notice of intent to submit a competing application.[15] A notice of intent informs the Commission that the prospective applicant needs additional time to prepare and file a competing application before the Commission examines, compares, and acts on all the applications competing for the same project. Upon submitting an acceptable notice of intent, a prospective applicant is granted an additional period of time beyond the last date for the filing of protests or motions to intervene prescribed in the public notice of the initial application [16] to prepare and submit its competing application. For a competing permit application, an applicant is allowed an additional 60 days.[17] For a competing license or a competing exemption application, an applicant is allowed an additional 120 days.[18]

The provisions allowing additional time to file a competing application pursuant to a notice of intent were promulgated to balance two countervailing objectives: expeditious processing of initial applications after giving notice of their acceptance for filing and allowance of a reasonable opportunity for prospective competitors to file competing applications. Under the notice of intent provisions, the Commission delays consideration of the initial application only when, within approximately 60 days of noticing its acceptance, the Commission is informed that a competing applicant intends to file an application for the same site.

In theory, these provisions should simplify and expedite the processing of applications. In their execution, however, these provisions have resulted in numerous disputes [19] and misuse.[20]

Therefore, the Commission proposes to eliminate notices of intent entirely because they have not proven to expedite and simplify the processing of applications, as they were intended to do. Under the proposed rule, a prospective competitor could file its application not later than the last date for filing protests and motions to intervene prescribed in the public notice issued for the initial application.[21] This approach should also simplify the regulations and reduce the number of disputes arising concerning the appropriate deadline for filing a competing application. The Commission specifically invites public comment on the time that should be allowed for the filing of competing applications and the strengths and weaknesses of the notice of intent mechanism.

B. Deadlines for Filing a Competing Application for License or Exemption from Licensing

The Commission's regulations require competing permit and license applications for a project to be filed no later than the deadline for filing protests and motions to intervene prescribed in the public notice of the "initial application" for the project.[22] In the *Georgia Pacific* decision in 1981, the Commission determined that the term "initial application" in § 4.33(a)(1) encompasses two initial applications—one for a permit and one for a license—for any one project.[23] The Commission reasoned that competition at the license level constitutes a phase of the competitive proceeding that is distinct from competition at the permit level. Thus, when an applicant files a license application in a preliminary permit proceeding, it starts a new round of competition at the license level.

The rule proposes to incorporate more clearly the Commission's decision in *Georgia Pacific* that a license application may be filed in competition with a preliminary permit application at any time before the permit is actually issued.[24] In addition, the rule would clarify that this opportunity ends if an intitial development application (*i.e.* an application for a license or exemption from licensing) is accepted. After an initial development application is accepted, any competing development application must be filed not later than the deadline for filing protests and motions to intervene prescribed in the public notice of the initial development application.[25]

This proposal extends beyond the precise holding in *Georgia Pacific* because, to date, the Commission's rules and decisions have not fully addressed how exemption applications fit into this two-phase process. In the final rule in Docket No. RM80–65–000,[26] in which the Commission promulgated its regulations governing exemption applications for small hydroelectric power projects, the Commission declined to allow an exemption application, or a notice of intent to submit such as application, to be filed after the last date for filing protests and motions to intervene prescribed in the public notice of an already pending permit application.[27] At that time, the Commission was concerned that if it allowed exemption applicants to do this, an unreasonable burden would be imposed upon efficient administration of the permit, license, and exemption programs. The Commission also was concerned that the Commission itself, its staff, and other interested agencies and persons needed greater certainty of the nature of the proceeding and the participants at a relatively early point.

Since *Georgia Pacific*, the Commission has found that acceptance for filing of a license application to develop projects during the pendency of a permit application proceeding does not unduly burden the Commission, any of the interested entities, or the process itself. Because an application for exemption is similar to an application for a license in the applicants for either are ready to build, the Commission believes that allowing an initial exemption application, and applications in competition therewith, to be accepted for filing up until a pending permit application is granted will also cause no undue burden. Rather, allowing exemption applications to be filed during this period of time should expedite development of hydroelectric sites because an exemption applicant.

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[13] Section 4.33(a)(1). (All sections cited are in 18 CFR Part 4. If a citation refers to a current regulation, only the section number is given. If a citation refers to a proposed new regulation, "proposed" precedes the section number.)

[14] Section 4.33(a)(2) excludes notices of intent for permits for a major project—existing dam, minor water power project 5 MW or less, and natural water feature project 5 MW or less.

[15] Section 4.33(a)(1) and (b).

[16] Section 4.31(c)(2).

[17] Section 4.33(c).

[18] Sections 4.33(c) and 4.104(d).

[19] *See* Energenics Systems, Inc., 17 FERC ¶61,110 (1981) (in which the Commission interpreted its regulations to allow a rejected competing permit application to be treated as a notice of intent); Long Lake Energy Corp., 20 FERC ¶61,130 (1982) (in which the Commission determined that a notice of intent to file a license or an exemption from licensing application could be used to file either type of application).

[20] Some notices of intent are apparently filed only to delay the initial applicant or as bargaining leverage against the initial applicant. Other notices of intent are filed without any realistic expectation of filing a competing application.

[21] Proposed § 4.36.

[22] Section 4.33(a)(1).

[23] Georgia Pacific Corp., 17 FERC ¶61,174 (1981).

[24] Proposed § 4.36(a)(2)(i).

[25] Proposed § 4.36(b)(2).

[26] 45 FR 76115 (Nov. 18, 1980) (Order No. 106).

[27] Section 4.104(a)(2)(i).

unlike a permit applicant, is prepared to proceed with construction immediately.

The rule would therefore treat exemption applications the same as license applications.[28] An application for exemption from licensing would be accepted against a pending permit application at any time before the Commission grants or denies a permit or not later than the last date for filing protests and motions to intervene prescribed in the public notice of the initial development application for the site, whichever occurs first.[29]

These amendments would clarify that, among the different types of applications that may be filed for any project, there can be two distinct phases of compatition: competition among applicants proposing to study the project (*i.e.*, permit applicants) and competition among applicants proposing to develop the project (*i.e.*, license and exemption applicants).[30]

Once an initial development application is filed in a permit proceeding, a new phase of competition begins. Of course the Commission ultimately considers and compares in the same proceeding all of the applications filed for the site.

C. Exemptions

(1) *Competing Exemption Applications.* There are circumstances in which more than one potential applicant could qualify for an exemption.[31] The rule would clarify that the Commission does allow competition for an exemption.[32]

The Commission's current regulations are silent on how it selects from among two or more competing exemption applications for the same project. In comparing competing permit or competing license applications, when either both applicants have municipal preference or neither applicant has municipal preference, the Commission favors the applicant with plans of development that are better adapted to develop, conserve, and utilize in the public interest the water resources of the region.[33] If the plans of development of the competing applicants are equally well adapted and neither applicant alone has municipal preference and neither applicant is the permittee, the Commission favors the applicant with the earliest application acceptance date.[34]

The Commission believes that it should apply these same rules of preference to competing applications for exemption from licensing of a small hydroelectric power project or a small conduit hydroelectric facility. The proposed rule would therefore amend the Commission's regulations to expressly state that the Commission would apply these rules of preference in selecting among competing exemption applications.[35]

(2) *Permit Applications Submitted After an Exemption Application.* The Commission's regulations state that, with certain exceptions, it will not accept for filing an application for a permit for a small hydroelectric power project if the Commission has accepted a previously filed exemption application for that project and has not yet granted or denied that exemption application.[36] The proposed rule would clarify the Commission's application of this restriction.[37] If an initial application for a project is for a permit and then an exemption application is filed that is the initial development application, the Commission only accepts permit applications filed until the last date for filing applications in competition against the initial permit application (as would be determined by proposed § 4.36(a)).[38] This avoids penalizing a competing permit applicant that is responding to the public notice issued for the initial permit application. However, after the deadline for filing applications competing against the initial permit application, the Commission does not accept additional permit applications that compete against an exemption application.[39]

(3) *Competing Exemption and License Applications.* The Commission's regulations state that if an application for a license and an application for exemption from licensing are both accepted for filing and each proposes to develop the same or mutually exclusive projects, the Commission will favor the application filed first *unless* the Commission determines that the plans of the subsequent applicant would better develop the water power potential of the affected resources.[40] The regulations do not state expressly that the Commission *will* make this comparison. The rule would clarify that the Commission will make the comparison, will favor the applicant with the better adapted plans, and that, if the plans of the competing applicants are equally well adapted, will favor the applicant that filed first.[41]

(4) *Competing Exemption and Permit Applications.* The Commission's regulations state that the Commission will favor an application for exemption from licensing over an application for a permit.[42] This regulation reflects the rebuttable presumption that preliminary permit applications are usually less concrete in nature and rarely offer substantiated information, whereas accepted exemption applications are fully developed proposals that are to be put into effect soon after approval. However, Commission practice is to compare plans of a permit applicant against those of an exemption applicant. If the permit applicant's plans are better adapted to develop the region's water resources and are substantiated in the application, the Commission will favor the permit applicant.[43] Where the permit applicant's plans are not substantiated or, if substantiated, are not better adapted, the Commission favors the exemption applicant. The proposed rule would codify this Commission practice.[44]

(5) *Threshold Capacity Required To Compete Against an Exemption Application for a Small Hydroelectric Power Project.* The Commission's

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[28] Proposed § 4.36(a)(2)(i).

[29] *Cf.* Milton and Morris Zack, 23 FERC 61,121 (1983) (noting that the current regulations prescribe different deadlines for filing license and exemption applications in competition with a permit application).

[30] Proposed §§ 4.30(b)(1) and 4.36(a)–(b). For any project, there can be one initial permit application and one initial development application. See proposed § 4.30(b)(10).

[31] For example, this can occur where only Federal lands would be used or occupied (*see* Douglas Pegar, 23 FERC ¶ 61,110 (1983)) or where more than one potential applicant has all the necessary property interests.

[32] Proposed § 4.36(b).

[33] Section 4.33(g)(1). *See also* section 10(a) of the Federal Power Act, 16 U.S.C. 803(a) (1976).

[34] Section 4.33(g)(2).

[35] Proposed § 4.37(d)(2).

[36] Section 4.104(c)(1).

[37] *See* City of Tenino, 18 ¶ 61,075 (1982).

[38] Proposed § 4.33(a)(3).

[39] Because the Commission favors applications that propose immediate development of a site (*i.e.*, applications for either a license or an exemption from licensing) over applications that propose studies (*i.e.*, applications for permits), the Commission generally does not accept permit applications for filing after either an acceptable license or exemption application has been filed. *See* §§ 4.30(b)(2) and 4.104(c)(1)(ii). However, the Commission does not want to preclude an opportunity to compete by a prospective competing applicant that submits an application in response to a public notice issued by the Commission soliciting the filing of competing applications. Therefore, for parallel reasons to those discussed above, even after an initial development application has been filed, the rule would allow a prospective preliminary permit applicant to submit an application in competition against an initial preliminary permit application, provided that the competing permit application is filed within the initial permit application's published deadline for competition as determined by proposed § 4.36(a). *See* proposed § 4.33(a)(3).

[40] Section 4.104(e)(2).

[41] Proposed § 4.37(d)(2).

[42] Section 4.104(e)(1).

[43] *See* Western Power, Inc., 23 FERC ¶61,343 (1983).

[44] Proposed § 4.37(d)(1).

current regulations require that a prospective competing license applicant must propose to develop a project with at least 7.5 MW in order to compete against an initial application for exemption of a small hydroelectric power project.[45] This threshold capacity requirement encourages prospective exemption applicants to develop small hydroelectric power projects. It buffers them from the full force of competition by allowing competition from a prospective license applicant only if that applicant can prove that it can develop a project with at least 50 percent more capacity than the largest project (5 MW) eligible for this type of exemption.

The proposed rule would eliminate this threshold capacity requirement.[46] Under the proposed rule, prospective license applicants would not have to propose a project with greater installed capacity in order to compete against an initial exemption application.

The Commission no longer believes that prospective exemption applicants need this favored treatment. The favored treatment is given only if the exemption applicant files the initial development application. If such an exemption applicant proposes plans of development best adapted to develop the region's water resources, the Commission favors its application as the first filed application.[47] If a prospective license applicant can better develop the region's water resources, the Commission believes that it should favor the license applicant.

(6) *Competition Against a Small Conduit Hydroelectric Facility Exemption Application.* The Commission's regulations do not currently provide rules for competition against an application for exemption of a small conduit hydroelectric facility. This proposed rule would extend the general rules for competition against an application for exemption of a small hydroelectric power project to competition against an application for exemption of a small conduit hydroelectric facility.[48] The rule also would codify the Commission's current practice [49] of allowing more than one application for a small conduit hydroelectric facility to be filed in competition for the same site, and allowing conduit exemption applications and small hydroelectric power exemption applications to be filed in competition with each other.[50]

[45] Section 4.104(c)(2)(i).

[46] Compare § 4.104(c) and proposed § 4.33(c).

[47] Section 4.104(e)(2).

[48] Proposed §§ 4.33, 4.36 and 4.37.

[49] City of Gridley, Cal., 22 FERC¶ 61,256 (1983).

[50] Proposed§ 4.36(b)(2).

VI. Evaluation of Competing Applications

A. Applicants' Comparisons of Plans of Development

The Commission grants a preliminary permit to the applicant with the plans best adapted to develop, conserve, and utilize in the public interest the water resources of the region or, if the plans are equally well adapted, to the first applicant to file an acceptable application.[51] The Commission has found that, at this early stage of planning, comparisons made by competing applicants of their plans of development to those of the initial applicant, and comparisons of the initial applicant of its plans of development to those of all competing applicants, do not usually help the Commission in determining whether one set of plans is better adapted than another set of plans. Plans are too rudimentary at this stage of the process. In most cases, to the extent that plans can be compared, the Commission can do so without referring to the applicants' comparisons. The rule therefore proposes to eliminate, on a generic basis, the requirement that a competing applicant for a preliminary permit compare its plans to those of the initial applicant and vice versa. In the unusual case where the Commission does not need the applicants' comparisons, the Commission can request that they be submitted.

In the competition phase for a license or exemption from licensing, competitors' plans are much more fully developed and can more readily be compared. At this stage of competition, the Commission could use the assistance of the applicants in comparing the various plans of development to determine which ones are best adapted. However, the Commission believes that this comparison would be more useful if, after all applications have been submitted, applicants compared their plans to those of all the other applicants. Under the present regulations, competing applicants must compare their plans only with those of the initial applicant.[52]

Thus, the proposed rule would require that all license and exemption applicants competing for the same or mutually exclusive sites compare their plans to the plans of all other applicants to show the Commission how their own plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region.[53] The rule would also change the Commission's practice of automatically finding to be patently deficient an application that at the time of filing fails to include comparisons of plans of development.[54] License and exemption applicants would be required to compare their plans with those of other applicants, but failure to do so would not automatically cause an application to be rejected as patently deficient.[55]

[51] This assumes that municipal preference does not apply.

[52] Section 4.33(d).

B. Special Limitations on Submission of Applications

The rule would add a new provision to allow the Commission to refuse to accept all applications for a project or to accept applications but not to treat any one as the first to be filed.[56] The Commission would use this power only rarely to handle certain extreme situations where the normal rules governing acceptance of applications and competitions among applicants have not resulted in one development plan for the water resource that fully satisfies the public interest in responsible hydropower development, such as where the development would be clearly undersized or where an abuse of the hidden hybrid doctrine has occurred.[57]

VII. Consultation

In the final rule in Docket No. RM82-2-000,[58] the Commission clarified in great detail the different steps that a prospective exemption applicant must take during consultation with state and Federal fish and wildlife agencies before filing an exemption application with the Commission. However, developers too often submit exemption applications to the Commission without having consulted *adequately* with the appropriate fish and wildlife agencies.[59] The Commission has had to reject many of these applications as patently deficient. The applicants have then had to reconsult with the fish and wildlife agencies and resubmit their applications.

This process of inadequate initial consultation, rejection, reconsultation, and resubmittal of an application is a waste of the time and resources of the applicants, the fish and wildlife agencies, and the Commission. The rule

[53] Proposed § 4.36(c)(2).

[54] Sections 4.31(d)(2)(i) and 4.33(d)(2).

[55] Proposed § 4.32(d)(2)(i).

[56] Proposed § 4.33(f).

[57] Gregory Wilcox, 24 FERC ¶ 61,317 (1983) and 26 FERC ¶ 61,113 (1984).

[58] 47 FR 38506 (Sept. 1, 1982) (Order No. 255).

[59] See, e.g., Eastern Sierra Energy Development, 20 FERC ¶ 61,348 (1982); Potter Instrument Co., 19 FERC ¶ 61,299 (1982).

would add a new section to the regulations to consolidate the Commission's consultation requirements for applicants for licenses and exemption[60] and to clarify the minimum steps that must to be taken to consult adequately with appropriate agencies, including the fish and wildlife agencies. Applicants that persist in failing to consult adequately with these agencies will continue to have their applications rejected by the Commission as deficient.[61]

Under the proposed rule, applicants would be required initially to contact all the appropriate agencies and provide them with details with respect to their planned projects.[62] During this initial phase, applicants should not restrict themselves merely to providing information to agenices. An effort should be made to determine the types of studies agencies consider necessary, the information they have in hand, their concerns about the environmental consequences of the proposed project and their ideas about mitigation of adverse impacts or enhancement of resources. Areas of disagreement between applicants and agencies should be isolated, and an attempt to resolve conflicts should be made. Applicants should be aware that if they and the agencies cannot resolve their conflicts, the Commission will give weight to the agencies expertise in deciding whether the applicants performed adequate studies to properly consult. Therefore, consultation does not consist merely of a transfer of information; ideally, it is a period of extensive communications in which agencies and applicants are fully acquainted with one another's assessment and priorities regarding the environmental dimensions of the project.

VIII. Other Aspects of the Exemption Process

A. Real Property Interests for Exempt Projects

When the Commission adopted Subpart J of Part 4 governing application for exemption of small conduit hydroelectric facilities, it anticipated that only property owners having all the real property interest necessary to develop and operate a small conduit hydroelectric facility would apply for such an exemption. In recent months, the Commission has received applications for exemption of small conduit hydroelectric facilities from entities that do not own all the real property interests necessary to develop and operate their proposed projects.[63] An exemption holder does not have the power of eminent domain provided under section 21 of the Federal Power Act. If the exemption holder does not possess all the necessary real property interests, it cannot immediately develop and operate the project. Therefore, this rule[64] would require an applicant for exemption of a small conduit hydroelectric facility to have either all the real property in the lands necessary to develop and operate its project or an option to obtain those necessary interests.[65]

The Commission also reminds exemption applicants for projects that require proof of ownership of all the necessary non-Federal real property interests that their applications will be considered to be patently deficient and rejected if documentary evidence of ownership is not submitted with their applications. Adequate documentation of ownership can include a deed, a written option to purchase, or a written lease. Also, the Commission advises applicants that if there is a significant dispute over the requisite ownership of real property interests for a project, the Commission might deny an exemption application for such a project.[66] The Commission believes that disputes over ownership of property rights should be resolved before filing an exemption application. A court, not the Commission, is the proper forum to resolve these disputes. One of the main underlying purposes of the Commission's exemption rules is to expedite hydropower development. When there is a significant dispute over ownership of the requisite real property interests for a project, that project cannot proceed expeditiously and an exemption application for that project should be rejected or denied.

B. Automatic Suspension of the 90- and 120-Day Period for Commission Action on Exemption Applications

Current regulations require the Commission to take an affirmative act to suspend the running of the time periods after which exemptions are issued automatically.[67] When an acceptable competing application is filed within these time periods, the Commission now compares the competing applications and grants the exemption, license, or permit to the applicant with the best adapted plans of development or, if the plans are equally well adapted, to the applicant that filed first. To do this, the Commission usually must suspend the running of the time periods. However, if the Commission should inadvertently fail to suspend the running of the time periods, an exemption could be automatically but incorrectly granted to the initial exemption applicant.[68] The rule would amend the Commisison's regulations to provide that, upon the filing of a competing application, the mandatory time periods for Commission action on an application for exemption of a small conduit hydroelectric facility and an application for exemption of a small hydroelectric power project would cease to run. The Commission would then consider all the filed competing applications.[69]

The Commission's current regulations allow a qualified applicant for exemption of a small hydroelectric power project to petition for a waiver of any specific provision of §§ 4.102 through 4.107.[70] The Commission usually needs to suspend the running of the mandatory time period to consider these petitions. Therefore, the proposed rule also would automatically suspend the running of the mandatory time period if an application for exemption of a small hydroelectric power project is accompanied or supplemented by a petition for waiver.[71]

C. Waiver of Conduit Exemption Regulation

Under the Commission's current regulations, an applicant for exemption of a small conduit hydroelectric facility may request a waiver of discharge requirements [72] for that type of exemption when it files its application.[73] The Commission must now rule on such a request before accepting the application.[74] The

[60] Proposed § 4.38. Because the same problems with respect to inadequate pre-filing consultation occur in license applications, and in order to consolidate the Commission's regulations governing consultation, this section would apply also to license applicants.

[61] Proposed § 4.32(d)(2).

[62] Proposed § 4.38(a).

[63] *See, e.g.*, city of Gridley, Cal., 22 FERC ¶ 61,256 (1983).

[64] Proposed ¶ 4.31(b).

[65] The proposed rule also would clarify that, while only a citizen, association of citizens, domestic corporation, municipality, or state may apply for exemption from provisions other than licensing, there are no such status restrictions on applicants for an exemption from licensing.

[66] *See, e.g.*, Ted Lance Slater, 21 FERC ¶ 61,234 (1982).

[67] The Commission must act within 90 days for applications for small conduit hydroelectric facilities or within 120 days for applications for small hydroelectric power projects. *See* §§ 4.93(e) and 4.105(b)(5).

[68] *See* Hirshey v. FERC, 701 F.2d 215 (D.C. Cir. 1983).

[69] Proposed §§ 4.93(c)(2) and 4.105(b)(2).

[70] Section 4.103(d)(1).

[71] Proposed § 4.103(b)(2)(iii).

[72] Section 4.91(f)(5) and proposed § 4.30(b)(26)(v).

[73] Section 4.92(c)(1)(i).

[74] Section 4.93(a)(2).

Commission believes that it should have the flexibility to rule on the waiver request either when it considers the application on its merits or at any other appropriate time. The proposed rule [75] would allow the Commission this flexibility and would clarify that the acceptance, by itself, of a conduit exemption application does not constitute a ruling on any request for waiver of the discharge requirements.

D. Revocation of an Exemption to Allow More Substantial Development

The Commission is responsible for regulating the non-Federal development of water resources to provide for the most comprehensive development of hydroelectric power.[76] If in order to fulfill this mandate exempted projects must be altered or are determined to be obsolete, the Commission may revoke an exemption even after the project has been authorized and is fully operational.[77] This is in part a necessary consequence of the indefinite term for an exemption as opposed to the finite term for a license. Of course, the circumstances are very rare in which the Commission would revoke an exemption. The Commission recognizes that exemption holders must be assured of the continuing validity of their exemptions to the maximum extent permitted by law.

To clarify the Commission's responsibilities, the proposed rule would add a new article to the standard terms and conditions of both an exemption of a small conduit hydroelectric facility and an exemption of a small hydroelectric power project. This standard article [78] would reserve expressly the Commission's right to (1) require modifications in the structure or operation of an exempted project, or (2) revoke an exemption if the most comprehensive development of a region's water resources so requires. If in deciding upon a particular license application the Commission determines that, in the interest of promoting more comprehensive development of the water resources under section 10(a) of the Federal Power Act, it should revoke an exemption and issue instead a license for a given site, the licensee would be required to pay compensation to the exemption holder pursuant to section 21 of the Act.

[75] Proposed § 4.93(a).

[76] Section 10(a) of the Federal Power Act, 16 U.S.C. 803(a) (1976).

[77] *See* Final Rule, *supra* note 6; Metro. Dist. of Hartford, 16 FERC ¶ 61,254 (1981); Wells River Hydro Assocs., 18 FERC ¶ 61,157 (1982).

[78] Proposed §§ 4.94(d) and 4.106(f).

E. Amendments to an Issued Exemption

The Commission expects an exempted project to be constructed and operated as described in the exemption application that was approved by the Commission. The rule [79] would establish a procedure through which an exemption holder desiring to change the design, location, or method of construction of its project works or the operation of its project could request from the Commission a determination whether its proposed changes would be allowed under its issued exemption.[80] Under this procedure, an exemption holder would notify the Commission and appropriate Federal and state fish and wildlife agencies of its proposed changes. The Commission would then review the proposed changes and determine whether the changes would be consistent with the exemption holder's issued exemption or whether the changes would constitute a material change of the exemption and therefore not be allowed under the issued exemption.

Within 45 days of receipt of the exemption holder's request for a determination, the Commission would notify the exemption holder whether its proposed changes were consistent with its issued exemption. If the Commission does not respond within 45 days of receiving the exemption holder's request, the exemption holder would be allowed to proceed with its proposed changes.

In reviewing an exemption holder's proposed changes to determine whether the changes were consistent with its exemption, the Commission would consider, among other things: the continuing applicability of the terms and conditions of the issued exemption; changes in the flow regime associated with the project; any adverse environmental impacts that had not been assessed previously by the Commission or the interested Federal and state fish and wildlife agencies; and whether the project, as modified, would continue to qualify for exemption.

If the Commission were to determine that the proposed changes were material, the exemption holder would be required to apply for an amendment to its exemption or apply for a license. An application for an amendment to an exemption would be prepared, filed, and processed identically to an application for exemption from licensing, with one difference. The Commission would not accept applications in competition against an application for an amendment of an exemption. This is necessary to encourage an exemption holder to notify the Commission of any planned changes to its project and to give adequate assurances to an exemption holder that such notifications will not ultimately result in the loss of its exemption.

[79] Proposed §§ 4.96 and 4.104.

[80] Because the Commission has only limited experience with changes to exempted projects and because any changes would be very site-specific, the Commission cannot, at this time, issue generic guidelines for determining what changes in an exempted project would be allowed under an issued exemption.

F. Additional Standard Terms and Conditions for Exemptions

First, to prevent an exemption holder from owning a project site for an unreasonable time without developing it, the rule would add a new article to the standard terms and conditions for exemptions of small conduit hydroelectric facilities. That article would reserve to the Commission the right to revoke an exemption if actual construction of any proposed generating facility has not begun within two years or if construction has not been completed within four years of the effective date of the exemption.[81] That article also would provide that, if an exemption is revoked under these conditions, the Commission would not accept any subsequent application for exemption from licensing, or a notice of exemption from licensing, from the prior exemption holder within two years of the revocation.[82]

Second, exempting a project from licensing does not relieve the Commission of its responsibilities over dam safety. The rule would add a new article [83] to the standard terms and conditions of all exemptions of small hydroelectric power projects. That article would require that if a dam is more than 33 feet in height above streambed, impounds more than 2.5 million cubic feet of water, or is

[81] Proposed § 4.94(c).

[82] A parallel article conditions exemptions for small hydroelectric power projects. *See* § 4.106(c). The rule would amend this standard article to lengthen the time period in which to begin construction from 18 months to 2 years. This change is in response to several requests received by the Commission seeking an extension of the current time period. The rule would also amend this standard article to restrict only the prior exemption holder that lost its exemption under this article from reapplying within two years of the exemption being revoked. The article currently restricts *anyone* from applying for an exemption for that site within two years. The Commission sees no reason to restrict persons other than the prior exemption holder from applying for an exemption for the site since the primary purpose of this restriction is to prevent persons from obtaining exemptions for the purpose of excluding others from developing the site (*e.g.*, a property owner that does not want to develop its site, but does not want others developing it either).

[83] Proposed § 4.106(h).

determined to have a significant or high hazard potential, the project must have periodic safety inspections by an independent consultant and is subject to safety inspections, remedial measures, and other requirements that may be imposed by the Commission's Regional Engineer or other authorized representative under the Commission's safety regulations.[84]

G. Federal Lands

The Commission's regulations now allow any person to apply for exemption of a small hydroelectric power project located on Federal lands if the rights to use or occupy those lands held by the Federal government are the only rights necessary to develop and operate the proposed project.[85] The regulations define Federal lands to be any lands to which the United States hold fee title.[86] Under this provision, some applicants have applied for exemption from licensing of projects that could not be developed and operated because non-Federal entities held or controlled certain necessary real property interests (*e.g.*, easements, leases, or surface or subsurface rights). The Commission reminds prospective applicants that, in order to apply for an exemption under this provision, "Federal lands" means any lands for which the United States owns all the real property interests necessary to develop and operate the project.[87]

H. Surrender of an Exemption

The Commission currently has no rules governing the surrender of an exemption. Under the proposed rule,[88] the Commission would require an exemption holder to file a petition with the Commission requesting surrender of its exemption. Public notice of the petition would be given at least 30 days before the Commission acted. These proposed regulations are similar to the Commission's existing regulations governing surrender of a license.[89]

Under the proposed rules, an exemption holder would be required to state in its petition for surrender its plans for disposition of the project works and restoration of project lands. The exemption holder would also be required to notify interested Federal and state fish and wildlife agencies of its surrender plans.

If a project occupies Federal lands under a permit from a Federal agency having supervision over such lands, the exemption holder would also be required concurrently to notify that agency of the exemption holder's surrender plans. The Commission expects these agencies to take appropriate action to require an exemption holder to restore affected Federal lands.

In approving a petition for surrender, the Commission would prescribe any necessary terms and conditions concerning disposition of the project works and restoration of the affected environment. In considering conditions for the surrender of an exemption, the Commission will be most concerned with life and property both downstream and in the immediate vicinity of the project works.

I. National Marine Fisheries Service Exemption Conditioning Authority

Under the Commission's current regulations, the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), and the appropriate state fish and wildlife agencies may impose conditions on all conduit and case-specific small power project exemptions that the Commission issues.[90] The USFWS's and the state fish and wildlife agencies' authority to condition exemptions emanates from the Public Utility Regulatory Policies Act of 1978[91] and the Energy Security Act of 1980.[92]

On the other hand, the NMFS's authority to impose exemption conditions does not rest on any statutory authority.[93] Rather, Congress contemplated that only "two agencies"—the USFWS and the appropriate state fish and wildlife agency—could impose binding conditions to exemptions.[94] Apart from these two agencies, the statutes vest exclusive authority over exemption conditions with the Commission.

The Commission believes that its regulations should more clearly reflect the regulatory scheme that Congress envisioned. Accordingly, under the proposed rule,[95] exemption conditions provided to the Commission by the NMFS would be considered advisory, not mandatory. Any conditions submitted by the NMFS would become part of an exemption only if the Commission determines that the inclusion of the condition is in the public interest. To assist the Commission in its exemption program, the Commission will continue to require applicants to consult with the NMFS on anadromous fish matters.[96]

J. Stream Flow Guidelines

As a guideline for determining whether a small hydroelectric power project would adequately use the available stream flow, the Commission's staff determines whether the instantaneous flow that a proposed project would be capable of using would be exceeded less than 25 percent of the time, (*i.e.*, the 25 percent exceedance point on the flow duration curve). If in using this guideline it appears to staff that the applicant would not be adequately developing the site, the applicant must demonstrate why a lesser use is nevertheless appropriate. The rule would reflect this current Commission practice by requiring an applicant for a case-specific exemption of a small hydroelectric power project to submit a flow duration curve.[97]

IX. Other Changes Regarding Permits

The rule proposes to give a permittee prior notice that the Commission intends to cancel its permit for its failure to comply with the specific terms and conditions of its permit. The rule would allow a permittee an opportunity to petition for a hearing before the Commission in order to contest the proposed cancellation order.[98]

The rule would also formalize the procedure by which a permittee surrenders an unexpired permit.[99] Under the proposed rule, a permittee would be required to file a petition to surrender its permit. Unless the Commission issues an order to the contrary, the surrender would take effect 30 days after the Commission issues a public notice of receipt of the petition. The 30-day period is being included to minimize unfair competitive advantages obtained by orchestration of a surrender petition and a subsequent application for the surrendered site. Applications for the surrendered site that are filed before the effective date of the surrender will be rejected.

[84] This article already is a standard term in all categorical exemptions. *See* § 4.111(a)(6).

[85] Section 4.103(b)(2)(i).

[86] Section 4.102(d).

[87] Proposed § 4.30(b)(8).

[88] Proposed §§ 4.95 and 4.102 would govern surrender of an exemption of a small conduit hydroelectric facility and a small hydroelectric power project, respectively.

[89] *See* §§ 6.1 and 6.2.

[90] Sections 4.94(b) and 4.106(b).

[91] Public Utility Regulatory Policies Act of 1978 § 213, 16 U.S.C. 823a (Supp. II 1978).

[92] Energy Security Act of 1980 408, 16 U.S.C. 2705(d) (Supp. IV 1980).

[93] *See* Winchester Water Control Dist., 24 FERC ¶ 61,080 at 61,207–08 (1983).

[94] Report of the House Ad Hoc Committee on Energy, H.R. Rep. No. 543, 95th Cong., 1st Sess. 49–50 (1977).

[95] Proposed § § 4.94(b) and 4.106(b).

[96] Proposed § 4.38(a).

[97] Proposed § 4.107(c)(5).

[98] Proposed § 4.83(a).

[99] Proposed § 4.84.

Third, the rule would clarify that failure of a permittee to file an *acceptable* license application before its permit expires will result in loss of the permittee's priority of application for a license for a proposed project.[100]

Finally, section 4 of the Federal Power Act authorizes the Commission to issue a preliminary permit to a prospective license applicant to perform studies and tests (for up to three years) for the purpose of preparing and submitting a license application. Neither the Federal Power Act nor any other act authorizes the Commission to issue a preliminary permit to perform studies and tests for the purpose of preparing and submitting an exemption application. Therefore, a permittee is not accorded any permit-based priority as a permittee when it files an exemption application. However, during the term of the permit, no one can file a license application unless and until a permittee first files a license application.[101] Hence, within the term of the permit, no prospective license applicant can compete against a permittee that has filed an exemption application. This is in essence a form of permit-based priority that is not intended and would not be beneficial to the public interest. Therefore, the proposed rule would provide for a permit to expire upon acceptance for filing of the permittee's exemption application.[102]

X. Veracity of Applications

The Commission relies on the accuracy and truthfulness of the statements and information contained in hydroelectric project applications. Based in large part on these statements and information, the Commission grants permits, licenses, and exemptions. Therefore, the Commission needs written assurance that persons submitting an application and making statements therein have knowledge of the contents of the application and can vouch for its accuracy. All hydroelectric applications should be subscribed and verified by the persons submitting them. Prior to the adoption of the Commission's new Rules of Practice and Procedure,[103] under former § 1.16 of the Commission's regulations, the Commission required that all hydroelectric applications and exemption notices be subscribed and verified. The proposed rule would reinstate this requirement.[104]

The rule would add a new article to the standard terms and conditions of all exemptions [105] and a special article to all permits and licenses that would explicitly recite the Commission's right to revoke any of these authorizations if any inaccurate material information was presented by or on behalf of the applicant during the application process.

XI. Amendments to Applications and New Filing Dates

The rule would amend § 4.35 in three ways. First, a new filing date would be assigned to a permit, exemption, or license application (or an application to amend a license when the amendment would increase installed capacity) when such an application is materially changed. This is the general rule of § 4.35. However, it has previously been applied only to license and permit applications. This rule would apply § 4.35, for the first time, to exemption applications. Fairness among competing applicants and the orderly processing of competing applications require that a new filing date be assigned to an application when it is materially changed. Other applicants should be availed the opportunity to know the entities and the plans of development against which they are competing. Also, the Commission should receive the best possible plans as early as possible.

A material amendment would be defined to be: (1) A change in generating units that would significantly modify the flow regime associated with the project; (2) a change in design or location of project works that would increase or decrease the reach of the stream affected by the project or would cause additional adverse environmental impacts; or (3) a change in the number of discrete units of development of the project. Under the proposed rule, if an application were materially amended, the Commission would consider any acceptance letter that may have been issued for that application to be automatically rescinded upon acceptance of the amendment to the application.

The staff would review an amended license or exemption application to determine whether the application, as revised, complies with applicable regulations as to content of the application. Acceptance, deficiency, or rejection letters would be prepared pursuant to the Commission's normal practice in reviewing applications.

Second, a change in "status," one of the material changes to an application that triggers § 4.35, would be defined to mean a change that causes a preliminary permit or license applicant to gain or lose municipal preference under section 7(a) of the Act; or causes a permittee to lose its priority status under section 5 of the Act. Prospective applicants should know at the time another applicant files whether that applicant has municipal preference or priority status as a permittee. This knowledge could affect a prospective applicant's decision whether to compete and may help the Commission to streamline its processing of hydro project applications.[106]

Third, a change in "identity," another of the material changes to an application that triggers § 4.35, would be defined more clearly to be a change that substitutes new applicants for *all* the original applicants.[107] This total substitution can be made in one or more amendments to an application. The amendment that substitutes for the last remaining original applicant would trigger § 4.35, resulting in the assignment of a new date of "acceptance for filing." Future total substitutions of the new set of applicants could again trigger § 4.35. Again, prospective and competing applicants shoudl know against whom they are competing. The rule bars transfers of applications both out of fairness to competing applicants and to allow orderly administration of the licensing program.

XII. Municipal Preference

Section 7(a) of the Federal Power Act directs the Commission "[i]n issuing preliminary permits hereunder or licenses where no preliminary permit has been issued" to give preference to applications by state and municipalities. In the *City of Fayetteville* decision, [108] the Commission concluded that the legislative design of the Act precluded giving municipal preference to "hybrid" applications filed jointly by private developers and municipalities. In that case, the Commission expressed its concern that a municipality's participation in power development should represent more than tokenism to receive this statutory preference. Therefore, in *Fayetteville*, the Commission stated that, in order to retain its entitlement to municipal preference as the party who intends to be the licensee, a municipality must

[100] Proposed § 4.83(b).
[101] Section 4.30(c).
[102] Proposed § 4.33(d)(1).
[103] 18 CFR Part 385 (1984).
[104] Proposed § 4.32(a)(3).
[105] Proposed §§ 4.94(e) and 4.106(g).
[106] Because municipal status is irrelevant to an exemption application under the applicable statutes, a change in "status" would not be a material change to an exemption application and, therefore, would not trigger § 4.35.
[107] *See* Noah Corp., 19 FERC ¶ 61,276 and 20 FERC ¶ 61,156 (1982).
[108] Cith of Fayetteville Public Works Comm., 16 FERC ¶ 61,209 (1981).

retain in its contractural relationships with private entities, the *requisite control over the operation of a project, and it may not relinquish any property or other rights necessary for project purposes.* However, at the same time, the Commission emphasized that municipal preference need not be jeopardized by contractual arrangements that a municipality may make with private entities for assistance in financing, studying, constructing or operating a project; provided that such arrangements are consistent with license ownership and control requirements.

Since *Fayetteville,* the Commission has applied this rule on a case-by-case basis.[109] However, the Commission would prefer to promulgate guidelines to help prospective applicants more easily determine the range of contractual relationships between a private entity and a municipality that would be allowed without jeopardizing the right to municipal preference. Therefore, the Commission specifically invites public comment and suggestions with respect to the formulation of generic guidelines to distinguish between (a) those types of contractual relations between private entities and municipalities that should not disqualify an applicant from receiving municipal preference under section 7(a) of the Federal Power Act, and (b) those contractual relationships that should preclude municipal preference.

The Commission's regulations [110] require applicants to identify in their applications "any citizen, association of citizens, domestic corporation, municipality, or state which has or intends to obtain, and will maintain, any proprietary right necessary to construct, operate or maintain a water power project for which an application for a preliminary permit or license is filed * * *." The Commission needs this information in determining whether an applicant should be given municipal preference. The Commission has declined to investigate allegations of "hidden hybrids" at the permit application stage, for the following reasons. First, it is self-defeating for a hybrid applicant to obtain a permit because, unless a permittee holds or intends to acquire all the proprietary rights necessary for construction, maintenance and operation of the project, it will not qualify for a license. Because the permit-based priority is not transferable, my license application filed jointly by a permittee and a non-municipal partner would not be given permit-priority over any other application. Second, if the Commission finds that a partner in a hybrid venture is being unfairly advantaged at the license application stage (*e.g.,* because it has used the permit's protection to perform all the requisite studies while discouraging other prospective applicants from performing studies), the Commission can dismiss that license application for a period of time and allow other prospective applicants adequate time to compete.[111] Finally, the Commission has limited resources. Because it has remedies available at the license application stage, it has declined to use its limited resources to investigate allegations at the permit stage.

While, for the reasons stated above, the Commission in the past has declined to investigate allegations of hidden-hybrids at the permit application stage, the Commission reminds prospective applicants that the Commission is not precluded from doing so in the future. In cases where the Commission believes the situation merits investigation at the permit application stage (*e.g.,* when the Commission has sufficient evidence at hand, or when the remedies available at the license application stage appear to be insufficient or less desirable),[112] the Commission may investigate allegations of hidden-hybrids at the permit application stage.[113]

XIII. Other Amendments

(1) The rule would clarify that, although an applicant may not apply for a preliminary permit or license for project works that are authorized for Federal development exclusively, an applicant may submit a preliminary permit or license application for project works authorized for both Federal and private development.[114]

(2) The rule would codify current Commission practice of rejecting any application as patently deficient if its effectiveness is conditioned upon the occurrence of some future event or circumstance.[115] The orderly administration of the hydroelectric licensing program requires that the Commission accept only nonconditional applications. The Commission cannot allow an applicant to make its application contingent upon extrinsic, future events.

(3) The rule would reflect the Commission's practice of not finding a competing application to be patently deficient merely because it does not include proof of service on other applicants.[116] When an application fails to include proof of service, the Commission allows a competing applicant to correct this deficiency, provided other deficiencies in the application do not singly or cumulatively cause the application to be determined to be patently deficient.[117] This treatment assures adequate notice to competitors while not unduly penalizing applicants that fail to make timely notifications.

(4) Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) governs the processing of motions to intervene in all Commission proceedings, including hydroelectric matters. Therefore, the rule would remove the redundant part of § 4.31(h) that describes the intervention procedure.[118]

(5) The Commission can require any applicant to submit additional copies of an application or any additional information or documents that the Commission considers relevant. The regulations do not provide a time limit for compliance with such a request. To ensure the timely processing of applications and the sound administration of the hydroelectric licensing program, applicants should submit additional material within the time specified in the Commission's request. The rule would codify the Commission's current requirement that, when an applicant is ordered to submit additional copies, it must do so within the time specified in the Commission's request. This rule would apply to information that the Commission seeks

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[109] *See* Linweave, Inc., 23 FERC ¶ 61,391 (1983); Boott Mills, 25 FERC ¶ 61,386 (1984).

[110] § 4.30(d).

[111] Gregory Wilcox, 24 FERC ¶ 61,317 (1983) and 26 FERC ¶ 61,113 (1984).

[112] It has been argued that the failure to investigate hidden-hybrids at the permit application stage discourages legitimate competition at the license application stage. Legitimate developers are reluctant to compete with a hidden-hybrid license application that has the permit and first-in-time preferences.

[113] Because of the importance of municipal preference and because hybrid-applicants might prefer not to claim municipal preference, under the proposed rule, applicants would state in their applications whether they were claiming municipal preference. *See* proposed §§ 4.41(a)(4), 4.51(a)(4), 4.61(b)(5), 4.71(a)(5), and 4.81(a)(4).

[114] *See* §§ 4.30(b) and (c); proposed § 4.33(a) and (b); Guadalupe Blanco River Authority, 21 FERC ¶ 61,131 (1980). The Flood Control Act of 1954 authorized the Corps of Engineers to develop hydroelectric power at Canyon Dam and Reservoir. It also authorized local interests to development hydroelectric power pursuant to the Federal Power Act. In *Guadalupe,* it was argued that when both Federal and non-Federal development is authorized, § 4.30 bars the Commission from accepting applications for non-Federal development. The Commission rejects this interpretation of its regulations.

[115] Proposed § 4.32(i). *See* Niagara Mohawk Power Corp., 20 FERC ¶ 61,454 (1982).

[116] Section 4.31(d)(2)(i) and 4.33(d)(2).

[117] Proposed § 4.32(d)(2).

[118] Proposed § 4.32(h).

for itself, or that the Commission orders to be furnished to other persons, agencies or entities.[119]

(6) The rule would codify more clearly the Commission's current practice of requiring permit and license applicants to identify all co-applicants.

(7) Under section 4(f) of the Federal Power Act, the Commission gives written notice to any municipality that it believes likely to be interested in, or affected by, a pending preliminary permit or license application.[120] The Commission gathers available information about political subdivisions in the project area, and determines which of them should be given written notice of a particular pending application.[121]

The Commission could better implement section 4(f) if permit and license applicants provided the Commission with a list of local political subdivisions in their areas. Therefore, the proposed rule would require a permit or license applicant to identify those political subdivisions that meet certain criteria related to whether those local political subdivisions would likely be interested in, or affected by, the application. An applicant also would be required to identify any other political subdivisions that it believes would be interested in, or affected by, the application. Consistent with the Commission's policy in issuing the section 4(f) notices,[122] a political subdivision's ability to "engage in the business of developing, transmitting, utilizing, or distributing power * * *", which determines whether it qualifies as a "municipality" under section 3(7) of the Act,[123] would have no bearing on whether it should be identified by an applicant under § 4.32(b). The Commission would determine which of those political subdivisions identified by the applicant should receive a section 4(f) notice and whether any additional political subdivisions also should receive a section 4(f) notice.

(8) Often, applicants omit information required to be included in an application. These applications are usually rejected as deficient. However, there are cases in which the information is unavailable or the requirement is inapplicable, and a detailed explanation to that effect would suffice. The rule would remined applicants to explain in detail any omissions or blank spaces in their applications.[124] If the Commission finds that the information is necessary, the application would still be rejected.

(9) The rule also would remined applicants that amendments to cure deficient applications must be timely submitted. Also, the rule would provide that the Director of the Office of Electric Power, under delegated authority, would reject applications as patently deficient only within 45 days of filing. Thereafter, such applications could be treated as deficient under § 4.32(d)(1), which allows the applicant an opportunity to cure the deficiencies. The Commission (but not the Director of the Office of Electric Power) could reject such applications as patently deficient after the 45 day period.[125]

(10) The proposed rule[126] would conform the requirements for describing project boundaries in an application for license for either a major unconstructed project or major modified project or a major project—existing dam.

(11) Due to a reorganization of the Commissioner's staff, § 12.3(b)(3) would be amended to include the Director of the Division of Inspections and Hydro-License Administration as an "authorized Commission representative."

XIV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The primary purposes of this proposed rule are to: (1) Clarify procedures already established for filing applications for a preliminary permit, a license, and an exemption from licensing for hydroelectric projects; (2) codify recent decisions of the Commission affecting these types of applications; and (3) reorganize certain sections of the regulations governing hydroelectric applications. The codification of Commission decisions and the reorganization of certain sections have no economic impact because they do not significantly change the substance of existing regulations and case law requirements. Other rules being proposed are mostly procedural and, in any case, are minor in effect on any potential applicants. Thus, there is no substantial economic impact on any entity, large or small.

XV. Declaration of No Environmental Impact

The Commission has determined that this proposed codification of Commission decisions, clarification, and reorganization of the regulations would not be a major Federal action significantly affecting the quality of the human environment. Therefore, under the National Environment Policy Act of 1969, neither an environmental assessment nor an environmental impact statement is necessary.

XVI. Paperwork Reduction Act Statement

The information collection provisions in this proposed rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (Supp. V 1981), and OMB's regulations, 5 CFR 1320.13 (1983). Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Joseph H. Long, (202) 357–8033). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

XVII. Comment Procedure

The Commission invites interested persons to submit written comments on the matters proposed in this notice. An original and 14 copies of such comments must be filed with the Commission not later than by May 4, 1984. Comments submitted by mail should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should indicate the name, title, mailing address and telephone number of the person to whom communications concerning the proposals should be addressed. Comments should reference Docket No. RM83–56–000 on the outside of the envelope and on all documents therein.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Division of Public Information, Room 1000, address above, during regular business hours.

List of Subjects

18 CFR Part 4

Electric power.

[119] Proposed § 4.32(f).

[120] 16 U.S.C. 797(f) (1976).

[121] City of Idaho Falls, 20 FERC ¶ 61,066 (1982).

[122] *Id.*

[123] 16 U.S.C. § 796(7) (1976).

[124] Proposed § 4.32(d).

[125] Proposed § 4.32(d)(2).

[126] Proposed §§ 4.41 and 4.51.

18 CFR Part 12

Electric power, Reporting and recordkeeping requirements, Safety.

In consideration of the foregoing, the Commission proposes to amend Parts 4 and 12 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. In Subparts D–K of Part 4 the respective table of contents are revised to read as follows:

SUBCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

* * * * *

Subpart D—Application for Preliminary Permit, License or Exemption: General Provisions

Sec.

4.30 Applicability and definitions.
4.31 Initial or competing application: who may file.
4.32 Acceptance for filing or rejection.
4.33 Limitations on submitting applications.
4.34 Hearings on applications.
4.35 Amendment of application; change of date of acceptance.
4.36 Competing applications: deadlines for filing; comparison of plans of development.
4.37 Rules of preference among competing applications.
4.38 Pre-filing consultation requirements.
4.39 Specifications for maps and drawings.

Subpart E—Application for License for Major Unconstructed Project and Major Modified Project

4.40 Applicability.
4.41 Contents of application.

Subpart F—Application for License for Major Project—Existing Dam

4.50 Applicability.
4.51 Contents of application.

Subpart G—Application for License for Minor Water Power Projects and Major Water Power Projects 5 Megawatts or Less

4.60 Applicability and notice to agencies.
4.61 Contents of application.

Subpart H—Application for License for Transmission Line Only

4.70 Applicability.
4.71 Contents of application.

Subpart I—Application for Preliminary Permit; Amendment and Cancellation of Preliminary Permit

4.80 Applicability and purpose.
4.81 Contents of application.
4.82 Amendments.
4.83 Cancellation and loss of priority.
4.84 Surrender of permit.

Subpart J—Exemption of Small Conduit Hydroelectric Facilities

4.90 Applicability and purpose.
4.92 Exemption applications.
4.93 Action on exemption applications.
4.94 Standard terms and conditions of exemption.
4.95 Surrender of exemption.
4.96 Amendment of exemption.

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

4.101 Applicability.
4.102 Surrender of exemption.
4.103 General provisions for case-specific exemption.
4.104 Amendment of exemption.
4.105 Action on exemption applications.
4.106 Standard terms and conditions of case-specific exemption from licensing.
4.107 Contents of application for exemption from licensing.
4.108 Contents of application for exemption from provisions other than licensing.
4.109 General provisions for exemption from licensing for certain categories of small hydroelectric power projects.
4.110 Categorical exemption from licensing for small hydroelectric power projects; relationships among applications, exemptions, permits, licenses, and notices of exemption.
4.111 Standard terms and conditions of exemption from licensing for certain categories of small hydroelectric power projects.
4.112 Notice of exemption from licensing for projects with installed capacity of more than 100 kilowatts.
4.113 Notice of exemption from licensing for projects with installed capacity of 100 kilowatts or less.

* * * * *

2. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 792–828c (1976 and Supp. V 1981); Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 (1978); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. V 1981); E. O. 12009, 3 CFR Part 1142 (1978), unless otherwise noted.

3. The heading for Subpart B is revised to read as follows:

Subpart D—Application for Preliminary Permit, License or Exemption: General Provisions

4. Section 4.30 is revised to read as follows:

§ 4.30 Applicability and definitions.

(a) This subpart applies to any application for preliminary permit, license, or exemption from licensing.

(b) For the purposes of this part—

(1)(i) "Competing development application" means any application for a license or exemption from licensing for a proposed water power project that would develop, conserve, and utilize, in whole or in part, the same or mutually exclusive water resources that would be developed, conserved, and utilized by a proposed water power project for which an initial preliminary permit or initial development application has been filed and is pending before the Commission.

(ii) "Competing preliminary permit application" means any application for a preliminary permit for a proposed water power project that would develop, conserve, and utilize, in whole or in part, the same or mutually exclusive water resources that would be developed, conserved and utilized by a proposed water power project for which an initial preliminary permit or initial development application has been filed and is pending before the Commission.

(2) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar man-made water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. The term "not primarily for the generation of electricity" includes but is not limited to a conduit:

(i) Which was built for the distribution of water for agricultural, municipal, or industrial consumption and is operated for such a purpose; and

(ii) To which a hydroelectric facility has been or is proposed to be added.

(3) "Construction of a dam" for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility means any construction, repair, reconstruction, or modification of a dam that creates a new impoundment or increases the normal maximum surface elevation or the normal maximum surface area of an existing impoundment.

(4)(i) "Dam" for the purposes of provisions governing application for license of a major project—existing dam means any structure for impounding or diverting water.

(ii) "Dam" for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility means any structure that impounds water.

(iii) "Dam" for the purposes of provisions governing application for exemption of a small hydroelectric power project means any structure for impounding water which is usable for electric power generation if the impoundment supplies all, or the substantial part of, the total hydroelectric pressure (head) developed for such generation.

(5) "Development application" means any application for either a license or exemption from licensing for a proposed water power project.

(6)(i) "Existing dam" for the purposes of provisions governing application for license of a major project—existing dam means any dam (as defined in paragraph (b)(4)(i) of this section) that has already been constructed and which does not require any construction or enlargement of impoundment structures other than repairs or reconstruction.

(ii) "Existing dam" for the purposes of provisions governing application for exemption of a small hydroelectric power project menas any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project.

(7) "Existing impoundment" for the purposes of provisions governing application for license of a major project—existing dam means any body of water that an existing dam impounds.

(8) "Federal lands" for the purposes of provisions governing application for exemption of a small hydroelectric power project means any lands to which the United States holds fee title.

(9) "Fish and wildlife agencies" means the U.S. Fish and Wildlife Service, and any state agency with administrative management over fish or wildlife resources of the state or states in which the small conduit hydroelectric facility or a small hydroelectric power project is or will be located.

(10)(i) "Initial development application" means any acceptable application for either a license or exemption from licensing for a proposed water power project that would develop, conserve, and utilize, in whole or in part, water resources for which no other acceptable application for a license or exemption from licensing has been submitted for filing and is pending before the Commission.

(ii) "Initial preliminary permit application" means any acceptable application for a preliminary permit for a proposed water power project that would develop, conserve, and utilize, in whole or in part, water resources for which no other acceptable preliminary permit application has been submitted for filing and is pending before the Commission.

(11) "Initial license" means the first license issued for a water power project under either the Federal Water Power Act of 1920 or the Federal Power Act.

(12) "Install or increase" for the purposes of provisions governing application for exemption of a small hydroelectric power project means to add new generating capacity at a site that has no existing generating units, to replace or rehabilitate an abandoned or unused existing generating unit, or to increase the generating capacity of any existing power plant by installing an additional generating unit or by rehabilitating an operable generating unit in a way that increases its rated electric power output.

(13) "Licensed water power project" means a project, as defined in section 3(11) of the Federal Power Act, that is licensed under Part I of the Federal Power Act.

(14) "Major modified project" means any major project—existing dam, as defined in paragraph (b)(16) of this section, that would include:

(i) Any repair, modification or reconstruction of an existing dam that would result in a significant change in the normal maximum surface area or the normal maximum surface elevation of an existing impoundment; or

(ii) Any change in existing project works or operations that would result in a significant enviromental impact.

(15) "Major unconstructed project" means any unlicensed water power project that would:

(i) Have a total installed generating capacity of more than 1.5 MW; and

(ii) Use the water power potential of a dam and impoundment which, at the time application is filed, have not been constructed.

(16) "Major project—existing dam" means a licensed or unlicensed, existing or proposed water power project that would:

(i) Have a total installed generating capacity of more than 2,000 horsepower (1.5 MW); and

(ii) Not use the water power potential provided by any dam except an existing dam.

(17) "Minor water power project" means any licensed or unlicensed, existing or proposed water power project that would have a total installed generation capacity of 2,000 horsepower (1.5MW), or less.

(18) "New development" for the purposes of provisions governing application for license of a major project—existing dam means any construction, installation, repair, reconstruction, or other change in the existing state of project works or appurtenant facilities, including any dredging and filling in project waters.

(19) "New license" means any license, except an annual license issued under section 15 of the Federal Power Act, for a water power project that is issued under the Federal Power Act after the initial license for that project.

(20)(i) "Non-Federal lands" for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility means any lands except lands to which the United States holds fee title.

(ii) "Non-Federal lands" for the purposes of provisions governing application for exemption of a small hydroelectric power project means any lands other than Federal lands defined in paragraph (b)(8) of this section.

(21) "Person" means any individual and, as defined in section 3 of the Federal Power Act, any corporation, municipality, or state.

(22) "Project" for the purposes of provisions governing application for exemption of a small hydroelectric power project means: (i) The impoundment and any associated dam, intake, water conveyance facility, power plant, primary transmission line, and other appurtenant facility if a lake or similar natural impoundment or a man-made impoundment is used for power generation; or

(ii) Any diversion structure other than a dam and any associated water conveyance facility, power plant, primary transmission line, and other appurtenant facility if a natural water feature other than a lake or similar natural impoundment is used for power generation.

(23) "Qualified exemption applicant" means any person who meets the requirements specified in § 4.31(c)(2) with respect to a small hydroelectric power project for which exemption from licensing is sought.

(24) "Qualified license applicant" means any person to whom the Commission may issue a license, as specified in section 4(e) of the Federal Power Act.

(25) "Real property interests" for the purposes of provisions governing application for exemption of a small conduit hydroelectric facility or a small hydroelectric power project includes ownership in fee, rights-of-way, easements, or leaseholds.

(26) "Small conduit hydroelectric facility" means an existing or proposed hydroelectric facility that is constructed, operated, or maintained for the generation of electric power, and includes all structures, fixtures, equipment, and lands used and useful in the operation or maintenance of the hydroelectric facility, but excludes the conduit on which the hydroelectric facility is located or the transmission lines associated with the hydroelectric facility.

(i) Utilizes for electric power generation the hydroelectric potential of a conduit:

(ii) Is located entirely on non-Federal lands, as defined in paragraph (b)(20(i) of this section;

(iii) Has an installed generating capacity of 15 MW or less;

(iv) Is not an integral part of a dam;

(v) Discharges the water it uses for power generation either:

(A) Into a conduit;

(B) Directly to a point of agricultural, municipal, or industrial consumption; or

(C) Into a natural water body if a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located; and

(vi) Does not rely upon construction of a dam, which construction will create any portion of the hydrostatic head that the facility uses for power generation unless that construction would occur for agricultural, municipal, or industrial consumptive purposes even if hydroelectric generating facilities were not installed.

(27) "Small hydroelectric power project" means any project in which capacity will be installed or increased after the date of notice of exemption or application under Subpart K, which will have a total installed capacity of not more than 5 MW, and which:

(i) Would utilize for electric power generation the water power potential of an existing dam that is not owned or operated by the United States or by any instrumentality of the Federal Government, including the Tennessee Valley Authority; or

(ii)(A) Would utilize for the generation of electricity a natural water feature, such as a natural lake, waterfall, or the gradient of a natural stream, without the need for a dam and man-made impoundment;

(b) Would not retain water behind any structure for the purpose of a storage and release operation; and

(C) Except as otherwise permitted under § 4.103(b)(2), would contain a diversion or intake structure that:

(*1*) Is not higher than two times the diameter of the penstock or intake pipeline, not to exceed ten feet in total height, as measured from the lowest point of the natural streambed at the downstream toe of the structure to the normal water surface level retained by the structure assuming a no-spill condition;

(*2*) Does not retain more than two acre-feet (2467 cubic meters) of water behind the diversion or intake structure; and

(*3*) Does not increase the existing, naturally occurring hydraulic head of the natural water feature more than five (5) percent.

5. Section 4.31 is revised to read as follows:

§ 4.31 Initial or competing application: Who may file.

(a) *Application for a preliminary permit or a license.* Any citizen, association of citizens, domestic corporation, municipality, or state may submit for filing an initial application or a competing application for a preliminary permit or a license for a water power project under Part I of the Federal Power Act.

(b) *Application for exemption of a small conduit hydroelectric facility*—(1) *Exemption from provisions other than licensing.* Any citizen, association of citizens, domestic corporation, municipality, or state that has all of the real property interests in the lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of a small conduit hydroelectric facility from provisions of Part I of the Federal Power Act other than licensing provisions.

(2) *Exemption from licensing.* Any person having all the real property interests in the lands necessary to develop and operate the small conduit hydroelectric facility, or an option to obtain those interests, may apply for exemption of that facility from licensing under Part I of the Federal Power Act.

(c) *Application for case-specific exemption of a small hydroelectric power project*—(1) *Exemption from provisions other than licensing.* Any qualified license applicant or licensee seeking amendment of license may apply for exemption of the related project from provisions of Part I of the Federal Power Act other than licensing provisions.

(2) *Exemption from licensing*—(i) *Only Federal lands involved.* If only rights to use or occupy Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any person may apply for exemption of that project from licensing.

(ii) *Some non-Federal lands involved.* If real property interests in any non-Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any person who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of that project from licensing.

§ 4.32 [Redesignated as §4.39]

6. Section 4.32 is redesignated as § 4.39.

7. A new § 4.32 is added to read as follows:

§ 4.32 Acceptance for filing or rejection.

(a) Each application must:

(1) For a preliminary permit or a license, identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project;

(2) For a preliminary permit or a license, identify:

(i) Every county in which any part of the project, and any Federal facilities that would be utilized by the project, would be located;

(ii) Every city, town, borough, township, or similar local political entity:

(A) In which any part of the project, and any Federal facilities that would be utilized by the project, would be located; or

(B) That has a population of more than 5,000 people and is located within 15 miles of the project;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project, and any Federal facilities that would be utilized by the project, would be located; or

(B) That owns, operates, maintains or utilizes any project facilities or any Federal facilities that would be utilized by the project; and

(iv) Every other political subdivision in the general area of the project that the applicant believes may be likely to be interested in, or affected by, the application.

(3) As to any facts alleged in the application or other materials filed, be subscribed and verified under oath in the form set forth in 18 CFR 131.60 by the person filing, an officer thereof, or other person having knowledge of the matters set forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it shall include a statement of the reasons therefore; and

(4) Contain the information and documents prescribed in the following sections of this chapter, according to the type of application:

(i) Preliminary permit: § 4.81;

(ii) License for a minor water power project and a major water power project 5 MW or less: § 4.61;

(iii) License for a major unconstructed project and a major modified project: § 4.41;

(iv) License for a major project—existing dam: § 4.51;

(v) License for a transmission line only: § 4.71;

(vi) Nonpower license for a licensed project: § 16.7;

(vii) Exemption of a small conduit hydroelectric facility: § 4.92; or

(viii) Case-specific exemption of a small hydroelectric power project: § 4.107.

(b)(1) Each applicant for a preliminary permit or a license must submit to the Commission's Secretary for filing an original and fourteen copies of the application and five sets of full-sized prints. The applicant must serve one copy of the application on the Commission's Regional Engineer for the region and on each consulted agency. The application may also include reduced prints of maps and drawings conforming to § 4.39(d). The originals (microfilm) of maps and drawings included in a license application under § 4.39(a) are not to be filed initially, but will be requested pursuant to paragraph (c) of this section.

(2) Each applicant for exemption must submit to the Commission's Secretary for filing an original and fourteen copies of the application and five sets of full-sized prints. An applicant must serve one copy of the application on the Commission's engineer for the region and on each consulted agency. Maps and drawings need not conform to the requirements of § 4.39, but must be of sufficient size, scale, and quality to permit easy reading and understanding. The original (microfilm) of maps and drawings are not to be filed initially, but will be requested pursuant to paragraph (c) of this section.

(c) When any application is found to conform to the requirements of paragraphs (a) and (b) of this section, the Commission or its delegate will:

(1) Notify the applicant that the application has been accepted for filing, specifying the project number assigned and the date upon which the application was accepted for filing, and, for a license or exemption application, direct the filing, of the originals (microfilm) of required maps and drawings;

(2)(i) For an application for a preliminary permit or a license, issue public notice of the application as required in the Federal Power Act;

(ii) For an application for exemption from licensing, publish notice once in a daily or weekly newspaper of general circulation in each county in which the project is or will be located; and

(3) If the project affects lands of the United States, notify the appropriate Federal office of the application and the specific lands affected, pursuant to section 24 of the Federal Power Act.

(d) In order for an application to conform adequately to the requirements of paragraphs (a) and (b) of this section and of § 4.38, an application must be completed fully. No blanks should be left in the application. No material or information required in the application should be omitted. If an applicant believes that its application conforms adequately without containing certain required material or information, it should explain in detail why the material or information is not being submitted and what steps were taken by the applicant to provide the material or information. If the Commission finds that an application does not adequately conform to the requirements of paragraphs (a) and (b) of this section or of § 4.38, the Commission or its delegate will consider the application either deficient or patently deficient.

(1) *Deficient applications.* (i) An application that, in the judgment of the Director of the Office of Electric Power Regulation, does not conform to the requirements of paragraphs (a) and (b) of this section of § 4.38, may be considered deficient. An applicant having a deficient application will be afforded additional time to correct deficiencies, not to exceed 45 days from the date of notification in the case of an application for a preliminary permit or exemption from licensing or 90 days from the date of notification in the case of an application for license. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an original and the number of copies specified in paragraph (b) of this section of the specified materials or information to the Secretary within the time specified in the notification of deficiency.

(ii) Upon submission of a conforming application, action will be taken in accordance with paragraph (c) of this section.

(iii) If the revised application is found not to conform to the requirements of paragraphs (a) and (b) of this section, or of § 4.38, or if the revisions are not timely submitted, the revised application will be rejected. Procedures for rejected applications are specified in paragraph (d)(2)(iii) of this section.

(2) *Patently deficient applications.* (i) If, within 45 days of its filing date, the Director of the Office of Electric Power Regulation determines that an application patently fails to meet the requirements of either paragraphs (a) or (b) of this section or of § 4.38, the application will be rejected as patently deficient with a specification of deficiencies that render the application patently deficient.

(ii) If, after 45 days of its filing date, the Director of the Office of Electric Power Regulation, determines that an application patently fails to meet the requirements of either paragraphs (a) or (b) of this section or of § 4.38:

(A) The application will be rejected as patently deficient by order of the Commission; or

(B) The application will be considered deficient under paragraph (d)(1) of this section.

(iii) Any application that is rejected may be resubmitted if the deficiencies are corrected and if, in the case of a competing application, the resubmittal is timely. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining its timeliness under § 4.36 and the disposition of competing applications under § 4.37. The cover page of the resubmitted application must prominently display the FERC project number, the word "Revised", and the date of the revision.

(e) Any application will be considered "accepted for filing" as of the application filing date if the Secretary receives all of the information and documents necessary to conform to the requirements of paragraphs (a) and (b) of this section and of § 4.38 within the time prescribed by the Commission or its delegate under paragraph (d) of this section.

(f) An applicant may be required to submit any additional information or documents that the Commission or its delegate considers relevant for an informed decision on the application. The information or documents must take the form, and must be submitted within the time, that the Commission or its delegate prescribes. An applicant may also be required to provide within a specified time additional copies of the complete application, or any of the additional information or doucments that are filed, to the Commission or to any person, agency, or other entity that the Commission or its delegate specifies. If an applicant fails to provide timely additional information or documents or copies of submitted materials as required, the Commission or its delegate may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

(g) A prospective applicant, prior to submitting its application for filing, may seek advice from the Commission staff regarding the sufficiency of the application. For this purpose, five copies of the draft application should be submitted to the Director of the Division of Hydropower Licensing. An applicant or prospective applicant may confer with the Commission staff at any time regarding deficiencies or other matters related to its application. All conferences are subject to the requirements of § 385.2201 of this chapter governing ex parte communications. The opinions or advice of the staff will not bind the Commission or any person delegated authority to act on its behalf.

(h) Intervention in any preliminary permit proceeding will not constitute intervention in any subsequent licensing or exemption proceeding.

(i) Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.

8. Section 4.33 is revised to read as follows:

§ 4.33 Limitations on submitting applications.

(a) *Limitations on submission and acceptance of a preliminary permit application.* The Commission will not accept an application for a preliminary permit for project works that:

(1) Are licenesed at the time of the application or are authorized by law exclusively for Federal development; or

(2) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which there is an unexpired preliminary permit.

(3) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which an initial development application has been filed unless the preliminary permit application is filed not later than the time allowed under § 4.36(a) for the filing of applications in competition against an initial application for a preliminary permit that would develop, conserve, and utilize, in whole or in part, the same resources.

(b) *Limitations on submission and acceptance of a license application.* The Commission will not accept an application for a license for project works that:

(1) Are licensed at the time of the application or are authorized by law exclusively for Federal development; or

(2) Would develop, conserve, and utilize, in whole or in part, the same water resources that would be developed, conserved, and utilized by a project for which there is an unexpired preliminary permit, unless the permittee has submitted an application for license.

(c) *Limitations on submission and acceptance of an application for a license that would affect an exempted project.* (1) Except as permitted under § § 4.33(c)(2), 4.94(d), or 4.106(c), (e) or (f), the Commission will not accept an application for a license for project works that are already exempted from licensing under this Part.

(2) If a project is exempted from licensing pursuant to § § 4.103 or 4.109 and real property interests in any non-Federal lands would be necessary to develop or operate the project, any person who is both a qualified license applicant and has any of those real property interests in non-Federal lands may submit a license application for that project. If a license application is submitted under this clause, any other qualified license applicant may submit a competing license application in accordance with § 4.36.

(d) *Limitations on submission and acceptance of exemption application*— (1) *Unexpired permit or license.* (i) If there is an unexpired permit in effect for a project, the Commission will accept an application for exemption of that project from licensing only if the exemption applicant is the permittee. Upon acceptance for filing of the permittee's application, the permit will be considered to have expired.

(ii) If there is an unexpired license in effect for a project, the Commission will accept an application for exemption of that project from licensing only if the exemption applicant is the licensee.

(2) *Pending license applications.* If an accepted license application for a project was submitted by a permittee before the preliminary permit expired, the Commission will not accept an applicant for exemption of that project from licensing submitted by a person other than the former permittee.

(3) *Submitted by qualified exemption applicant.* If the first accepted license application for project was filed by a qualified exemption applicant, the applicant may request that its license application be treated initially as an application for exemption from licensing by so notifying the Committee in writing and, unless only rights to use or occupy Federal lands would be necessary to develop and operate the project, by submitting documentary evidence showing that the applicant holds the real property interests required under § 4.31. Such notice and documentation must be submitted not later than the last date for filing protests or motions to intervene prescribed in the public notice issued for its license application under § 4.32(c)(2).

(e) *Priority of exemption applicant's earlier permit or license application.* Any accepted preliminary permit or license application submitted by a person who later applies for exemption of the project from licensing will retain its validity and priority under this subpart until the preliminary permit or license application is withdrawn or the project is exempted from licensing.

(f) *Special limitations on submission and acceptance of applications.* Where appropriate and in the public interest, the Commission may refuse to accept any applications for a given project, or the Commission may accept applications for a given project but not consider any application to be the first filed for the purpose of favoring one application over another.

9. Section 4.34 is revised to read as follows:

§ 4.34 Hearings on applications.

The Commission may order a hearing on an application for a preliminary permit, a license, or an exemption from licensing upon either its own motion or the motion of any interested party. Any hearings will be limited to the issues prescribed by order of the Commission

10. Section 4.35 is revised to read as follows:

§ 4.35 Amendment of application; change of date of acceptance.

(a) *General rule.* (1) Except as provided in paragraph (a)(2), if an applicant amends its filed license or preliminary permit application in order to change the status or identity of the applicant or to materially amend the proposed plans of development, or if an applicant amends its filed application for exemption from licensing in order to materially amend the proposed plans of development, the Commission in determining the date of acceptance of the application under § 4.32(e) will consider the date on which the amendment to the application was filed to be the date on which the application was filed with the Commission, and will consider the amended application as a new filing for the purposes of determining its timeliness under § 4.36, for disposing of competing applications under § 4.37, and for reissuing public notice of the application under § 4.32(c)(2). The Commission also will rescind any acceptance letter already issued for the application.

(2) *Exceptions.* This section does not apply to:

(i) Any corrections of deficiencies made pursuant to § 4.32(d)(1);

(ii) Any amendments made pursuant to § 4.37(b)(4) by a state or a municipality to amend its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a state or a municipality;

(iii) Any amendments made pursuant to § 4.37(c)(2) by a priority applicant to amend its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a priority applicant; and

(iv) Any amendments made by an exemption applicant to amend its proposed plans of development to satisfy requests of fish and wildlife agencies submitted after an applicant has consulted adequately under § 4.38.

(b) *Definitions.* (1) For the purposes of this section, a material amendment to plans of development proposed in an application for a license or exemption from licensing means any fundamental and significant change, including but not limited to:

(i) A change in the installed capacity, or the number or location of any generating units of the proposed project if the change would significantly modify the flow regime associated with the project;

(ii) A material change in the location, size, or composition of the dam, the location of the powerhouse, or the size and elevation of the reservoir if the change would:

(A) Enlarge, reduce, or relocate the area of the body of water that would lie between the farthest reach of the proposed impoundment and the point of discharge from the powerhouse; or

(B) Cause adverse environmental impacts not previously discussed in the original application; or

(iii) A change in the number of discrete units of development to be included within the project boundary.

(2) For purposes of this section, a material amendment to plans of development proposed in an application for a preliminary permit means a material change in the location of the powerhouse or the size and elevation of the reservoir if the change would enlarge, reduce, or relocate the area of the body of water that would lie between the farthest reach of the proposed impoundment and the point of discharge from the powerhouse.

(3) For purposes of this section, a change in the status of an applicant means:

(i) the acquisition or loss of preference as a state or a municipality under section 7(a) of the Federal Power Act; or

(ii) the loss of priority as a permittee under section 5 of the Federal Power Act.

(4) For purposes of this section, a change in the identity of an applicant means a change that either singly, or together with previous amendments, causes a total substitution of all the original applicants in a permit or a license application.

11. A new § 4.36 is added to read as follows:

§ 4.36 Competing applications: deadlines for filing; comparison of plans of development.

(a) *Deadlines for filing applications competing against an initial preliminary permit application.* An application filed in competition against an initial application for a preliminary permit must be submitted for filing within the following deadlines:

(1) *Competing preliminary permit application.* Any competing application for preliminary permit must be submitted for filing not later than the last date for filing protests and motions to intervene specified in the public notice of the initial preliminary permit application.

(2) *Competing development application.* (i) If, for a mutually exclusive project, no initial development application has been filed, a development application may be submitted in competition against an initial preliminary permit application at any time before the Commission approves any pending preliminary permit application.

(ii) If, for a mutually exclusive project, an initial development application has been filed, any other development application must be submitted in competition against an initial preliminary permit application not later than the last date for filing protests and motions to intervene specified in the public notice of the initial preliminary permit application.

(b) *Deadlines for filing applications in competition against an initial development application.* An application competing against an initial development application must be submitted for filing within the following deadlines:

(1) *Competing preliminary permit application.* A competing preliminary permit application may not be filed in competition against an initial development application.

(2) *Competing development application.* (i) Except as provided in paragraph (b)(2)(ii) of this section, a competing development application must be submitted for filing not later than the last date for filing protests and motions to intervene specified in the public notice of the initial development application.

(ii) If the Commission has accepted an application for exemption of a project from licensing and the application has not yet been granted or denied, the applicant for exemption may submit a license application for the project if it is a qualified license applicant. The pending application for exemption from licensing will be considered withdrawn as of the date that the Commission accepts the license application for filing. If a license application is accepted for filing under this provision, any qualified license applicant may submit a competing license application not later than the last date for filing protests and motions to intervene specified in the public notice of such license application.

(c) *Requirements for competing applications.* (1) Any competing application must:

(i) Conform to all requirements for filing an initial application; and

(ii) Include proof of service of a copy of the competing application on the person(s) designated in the public notice of the initial application for service of pleadings, documents, or communications concerning the initial application.

(2) *Comparisons of plans of development.* (i) After the deadline for filing applications in competition against an initial development application has expired, the Commission will notify each license and exemption applicant of the identity of the other applicants.

(ii) Not later than 14 days after the Commission serves the notification described in paragraph (c)(2)(i) of this section, if a license or exemption applicant has not already done so, it must serve a copy of its application on each of the other license and exemption applicants.

(iii) Not later than 40 days after the Commission serves the notification described in paragraph (c)(2)(i) of this section, each license and exemption applicant must file with the Commission a detailed and complete statement of how its plans are as well or better adapted than are the plans of each of the other license and exemption applicants to develop, conserve, and utilize in the public interest the water resources of the region. These statements should be supported by any technical analyses that the applicant deems appropriate to support its proposed plans of development.

12. A new §4.37 is added to read as follows:

§ 4.37 Rules of preference among competing applications.

Except as provided in § 4.33(f), the Commission will select between or among competing applications on the following bases:

(a) If an accepted application for a preliminary permit and an accepted application for a license propose project works that would develop, conserve, and utilize, in whole or in part, the same water resources, and the applicant for a license has demonstrated its ability to carry out its plans, the Commission will favor the applicant for a license unless the permit applicant substantiates in its filed application that its plan is better adapted to develop, conserve, and utilize in the public interest the water resources of the region.

(b) If two or more applications for preliminary permits or two or more applications for licenses (not including applications for a new license under section 15 of the Federal Power Act) are filed by applicants for project works that would develop, conserve, and utilize, in whole or in part, the same water resources, and if none of the applicants is a preliminary permittee whose application for license was accepted for filing within the permit period, the Commission will select between or among the applicants on the following bases:

(1) If both of two applicants are either a municipality or a state, the Commission will favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans.

(2) If both of two applicants are either a municipality or a state, or neither of them is a municipality or a state, and the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will favor the applicant with the earliest application acceptance date.

(3) If one of two applicants is a municipality or a state, and the other is not, and the plans of the municipality or a state are at least as well adapted to develop, conserve, and utilize in the public interest the water resources of the region, the Commission will favor the municipality or state.

(4) If one of two applicants is a municipality or a state, and the other is not, and the plans of the applicant who is not a municipality or a state are better adapted to develop, conserve, and utilize in the public interest the water resources of the region, the Commission will inform the municipality or state of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the municipality or state to render its plans at least as well adapted as the other plans. If the plans of the municipality or state are rendered at least as well adapted within the time allowed, the Commission will favor the municipality or state. If the plans are not rendered at least as well adapted within the time allowed, the Commission will favor the other applicant.

(c) If two or more applications for licenses are filed for project works which would develop, conserve, and utilize, in whole or in part, the same water resources, and one of the applicants was a preliminary permittee whose application was accepted for filing within the permit period ("priority applicant"), the Commission will select between or among the applicants on the following bases:

(1) If the plans of the priority applicant are at least as well adapted as the plans of each other applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will favor the priority applicant.

(2) If the plans of an applicant who is not a priority applicant are better adapted than the plans of the priority applicant to develop, conserve, and utilize in the public interest the water resources of the region, taking into consideration the ability of each applicant to carry out its plans, the Commission will inform the priority applicant of the specific reasons why its plans are not as well adapted and afford a reasonable period of time for the priority applicant to render its plans at least as well adapted as the other plans. If the plans of the priority applicant are rendered at least as well adapted within the time allowed, then the Commission will favor the priority applicant. If the plans of the priority applicant are not rendered as well adapted within the time allowed, the criteria specified in paragraph (b) will govern.

(3) The criteria specified in paragraph (b) will govern selection among applicants other than the priority applicant.

(d) With respect to a project for which an application for an exemption from licensing has been accepted for filing, the Commission will select between or among competing applications on the following bases:

(1) If an accepted application for a preliminary permit and an accepted application for exemption from licensing propose to develop mutually exclusive small hydroelectric power projects, the Commission will favor the applicant whose substantiated plans in the application received by the Commission are better adapted to develop, conserve, and utilize in the public interest the water resources of the region. If the substantiated plans are equally well adapted, the Commission will favor the application for exemption from licensing.

(2) If an application for a license and an application for exemption from licensing, or two or more applications for exemption from licensing are each accepted for filing and each propose to develop a mutually exclusive project, the Commission will favor the applicant whose plans are better adapted to develop, conserve, and utilize in the public interest the water resources of the region. If the plans are equally well adapted, the Commission will favor the applicant with the earliest application acceptance date.

(e) A municipal applicant must provide evidence that the municipality is competent under applicable state and local laws to engage in the business of developing, transmitting, utilizing, or distributing power, or such applicant will be considered a non-municipal applicant for the purpose of determining the disposition of competing applications.

13. A new § 4.38 is added to read as follows:

§ 4.38 Pre-filing consultation requirements.

(a) An applicant for a license or exemption from licensing must consult with each appropriate Federal and state agency before submitting its application to the Commission. The Federal agencies to be consulted must include the Federal agency administering any United States lands utilized or occupied by the project as well as other appropriate resource agencies. To assist applicants, the Director of the Division of Hydropower Licensing or the Regional Engineer responsible for the area will provide a list of known appropriate Federal and state agencies upon request.

(b) Consultation consists of the following:

(1) *Initial stage of consultation.* A potential applicant must contact all appropriate agencies and provide each of them with the following information:

(i) Detailed maps with proper land descriptions of the entire project area by

township, range and section as well as by state, county, river, river mile, and the closest town. Show the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities.

(ii) A general engineering design of the proposd project with a description of any proposed diversion of a stream through a canal or a penstock.

(iii) A summary of the proposed operational mode of the project.

(iv) Identification of the environment to be affected and the significant resources present, and the applicant's environmental protection, mitigation, and enhancement plans to the extent known at that time.

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the proposed point of diversion or impoundment with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations.

(vi) A preliminary schedule of dates for filing an application, beginning and competition of construction, and initiation of operation.

(2) *Second stage of consultation.* A potential applicant must perform any reasonable studies necessary to assess potential impacts of the proposed project on the environment and to determine adequate mitigative measures for the proposed project. A potential applicant must provide each agency with a copy of its draft application, any studies and a written request for review and comment. The draft application must clearly indicate the type of application the applicant expects to file with the Commission. From the date that an agency receives the applicant's draft application, an applicant must allow each agency the following lengths of time to comment on the draft application prior to filing the application with the Commission:

(i) Thirty days for an application to be filed under §§ 4.60 and 4.61(d)(2), 4.70 and 4.71, 4.90 through 4.94, 4.101 through 4.107, or 4.200 and 4.201(b) (2), (3) and (4); and

(ii) Sixty days for an application to be filed under §§ 4.40 and 4.41, 4.50 and 4.51, 4.60 and 4.61(d)(1), or 4.200 and 4.201(b) (1) and (5).

A potential applicant must also provide each agency with a copy of reports discussing the results of any studies performed after the initial stage of consultation and, to the extent possible, must respond in the draft application to any comments and recommendations made by agencies during the initial stage of consultation.

(3) *Third state of consultation.* When an applicant files an application with the Commission for an exemption, minor license, or major license less than 5 MW, it must serve a copy of its application on each of the agencies consulted. When an applicant revises, supplements, or amends an application on file with the Commission, the applicant must serve a copy of the revision, supplement, or amendment upon each consulted agency upon which it had served a copy of the original application. Applications for major license for 5 MW or more must be provided by applicant to the agencies after receipt of notification by the Commission that the application has been accepted.

(c) An applicant must document to the Commission that the requirements of all three stages of the consultation process have been fully satisfied and include any agency letters containing agency comments and recommendations.

(d) If an agency fails to comment in writing within the prescribed time period or fails to otherwise consult, an applicant must decribe *in detail* in its application all attempts to consult with that agency, the results of any partial consultations that did occur, and any recommendations that the agency did make.

§ 4.40 [Amended]

14. Section 4.40 is amended as follows:

a. The title is revised to read: *§ 4.40 Applicability.*

b. Paragraphs (b) and (d) are removed.

c. Paragraph (c) is redesignated as paragraph (b).

d. Newly redesignated paragraph (b) is amended by removing the word "§ 4.31(g)" and inserting, in its place, the word "§ 4.32(g)".

15. Section 4.41 is amended as follows:

a. Paragraph (a)(4), and the introductory text in paragraph (f) and paragraph (h)(2) are revised to read as follows:

§ 4.41 Contents of application.

(a) * * *

(4) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate. See 16 U.S.C. 796] and (is/is not) claiming preference under section 7(a) of the Federal Power Act.

* * * * *

(f) *Exhibit E* is an Environmental Report. Information provided in the report must be organized and referenced according to the itemized subparagraphs below. See § 4.38 for consultation requirements. The Environmental Report must contain the following information, *commensurate with the scope of the project:*

* * * * *

(h) * * *

(2) *Project boundary.* The map must show a project boundary enclosing all project works and other features described under paragraph (b) of this section (Exhibit A) that are to be licensed. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources (see paragraph (f) of this section (Exhibit E)). Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes (*e.g.*, for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

(i) *Impoundments.* (A) The boundary around a project impoundment may be described by any of the following:

(*1*) Contour lines, including the contour elevation (preferred method);

(*2*) Specified courses and distances (metes and bounds);

(*3*) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or

(*4*) Any combination of the above methods.

(B) The boundary must be located no more than 200 feet (horizontal measurement) from the exterior margin of the reservoir, defined by the normal maximum surface elevation, except where deviations may be necessary in describing the boundary according to the above methods or where additional lands are necessary for project purposes, such as public recreation, shoreline control, or protection of environmental resources.

(ii) *Continuous features.* The boundary around linear ("continuous") project features such as access roads,

transmission lines, and conduits may be described by specified distances from center lines or offset lines of survey. The width of such corridors must not exceed 200 feet unless good cause is shown for a greater width. Several sections of a continuous feature may be shown on a single sheet with information showing the sequence of contiguous sections.

(iii) *Noncontinuous features.* (A) The boundary around noncontinuous project works such as dams, spillways, and powerhouses may be described by:

(*1*) Contour lines;

(*2*) Specified courses and distances;

(*3*) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or

(*4*) Any combination of the above methods.

(B) The boundary must enclose only those lands that are necessary for safe and efficient operation and maintenance of the project or for other specified project purposes, such as public recreation or protection of environmental resources.

* * * * *

b. Paragraph (f)(4)(vii) is amended by removing the word "§ 4.31(b)" and inserting, in its place, the word "§ 4.32(b)(1)".

c. Paragraph (f)(8)(iv) is amended by removing the word "§ 4.32" and inserting, in its place, the word "§ 4.39".

d. Paragraph (g) is amended by removing the word "§ 4.32" and inserting, in its place, the word "§ 4.39".

e. Paragraph (h) is amended by removing the word "§ 4.32" and inserting, in its place, the word "§ 4.39".

§ 4.50 [Amended]

15. Section 4.50 is amended as follows:

a. The title is revised to read: § 4.50 *Applicability.*

b. Paragraph (b) is removed.

c. Paragraph (c) is redesignated as paragraph (b).

d. Newly redesignated paragraph (b) is amended by removing the word "§ 4.31(g)" and inserting, in its place, the word "§ 4.32(g)".

17. Section 4.51 is amended as follows:

a. Paragraph (a)(4), and the respective introductory texts in paragraph (f) and paragraph (h)(2) are revised to read as follows:

§ 4.51 Contents of application.

(a) * * *

(4) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate. See 16 U.S.C. 796) and (is/is not) claiming preference under section 7(a) of the Federal Power Act.

* * * * *

(f) *Exhibit E* is an Environmental Report. Information provided in the report must be organized and referenced according to the itemized subparagraphs below. See § 4.38 for consultation requirements. The Environmental Report must contain the following information, *commensurate with the scope of the proposed project:*

* * * * *

(h) * * *

(2) *Project boundary.* The map must show a project boundary enclosing all of the principal project works and other features described under paragraph (b) of this section (Exhibit A) that are to be licensed. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control, or protection of environmental resources (see paragraph (f) of this section (Exhibit E)). Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes (*e.g.*, for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public land survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

* * * * *

b. Paragraphs (f)(3)(v)(A), (3)(v)(E), (5)(v)(D), (6)(vi), and paragraph (h) are each amended by removing the word "§ 4.32" and inserting, in their respective places, the word "§ 4.39".

c. Paragraph (g)(3) is amended by removing the word "§ 4.31(b)" and inserting, in its place, the word "§ 4.32(b)(1)".

18. Section 4.60 is revised to read as follows:

§ 4.60 Applicability and notice to agencies.

(a) *Applicability.* The provisions of this subpart apply to any application for an initial license or a new license for:

(1) A minor water power project, as defined in § 4.30(b)(17);

(2) Any major project—existing dam, as defined in § 4.30(b)(16), that has a total installed capacity of 5 MW or less; or

(3) Any major unconstructed project or major modified project, as defined in § 4.30(b) (15) and (14) respectively, that has a total installed capacity of 5 MW or less.

(b) *Notice to agencies.* The Commission will supply interested Federal, state, and local agencies with notice of any application for license for a water power project 5 MW or less and request comment on the application. Copies of the application will be available for inspection at the Commission's Office of Public Information. The applicant shall also furnish copies of the filed application to any Federal, state, or local agency that so requests.

19. Section 4.61 is amended as follows:

a. Paragraphs (a)(1) and (a)(2)(i) are removed.

b. Paragraphs (a)(2)(ii), (a)(2)(ii)(A), (a)(2)(ii)(B), (a)(3), (a)(4), and (a)(5) are redesignated as paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4), respectively.

c. Paragraph (b)(7)(ii) is amended by removing the word "§ 4.40(b)(3)" and inserting, in its place, the word "§ 4.30(b)(14)".

d. Paragraph (d)(1)(i) is amended by removing the word "§ 4.40(b)(2)" and inserting, in its place, the word "§ 4.30(b)15)".

e. Paragraph (d)(1)(ii) is amended by removing the word "§ 4.40(b)(3)" and inserting, in its place, the word "§ 4.30(b)14)".

f. Paragraphs (e) and (f) are each amended by removing the word "§ 4.32" and inserting, in their respective places, the word "§ 4.39".

g. Paragraph (b)(5) and the introductory text in subparagraph (d)(2) are revised to read as follows:

§ 4.61 Contents of application.

* * * * *

(b) * * *

(5) The applicant is a ——— (citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or State, as appropriate) and (is/is not) claiming preference under section 7(a) of the Federal Power Act.

(d) * * *

(2) *For minor projects and major projects at existing dams 5 MW or less.* An application for license for either a minor water power project with a total proposed installed generating capacity of 1.5 MW or less or a major project—existing dam with a proposed total installed capacity of 5 MW or less must contain an Exhibit E under this paragraph. See § 4.38 for consultation requirements. The Environmental Report must contain the following information:

* * * * *

20. In § 4.71, the introductory paragraph and paragraph (a)(5) are revised to read as follows:

§ 4.71 Contents of applications.

An application for license for transmission line only must contain the following information in form specified.

* * * * *

(a) * * *

(5) The applicant is a [citizen of the United States, association of citizens of the United States, domestic corporation, municipality, or state, as appropriate. See 16 U.S.C. 796] and (is/is not) claiming preference under section 7(a) of the Federal Power Act.

* * * * *

§ 4.80 [Amended]

21. Section 4.80 is amended by revising the title to read: *§ 4.80 Applicability.*

22. In § 4.81, paragraph (e) is amended by removing the phrase "§ 4.32 (a) and (b)" and inserting, in its place, the phrase "§ 4.39 (a) and (b)".

23. In § 4.81, paragraph (a)(4) is revised to read as follows:

§ 4.81 Contents of application.

* * * * *

(a) * * *

(4) [Name of applicant] is a [citizen, association, citizens, domestic corporation, municipality, or State, as appropriate] and (is/is not) claiming preference under section 7(a) of the Federal Power Act. [If the applicant is a municipality, the applicant must submit copies of applicable state or local laws or a municipal charter or, if such laws or documents are not clear, any other appropriate legal authority, evidencing that the municipality is competent under such laws to engage in the business of development, transmitting, utilizing, or distributing power].

* * * * *

24. Section 4.82 is revised to read as follows:

§ 4.82 Amendments.

(a) Any permittee may file an application for amendment of its permit, including any extension of the term of the permit that would not cause the total term to exceed three years. (Transfer of a permit is prohibited by section 5 of the Federal Power Act.) Each application for amendment of a permit must conform to any relevant requirements of § 4.81 (b), (c), (d), and (e).

(b) If an application for amendment of a preliminary permit requests any material change in the proposed project, public notice of the application will be issued as required in § 4.32(c)(2)(i).

(c) If an application to extend the term of a permit is submitted not less than 30 days prior to the termination of the permit, the permit term will be automatically extended (not to exceed a total term for the permit of three years) until the Commission acts on the application for an extension. The Commission will not accept extension requests that are filed less than 30 days prior to the termination of the permit.

25. Section 4.83 is revised to read as follows:

§ 4.83 Cancellation and loss of priority.

(a) The Commission may cancel a preliminary permit if, after notice and opportunity for hearing, the permittee fails to comply with the specific terms and conditions of the permit. The Commission may also cancel a permit for other good cause shown after notice and opportunity for hearing. Cancellation of a permit will result in loss of the permittee's priority of application for a license for the proposed project.

(b) Failure of a permittee to file an acceptable application for a license before the permit expires will result in loss of the permittee's priority of application for a license for the proposed project.

26. A new § 4.84 is added to read as follows:

§ 4.84 Surrender of permit.

A permittee must submit a petition to the Commission before the permittee may voluntarily surrender its permit. Unless the Commission issues an order to the contrary, the surrender will take effect 30 days after the Commission issues a public notice of receipt of the petition.

§ 4.90 [Amended]

27. Section 4.90 is amended by removing the word "§ 4.91" and inserting, in its place, the word "§ 4.30(b)(26)".

§ 4.91 [Removed]

28. Section 4.91 is removed.

29. Section 4.92 is amended as follows:

a. Paragraphs (a) and (b) are removed.

c. The following paragraphs are redesignated or removed as shown:

Old	New
Designation "(1)" following "(c) *Contents of Application.*".	Removed.
(c)(1)(i)	(a)(1).
(c)(1)(ii)	(a)(2).
(c)(2)	(b).
The introductory text of (c)(3).	The introductory text of (c)
(c)(3)(i) through the introductory text of (c)(3)(vii).	(c)(1) through the introductory text of (c)(7).
(c)(3)(vii)(A) through (c)(3)(vii)(E).	(c)(7)(i) through (c)(7)(v).
(c)(3)(viii) through (c)(3)(xi)	(c)(8) through (c)(11)
The introductory text of (c)(4).	The introductory text of (d).
(c)(4)(i) through (c)(4)(iii)	(d)(1) through (d)(3).
The introductory text of (c)(5).	The introductory text of (e).
(c)(5)(i) through (c)(5)(iii)	(e)(1) through (e)(3).
(c)(5)(iv)	Removed.
(c)(5)(v)	(e)(4).
(c)(6)	(f).

30. The reference in newly redesignated paragraph (c)(7)(v) to "clause (D)" is revised to read "paragraph (c)(7)(iv) of this section".

31. Section 4.92 is further amended by revising the section heading and newly redesignated paragraphs (a), (b), (c)(7)(iv), (c)(9), (d)(2), the introductory text of (e), and paragraph (f) to read as follows:

§ 4.92 Contents of exemption application.

(a) An application for exemption for this subpart must include:

(1) An introductory statement, including a declaration that the facility for which application is made meets the requirements of § 4.30(b)(26) (If the facility qualifies but for the discharge requirement of § 4.30(b)(26)(v), the introductory statement must identify that fact and state that the application is accompanied by a petition for waiver of § 4.30(b)(26)(v), filed pursuant to § 385.207 of this chapter);

(2) Exhibits A, B, E, and G; and

(3) An appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.31(b).

(b) *Introductory Statement.* The introductory statement must be set forth in the following format:

Before the Federal Energy Regulatory Commission, Application for Exemption for Small Conduit Hydroelectric Facility

[Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for the [name of facility], a small conduit hydroelectric facility that meets the requirements of [insert the following language, as appropriate: "§ 4.30(b)(26) of this subpart" or "§ 4.30 (b)(26) of this subpart, except paragraph (b)(26)(v)"], from certain provisions of Part I of the Federal Power Act.

The location of the facility is:
State or Territory: ———
County: ———
Township or nearby town: ———

The exact name and business address of each applicant are: ———

The exact name and business address of each person authorized to act as agent for the applicant in this application are: ———

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state or the state of incorporation, as appropriate), as appropriate].

The provisions of Part I of the Federal Power Act for which exemption is requested are:

[List here all sections or subsections for which exemption is requested.]

[If the facility does not meet the requirement of § 4.30(b)(26)(v), add the following sentence: "This application is accompanied by a petition of waiver of § 4.30(b)(26)(v), submitted pursuant to 18 CFR 385.207."]

(c) * * *

(7) * * *

(iv) The average flow of the conduit at the plant or point of diversion (using best available data and explaining the sources of the data and the method of calculation); and

* * * * *

(9) If the hydroelectric facility discharges directly into a natural body of water and a petition for waiver of § 4.30(b)(26)(v) has not been submitted, evidence that a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility is withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located.

* * * * *

(d) * * *

(2) a proposed project boundary enclosing all project works to be exempted from licensing; and

* * * * *

(e) *Exhibit E.* This exhibit is an Environmental Report. It must be prepared pursuant to § 4.38 and must include the following information, commensurate with the scope and environmental impact of the facility's construction and operation:

* * * * *

(f) *Exhibit G.* Exhibit G is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility. The drawings must include plan, elevation, profile, section views of the power plant, and any other principal facility structure and of any dam to which a facility structure is attached. Each drawing must be an ink drawing or a drawing of similar quality on a sheet no smaller than eight and one-half inches by eleven inches, with a scale no smaller than one inch equals 50 feet for plans and profiles and one inch equals 10 feet for sections. Generating and auxiliary equipment must be clearly and simply depicted and described. For purposes of this subpart, these drawings specifications replace those required in § 4.39 of the Commission's regulations.

32. Section 4.93 is amended as follows:

a. Paragraph (b) is removed.

b. Paragraphs (c) through (g) are redesignated as paragraphs (b) through (f) respectively.

c. Newly designated paragraph (b) is amended by removing the word "§ 4.92(c)(5)" and inserting, in its place, the word "§ 4.92(e)".

33. Newly redesignated § 4.93 is amended by revising paragraphs (a) and (c) to read as follows:

§ 4.93 Action on exemption applications.

(a) An application for exemption that does not meet the eligibility requirements of § 4.30(b)(26)(v) may be accepted, provided the application has been accompanied by a request for waiver under § 4.92(a)(1) and the waiver request has not been denied. Acceptance of an application that has been accompanied by a request for waiver under § 4.92(a)(1) does not constitute a ruling on the waiver request, unless expressly stated in the acceptance.

* * * * *

(c)(1) *General rule.* Except as provided in paragraph (c)(2) of this section, if the Commission has not taken one of the actions set forth in paragraph (d) of this section within 90 days after notifying the applicant that its application for exemption is accepted for filing, then at the expiration of that period the application will be considered granted as requested in the standard terms and conditions set forth in § 4.94.

(2) *Exceptions.* Paragraph (c)(1) will not apply and the 90-day period is automatically suspended if:

(i) An acceptable competing application is filed; or

(ii) The exemption application is accompanied by a request for a waiver of § 4.30(b)(26)(v).

* * * * *

34. Section 4.94 is amended by revising paragraph (b) and adding new paragraphs (c), (d) and (e) to read as follows:

§ 4.94 Standard terms and conditions of exemption.

* * * * *

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the effective date of this exemption. If an exemption is revoked, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) *Article 4.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(e) *Article 5.* The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

35. A new § 4.95 is added to read as follows:

§ 4.95 Surrender of exemption.

(a) To voluntarily surrender its exemption, a holder of an exemption for a small conduit hydroelectric facility must file a petition with the Commission. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands. If no significant construction has taken place, unless the Commission issues an order to the contrary, the surrender will take effect 30 days after the Commission issues a public notice of receipt of the petition. If significant construction has taken place, public notice of the petition will be given and at least 30 days thereafter the Commission will act upon the petition. The exemption holder must serve a copy of its petition on each of the interested Federal and state fish and wildlife agencies.

(b) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if the project works described in the exemption have been constructed in whole or in part, upon such conditions with respect to the dispostition of such project works and restoration of project lands as may be determined by the Commission.

36. A new § 4.96 is added to read as follows:

§ 4.96 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate. An exemption holder must notify the Commission and appropriate Federal and state fish and wildlife agencies in writing of any proposed changes in the design, location and method of construction of the project works or in the operation of the project. If the Director of the Office of Electric Power Regulation has not taken one of the actions set forth in paragraph (b) of this section within 45 days of the filing date of the notification required by this paragaph, the exemption holder may proceed with the project changes as proposed.

(b) Within 45 days after the filing date of the notification required by paragraph (a) of this section, the Director of the Office of Electric Power Regulation may take any of the following affirmative actions. The Director may:

(1) Approve the changes;

(2) Determine that the changes are consistent with the exemption as issued and that no amendment of the exemption is necessary;

(3) Determine that the changes would constitute a material amendment of the exemption and deny the request to make the changes. If the changes are determined to constitute a material amendment of the exemption, the exemption holder may apply for an amendment of its exemption or apply for a license in order to acquire authorization to construct and operate the project with the requested changes; or

(4) Request the exemption holder to file additional information. After the additional information is received, the Commission may take one of the actions specified in this paragraph.

(c) If an exemption holder is required to apply for an amendment of its exemption, it must follow the same procedures of this Part for applying for an exemption. The Commission will not accept applications in competition against an application for amendment of an exemption.

§ 4.101 [Amended]

37. Section 4.101 is amended by removing the word "§ 4.102" and inserting, in its place, the word "§ 4.30(b)(26)".

38. Section 4.102 is revised to read as follows:

§ 4.102 Surrender of exemption.

(a) To voluntarily surrender its exemption, a holder of an exemption for a small hydroelectric power project must file a petition with the Commission. The petition must set forth the exemption holder's plans with respect to disposition and restoration of the project works and lands. If no significant construction has taken place, unless the Commission issues an order to the contrary, the surrender will take effect 30 days after the Commission issues a public notice of receipt of the petition. If significant construction has taken place, public notice of the petition will be given and at least 30 days thereafter the Commission will act upon the petition. The exemption holder must serve a copy of its petition on each of the interested Federal and state fish and wildlife agencies.

(b) Exemptions may be surrendered only upon fulfillment by the exemption holder of such obligations under the exemption as the Commission may prescribe and, if the project works described in the exemption have been constructed in whole or in part, upon such conditions with respect to the disposition of such project works and restoration of project lands as may be determined by the Commission.

(c) Where occupancy of United States lands or reservations has been permitted by a Federal agency having supervision over such land, the exemption holder must concurrently notify that agency of the petition to surrender and of the steps that will be taken to restore the affected U.S. lands or reservations.

39. Section 4.103 is revised to read as follows:

§ 4.103 General provisions for case-specific exemption.

(a) *Exemptible projects.* Subject to the provisions in paragraph (b) of this section, § 4.31(c), and §§ 4.105 and 4.106, the Commission may exempt on a case-specific basis any small hydroelectric power project from all or part of Part I of the Act, including licensing requirements. Any applications for exemption for a project shall conform to the requirements of §§ 4.107 or 4.108, as applicable.

(b) *Limitation for licensed water power project.* The Commission will not accept for filing an application for exemption from licensing for any project that is only part of a licensed water power project.

(c)(1) *Waiver.* In applying for case-specific exemption from licensing, a qualified exemption applicant may petition under § 385.207 of this chapter for waiver of any specific provision of §§ 4.102 through 4.107. The Commission will grant a waiver only if consistent with Section 408 of the Energy Security Act of 1980.

(2) For any small hydroelectric power project that would utilize a natural water feature, as defined in § 4.30(b)(27)(ii)(A), a qualified exemption applicant may obtain a waiver under this paragraph of the height limitation in § 4.30(b)(27)(ii)(C)(1), the water retention limitation in § 4.30(b)(27)(ii)(C)(2), or both only if that applicant has demonstrated, based on adequate environmental and engineering information in its exemption application and petition for waiver, that it is reasonable to waive these limitations. In no case may a diversion or intake structure for such project exceed ten feet in total height.

40. Section 4.104 is revised to read as follows:

§ 4.104 Amendment of exemption.

(a) An exemption holder must construct and operate its project as described in the exemption application approved by the Commission or its delegate. An exemption holder must notify the Commission and appropriate Federal and state fish and wildlife agencies in writing of any proposed changes in the design, location, and method of construction of the project works or in the operation of the project. If the Director of the Office of Electric Power Regulation has not taken one of the actions set forth in paragraph (b) of this section within 45 days of the filing date of the notification required by this paragraph, the exemption holder may proceed with the project changes as proposed.

(b) Within 45 days after the filing date of the notification required by paragraph (a) of this section, the Director of the Office of Electric Power Regulation may take any of the following affirmative actions. The Director may:

(1) Approve the changes;

(2) Determine that the changes are consistent with the exemption as issued and that no amendment of the exemption is necessary;

(3) Determine that the changes would constitute a material amendment of the exemption and deny the request to make the changes. If the changes are determined to constitute a material amendment of the exemption, the exemption holder may apply for an amendment of its exemption or apply for a license in order to acquire authorization to construct and operate the project with the requested changes; or

(4) Request the exemption holder to file additional information. After the additional information is received, the Commission may take one of the actions specified in this paragraph.

(c) If an exemption holder is required to apply for an amendment of its exemption, it must follow the procedures of this Part for applying for an exemption. The Commission will not accept applications in competition against the application for amendment of the exemption.

41. Section 4.105 is amended as follows:

a. The heading *"Exemption from licensing. (1) General Procedure."* following the paragraph designation "(b)" is removed.

b. Paragraphs (b)(1) and (b)(2) are removed.

c. Paragraphs (b)(3) through (b)(6) are redesignated as (b)(1) through (b)(4), respectively.

d. Newly redesignated paragraphs (b)(2) of § 4.105 are revised to read as follows:

§ 4.105 Action on exemption applications.

* * * * *

(b) * * *

(2) *Automatic exemption.* (i) If the Commission has not taken one of the actions set forth in subparagraph (b)(3) within 120 days after notifying the applicant that its application for exemption from licensing is accepted for filing and if the 120-day period for action has not been automatically suspended pursuant to subparagraph (b)(2) (ii) or (iii), exemption of the project as proposed will be deemed to be found consistent with the public interest and granted, subject to the standard terms and conditions set forth in § 4.106.

(ii) If an acceptable competing application for a license or for exemption from licensing is filed, the 120-day period of time for action on the initial application for exemption from licensing or for any competing applications for exemption from licensing is automatically suspended.

(iii) If an initial application for exemption from licensing requests a waiver under § 4.103, the 120-day period for action on the initial application for exemption is automatically suspended.

* * * * *

42. Section 4.106 is amended by revising paragraphs (b) and (c) and adding new paragraphs (f), (g), and (h) to read as follows:

§ 4.106 Standard terms and conditions of case-specific exemption from licensing.

* * * * *

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service and any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) *Article 3.* The Commission may revoke this exemption if actual construction of any proposed generating facilities has not begun within two years or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

* * * * *

(f) *Article 6.* In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(g) *Article 7.* The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(h) *Article 8.* Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 CFR 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 CFR Part 222, is subject to the following provisions of 18 CFR Part 12:

(i) Section 12.4(b)(1) (i) and (ii), (b)(2) (i) and (iii), (b)(iv), and (b)(v);

(ii) Section 12.4(c);

(iii) Section 12.5;

(iv) Subpart C; and

(v) Subpart D.

For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

43. Section 4.107 is amended as follows:

a. In paragraph (a), the designation "(1)" following the heading *"General requirements."* is removed;

b. Paragraph (a)(2) is removed;

c. Paragraph (e)(3) is removed;

d. Paragrpah (e)(4) is redesignated (e)(3); and

e. Paragraph (c)(5) of § 4.107 is revised and a new subparagraph (d)(4) is added to read as follows:

§ 4.107 Contents of application for exemption from licensing.

* * * * *

(c) * * *

(5) A graph showing a flow duration curve for the project. Identify steam gauge(s) and period of record used. If a synthetic record is utilized, provide details concerning its derivation. Furnish justification for selection of installed capacity if the hydraulic capacity of proposed generating unit(s) is less than the stream flow that is available 25 percent of the time.

* * * * *

(d) * * *

(4) A proposed project boundary enclosing project works to be exempted from licensing.

* * * * *

44. The introductory text of § 4.201 and the heading and introductory text in § 4.201(b) are revised respectively to read as follows:

§ 4.201 Contents of application.

An application for amendment of a license for a water power project must contain the following information in the form specified.

* * * * *

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a water power project that would alter the actual or proposed total installed capacity of the project must be prepared pursuant to § 4.38 and must contain the following exhibits, or revisions or additions to any exhibits on file, *commensurate with the scope of the licensed project:*

* * * * *

PART 12—[AMENDED]

45. Section 12.3(b)(3) is revised to read as follows:

§ 12.3 Definitions.

* * * * *

(b) * * *

(3) "Authorized Commission representative" means the Director of the Office of Electric Power Regulation, the Director of the Division of Inspections and Hydro-License Administration, the Director of the Division of Hydropower Licensing, the Regional Engineer, or any other member

of the Commission staff whom the Commission may specifically designate.

* * * * *

[FR Doc. 84-5581 Filed 3-2-84; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-225 (Kentucky-3)]

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (Supp V. 1981), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Offiice of Pipeline and Producer Regulation contains the recommendation of the Commonwealth of Kentucky that the "Big Lime" Formation of the Newman Group be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 16, 1984.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 15, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Leslie Lawner, (202)(357-8581,
or
C. W. Gray, Jr., (202) 357-8731.

SUPPLEMENTARY INFORMATION:

I. Background

On January 16, 1984, the Commonwealth of Kentucky (Kentucky) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the "Big Lime" Formation of the Newman Group located in Harlan, Leslie, Letcher and Perry Counties, Kentucky, be designated as a tight formation. This Notice of Proposed Ruemaking is issued under § 271.703(c)(4) to determine whether Kentucky's recommendation that the "Big Lime" Formation of the Newman Group be designated a tight formation should be adopted. Kentucky's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Kentucky recommends that the "Big Lime" Formation of the Newman Group in Harlan, Leslie, Letcher, and Perry Counties in southeastern Kentucky, except for several irregularly shaped excluded areas as shown on maps on file with the Commission, be designated as a tight formation. The "Big Lime" Formation is a late Mississippian shallow marine deposit with interbedded layers of clastic and nonclastic limestone with interbedded thin shales in the upper portions of the formation. The "Big Lime" Formation consists of the Haney-Paoli Limestone, the Ste. Genevieve Limestone and St. Louis Limestone. The recommended tight formation is overlain by the "Pencil Cave" Shale and underlain by the "Big Injun" Sandstone.

The thickness of the "Big Lime" Formation in the four county area ranges from 174 to 303 feet. The average depth to the top of the "Big Lime" Formation is 1848 feet in western Leslie County and increases to 3403 feet to the south in Harlan County.

III. Discussion of Recommendation

Kentucky claims in its submission that evidence gathered through information and testimony presented at a public hearing in Frankfurt, Kentucky, convened by Kentucky on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production in the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Kentucky further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97 [Reg. Preambles 1977-1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Kentucky that the "Big Lime" Formation of the Newman Group as described and delineated in Kentucky's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before April 16, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-225 (Kentucky-3) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communication concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than March 15, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event

the Commission adopts Kentucky's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. § 553

2. Section 271.703 is amended by adding paragraph (d)(190) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(190) "Big Lime" Formation of the Newman Group in Kentucky. RM79–76–225 (Kentucky-3).

(i) *Delineation of formation.* The "Big Lime" Formation is found in Harlan, Leslie, Letcher and Perry Counties, Kentucky. Several irregularly shaped areas in these counties are excluded from the designation, and are shown on maps on file with the Commission.

(ii) *Depth.* The average depth to the top of the "Big Lime" Formation is 1848 feet in western Leslie County and increases to 3403 feet in Harlan County. The thickness of the "Big Lime" Formation in the four county area ranges from 174 to 303 feet. It is overlain by the "Pencil Cave" Shale and underlain by the "Big Injun" Sandstone.

[FR Doc. 84–5863 Filed 3–2–84; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 282

[Docket No. RM82–22–001 and Docket No. RM83–48–001]

Termination of Rulemaking Dockets: Miles Laboratories, Inc. and Church and Dwight Company, Inc.; Order Granting Rehearing for Purposes of Further Consideration

Issued: February 29, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On January 6, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 354, an order terminating fifteen rulemaking dockets. Order No. 354 withdrew two Notices of Proposed Rulemaking and denied 13 petitions for rulemaking.

In this order, the Commission grants rehearing, to the extent it may apply, of its decision to deny petitions for rulemaking filed in Docket Nos. RM82–22–001 and RM83–48–001 in order to consider further the merits of the petitions.

EFFECTIVE DATE: February 29, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Office of the General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8033.

The Federal Energy Regulatory Commission (Commission) terminated fifteen rulemaking dockets in Order No. 354, issued January 6, 1984 (49 FR 1525 (Janury 12, 1984)). Order No. 354 withdrew two Notices of Proposed Rulemaking and denied thirteen petitions for rulemaking for one of two reasons: Either the Commission had already taken action obviating the need for furhter activity in the docket or the Commission was unpersuaded to change existing policies.

The Commission has received two timely requests to rehear its decision denying two of the petitions for rulemaking. These requests for rehearing were filed by Miles Laboratories, Inc. (Docket No. RM82–22–001) and Church and Dwight Company, Inc. (Docket No. RM83–48–001).

The Commission intends to review these requests. To have sufficient time to evaluate the issues raised in them, the Commission grants rehearing, to the extent rehearing may apply, of Order No. 354 solely for the purpose of further consideration.

The Commission Orders

The requests for rehearing filed by Miles Laboratories, Inc., and Church and Dwight Company, Inc. are granted, to the extent rehearing may apply, solely for purposes of further consideration. This action does not constitute a grant or denial of either request on its merits, either in whole or in part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 385.713), no answers to these requests will be entertained by the Commission because this order does not grant rehearing on any substantive issue.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–5810 Filed 3–2–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Proposed rule with request for comment.

SUMMARY: To make the Paroling Policy Guidelines, 28 CFR 2.20, more comprehensive the Parole Commission is proposing an addition to these guidelines establishing offense severities for export offenses.

DATE: Comment must be received by May 4, 1984.

ADDRESS: James Beck, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

FOR FURTHER INFORMATION CONTACT: James Beck, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: To make the parole guidelines more comprehensive, the Parole Commission is proposing an addition to the guidelines for export offenses. Violations of the Export Administration Act involving national security controls or nuclear nonproliferation controls will be graded as Category Six; violations of the Arms Control Act will be graded as Category Six if involving sophisticated weaponry; conduct involving export of other weapons will be graded as if an offense involving weapons under Chapter Eight of the guidelines.

List of Subjects in 28 CFR Part 2

Adminstrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission proposes to amend 28 CFR 2.20 by adding sections 1042 and 1043 to Chapter Ten, Subchapter E of the Offense Behavior Severity Index to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

* * * * *

1042 *Violations of Export Administration Act* (50 U.S.C. 2410)

Grade conduct involving "national security controls" or "nuclear nonproliferation controls" as Category Six;

1043 *Violations of the Arms Control Act* (22 U.S.C. 2778)

(a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armored vehicles, or "high technology" items) as Category Six.

(b) Grade conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

* * * * *

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: February 17, 1984.

Bejamin F. Baer,

Chairman, Parole Commission.

[FR Doc. 84-5668 Filed 3-2-84; 8:45 am]

BILLING CODE 4410-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2647

Reduction or Waiver of Complete Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation, if adopted, would provide rules for reducing or waiving the liability of an employer that has completely withdrawn from a multiemployer plan and subsequently resumes covered operations or renews the obligation to contribute under the plan. The Pension Benefit Guaranty Corporation is required to issue these rules under the Employee Retirement Income Security Act of 1974, as amended. The regulation is needed to provide relief from withdrawal liability for employers that have completely withdrawn from a multiemployer plan and subsequently reenter the plan. The effect of this regulation would be to require the plan to waive the reentering employer's obligation to make future payments with respect to its complete withdrawal, and to reduce the amount of the employer's liability for a partial or complete withdrawal from the plan after its reentry into the plan to reflect prior withdrawal liability payments.

DATE: Comments must be received on or before May 4, 1984.

ADDRESSES: Comments should be addressed to the Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7100 at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Attorney, Office of the Executive Director, Policy and Planning (140), 2020 K Street, NW., Washington, D.C. 20006; 202-254-4862. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

The Statute

Under the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or "the Act"), an employer that completely withdraws from a multiemployer plan covered under Title IV may be liable to the plan for a portion of the plan's unfunded vested benefits. In general, a complete withdrawal occurs under section 4203(a) of the Act if an employer either permanently ceases to have an obligation to contribute or permanently ceases all covered operations. Special withdrawal rules apply with respect to construction industry plans, entertainment industry plans and trucking industry plans. The withdrawal liability rules generally apply to withdrawals after April 28, 1980 (May 2, 1979 for certain employers in the seagoing industry).

Section 4207(a) of ERISA requires the Pension Benefit Guaranty Corporation (the "PBGC") to provide rules for reducing or waiving the liability of an employer that has completely withdrawn from a multiemployer plan and subsequently resumes covered operations or renews the obligation to contribute under the plan, to the extent PBGC determines that reduction or waiver of withdrawal liability is consistent with the purposes of the Act. Under section 4207(b), PBGC must also prescribe a procedure and standards under which plans may, by amendment, adopt alternative rules for reduction or waiver of complete withdrawal liability upon the resumption of covered operations or the renewal of the obligation to contribute by a withdrawn employer. Plan rules may be applied only to the extent they are consistent with the purposes of ERISA .

The Regulation

This proposed regulation prescribes rules under section 4207(a). PBGC is also developing a procedure and standards, pursuant to section 4207(b) of the Act, by which plans may adopt their own rules for reduction or waiver of complete withdrawal liability. However, because PBGC believes that it is important to provide the relief contemplated under section 4207(a), PBGC has decided to issue rules under the provision at this time and to promulgate rules under section 4207(b) at a later date.

This regulation applies to multiemployer plans covered under Title IV and to employers that have completely withdrawn from those plans after April 28, 1980 (May 2, 1979 for certain employers in the seagoing industry) and incurred withdrawal liability, but have not, as of the date of their reentry into the plan, full paid that liability (§ 2646.1(b)).

In order to encourage the growth and maintenance of multiemployer pension plans, these rules attempt to provide an incentive to withdrawn employers to reenter multiemployer plans by waiving withdrawal liability payments due after the date of reentry (§§ 2647.2-2647.4). The continued participation by an employer in a multiemployer plan is generally more beneficial to the long-run viability of the plan than is the payment of withdrawal liability. Continued participation protects the plan's contribution base. The payment of withdrawal liability merely replaces lost contributions for a limited period. After withdrawal liability payments cease, plan income may be permanently reduced. Abating the withdrawal liability of a reentering employer, therefore, will not usually harm the plan and, if fact, is likely to help the plan if the employer would not otherwise reenter the plan.

However, merely waiving the withdrawal liability of a reentering employer, without making any other adjustments to the statutory withdrawal liability rules, could create the potential for harm to plans and to other contributing employers. Without other adjustments, the reentered employer would be treated as a new employer under the plan, and, should the employer withdraw from the plan, its liability would be based only on its participation since its date of reentry. Thus, an employer who incurred a large withdrawal liability for a complete withdrawal could reenter the plan and have most of that liability waived, and then withdraw again a short time later, incurring little (or perhaps, no) liability for that second withdrawal. In this manner, an employer could shift the liability for the plan's unfunded vested benefits allocable to that employer to the other employers in the plan. This would be inequitable to the other employers, and if it occurred often enough, could harm the plan.

Therefore, this regulation also contains provisions designed to minimize potentially abusive situations, as illustrated above. To this end, the regulation treats a reentered employer, as much as practicable, as a continuing employer in the plan. Thus, in the situation described above, the reentered employer would generally continue, consistent with the plan's allocation method under section 4211 of the Act, to be responsible for the plan's unfunded vested benefits allocable to the employer with respect to its pre-withdrawal participation in the plan (§ 2647.6).

Many of the statutory rules defining withdrawal and computing withdrawal liability (*e.g.* sections 4205 and 4219(c)) use data from plan years prior to the year of withdrawal. This creates a problem in treating a reentered employer as if it had never withdrawn from the plan, because, of course, the employer does not have an uninterrupted contribution history. Therefore, in order to effect this result, and treat both the reentered employer and other contributing employers equitably, the regulation provides special rules for determining liability for a reentered employer that subsequently has a partial or complete withdrawal. (§§ 2647.5–2647.7.)

Thus, PBGC believes that this regulation, while providing an incentive to employers to reenter plans, also contains necessary and appropriate safeguards to ensure that employers cannot use this regulation to the detriment of plans and other contributing employers; that these safeguards ensure that the purposes of the Multiemployer Act— to strengthen multiemployer plans and to provide for the equitable sharing by all contributing employers of a plan's benefit liabilities—will not be frustrated by waiving withdrawal liability for a reentering employer.

Abatement of Liability

Section 2647.2 of the regulation sets forth general rules regarding abatement. Section 2647.2(a) provides that (with one minor exception discussed below) whenever an employer that has completely withdrawn from a multiemployer plan reenters the plan, the plan sponsor shall determine, in accordance with § 2647.2(b), whether that employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4. Under § 2647.2(b), the plan sponsor must make this determination as soon as practicable after the employer reenters the plan. Since one of the abatement tests under § 2647.4 measures the employer's actual level of operations and contributions under the plan after reentry, it may be a year or more after the employer reenters the plan before the plan sponsor can determine whether the employer qualifies for abatement.

Section 2647.2(b) also provides that the plan sponsor must notify the employer in writing of its determination and of the consequences of its determination, which are described in § 2647.2 (c) or (d) and (e), as appropriate. If a bond or escrow has been provided to the plan under § 2646.3 (relating to withdrawal liability payments due during the pendency of the plan sponsor's abatement determination; see discussion below), the plan sponsor must also send a copy of this notice to the bonding or escrow agent. (A bond or escrow may not be necessary in all cases since an abatement determination may be made under one of the abatement tests in § 2647.4 immediately upon the employer's reentry into the plan.)

Under § 2647.2(c), if the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability, several consequences ensue. First, the employer ceases to have an obligation to make further withdrawal liability payments to the plan with respect to its complete withdrawal. Second, the employer's liability for any subsequent partial or complete withdrawal will be determined in accordance with § 2647.6 or § 2647.7. Third, any bond or escrow provided by the employer to the plan under § 2647.3 must be cancelled or refunded to the employer. Finally, any withdrawal liability payments already made by the employer to the plan shall be retained by the plan. (A determination of abatement does not abate the obligation of an employer to make withdrawal liability payments due prior to its reentry.)

The consequences of a determination by the plan sponsor that the employer does not satisfy the requirements for abatement of its complete withdrawal liability are set forth in § 2647.2(d). In this event, any bond or escrow furnished by the employer to the plan under § 2647.3 must be paid to the plan (§ 2647.2(d)(1)). The employer must also pay to the plan the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the amount of the bond or escrow (§ 2647.2(d)(2)). Both payments must be made no later than 30 days after the date of the plan sponsor's determination letter under § 2646.2(b). In addition, the employer shall resume making its withdrawal liability payments as they are due (§ 2647.2(d)(2)). Finally, the employer will be considered a new employer with respect to its participation in the plan after its reentry (§ 2647.2(d)(4)).

Section 2647.2(e) of the regulation provides rules covering the collection of the payments due as a result of the plan sponsor's non-abatement determination. Specifically, these payments, other than the payment of the bond/escrow, will be subject to the rules in Part 2644 of PBGC's regulations (to be issued shortly) relating to notice and collection of withdrawal liability. For this purpose, the payment required to be made under § 2647.2(d)(2) shall be treated as a withdrawal liability payment that is due on the 30th day after the date of the plan sponsor's notice to the employer of the sponsor's non-abatement determination. The payment of the bond or escrow is excepted from this provision because PBGC expects that this payment will always be made promptly. Section 2647.3 of this regulation requires the bond or escrow agreement to provide for payment to the plan upon notice from the plan sponsor to the bonding company or escrow agent.

Section 2647.2(e)(1) provides that a plan sponsor's determination that the employer does not satisfy the requirements for abatement under § 2647.4 is subject to plan review under section 4219(b)(2) of the Act and to arbitration under section 4221 of the Act, within the time limits prescribed by those sections. PBGC believes it appropriate to make the plan sponsor's non-abatement determination subject to plan review and arbitration because this determination is analogous to a determination by a plan sponsor that an employer has partially or completely withdrawn from the plan. Therefore, the employer should be afforded the same procedural safeguards as an employer that is determined to have withdrawn from a plan.

For purposes of plan review and arbitration, the plan sponsor's notice under § 2647.2(b) shall be treated as a demand under section 4219(b)(1) of the Act. PBGC notes that under § 2644.2(c)(1) of the collection of withdrawal liability regulation (which applies to payments required under § 2647.2 (d)(2) and (d)(3), as discussed above), the plan may not declare a default and require immediate payment of the outstanding balance of the employer's withdrawal liability (plus interest) for non-payment of amounts due either before the expiration of the period during which arbitration may be requested or during arbitration. Finally,

PBGC emphasizes that § 2647.2(e)(1) does not give the employer a new opportunity to contest the plan sponsor's original determination of the employer's liability and the schedule of payments.

Section 2647.2(e)(2) of the regulation provides for the return of certain payments made by the employer to the plan if, upon plan review or arbitration, the plan sponsor or an arbitrator determines that the employer satisfies the requirements for abatement of its withdrawal liability. The payments to be returned are those that would not have been made by the employer if the plan sponsor had initially determined, within the time provided under § 2646.2(b), that the employer satisfied the requirements for abatement of its liability under § 2647.4. These payments are: (1) any bond or escrow paid to the plan pursuant to § 2646.2(d)(1); (2) the amount of the employer's withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow, paid to the plan pursuant to § 2646.2(d)(2); and (3) any withdrawal liability payments made by the employer to the plan after the plan sponsor's notice under § 2647.2(b) to the employer. The plan sponsor must immediately refund these payments (plus interest) to the employer in a lump sum. Interest is to be credited on these payments in accordance with § 2644.2(d) of the collection of withdrawal liability regulation.

Finally, § 2647.2(f) of the regulation provides that a reentering employer may elect not to have its liability for its initial complete withdrawal abated under this regulation. Under § 2647.6 of the regulation (discussed in detail later in this preamble), if an employer whose liability is abated subsequently withdraws again from the plan, its statutory liability for that subsequent withdrawal is modified to, in essence, include a portion of its waived liability for its initial withdrawal. As discussed previously, this is necessary in order to prevent an employer from being able to avoid liability properly allocable to it by reentering a plan, having its liability abated, and then withdrawing again shortly thereafter. However, in rare circumstances, these rules could result in an employer's having more liability for its two withdrawals than it would have had if its first liability had not been abated and it was instead treated as a new employer upon its reentry into the plan. Therefore, the regulation permits a reentering employer to choose not to have its initial withdrawal liability abated. If the employer elects this option, it must so notify the plan sponsor at the time it reenters the plan. The plan sponsor is then relieved of the obligation to make an abatement determination, and the employer will be treated as a new employer in the plan.

Section 2647.3(a) of the regulation requires a reentering employer to provide to the plan a bond or escrow, pending the plan sponsor's abatement determination under § 2647.3(b), in lieu of making its withdrawal liability payments. The bond or escrow must satisfy the requirements of § 2647.3(b) or plan rules adopted under § 2647.3(d). The employer's obligation to make withdrawal liability payments to the plan after its reentry is contingent on the plan sponsor's abatement determination. If the sponsor determines that the employer qualifies for abatement of its liability, then the employer would be entitled to a refund or its withdrawal liability payments made after its reentry. However, PBGC believes it would often be unduly burdensome and disruptive to require a plan to refund these payments. Accordingly, PBGC has decided instead to require the employer to post a bond or establish an escrow account for its withdrawal liability payments due during the pendency of the plan sponsor's abatement determination. PBGC believes this will provide adequate protection to the plan in the event the sponsor determines that the employer does not qualify for abatement of its withdrawal liability.

The bond escrow required under § 2647.3 shall be in the amount of 50 percent of the withdrawal liability payment that would otherwise be payable to the plan, and must be furnished before the due date of the payment (§ 2647.3(b)). A single bond or escrow may be provided with respect to more than one payment due during the pendency of the plan sponsor's determination. (A bond or escrow may not be provided in lieu of a delinquent withdrawal liability payment that was due prior to the employer's reentry.) A letter of credit deposited in an escrow account constitutes an acceptable bond or escrow within the meaning of § 2647.3(b), assuming the letter of credit otherwise satisfies the requirements of § 2647.3(b). A bond satisfies the requirements of § 2647.3(b) only if the bond is issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Act. Finally, § 2647.3(b) requires that the bond or escrow provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under § 2647.4, the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent.

Concurrently with posting the bond or establishing the escrow account, the employer must notify the plan sponsor (§ 2647.3(c)). The notice must include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent. This notice requirement applies on each occasion that the employer posts a bond or establishes an escrow account.

Under § 2647.3(d) of the regulation, a plan may, by amendment, adopt a rule decreasing the amount of the bond or escrow below the amount required under paragraph (b) of that section. A plan amendment decreasing the amount of the bond or escrow may be applied only to the extent it is consistent with the purposes of the Act (§ 2647.3(d)).

Section 2647.4 of the regulation prescribes the requirements for abatement of an employer's complete withdrawal liability. Under § 2647.4(a), an employer that completely withdraws from a multiemployer plan and subsequently reenters the plan shall have its liability for that withdrawal abated in accordance with § 2647.2(c) if the employer—

(1) renews the obligation to contribute to the plan for the same operations for which it was obligated to contribute to the plan prior to its withdrawal; or

(2) resumes covered operations under the plan, and the number of contribution base units with respect to which the employer has an obligation to contribute under the plan during the measurement period after it resumes covered operations is not less than 50 percent of the number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the base year.

The measurement period is the period from the date the employer resumes covered operations until the end of the plan year, if that period covers at least six full months and if the employer would satisfy the test based on its contribution base units for that period. If either of these conditions is not satisfied, the measurement period is the first full plan year beginning after the employer resumes covered operations (§ 2647.4(b)). The employer's number of contribution base units for the base year is the average number of contribution base units for the two plan years in which the employer's contribution base units were the highest within the five

plan years immediately preceding its complete withdrawal (§ 2647.4(c)).

These two tests are designed, in conjunction with the other rules in this part, to protect the plan against an employer attempting to evade liability by reentering the plan at a contribution level substantially below its pre-withdrawal contribution level. The first test is based on the employer's obligation under the plan upon reentry. An employer that renews its obligation to contribute to the plan for the same operations as before its complete withdrawal is restoring the same work to the plan's contribution base, and, therefore, abating its withdrawal liability should not harm the plan. This test would be satisfied if, for example, an employer signs a collective bargaining aggreement obligating it to contribute for the same facilities for which it was obligated before its complete withdrawal.

The second test is based on the employer's actual level of contribution base units after reentry. This must be determined over a period of time. Normally that period will be the first full plan year after reentry. However, in order not to delay the abatement determination unduly, when the employer can satisfy the test sooner and the period over which the determination will be made is long enough to provide a reasonable picture of the employer's actual level of participation, the determination may be made at the end of the plan year in which the employer reentered the plan.

This test is intended to be used when the employer has discontinued some or all of the operations for which it was obligated to contribute to the plan prior to its withdrawal, or is reentering the plan for new operations only. The test measures the extent to which the employer is restoring work to the contribution base of the plan. The reentry of an employer into a plan for a significant percentage of its pre-withdrawal contribution base units is generally more beneficial to the long-run viability of the plan than is the payment of withdrawal liability. Continued participation at a significant level protects the plan's contribution base. Therefore, abating the employer's withdrawal liability should not harm the plan.

In deciding what level of post-reentry participation would be sufficient to justify abatement of an employer's withdrawal liability, PBGC has attempted to establish a level that would both provide adequate protection to the plan and encourage reentry by employers in to the plan. Because, in this case, the employer is not returning all of the withdrawn operations to the plan, PBGC believes that more than a minimal level of participation should be required. Accordingly, PBGC is proposing to require a 50 percent level of post-reentry participation as a condition for abatement under the second test.

Partial Withdrawals After Reentry

Under sections 4205 of the Act and 108 of the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act"), a partial withdrawal occurs upon a 70-percent contribution decline (described in section 4205(a)(1)) or upon a partial cessation of an employer's contribution obligation (described in section 4205(a)(2)). Although an employer may have had its liability for a complete withdrawal abated, it does not follow that the employer should not be liable for a partial withdrawal, either upon the employer's reentry or at some time thereafter. Partial withdrawal liability should result if the employer would have incurred a partial withdrawal had it remained in the plan. However, because the partial withdrawal tests are based on an employer that has had continuous participation in the plan, these statutory tests must be modified in order to deal with an employer that has not had continuous participation in the plan.

Section 2647.5 of the regulation contains the rules for determining whether there is a partial withdrawal of an employer that has had its liability abated. Paragraph (a) of this section requires the plan sponsor to apply the statutory partial withdrawal rules, as modified by the rules in this section. Section 2647.5(b) sets forth modifications to the 70-percent contribution decline rules; § 2647.5(c) sets forth modifications to the rules on a partial cessation of an employer's contribution obligation.

It is important to note that under these rules, an employer liability has been abated may incur a partial withdrawal upon its reentry. This is because the second abatement test does not require that an employer's participation in the plan upon reentry be exactly the same as before the employer's withdrawal. However, a plan sponsor may not demand payment of withdrawal liability for a partial withdrawal upon the employer's reentry before the plan sponsor has determined whether the employer's liability for its complete withdrawal is abated and has so notified the employer (§ 2647.5(a)). This avoids the possibility of an employer, whose liability is not abated, being assessed both complete and partial withdrawal liability.

Under section 4205(a)(1) of the Act, a 70-percent contribution decline generally occurs if the number of contribution base units with respect to which the employer is required to contribute under the plan for each of three consecutive plan years (the "3-year testing period") does not exceed 30 percent of the number of contribution base units for the high base year. (A 70-percent contribution decline occurs on the last day of the 3-year testing period.) The "number of contribution base units for the high base year" is the average number of contribution base units in the two plan years for which the employer's contribution base units were the highest within the five plan years immediately preceding the beginning of the 3-year testing period.

Section 2647.5(b) makes two modifications to the above rules. First, the 3-year testing period excludes any plan year during the period of withdrawal. The "period of withdrawal" is defined in § 2640.8 to mean "the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years." Second, for purposes of determining the number of contribution base units for the high base year, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, the number of contribution base units for each such plan year is deemed to be the greater of: (1) the employer's contribution base units for that year; or (2) the average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

The second rule is intended to normalize contribution base units when the high-base year period includes a plan year(s) during the period of withdrawal. It substitutes a 3-year average of contribution base units as an indication of the employer's "normal" obligation for any year during the employer's period of withdrawal. However, an employer may have made contributions to the plan for a plan year during the period of withdrawal, and the employer's actual contribution base units for that year may exceed the 3-year average (*e.g.*, when an employer withdraws late in a plan year). In this case, the actual contribution base units for the year are used for determining the number of contribution base units for the high base year. (This rule does not modify section 108(d)(3) of the Multiemployer Act, which provides that the employer's contribution base units

for any plan year ending before April 29, 1980, shall be deemed to equal the employer's contribution base units for the last plan year ending before April 29, 1980.)

PBGC considered several other options concerning whether and how to modify the 3-year testing period and the number of contribution base units for the high base year, as defined in the Act. For example, PBGC considered using the statutory definition of 3-year testing period without modification. Under this approach, plan years during the period of withdrawal would be counted. This rule was rejected because it might discourage reentry into the plan. For example, where an employer has made no contributions for two plan years and reenters the plan at the end of the third plan year, for the same operations that were covered prior to its withdrawal, but at a reduced level of participation, the employer would immediately incur a partial withdrawal.

PBGC also considered determining whether a 70-percent contribution decline occurs based on a comparison of the employer's number of contribution base units for a 1-year period, the plan year after reentry, with the employer's number of contribution base units for the five plan years before its complete withdrawal. This, too, was rejected as being too harsh, and thus as potentially discouraging reentry.

PBGC has concluded that the rules proposed are equitable to the plan and the reentering employer. The rules do not create a disincentive to reentry. They treat a reentering employer exactly like a continuing employer.

Under section 4205(b)(2) of the Act, a partial cessation of the employer's contribution obligation occurs if: (1) an employer that is required to contribute to a plan under two or more collective bargaining agreements ceases to have an obligation to contribute under at least one but not all of the agreements, but continues to perform work in the jurisdiction of the agreement of the type for which contributions were previously required or transfers such work to another location; or (2) an employer permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities covered under the plan, but continues to perform work at the facility. Section 2647.5(c) of the regulation contains separate rules for applying these tests in the year of reentry and in subsequent plan years.

Section 2647.5(c)(1) covers the year of reentry. A partial withdrawal occurs in that plan year in two situations. A partial withdrawal occurs if the employer reenters the plan without being obligated to contribute under one or more but fewer than all collective bargaining agreements under which the employer had previously been obligated to contribute under the plan, and is performing work of the type for which contributions were previously required in the jurisdiction of one or more of the collective bargaining agreements, or has transferred such work to another location. A partial withdrawal also occurs if the employer is performing work at one or more facilities at which the employer was previously obligated to contribute under the plan, of the type for which the employer had been obligated to contribute before its complete withdrawal, without being obligated to contribute to the plan for that work.

These rules are intended to result in a partial withdrawal occurring only if a partial withdrawal would have occurred had not the employer completely withdrawn. These rules would apply where the employer reenters the plan with new operations, while continuing the withdrawn operations without being obligated to contribute for them, even if the employer's level of contributions for the new operations is equal to or greater than the level of contributions for the withdrawn operations. PBGC believes that a partial withdrawal should occur in this situation, irrespective of the level of contributions, because if the employer originally had both the new and the old operations in the plan and withdrew either one, a partial withdrawal would occur.

Section 2647.5(c)(2) contains special rules for determining whether there is a partial cessation of the employer's contribution obligation for a plan year beginning after the employer reenters the plan. Under these rules, a partial withdrawal can occur only with respect to a reentered employer's post-reentry obligation to contribute under a collective bargaining agreement or post-reentry work at a facility. The employer's obligation to contribute to the plan under a collective bargaining agreement or at a facility before its complete withdrawal is disregarded under § 2647.5(c)(2), because it has already been taken into account under § 2647.5(c)(1) in determining whether there is a partial withdrawal upon the employer's reentry into the plan.

Determination of Liability for Subsequent Withdrawals

Section 2647.6 of the regulation sets forth the rules for determining the liability of an employer that has had its liability for a complete withdrawal abated and subsequently completely withdraws from the plan. Pursuant to § 2647.6(a), the employer's liability for that subsequent withdrawal is determined in accordance with the rules in sections 4201–4225 of Title IV, as modified by the rules in § 2647.6, and section 108 of the Multiemployer Act. Most of these modifications deal with the formulas for determining the employer's allocable share of the plan's unfunded vested benefits.

In addition, § 2647.6 contains adjustments to some of the allocation methods under section 4211 of the Act, which a plan must use in allocating unfunded vested benefits to any employer that withdraws after the plan has abated the liability of a reentered employer. All of these modifications to the allocation methods are intended to provide equitable treatment to the reentering employer, while protecting other contributing employers from assuming amounts allocable to that employer for the previous withdrawal (other than those amounts that would have been assumed even if the employer had not withdrawn).

With respect to determining the reentered employer's allocable share of unfunded vested benefits for a subsequent withdrawal, PBGC considered using a uniform modification to each of the statutory allocation formulas. This approach is not used in the proposed regulation, however, because of the wide disparities among the allocation methods in the manner in which an employer's allocable share is determined.

Under the "presumptive" method of section 4211(b), for example, the amount of an employer's allocable unfunded vested benefits consists of its proportional share of the plan's unfunded vested benefits immediately prior to the effective date of the withdrawal liability provisions, and its share of the annual changes, either positive or negative, in the plan's unfunded vested benefits and the reallocated amounts after that date. Each such share is considered to be amortized at an annual rate of 5 percent. Thus, under the presumptive rule, an employer's allocable amount is based on its total period of participation in the plan. On the other hand, the "rolling-5" method (section 4211(c)(3)) and, to a certain extent, the "modified presumptive" method (section 4211(c)(2)), based an employer's allocable amount on the plan's unfunded vested benefits in the year prior to withdrawal, with the employer's share determined on the basis of its prorata share of total contributions over the 5-year period preceding withdrawal. Finally, the "direct attribution" method

(section 4211(c)(4)) bases an employer's allocable amount, in part, on the benefits earned by employees of the employer and the assets of the plan attributed to the employer.

Because of these differences, an approach that is suitable for one allocation method might not be suitable for another method in terms of equity to the reentering employer and the plan. Therefore, § 2647.6 of the regulation sets forth modifications (in paragraphs (b), (c) and (e)) to each of the statutory allocation rules for determining a reentered employer's allocable unfunded vested benefits upon a subsequent withdrawal. In addition, § 2647.6 (d) and (e) set forth modifications to the "presumptive" and "direct attribution" methods that apply to the allocation to other employers as well.

Section 2647.6(b) sets forth the modifications to the "presumptive" allocation method in section 4211(b) applicable in determining the allocable share of a reentered employer upon its subsequent withdrawal; § 2647.6(d) provides modifications to the "presumptive" method that apply to all employers. Because the section 4211(b) method bases an employer's allocable amount on annual changes in unfunded vested benefits during its period of participation, and the employer's share of the annual changes is allocable only against that employer until they are fully amortized under the method or until the amount is declared to be uncollectible, the modifications attempt to restore the reentered employer to where it would have been in the allocation process if it had not withdrawn. Such restoration is necessary to prevent the shifting of liabilities for the pre-withdrawal period from the reentered employer to other employers.

For the period beginning with the year of withdrawal and ending with the plan year preceding reentry, the modifications treat the employer as not being obligated to contribute, for purposes of allocating the employer's share of the annual changes in the plan's unfunded vested benefits during that period. However, in order to provide equitable treatment to both the reentered employer and the plan for withdrawal liability payments made and the amortization of the amounts allocable to the employer during this period, the modifications provide the employer with an annual credit for withdrawal payments made that exceeded the employer's imputed contributions during that period. (See discussion below of imputed contributions.) The credit is treated as a negative increase in unfunded vested benefits for a plan year. The amount of the annual credit is reduced by 5 percent of the initial amount for each plan year after the year to which the credit is attributable. The sum of the unamortized amounts of the annual credits is treated as a reallocated amount under section 4211(b)(4) of the Act in the year in which the employer reenters.

For plan years ending after the employer's reentry date, the modifications to section 4211(b) allocate to the employer a share of the change in the plan's unfunded vested benefits as if the employer had contributed in the four preceding plan years. Generally, an employer's share of the change for a plan year is determined based on its share of contributions required under the plan expressed as a percentage of total contributions for the year of the change and the four preceding years. However, because the employer did not make contributions, or may have made less than a full year's contribution for the plan years during its period of withdrawal, it may be necessary to impute contributions to the employer for those years during the period of withdrawal that are included in the proration fraction used to determine the employer's allocable share for a plan year. Under § 2647.6(b), the employer's imputed contributions for each plan year during its period of withdrawal are equal to the average annual contribution required to be made by the employer under the plan for the three plan years preceding the plan year in which the employer initially withdrew.

Because the modifications treat the reentered employer as having contributed for the year of the change and the four preceding years, it is necessary to adjust the denominator of the proration fraction so that other contributing employers will not be allocated more than their proportional share of the annual change. Therefore, in determining the proration fraction for annual changes for plan years ending after reentry, the denominator must be increased by the reentered employer's actual or imputed contribution, determined as described above (§ 2647.6(d)(2)).

Section 2647.6(c) sets forth the modifications to the "modified presumptive" and "rolling-5" allocation methods of section 4211 (c)(2) and (c)(3) for determining a reentered employer's allocable share of unfunded vested benefits upon a subsequent withdrawal. Because those two methods allocate solely or partly on the basis of total unfunded vested benefits immediately preceding withdrawal, treating the employer as if it had not withdrawn, as is done under the presumptive method, would immediately expose the employer to increases in unfunded vested benefits that occurred during its period of withdrawal. This would create a disincentive to reentry. Therefore, PBGC believes it is appropriate in this case to deviate from the general approach under this regulation of treating the employer as if it had never withdrawn. On the other hand, completely ignoring the employer's previous allocable share would provide an incentive for employers to reenter and then withdraw again.

The modification in § 2647.6(c) is intended to avoid these problems by providing that a reentered employer's allocable share for a subsequent withdrawal is equal to the greater of: (1) its allocable share determined as if its reentry date were its initial date of participation under the plan; or (2) the adjusted amount of unfunded vested benefits allocable to the employer for its initial complete withdrawal, as of the end of the plan year preceding the subsequent withdrawal, less the sum of withdrawal liability payments made and actual contributions following reentry, both accumulated with interest at the plan's funding rate. The adjusted amount of unfunded vested benefits allocable to the employer for its initial withdrawal is the amount determined under section 4211 (c)(2) or (c)(3) of the Act as of the end of the plan year preceding its initial withdrawal, accumulated with interest at the plan funding rate in effect for each succeeding year ending prior to the year of the subsequent withdrawal.

Section 2647.6(e) sets forth modifications to the "direct attribution" method of section 4211(c)(4) of the Act. These modifications apply in determining the allocable share of unfunded vested benefits of any employer that withdraws after the plan year of reentry of an employer whose liability is abated under this part. Because the "direct attribution" method is based on the nonforfeitable benefits attributable to service with an employer, the reentered employer is treated as if it had never withdrawn with respect to benefits attributable to service with that employer. Thus, attributable benefits accrued prior to the initial withdrawal and any increases in such benefits during the period of withdrawal are allocable to the reentered employer. Withdrawal liability payments made during the period of withdrawal are treated as contributions made by the reentered employer for purposes of

determining its allocable share of plan assets under section 4211(c)(4)(D) (ii) and (iii) of the Act.

Section 2647.6(f) of the regulation applies to plans that have adopted an alternative allocation method pursuant to section 4211(c)(5) of the Act and Part 2642 of PBGC's regulations. It requires those plans to adopt by plan amendment modifications to the method to be used in determining a reentered employer's allocable share of unfunded vested benefits and the amounts allocable to other employers following reentry. The amendment required by § 2647.6(f) must provide a method that is appropriate to the plan's alternative allocation method, and that treats withdrawing employers in manner consistent with the treatment under the modifications set forth in this regulation applicable to the statutory allocation methods.

Finally, § 2647.6(g) prescribes two adjustments to section 4219(c)(1)(C) of the Act, dealing with computation of the annual withdrawal liability payments. The amount of an employer's annual withdrawal liability payments is determined under section 4219(c)(1)(C)(i) by multiplying the employer's highest contribution rate in the ten plan years *ending with* the year of withdrawal (section 4219(c)(1)(C)(i)(II)) by the average annual number of contribution base units for the three consecutive plan years for which contribution base units were the highest during the ten plan years *preceding* the year of withdrawal (section 4219(c)(1)(C)(i)(I)). This latter 10-year period may be comprised largely of plan years during the period of withdrawal and this would make impossible, or, at least distort, the calculation of the highest average contribution base units for a consecutive 3-year period during the 10-year period. Therefore, § 2647.6(g) provides that for purposes of section 4219(c)(1)(C)(i)(I) of the Act, is the period of ten consecutive plan years ending before the plan year in which the subsequent withdrawal occurs includes any plan years during the period of withdrawal, the employer's number of contribution base units for each such year shall be deemed to be the greater of: (1) the employer's contribution base units for that year; or (2) the average of the employer's contribution base units for those plan years not during the period of withdrawal, within the ten consecutive plan years ending before the plan year in which the employer's subsequent complete withdrawal occured.

Section 4219(c)(1)(C)(ii)(I) contains a special rule for determining an employer's annual withdrawal liability payments for withdrawals occuring in plan years ending before 1986. Under this rule, a plan may be amended to provide that an employer's annual payments will be determined by using the highest average required contributions for three consecutive plan years during the period of ten consecutive plan years preceding the plan year in which the withdrawal occurs. Because this rule presents the same potential problem as that discussed above in relation to section 4219(c)(1)(C)(i)(I), § 2647.6(g) also provides for imputing required contributions for plan years during the period of withdrawal.

Determination of Liability for Subsequent Partial Withdrawals

Section 2647.7 sets forth certain modifications to section 4206(a) (relating to the calculation of liability for a partial withdrawal), section 4208 (relating to the reduction of liability for a partial withdrawal) and section 4219(c)(1) (relating to the amount of the annual partial withdrawal liability payments) of the Act. These modifications are used in determining the employer's liability for a subsequent partial withdrawal as the result of a 70-percent contribution decline. It should be kept in mind that the rules in § 2647.6 also apply to partial withdrawal cases. The first step in determining an employer's partial withdrawal liability is to determine the employer's allocable share of the plan's unfunded vested benefits as if the employer has completely withdrawn (§ 2647.6 (b)–(f)). In addition, the first step in determining the amount of an employer's partial withdrawal liability payments is to determine the amount of each payment as if the employer had completely withdrawn (§ 2647.6(g)).

Section 2647.7(b) contains four additional modifications to the statutory rules for determining an employer's liability with respect to a 70-percent contribution decline. These modifications are necessary in order to exclude plan years during the employer's period of withdrawal in calculating the employer's liability under the Act. Thus, § 2647.7(b)(1) modifies the statutory definition of the term "3-year testing period" (i.e., "the period consisting of the plan year and the immediately preceding two plan years"), for purposes of sections 4206(a) and 4219(c)(1) of the Act and § 2647.7 (b)(2)–(b)(4) of the regulation, to exclude any plan year during the period of withdrawal.

Pursuant to section 4206(a) of the Act, the amount of an employer's liability for a partial withdrawal equals the plan's unfunded vested benefits allocable to the employer as if the employer had completely withdrawn from the plan as of a specified date (the date varies depending on the type of partial withdrawal), multiplied by a fraction. In the case of a 70-percent contribution decline, the date of the hypothetical complete withdrawal is the last day of the first plan year in the 3-year testing period (section 4206(a)(1)(B) of the Act). Because of the modified definition of the term "3-year testing period" under the regulation, this date may be several years prior to the date of the partial withdrawal. This could result in the employer being allocated less than its fair share of the plan's unfunded vested benefits. Therefore, § 2647.7(b)(2) provides that for purposes of section 4206(a)(1)(B) of the Act, the amount determined under section 4211 shall be determined as if the employer had withdrawn from the plan in a complete withdrawal on the last day of the first plan year in the 3-year testing period, or the last day of the plan year in which the employer reentered the plan, whichever is later.

For a 70-percent contribution decline, the denominator of the fraction used to determine an employer's liability under section 4206 is the average of the employer's contribution base units for the five plan years immediately preceding the beginning of the 3-year testing period (section 4206(a)(2)(B)(ii) of the Act). Because this 5-year period may include a plan year during the period of withdrawal, § 2647.7(b)(3) provides that when this is the case, the employer's contribution base units for each such year shall be deemed to be the greater of: (1) the employer's contribution base units for that plan year; or (2) the average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan. The same modification applies for purposes of determining the amount of each annual withdrawal liability payment under section 4219(c)(1). Finally, this modification also applies in comparing the employer's number of contribution base units after the 70-percent contribution decline to its contribution base units before the decline, to determine whether the employer's partial withdrawal liability will be waived or reduced under section 4208 of the Act (§ 2647.7(b)(4)).

Section 2647.7(c) sets forth modifications to sections 4206(a) and 4219(c)(1) of the Act for a subsequent partial withdrawal resulting from a partial cessation of the employer's contribution obligation. As with the 70-percent contribution decline, § 2647.6 applies to these withdrawals as well.

As discussed previously, pursuant to section 4206(a) of the Act, the amount of an employer's liability for a partial withdrawal equals the plan's unfunded vested benefits allocable to the employer as if the employer had completely withdrawn from the plan as of a specified date, multiplied by a fraction. For a partial cessation of the employer's contribution obligation, the date of the hypothetical complete withdrawal is the last day of the plan year in which the partial cessation occurs, and the denominator of the fraction is the average of the employer's contribution base units for the five plan years immediately preceding the plan year in which the partial withdrawal occurs. No modification in the date of the hypothetical withdrawal is necessary in this case. However, just as in the case of the fraction used to determine an employer's liability for a 70-percent contribution decline, the 5-year period in the denominator may include a plan year during the period of withdrawal. Accordingly, the denominator of the fraction used to determine an employer's liability under section 4206 for a partial cessation of the employer's contribution obligation shall be determined in accordance with the rule in § 2647.7(b)((3) applicable to a 70-percent contribution decline (§ 2647.7(c)). The same modification also applies in determining the amount of each annual withdrawal liability payment under section 4219(c)(1).

Transitional Rules

Section 2647.8 sets forth transitional rules for applying this regulation. Section 2647.8(a) contains special rules relating to the application of the regulation to an employer that completely withdraws from a multiemployer plan and subsequently reenters the plan after April 28, 1980 and is obligated to contribute, or is performing covered work, under the plan on the effective date of this regulation. Upon the request of the employer, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability. (This rule applies even if the employer has partially withdrawn from the plan subsequent to its reentry.) PBGC believes that this application requirement is appropriate in order to spare the plan sponsor the burden (particularly in large plans) of identifying those employers that have completely withdrawn from and subsequently reentered the plan as of the effective date of this regulation.

Pending the plan sponsor's determination, the employer shall provide the plan with a bond or escrow in accordance with the requirements of § 2647.3, in lieu of making future withdrawal liability payments. The plan sponsor must notify the employer in writing of its determination and of the consequences of its determination, as described in § 2647.2 (c) or (d), and (e), as appropriate. If a bond or escrow has been provided the plan in accordance with § 2647.3, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

If the plan sponsor determines that the employer qualifies for abatement, the provision of § 2647.2(c)(4) is modified slightly, in that the plan shall be entitled to retain only withdrawal liability payments made prior to the employer's reentry; amounts paid after that date and prior to the employer's application for abatement shall be refunded with interest, in accordance with § 2647.2(e)(2). This rule effords employers who reenter plans prior to the effective date of the regulation the same relief as is given employers who reenter after the effective date. PBGC believes this is an equitable result. Moreover, it is not likely that this rule will apply to many employers, and therefore requiring plans to make refunds to those employers should not create a significant burden for plans.

Finally, §§ 2647.5–2647.7 shall apply with respect to the employer's subsequent complete withdrawal occurring on or after the effective date of this part, or partial withdrawal occurring either before or after the effective date. Absent this regulation, if an employer had completely withdrawn and later reentered a plan, the employer would be treated as a new employer. Therefore, if the employer incurred a partial withdrawal, its liability for that withdrawal would be relatively small. Under this regulation, however, if the employer's liability for its complete withdrawal is abated, it is not treated as a new employer after its reentry. Therefore, its liability for its subsequent partial withdrawal should be recomputed. Accordingly, § 2647.5 (relating to partial withdrawals after reentry) and § 2647.7 (relating to the amount of partial withdrawal liability) apply with respect to a partial withdrawal occurring prior to, as well as after, the effective date of this regulation.

Section 2647.8(b) sets forth special rules for multiple complete withdrawals before the effective date of this regulation. These rules apply to an employer that is obligated to contribute, or is performing covered work, under the plan on the effective date of this regulation and to an employer that reenters the plan after the effective date of this regulation. If an employer completely withdraws from a multiemployer plan on two or more occasions between April 29, 1980 (May 3, 1979 for certain employers in the seagoing industry) and the effective date of this regulation, the plan sponsor shall determine whether the employer satisfies the requirements for abatement under § 2647.4 based on its most recent complete withdrawal. If so, the employer's liability with respect to all the previous complete withdrawals is abated. If the liability is abated, §§ 2647.5 and 2647.6 of the regulation shall be applied as if the employer's earliest complete withdrawal is its initial complete withdrawal. The effect of this rule is that the entire period after the employer's first complete withdrawal until the employer's most recent reentry into the plan constitutes the employer's period of withdrawal for purposes of §§ 2647.5 and 2647.6 of the regulation.

For example, assume that an employer completely withdraws from a plan in December 1980, reenters the plan in November 1981, completely withdraws from the plan in June 1982 and reenters the plan on the effective date of this regulation. If the employer satisfies the requirements for abatement in § 2647.4 with respect to its reentry on the effective date of the regulation, the employer's obligation to make withdrawal liability payments with respect to both of its complete withdrawals would be abated. The employer's liability for a withdrawal after its latest reentry would be determined as if the employer's December 1980 withdrawal was its initial complete withdrawal, and the entire period from that date until its latest reentry would be the period of withdrawal. This rule is intended to encourage reentry into the plan of those employers that have had multiple complete withdrawals before the effective date of this regulation.

E.O. 12291 and Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United

States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Moreover, this regulation is required by ERISA and will reduce costs that would otherwise be imposed by that statute.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed regulation affects only multiemployer plans covered by PBGC and employers that withdraw from such plans but subsequently reenter the plan. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Defining "small plans" as those with under 100 participants, such plans represent only 10% of all multiemployer plans covered by PBGC (200 out of 2000). Further, small multiemployer plans represent only .3% of all small plans covered by the PBGC (200 out of 61,200) and less than .05% of all small plans (200 out of 427,900). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). PBGC estimates that fewer than 25,000 (5%) of these employers will be required to pay withdrawal liability in any year, and that an even smaller percentage will subsequently reenter a plan and thereby become subject to these rules. Therefore, compliance with section 603 and 604 of the Regulatory Flexibility Act is waived.

Public Comments

Interested parties are invited to submit comments on this proposed regulation. Comments should be addressed to: Assistant Executive Director for Policy and Planning, Pension Benefit Guaranty Corporation (140), 2020 K Street NW., Washington, D.C. 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name and address, identify this proposed regulation, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

List of Subjects in 29 CFR Parts 2640 and 2647

Employee Benefit Plans and Pensions.

In consideration of the foregoing, it is proposed to amend Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, as follows:

PART 2640—[AMENDED]

1. The authority for Part 2640 is:

Authority: Sec. 4002(b)(3), Pub. L. 93–406, as amended by sec. 403(1), Pub. L. 96–364, 94 Stat. 1208, 1302 (1980) [29 U.S.C. § 1302(b)(3)].

2. Part 2640 is amended by adding a new § 2640.6 to read as follows:

§ 2640.6 Reduction or waiver of complete withdrawal liability.

For purposes of Part 2647—

"Complete withdrawal" means a complete withdrawal as described in section 4203 of the Act.

"Multiemployer Act" means the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96–364, 94 Stat. 1208 (1980).

"Period of withdrawal" means the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years.

3. A new Part 2647 is added to read as follows:

PART 2647—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

Sec.

2647.1 Purpose and scope.
2647.2 Abatement.
2647.3 Withdrawal liability payments during pendency of abatement determination.
2647.4 Requirements for abatement.
2647.5 Partial withdrawals after reentry.
2647.6 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.
2647.7 Liability for subsequent partial withdrawals.
2647.8 Special rules.

Authority: Secs. 4002(b)(3) and 4027(a), Pub. L. 93–406, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1302 and 1223 (1980) (29 U.S.C. §§ 1302(b)(3) and 1387(a)).

§ 2647.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4207(a) of the Act, for reducing or waiving the withdrawal liability of certain employers that have completely withdrawn from a multiemployer plan and subsequently resume covered operations or renew the obligation to contribute under the plan. This part prescribes rules pursuant to which the plan must waive the employer's obligation to make future liability payments with respect to its complete withdrawal and reduce the amount of the employer's liability for a partial or complete withdrawal from the plan after its reentry into the plan.

(b) *Scope.* This part applies to multiemployer plans covered under section 4021(a) of the Act and not excluded by section 4021(b), and to employers that have completely withdrawn from such plans after April 28, 1980 (May 2, 1979 for certain employers in the seagoing industry) and that have not, as of the date of their reentry into the plan, fully satisfied their obligation to pay withdrawal liability arising from the complete withdrawal.

§ 2647.2 Abatement.

(a) *General.* Except as provided in paragraph (f) of this section, whenever an employer that has completely withdrawn from a multiemployer plan reenters the plan, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether that employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4. If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* As soon as practicable after an employer that completely withdrew from a multiemployer plan reenters the plan, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4, and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 2647.3, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4, then—

(1) The employer shall have no obligation to make future withdrawal liability payments to the plan with respect to its complete withdrawal;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 2647.6 or § 2647.7, as applicable;

(3) Any bond furnished under § 2647.3 shall be cancelled and any amounts held in escrow under § 2647.3 shall be refunded to the employer; and

(4) Any withdrawal liability payments made by the employer to the plan shall be retained by the plan.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under § 2647.4, then—

(1) The bond or escrow furnished under § 2647.3 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section;

(2) The employer shall pay to the plan, within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow;

(3) The employer shall resume making its withdrawal liability payments as they are due to the plan; and

4. The employer shall be treated as a new employer for purposes of any future application of the withdrawal liability rules in sections 4201–4225 of Title IV with respect to its participation in the plan after its reentry into the plan.

(e) *Collection of payments due and review of non-abatement determination.* The rules in Part 2644 of this subchapter (relating to notice and collection of withdrawal liability) shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3) of this section. For this purpose, a payment required to be made under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) *Review of non-abatement determination.* A plan sponsor's determination that the employer does not satisfy the requirements for abatement under § 2647.4 shall be subject to plan review under section 4219(b)(2) of the Act and to arbitration under section 4221 of the Act, within the times prescribed by those sections. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of the Act.

(2) *Determination of abatement.* If the plan sponsor or an arbitrator determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4, the plan sponsor shall immediately refund the following payments (plus interest, determined in accordance with § 2644.2(d) of this subchapter as if the payments were overpayments of withdrawal liability) to the employer in a lump sum:

(i) The bond or escrow paid to the plan under paragraph (d)(1) of this section;

(ii) The amount of the employer's withdrawal liability payment or payments in excess of the bond or escrow, paid to the plan under paragraph (d)(2) of this section; and

(iii) Any withdrawal liability payment made by the employer to the plan pursuant to paragraph (d)(3) of this section after the plan sponsor's notice under paragraph (b) of this section.

(f) *Employer election of non-abatement.* An employer who has completely withdrawn from and subsequently reenters a multiemployer plan may elect not to have its liability for its complete withdrawal abated under this part. An employer so electing shall notify the plan sponsor in writing at the time the employer reenters the plan. Upon receiving the written notice, the plan sponsor shall no longer be required to make the abatement determination required by this section, and the employer shall be treated as a new employer under the plan.

§ 2647.3 Withdrawal liability payments during pendency of abatement determination.

(a) *General rule.* An employer that completely withdraws from a multiemployer plan and subsequently reenters the plan shall, in lieu of making withdrawal liability payments due after its reentry, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor under § 2647.2(b) of whether the employer satisfies the requirements for abatement of its complete withdrawal liability.

(b) *Bond/escrow.* The bond or escrow required by this section shall be in an amount equal to 50 percent of the withdrawal liability payment that would otherwise be due, and shall be furnished before the due date of the payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under § 2647.4, the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Act.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under paragraph (b) of this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow in being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount specified in paragraph (b) of a bond or escrow required under this section. A plan amendment adopted under this paragraph may be applied only to the extent it is consistent with the purposes of the Act.

§ 2647.4 Requirements for abatement.

(a) *General rule.* An employer that completely withdraws from a multiemployer plan and subsequently reenters the plan shall have its liability for that withdrawal abated in accordance with § 2647.2(c) if the employer—

(1) renews its obligation to contribute to the plan for the same operations for which it was obligated to contribute to the plan prior to its withdrawal; or

(2) resumes covered operations under the plan, and the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for the measurement period (as defined in paragraph (b) of this section) after it resumes covered operations is not less than 50 percent of the number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the base year (as defined in paragraph (c) of this section).

(b) *Measurement period.* If the employer resumes covered operations under the plan at least six full months prior to the end of a plan year and would satisfy the test in paragraph (a)(2) based on its contribution base units for that plan year, then the measurement period shall be the period from the date it resumes covered operations until the end of that plan year. If the employer would not satisfy the test, or if the employer resumes covered operations under the plan less than six full months prior to the end of the plan year, then the measurement period shall be the first full plan year after it resumes covered operations.

(c) *Base year.* For purposes of paragraph (a)(2) of this section, the employer's number of contribution base

units for the base year is the average number of contribution base units for the two plan years in which the employer's contribution base units were the highest, within the five plan years immediately preceding the year of its complete withdrawal.

§ 2647.5 Partial withdrawals after reentry.

(a) *General rule.* For purposes of determining whether there is a partial withdrawal of an employer whose liability is abated under this part upon the employer's reentry into the plan or at any time thereafter, the plan sponsor shall apply the rules in section 4205 of the Act, as modified by the rules in this section, and section 108 of the Multiemployer Act. A partial withdrawal of an employer whose liability is abated under this part may occur under these rules upon the employer's reentry into the plan. However, a plan sponsor may not demand payemnt of withdrawal liability for a partial withdrawal occurring upon the employer's reentry before the plan sponsor has determined whether the employer's liability for its complete withdrawal is abated under this part and has so notified the employer in accordance with § 2647.2(b).

(b) *Partial withdrawal—70-percent contribution decline.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(1) of the Act (relating to a 70-percent contribution decline) in accordance with the rules in section 4205 of the Act and section 108 of the multiemployer Act, as modified by the rules in this paragraph, and shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 2647.7(b).

(1) *Definition of "3-year testing period".* For purposes of section 4205(b)(1) of the Act, the term "3-year testing period" means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Contribution base units for high base year.* For purposes of section 4205(b)(1) of the Act and except as provided in section 108(d)(3) of the Multiemployer Act, in determining the number of contribution base units for the high base year, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, the number of contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) the employer's contribution base units for that plan year; or

(ii) the average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(c) *Partial withdrawal—partial cessation of contribution obligation.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(2) of the Act (relating to a partial cessation of the employer's contribution obligation) in accordance with the rules in section 4205 of the Act, as modified by the rules in this paragraph, and section 108 of the Multiemployer Act and shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 2647.7(c).

(1) *Plan year of reentry.* For purposes of section 4205(a)(2) of the Act, there is a partial cessation of the employer's contribution obligation for the plan year in which the employer reenters the plan if—

(i) The employer reeenters the plan with an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer had been obligated to contribute under the plan at the time of its complete withdrawal, and is performing work of the type for which contributions were required before its complete withdrawal, in the jurisdiction of one or more of the collective barganing agreements under which the employer was formerly obligated to contribute, without being obligated to contribute to the plan for that work, or has transferred such work to another location; or

(ii) The employer is performing work at one or more facilities at which the employer was obligated to contribute under the plan at the time of its complete withdrawal, of the type for whch the employer had been obligated to contribute under the plan before its complete withdrawal, without being obligated to contribute to the plan for that work.

(2) *Plan years after reentry.* For purposes of determining under section 4205(a)(2) of the Act whether there is a partial cessation of the employer's contribution obligation for a plan year beginning after the employer reeenters the plan, the plan sponsor shall consider only work performed after the employer's reentry into the plan or work for which the employer was obligated to contribute after its reentry.

§ 2647.6 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.

(a) *General.* When an employer that has had its liability for a complete withdrawal abated under this part completely withdraws from the plan, the employer's liability for that subsequent withdrawal shall be determined in accordance with the rules in sections 4201–4225 of Title IV, as modified by the rules in this section, and section 108 of the Multiemployer Act. In addition, when a plan has abated the liability of a reentered employer, if the plan uses either the "presumptive" or the "direct attribution" method (section 4211 (b) or (c)(4), respectively) for allocating unfunded vested benefits, the plan shall modify those allocation methods in allocating unfunded vested benefits to any employer that withdraws from the plan after the reentry.

(b) *Allocation of unfunded vested benefits for subsequent withdrawal in plan using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of the Act, the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1), for the plan years preceding its initial withdrawal, determined as if the employer had not previously withdrawn;

(2) The sum of the unamortized annual credits attributable to the year of the initial withdrawal and each succeeding year ending prior to reentry; and

(3) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1)(A) and (C) for plan years ending after its reentry.

For purposes of paragraph (b)(2), the annual credit for a plan year is the amount by which the employer's withdrawal liability payments for the year exeed the greater of the employer's imputed contributions or actual contributions for the year. The employer's imputed contributions for a year shall equal the average annual required contributions of the employer for the three plan years preceding the initial withdrawal. The amount of the credit for a plan year is reduced by 5 percent of the original amount for each succeeding plan year ending prior to the year of the subsequent withdrawal.

(c) *Allocation of unfunded vested benefits for subsequent withdrawal in plan using "modified presumptive" or "rolling-5" method.* In a plan using either the "modified presumptive" allocation method under section 4211(c)(2) of the Act or the "rolling-5" method under section 4211(c)(3), the amount of unfunded vested benefits allocable to a reentered employer for a

subsequent withdrawal shall equal the greater of—

(1) The amount determined under section 4211 (c)(2) or (c)(3) of the Act, as appropriate, as if the date of reentry was the employer's initial date of participation in the plan; or

(2) The adjusted amount of the unfunded vested benefits allocated to the employer for its previous withdrawal, less the sum of—

(i) Withdrawal liability payments made accumulated with interest at the plan funding rate to the end of the plan year preceding the year of the subsequent withdrawal; and

(ii) Contributions made after reentry, accumulated with interest at the plan's funding rate to the end of the plan year preceding the year of the subsequent withdrawal.

For purposes of paragraph (c)(2), the adjusted amount of unfunded vested benefits is the amount determined under section 4211 (c)(2) or (c)(3) of the Act as of the end of the year preceding the year in which the employer initially withdrew, accumulated with interest at the plan's funding rate for each succeeding plan year ending prior to the year of the subsequent withdrawal.

(d) *Adjustments applicable to all employers in plan using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of the Act, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan after the reentry:

(1) The sum of the unamortized amounts of the annual credits of a reentered employer shall be treated as a reallocated amount under section 4211(b)(4) of the Act in the plan year in which the employer reenters.

(2) In the event that the 5-year period used to compute the fraction described in section 4211 (b)(2)(E) and (b)(4)(D) of the Act includes a year during the period of withdrawal of a reentered employer, the contributions used to compute the denominator of that fraction for a year during the period of withdrawal shall be adjusted to include any actual or imputed contributions of the employer, as determined under paragraph (b) of this section.

(e) *Adjustments applicable to all employers in plan using "direct attribution" method.* In a plan using the "direct attribution" method under section 4211(c)(4) of the Act, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan after the plan year in which the employer reentered:

(1) The nonforeitable benefits attributable to service with a reentered employer prior to its initial withdrawal shall be treated as benefits that are attributable to service with that employer.

(2) For purposes of section 4211(c)(4)(D) (ii) and (iii) of the Act, withdrawal liability payments made by a reentered employer shall be treated as contributions made by the reentered employer.

(f) *Plans using alternative allocation methods under section 4211(c)(5).* A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of the Act and Part 2642 of this subchapter, shall adopt by plan amendment a method of determining a reentered employer's allocable share of the plan's unfunded vested benefits upon its subsequent withdrawal. The method shall treat the reentered employer and other withdrawing employers in a manner consistent with the treatment under paragraphs (b)–(e) of this section for plans using the allocation methods under sections 4211 (b), (c)(2), (c)(3), or (c)(4) of the Act.

(g) *Adjustments to amount of annual withdrawal liability payments for subsequent withdrawal.* For purposes of section 4219(c)(1)(C), (i)(I) and (ii)(I) of the Act, in determining the amount of the annual withdrawal liability payments for a subsequent complete withdrawal, if the period of ten consecutive plan years ending before the plan year in which the withdrawal occurs includes a plan year during the period of withdrawal, the employer's number of contribution base units, used in section 4219(c)(1)(C)(i)(I), or the required employer contributions, used in section 4219(c)(1)(C)(ii)(I), for each such plan year during the period of withdrawal shall be deemed to be the greater of—

(1) The employer's contribution base units or the required employer contributions, as applicable, for that year; or

(2) The average of the employer's contribution base units or of the required employer contributions, as applicable, for those plan years not during the period of withdrawal, within the ten consecutive plan years ending before the plan year in which the employer's subsequent complete withdrawal occurred.

§ 2647.7 Liability for subsequent partial withdrawals.

(a) *General.* When an employer that has had its liability for a complete withdrawal abated under this part partially withdraws from the plan, the employer's liability for that subsequent partial withdrawal shall be determined in accordance with the rules in sections 4201–4225 of the Act, as modified by the rules in § 2647.6(b)–(g) of this part and the rules in this section, and section 108 of the Multiemployer Act.

(b) *Liability for a 70-percent contribution decline.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal), section 4208 (relating to the reduction of liability for a partial withdrawal) and section 4219(c)(1) (relating to the schedule of partial withdrawal liability payments) of the Act, for a subsequent partial withdrawal described in section 4205(a)(1) of the Act (relating to a 70-percent contribution decline) shall be modified in accordance with the rules in this paragraph.

(1) *Definition of "3-year testing period".* For purposes of sections 4206(a) and 4219(c)(1) of the Act, and paragraphs (b)(2)–(b)(4) of this section, the term "3-year testing period" means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Determination date of section 4211 allocable share.* For purposes of section 4206(a)(1)(B) of the Act, the amount determined under section 4211 shall be determined as if the employer had withdrawn from the plan in a complete withdrawal on the last day of the first plan year in the 3-year testing period or the last day of the plan year in which the employer reentered the plan, whichever is later.

(3) *Calculation of fractional share of section 4211 amount.* For purposes of sections 4206(a)(2)(B)(ii) and 4219 (c)(1)(E)(ii) of the Act, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then, in determining the denominator of the fraction described in section 4206(a)(2), the employer's contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(4) *Contribution base units for high base year.* If the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then for purposes of section 4208 (a) and (b)(1) of the Act, the number of contribution base units for the high base year shall be the number of contribution base units determined under paragraph (b)(3) of this section.

(c) *Liability for partial cessation of contribution obligation.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal) and section 4219(c)(1) (relating to the amount of the annual partial withdrawal liability payments) of the Act, for a subsequent partial withdrawal described in section 4205(a)(2) of the Act (relating to a partial cessation of the contribution obligation) shall be modified in accordance with the rules in this paragraph. For purposes of sections 4206(a)(2)(B)(i) and 4219(c)(1)(E)(ii) of the Act, if the five plan years immediately preceding the plan year in which the partial withdrawal occurs include a plan year during the period of withdrawal, the denominator of the fraction described in section 4206(a)(2) shall be determined in accordance with the rule set forth in paragraph (b)(3) of this section.

§ 2647.8 Special rules.

(a) *Employer that has withdrawn and reentered the plan before effective date of this part.* This part shall apply, in accordance with the rules in this paragraph, with respect to an employer that completely withdraws from a multiemployer plan and subsequent reenters the plan after April 28, 1980 (May 2, 1979 for certain employers in the seagoing industry) and is obligated to contribute, or is performing covered work, under the plan on the effective date of this part. Upon the application of an employer described in the preceding sentence, the plan sponsor of a multiemployer plan shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 2647.4. Pending the plan sponsor's determination, the employer shall provide the plan with a bond or escrow that satisfies the requirements of § 2647.3, in lieu of making its withdrawal liability payments due after its application for an abatement determination. The plan sponsor shall notify the employer in writing of its determination and the consequences of its determination, as described in § 2647.2 (c) or (d) and (e), as applicable. Notwithstanding § 2647.2(c)(4), if the plan sponsor determines that the employer qualifies for abatement, only withdrawal liability payments made prior to the employer's reentry shall be retained by the plan; payments made by the employer after its reentry and prior to its application for abatement shall be refunded to the employer with interest, in accordance with § 2647.2(e)(2). If a bond or escrow has been provided the plan in accordance with § 2647.3, the plan sponsor shall send a copy of the notice to the bonding or escrow agent. Sections 2647.5–2647.7 shall apply with respect to the employer's subsequent complete withdrawal occurring on or after the effective date of this part, or partial withdrawal occurring either before or after that date.

(b) *Employer with multiple complete withdrawals that has reentered the plan before effective date of this part.* If an employer described in paragraph (a) of this section has completely withdrawn from a multiemployer plan on two or more occasions before the effective date of this part, the rules in paragraph (a) of this section shall be applied as modified by this paragraph.

(1) The plan sponsor shall determine whether the employer satisfies the requirements for abatement under § 2647.4 based on the most recent complete withdrawal.

(2) If the employer satisfies the requirements for abatement, the employer's ability with respect to all previous complete withdrawals shall be abated.

(3) If the liability is abated, sections 2647.5 and 2647.6 shall be applied as if the employer's earliest complete withdrawal is its initial complete withdrawal.

(c) *Employer with multiple complete withdrawals that has not reentered the plan as of the effective date of this part.* If an employer has completely withdrawn from a multiemployer plan on two or more occasions between April 29, 1980 (May 3, 1979 for certain employers in the seagoing industry) and the effective date of this part and is not obligated to contribute, or performing covered work, under the plan on the effective date of this regulation, the rules in this part shall apply, subject to the modifications specified in paragraphs (b)(1)–(b)(3) of this section, upon the employer's reentry into the plan.

Issued in Washington, D.C., on this 28th day of February 1984.

Raymond Donovan,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this Notice of Proposed Rulemaking.

Henry Rose,

Secretary,
Pension Benefit Guaranty Corporation.

[FR Doc. 84–5723 Filed 3–2–84; 8:45 am]
BILLING CODE 7708–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R, Amdt. No.]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Coverage for Intraocular Lenses

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed rule would amend the comprehensive CHAMPUS regulation, DoD 6010.8–R (32 CFR Part 199), pertaining to CHAMPUS coverage for intraocular lenses by making them an exception to the FDA restriction that surgically implanted devices must be approved by the U.S. Food and Drug Administration (FDA) for use in humans. Current CHAMPUS provisions requiring FDA approval make it necessary for CHAMPUS to deny benefits for intraocular lens implants that have not received premarket approval by FDA. These lenses are a treatment modality that is generally accepted by the medical community for patients who have developed opacity of the lens of the eye. This amendment would allow CHAMPUS payment for all medically necessary intraocular lenses.

DATES: Written public comments must be received on or before April 4, 1984. It is proposed to make this amendment effective retroactive to June 1, 1977.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Marion M. Blackburn, Policy Branch, OCHAMPUS, telephone (303) 361–4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R.

"Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

The Note following § 199.10(d)(3)(vii) of this part states that in order for CHAMPUS benefits to be extended for surgically implanted medical devices, the device must be approved for use in humans by the U.S. Food and Drug Administration. The intent of this requirement was to protect CHAMPUS beneficiaries until the safety and efficacy of such devices had been proven by the FDA. This provision meant that CHAMPUS could not provide benefits for the implantation of intraocular lenses-surgically implanted devices which replace the human lens of the eye.

Intraocular lenses were in use for many years before the FDA classified them as investigational devices in 1976. CHAMPUS benefits were available for the lenses prior to that time. According to the medical community, IOLs are effective medical devices and should not be considered in the same category as an investigational device for which experience regarding safety and effectiveness is not available. The majority of government and private third-party health benefit payers provide coverage for the lenses and associated surgical expenses.

For these reasons, the Secretary has concluded that an exception should be made to the requirement for FDA approval in the case of intraocular lenses. In this case, rather than protecting CHAMPUS beneficiaries from an unproven technology, the requirement excludes them from a modality which is widely available to the general public. This amendment would grant an exception to the requirement for FDA approval of intraocular lenses.

Additionally, in order to avoid any possibility of misinterpretation of coverage of intraocular lenses following intraocular surgery or ocular injury, it is proposed that paragraph (e)(6)(i)(*a*) of § 199.10 be revised by deleting the word "contact". This will allow benefits for either contact lenses or intraocular lenses as a substitute for the human lens.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly we propose to amend 32 CFR Chapter I, to read as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. Section 199.10 is amended by revising paragraph (e)(6)(i)(*a*) and adding a "Note" following paragraph (e)(6)(i))(*a*) to read as follows:

§ 199.10 Basic Program Benefits

(e) * * *

(6) * * *

(i) * * *

(*a*) Eyeglasses or lenses which perform the function of the human lens, lost as the result of intraocular surgery or ocular injury.

Note.—Notwithstanding the general requirement for U.S. Food and Drug Administration approval of any surgical implant set forth in Section 199.10(d)(3)(vii) of the Part, intraocular lenses are authorized under CHAMPUS even if not approved by the U.S. Food and Drug Administration.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

Dated: February 29, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 84-5836 Filed 3-2-84; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-V111-FRL-2534-6]

Approval and Promulgation of State Implementation Plans; 1982 Colorado Carbon Monoxide Plan for the Denver Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve the 1982 carbon monoxide (CO) plan for the Denver area which was submitted on June 24, 1982. EPA originally proposed to disapprove the plan on February 3, 1983 (48 FR 5030) but, based on comments and supplemental information received and a re-evaluation of the plan, EPA now finds that the plan substantially meets the requirements of the Clean Air Act (CAA) and EPA related policy and will provide for attainment of the primary national ambient air quality standard for CO as required under Section 110 and Part D of the Clean Air Act.

DATES: Comments due April 4, 1984.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-6131.

SUPPLEMENTARY INFORMATION: Part D of the Clean Air Act, requires States that were granted an extension beyond 1982 for attainment of the CO and/or ozone standard to submit SIP revisions by July 1, 1982, providing for attainment of the standards by December 31, 1987. The Colorado SIP revisions are submitted pursuant to these part DS requirements, section 110 of the Clean Air Act and EPA criteria published on January 22, 1981 (46 FR 7182).

EPA originally proposed to disapprove the Denver area CO plan on February 3, 1983, because the emission reductions provided by the plan did not appear to be sufficient to ensure attainment of the ambient CO standard. EPA believed that the reductions claimed for all but one control measure were reasonable, but that the reduction claimed for the episodic share-a-ride strategy was too high with a projected shortfall of about 130 tons per day in attaining the standard in 1987. EPA also noted that the share-a-ride strategy was not adequately described and relied on predicting high pollution days when a method of predicting such days had not been developed and may not be available. EPA also questioned whether an episodic control measure of this type was prohibited by section 123 of the Clean Air Act and whether the basic transportation needs requirement would be met. Finally, the proposed disapproval was based on the questionable enforceability of the share-a-ride strategy (since there was no legislative authority for a mandatory program) and on the lack of legislative authority for the warranty enforcement and light-duty truck inspection/maintenance (I/M) materials required by Section 316(b) of the Act (an identification of major federal actions during the 1982 to 1987 period) was omitted, and that there was no list of planned transportation projects adversely affecting air quality that could

be deferred if planned air quality improvements do not occur. Further, there was no contingency plan to address potential shortfalls, and reasonable further progress in obtaining emission reductions was not demonstrated.

Comments by the Colorado Air Quality Commission

In response to the February 3 proposal, the Colorado Air Quality Control Commission (AQCC) submitted substantial comments and supplemental information on May 4, 1983. These comments included a recalculation of emission reductions expected to be achieved from the various strategies and a re-analysis of the CO control strategy using the latest EPA emission factors (Mobile 2.5). This re-analysis indicates that for the area to attain the standard, the share-a-ride program would need to provide a reduction of 150 tons per day or a reduction in vehicle miles traveled (VMT) by light duty vehicles of 14.4%. The control strategies included in the SIP and their associated CO emission reductions are as lited in Table I.

TABLE I.—EMISSIONS: TONS PER DAY

	Original	Reanalysis
Emissions allowed for attainment	1,050	1,050
Regional vehicular emissions due to federal standards, I/M, ¾ ton truck I/M	1,347	1,238
Clean Air Task Force transportation controls reduction	32	38
Warranty enforcement reduction	125	[1] 0
Total emissions	1,190	1,200
Shortfall for attainment	160	150
Amount claimed for share-a-ride	200	150

[1] No longer a part of the control plan.

The AQCC also responded to each of the concerns raised by EPA in its original proposed rulemaking action. It is clear from the AQCC's comments that the share-a-ride program would be voluntary and that the majority of the VMT reductions would result from carpooling. In addition, the Denver Regional Transportation District (RTD) has committed to investigating the use of its reserve fleet capacity for future episodes. However, the RTD feels that use of the reserve fleet may not be possible until 1998. Therefore, EPA's concerns about enforcement and providing for basic transportation needs are no longer valid. The comments do indicate, however, that if the voluntary program is not effective, a mandatory program will be instated, as a contingency measure. The AQCC stated that additional strategies of warranty enforcement, gasohol and further ridesharing programs—none of which have yet been developed—could further reduce the required reduction. An acceptable demonstration of reasonable further progress was also included in the comments.

On November 10, 1983, the AQCC adopted the recommendations of the episodic share-a-ride task force. Based on an extensive evaluation of the different methods for implementing the program contained in the task force report, the AQCC adopted a plan that requests that 20% of all licensed drivers do not drive one weekday each week from November 15 to January 15. In addition, when adverse air quality is expected, all drivers will be requested to curtail all discretionary driving. The task force report is available for review at the address listed in the beginning of this notice, although it had for yet been formally submitted as a SIP revision. The State must submit a SIP revision containing a detailed description of the program before EPA takes final action on this proposal.

In the February 3, 1983 notice EPA proposed to disapprove the share-a-ride strategy as a "dispersion technique" under Section 123 of the Clean Air Act. Section 123(a) provides that "the degree of emission limitation required for control of any air pollutant under an applicable implementation plan . . . shall not be affected in any manner by . . . any dispersion technique." Section 123(b) defined "dispersion technique" to include "any control of air pollutants varying with atmospheric conditions." EPA suggested that Denver's share-a-ride program could be a dispersion technique because it was designed to reduce CO emissions only when weather conditions contribute to high CO concentrations.

In its comments, the AQCC argued that section 123 does not apply to mobile sources. The AQCC asserted that the legislative history of section 123 discusses only stationary sources. Also, section 108(f), which requires EPA to prepare guidance on transportation controls that Congress endorsed as SIP measures, lists several measures that vary with time, place, or weather conditions.

In response to these comments, EPA has reexamined the relationship between section 123 and mobile sources. EPA found that the Act contains support for distinguishing "transportation controls" from the "emission limitations" restricted under section 123. Section 123 prohibits EPA from approving credit for dispersion techniques that affect any "emission limitation." Elsewhere in the Act, however, Congress lists "emission limitations" and "transportation controls" separately, implying that it considers them to be separate categories of control measures. *See* Sections 110(a)(2)(B), 304(f). Accordingly, it is possible to read Section 123 as allowing credits for transportation controls that vary with atmospheric conditions, but only to the extent that the credits do not affect emission limitations for other sources.

While the Act does not define "transportation control," EPA has defined the term to include "any measure, such as reducing vehicle use, changing traffic flow patterns, decreasing emissions from individual motor vehicles, or altering existing modal split patterns that is directed toward reducing emissions of air pollutants from transportation sources." 40 CFR 51.1(r) (1983). Denver's share-a-ride program fits this definition, as it seeks to reduce CO emissions by reducing the use of light-duty motor vehicles. Moreover, due to rather unusual circumstances, it appears that approval of the strategy would not affect any CO emission limitations in the Denver nonattainment area. CO is the most localized of all the criteria pollutants. The share-a-ride strategy targets the downtown "core" of the nonattainment area. No major stationary sources of CO are located in this "core" area. In fact, the only large stationary sources of CO in the nonattainment area are located far enough from the "core" that the state does not need to control them to provide for attainment in the "core." Therefore, any variations in CO emissions under the share-a-ride strategy would not affect control requirements for these stationary sources. Use of the share-a-ride strategy would allow the state to choose not to implement other transportation controls that might apply on a more constant basis; however, since these controls are not "emission limitations," section 123 would not prohibit such choices.

Under the legal theory and facts described above, EPA is proposing to find that section 123 does not require disapproval of credits for Denver's share-a-ride strategy.

The AQCC's comments and the task force report provide a good description of how the voluntary share-a-ride program is to be implemented as well as a demonstration (based on similar, but much less comprehensive, programs in other States) that there is a reasonable probability that the program will provide the needed reduction to meet the ambient air quality standard. A public opinion survey performed in March 1983, was included in the AQCC's comments; an additional survey

was completed in July 1983 and is included in the task force report. These surveys indicate that a majority of Denver area drivers are willing, depending on the nature of the trip, to substantially reduce automobile use as part of a voluntary air pollution control plan.

Comments by Other Parties

The AQCC submitted testimony and letters from 34 individuals and groups on the Denver area plan. These comments were from the Governor, local government officials, the Department of Highways, the Regional Transportation District, an auto club, citizen and environmental groups, and private citizens. Almost all of the comments strongly supported the Denver area CO plan and the share-a-ride program. None of the comments strongly opposed the plan in general and none of the comments opposed the share-a-ride program.

EPA directly received 9 other comments (21 individuals). These comments were from the Denver Regional Council of Governments, business groups, the Mayor of Denver, the Boulder County Health Department, and 2 individual citizens. Only one letter, from an individual citizen, opposed the Colorado plan and urged that EPA mandate other measures. All other relevant comments supported the Colorado plan.

Conclusions on Share-a-Ride Strategy

Based on the July 1983 survey, and the other material which the AQCC has submitted, EPA finds that the share-a-ride program will provide for attainment of the standards if half of the people who the survey indicated were willing to participate in the program actually do participate, and provided that the State can demonstrate it can predict air quality for a particular day by 7:00 a.m. the same day, with only a one day error each year. Provided the State can demonstrate such a predictive capability, EPA has determined that there is sufficient probability of success to approve the plan. The State must submit a demonstration of its predictive capability prior to final Agency action. There is also a need to determine the participation level in the program during the first year of implementation (November 15, 1984 to January 15, 1985) to insure that the program does in fact work. Such a program to monitor the effectiveness of the share-a-ride program is discussed in the task force report, but a much more detailed tracking program must be submitted prior to EPA's final approval of the plan. The demonstration of the predictive capability and a commitment to the contingency measures discussed below must also be submitted prior to final Agency action.

Also, the State must commit to review the program after its first season of operation and evaluate its success in reducing VMT. If the strategy is not reducing VMT as predicted in the SIP, the State must consider alternative control measures as described below.

Contingency Plan

Although EPA believes that there is a reasonable probability that Denver's share-a-ride program can reduce CO emissions by 150 tons per day, EPA does not have sufficient experience with ridesharing strategies of this type and magnitude to be able to predict their effects on emissions with complete confidence. Consequently, EPA has asked the State to provide a detailed contingency plan for implementing additional control measures if the evaluation of the episodic share-a-ride program shows it is not performing as effectively as predicted. The commitment must identify specific measures that the State will consider and include a schedule for selection and implementation of any measures that are needed. The State has indicated that it will consider further ridesharing programs, warranty enforcement, gasohol and making the current episodic share-a-ride program mandatory. The State must submit this commitment and schedule before EPA takes final action on this proposal.

Measures Proposed for Disapproval Due to Lack of Legal Authority

The measures for which EPA originally proposed disapproval due to the lack of legislative authority are the share-a-ride program, warranty enforcement, and light duty truck I/M. Since the share-a-ride program is to be voluntary, no legislative authority is required. Similarly, no legislative authority is required for warranty enforcement, since this program is not required to meet the ambient CO standard. EPA has determined that adequate legislative authority for expansion of the light duty truck I/M program has been passed. The amended I/M regulation implementing this requirement was submitted to EPA by the Governor of Colorado on November 30, 1983, and EPA finds the regulation to be acceptable. The inspection of such vehicles began on January 1, 1984. A copy of the adopted regulation is available for inspection at the office listed at the beginning of this notice.

The Commission also, on May 4, 1983, submitted the required list of projects pursuant to section 316 of the Act, and the Commission stated that there were no planned transportation projects which were expected to adversely affect air quality. EPA finds that these submittals meet the requirements of the Clean Air Act.

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

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

This notice of proposed rulemaking is issued under the authority of section 110 of the Clean Air Act (42 U.S.C. 7410).

List of Subjects in Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: October 27, 1983.

John G. Welles,

Regional Administrator.

[FR Doc. 84-5584 Filed 3-2-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

Eliminate Requirement To Certify Substitute Document

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) by permitting the use of an uncertified substitute document when the U.S. Government Bill of Lading—Original (GBL), Standard Form (SF) 1103, is lost or destroyed. By eliminating the certification requirement, carriers can submit vouchers with uncertified substituted documents directly to paying offices for payment enabling carriers to receive payments more quickly. Electronic recordkeeping within paying offices will eliminate the possibility of duplicate payments.

DATE: Written comments must be received by no later than 4 p.m. on April 4, 1984.

ADDRESS: Comments should be sent to General Services Administration (BWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures and Claims Branch, Office of Transportation Audits (202–786–3014).

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

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Railroads, Transportation.

It is proposed to amend 41 CFR Part 101–41 as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for §§ 101–41.307–1 and 101–41.307–2 is:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by revising the following entry:

101–41.307–2 Certification of substitute document by carrier.

3. Secton 101–41.307–1 is revised to read as follows:

§ 101–41.307–1 Substitute document.

When the original of the regular GBL (SF 1103) has been lost or destroyed, the billing carrier shall use the original freight waybill (SF 1105), properly certified by the carrier, as a substitute document for billing charges. Execution of the "Certificate of Carrier Billing for Charges" on the substitute document is not required for charges billed under the exception procedures in § 101–41.312.

4. In § 101–41.307–2, paragraph (a) is reserved and paragraph (b) is revised to read as follows:

§ 101–41.307–2 Certification of substitute document by carrier.

(a) [Reserved].

(b) The billing carrier shall enter on the reverse side of the substitute document a properly executed certificate of delivery showing all information required in the "Certificate of Carrier Billing for Charges" section on the face of the original GBL.

Dated: February 3, 1984.

Raymond A. Fontaine,

Comptroller, General Services, Administration.

[FR Doc. 84–5794 Filed 3–2–84; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF JUSTICE

48 CFR Ch. 28

Implementation of the Federal Acquisition Regulations (FAR); Department of Justice Acquisition Regulations (JAR)

AGENCY: Justice Management Division, Justice.

ACTION: Proposed regulation.

SUMMARY: This notice invites written comments to the DOJ proposal to establish the Justice Acquisition Regulations (JAR). The new JAR will supersede the existing Justice Procurement Regulations (JPR), 41 CFR Chapter 28. The DOJ has been assigned Chapter 28 of Title 48 of the Code of Federal Regulations—Federal Acquisition Regulations System. The following parts of the proposed JAR are available for review and comment: Parts 2801 through 2852.

DATES: Comments must be submitted on or before April 4, 1984.

ADDRESS: Requests for copies of the proposed regulations and comments should be addressed to the Procurement and Contracts Staff, Justice Management Division, Department of Justice, Room 6213, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. The proposed regulations may be reviewed at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Silvis, (202) 633–3217.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted procurement regulations from Executive Order 12291. The DOJ certifies that these documents will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612.

William D. Van Stavoren,

Acting Assistant Attorney General for Administration.

[FR Doc. 84–5850 Filed 3–2–84; 8:45 am]

BILLING CODE 4410–01–M

Notices

Federal Register
Vol. 49, No. 44
Monday, March 5, 1984

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

Inyo National Forest Grazing Advisory Board; Meeting

The Inyo National Forest Grazing Advisory Board will meet at 10 a.m. on April 10, 1984, in the Inyo National Forest Conference Room in Bishop, California. The purpose of the meeting is:

FY 84 and 85 Range Management Projects
Grazing Advisory Board Recommendations
Establishment of Sub-committees
Establish Next Meeting Date

The meeting will be open to the public. Persons who wish to attend may notify Inyo National Forest—telephone (619) 873–5841. Written statements may be filed with the committee before or after the meeting. Members of the public wishing to speak at the meeting will be recognized by the committee chairman at the appropriate time.

Dated: February 24, 1984.

Eugene E. Murphy,

Forest Supervisor.

[FR Doc. 84-5796 Filed 3-2-84; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket No. 40962]

Lone Star Certificate Amendment and Transfer Case; Hearing

Notice is hereby given that a hearing in the above-titled matter will commence on March 18, 1984, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., February 29, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-5877 Filed 3-2-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 41996]

Silvas Air Lines Fitness Investigation; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-titled matter scheduled to begin on March 12, 1984, has been postponed until March 19, 1984, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., February 29, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84-5876 Filed 3-2-84; 8:45 am]

BILLING CODE 6320-01-M

Navigation of Foreign Civil Aircraft Within the United States; Proposed Collection of Information Under the Paperwork Reduction Act

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Collection of Information under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35).

SUMMARY: The Civil Aeronautics Board is requesting the Office of Management and Budget's approval of extension of the submission of information by foreign air carriers pursuant to the reporting requirements contained in §§ 375.42, 375.45 and 375.70 of Part 375 of the Board's Special Regulations.

DATED: February 29, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6042.

SUPPLEMENTARY INFORMATION: Agency Clearance Officer from Whom a Copy of the Collection of Information and Supporting Documents is Available: Robin A. Caldwell (202) 673–5922.

How Often the Collection of Information Must Be Filed: Occasionally.

Who is Asked or Required to Report: Foreign Air Carriers.

Estimate of Number of Annual Responses: 53.

Estimate of Number of Annual Hours Needed to Complete the Collection of Information: 13½.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-5870 Filed 3-2-84; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9:30 a.m. and will end at 2:00 p.m., on March 29, 1984, at the Holiday Inn State Capitol, Banquet Room B, 924 Madison Street, Montgomery, Alabama 36109. The purpose of this meeting is to review a draft report on police/community relations in Montgomery, Alabama.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Abigail Turner, at (205) 433–7409 or the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 28, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-5783 Filed 3-2-84; 8:45 a.m.]

BILLING CODE 6335-01-M

Delaware Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 2:45 p.m. and will end at 5:00 p.m., at the Boggs Federal Courthouse, Room 3207, 844 King Street, Wilmington,

Delaware 19801. The purposes of the meeting are to conduct an orientation for new members, and to discuss the possibility of convening a statewide conference with workshops on violence and bigotry, the status of school desegregation, the administration of justice, the status of Hispanics, and the release of the report on migrant farmworkers.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Horacio D. Lewis, at (302) 736–4885 or the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 28, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-5781 Filed 3-2-84; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 8:00 a.m. and will end at 10:00 a.m., on April 11, 1984, at the Anne Arundel Board of Education, Conference Room #1, 2644 Riva Road, Annapolis, Maryland, 21401. The purpose of the meeting is to discuss the status of affirmative action in higher education in Maryland and the status of state and local human rights commissions. Advisory Committee members will also consider program plans and issues of concern, inlcuding follow-up to the Committee's study of migrant workers, the Commission's study of minority business in Baltimore, and an update on combatting violence and bigotry in Maryland.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Dr. Patsy Baker Blackshear, at (202) 724–4256 or the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Committee.

Dated at Washington, D.C., February 28, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-5780 Filed 3-2-84; 8:45 am]

BILLING CODE 6335-01-M

Missouri Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 7:00 p.m. and will recess at 9:30 p.m., on March 26, 1984; on March 27, 1984 the meeting will reconvene at 9:00 a.m. and will end at 3:00 p.m. Both sessions will be held at the Howard Johnson's Motor Lodge, Dogwood Room, 2610 North Glenstone, Springfield, Missouri 65803. The purpose of these sessions is to conduct program planning for the remainder of Fiscal Year 1984.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Joanne M. Collins, at (816) 274–1321 or the Central States Regional Office at (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 28, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-5779 Filed 3-2-84; 8:45 a.m.]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 8:00 p.m., on March 30, 1984, at the Radisson Plaza, Branchwood Room, 2 Commerce Place, Nashville, Tennessee 37239. The purpose of this meeting is to discuss program planning for Fiscal Year 1984 and hear a presentation by Commissioner Frances Guess.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Mattie Crossley, at (901) 276–4461 or the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., February 28, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-5782 Filed 3-2-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purpose for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.:83–287R. Applicant: Vanderbilt University Medical Center, Medical Center North, Rm. T–1206, Station 17 P.O., Nashville, TN 37232. Instrument: Bone Implant System for Jaws. Original notice of this resubmitted application was published in the Federal Register of September 2, 1983.

Docket No.: 84–63. Applicant: Sandia National Laboratories, P.O. Box 5800, Albuquerque, NM 87185. Instrument: Gas Mass Spectrometer, MAT 271/45. Manufacturer: Finnigan MAT GmbH, West Germany. Intended use: Accelerated aging studies, materiel compatibility studies and weapon stockpile surveillance all which necessitate the capability to quantitatively analyze the gases contained in hermetically sealed relays, switches, explosive components, integrated circuits, gas inclusions in ceramics or glass-to-metal seals, and small MC assemblies. The instrument will also be used for the complete quantitative analysis of multiple component gas mixtures of unknown composition and the quantitation of outgassing and decomposition products. Application received by Commissioner of Customs: January 25, 1984.

Docket No.: 84–64. Applicant: University of Illinois at Urbana-Champaign, Purchasing Division/223 Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: High Resolution Fourier Transform Interferometric Spectrophotometer System. Manufacturer: Bomen, Inc., Canada. Intended use: Determination of the sources of the residual impurities present in GaAs prepared by the different growth techniques. The goal of this research is to eliminate or minimize the sources of these impurities so that still higher quality GaAs material can be prepared. A closely related area of research is the study of the impurity incorporation mechanisms in general and in particular the incorporation mechanisms of the amphoteric impurities in GaAs. Application received by Commissioner of Customs: January 25, 1984.

Docket No.: 84–65. Applicant: University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Infrared Spectrometer System, Model DA3–02. Manufacturer: Bomen, Inc., Canada. Intended use: Examination of a variety of materials of interest in atmospheric chemistry, and in the formation and deposition of acidity. These materials includes, but are not limited to, soil derived materials, materials derived from combustion sources, and materials arising from the interaction of gases with either of the two types of materials. The objective of the studies is to determine the rotional-vibrational properties of the sample materials in order to determine the structure of these materials and their interaction with reactive compounds as reactions proceed. Application received by Commissioner of Customs: January 25, 1984.

Docket No.: 84–66. Applicant: Veterans Administration Medical Center, 1500 E. Woodrow Wilson Drive, Jackson, MS 39216. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: Studies of cells and tissue to determine the relationship of cells to their environment. Application received by Commissioner of Customs: January 25, 1984.

Docket No.: 84–67. Applicant: Yale University, Applied Physics, P.O. Box 2157, Yale Station, New Haven, CT 06520. Instrument: Laser Filter Monochromator, Model Laserspec III with Accessories. Manufacturer: Anaspec International Limited, United Kingdom. Intended use: Studies of Raman scattering of adsorbates on electrodes. Application received by Commissioner of Customs: January 25, 1984.

Docket No: 84–68. Applicant: University of Connecticut Health Center, 263 Farmington Avenue, Farmington, CT 06032. Instrument: X-ray generator, Model GX-13 with Accessories. Manufacturer: Marconi Avionics Limited, United Kingdom. Intended use: As a high brilliancy source of x-rays to study the structure of biological membranes, polymers and model membrane systems. Experiments will involve the binding of drug molecules to these biological systems and x-ray diffraction patterns will be recorded. Application received by Commissioner of Customs: January 25, 1984.

Docket No: 84–70. Applicant: NCI-Frederick Cancer Research Facility, P.O. Box B, Frederick, MD 21701. Instrument: Integrated Mass Spectrometer and Data System, Model MM 7250E. Manufacturer: VG Instruments, United Kingdom. Intended use: Structure elucidation of products arising from various research areas involved with chemical carcinogenesis. The objectives of this research include developing analytical methodologies for the rapid reliable identification of small quantities of metabolites, conjugates or nucleoside adducts resulting from exposure of living species to carcinogens so that a better understanding of the mechanistic aspects of chemical carcinogenesis and its consequences could be reached thoroughly. Application received by Commissioner of Customs: January 26, 1984.

Docket No: 84–71. Applicant: The Children's Hospital, 1056 E. 19th Avenue, Denver, CO 80218. Instrument: Electron Microscope, Model EM 109 and Accessories. Intended use: Ultrastructural study of a wide variety of mainly biological specimens ranging from tissue sections to isolated virus particles. Research program is focused upon gaining a better understanding of pathologic processes, so as to develop improved means of diagnosis and treatment of childhood diseases. Application received by Commissioner of Customs: January 26, 1984.

Docket No: 84–72. Applicant: University of Chicago, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL, 60439. Instrument: Frequency Response Analyser, Model 1250A. Manufacturer: Solatron Electronic Group Ltd., United Kingdom. Intended use: Studies of the electrolyte and electrode materials of a monolithic solid oxide fuel cell during investigation of the interfacial phenomena occuring in combination of these electrode, electrolyte laminates at the operating temperature of the fuel cell which is around 1000 degrees Celsius. Application received by Commissioner of Customs: January 26, 1983.

Docket No: 84–73. Applicant: University of Wisconsin-Madison, Department of Chemistry, 1101 University Avenue, Madison, WI 53706. Instrument: Gas Isotope Ratio Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan MAT GmbH, West Germany. Intended use: Determination of the fractionation of carbon, oxygen, and nitrogen isotopes associated with various biological and chemical processes. Educational purposes include teaching students to do research and gain significant new information about biochemical systems in the courses Chemistry 990 and Biochemistry 990. Application received by Commissioner of Customs: January 26, 1984.

Docket No.: 84–75. Applicant: Stanford University, Stanford, CA 94305. Instrument: Mass Spectrometer & Data System, Model VG ZAB 2E/11–250 with Accessories. Manufacturer: VG Analytical, United Kingdom. Intended use: Study of peptides of neurological origin. The technique of Fast Atom Bombardment Mass Spectrometry will play a major role in this work, since these materials are generally involatile and thermally labile; hence they are unsuited to conventional mass spectrometric analysis. Application received by Commissioner of Customs: January 9, 1984.

Docket No.: 84–77. Applicant: University of California, Facility for Advanced Instrumentation, 9-Hutchison Hall, Davis, CA 95616. Instrument: Image Analyzing System, Model Quantimet 900. Manufacturer: Cambridge Instruments, Ltd., United Kingdom. Intended use: Use in research programs involving the morphology, cytology, functions and biochemistry of the mammalian lung. The specific research projects are:

Effects of Air Pollution on the Mammalial Lung,
Effect of Diesel Exhaust on the Adult Cat Lung,
Evaluation of Antifibrotic Drugs on the Bleomycin Fibrotic Hamster Model,
Cellular Maturation in Bronchials of the Non-human Primate and
Cytodifferentiation of the Alveolar Macrophage.

These projects involve the study of the lungs of cats, dogs, rats, mice, hamsters, ferrets and monkeys. The material to be used for image analysis will be one micrometer sections of plastic embedded lung tissue stained with toluidine blue. Measurements to be

made include: cell nuclei count, shape distribution, serial reconstruction of nuclei, area of alveoli and alveolar duct air, tissue volume of interalveolar septal tissue, surface area of cumulative lung epithelial layers. Another specific project involves the measurement of aerial spray cards for the U.S. Department of Agriculture. Application received by Commissioner of Customs: January 26, 1984.

Docket No.: 84–78. Applicant: University of Tennessee, Electrical Engineering Department, Ferris Hall, Knoxville, TN 37996. Instrument: Ultra-high-frequency Microwave Detector. Manufacturer: Oxford Instruments, United Kingdom. Intended use: Study of the microwave emission of several new microwave maser tubes now being developed in order to obtain a better understanding of the microwave generation process, with the objective of increasing the power output and obtaining better spectral purity. Educational purposes will consist of teaching students the processes and applications of collective interactions between charged particles (electrons and ions) in the course Electrical Engineering 4480, Kinetic Theory. Application received by Commissioner of Customs: January 26, 1984.

Docket No.: 84–79. Applicant: Louisiana State University, Chemical Engineering Department, Baton Rouge, LA 70803. Instrument: Dynamic Equilibrium Still, Model LABODEST, with Accessories. Manufacturer: Fischer Labor-und Verfahrenstechnik, West Germany. Intended use: Study of the vapor-liquid equilibrium characteristics of a number of organic systems consisting of a solute (e.g. phenanthrene) and one or more organic solvents (e.g. toluene). The thermodynamic data produced is of value in process design of coal liquefaction plants. The experiments will consist of the determination of vapor and liquid equilibrium compositions for these systems. Application received by Commissioner of Customs: January 26, 1984.

Docket No.: 84–81. Applicant: University of California, Veterans Administration Medical Center, Nephrology Section (111J), 4150 Clement Street, San Franciso, CA 94121. Instrument: Counter Current Distribution Apparatus. Manufacturer: Kemicentrum, Sweden. Intended use: Investigation of surface charge properties of membranes from kidneys and red blood cells for characterization of the separated membrane populations. Application received by Commissioner of Customs: January 26, 1984.

Docket No.: 84–82. Applicant: Trustees of Princeton University, Office of Research and Project Administration, P.O. Box 36, Princeton, NJ 08544. Instrument: Static Vacuum Mass Spectrometer, Model 1200–C. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended use: Studies of rock forming minerals from terrestrial and extraterrestrial samples to determine their: (1) Geologic age, (2) isotopic homogeneity, and (3) thermal stability dating a single feldspar grain that is 3 million years old with a precision that is plus or minus 0.12 million years old. Results from the research will be used as educational material. Application received by Commissioner of Customs: January 27, 1984.

Docket No.: 84–83. Applicant: National Institutes of Health, Building 10, Room 8N110, Bethesda, MD 20205. Instrument: Data System Mass Spectrometer, Model VG 11/250. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: Instrument will be interfaced to an existing mass spectrometer in order to more rapidly identify and quantitate drug metabolites that have been isolated from biological fluids. Postdoctoral students will also be trained to operate the instrument. Application received by Commissioner of Customs: January 27, 1984.

Docket No.: 84–84. Applicant: U.S. Department of Agriculture, Agricultural Research Service, 252 Davenport Hall, U of I, 607 S. Mathews, Urbana, IL. 61801. Instrument: Pressure probe. Manufacturer: Kernforschungsanlage Julich GmbH, West Germany. Intended use: Measurement of turgor pressure in individual cells of higher plants in order to understand the factors controlling cell growth in plants. Application received by Commissioner of Customs: January 27, 1984.

Docket No.: 84–85. Applicant: Minneapolis Medical Research Foundation, 501 Park Avenue South, Minneapolis, MN 55415. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Co., Ltd., Japan. Intended use: High resolution investigations that include:

1. Ultrastructural studies of pathologic changes occurring in selected liver disorders,
2. Ultrastructural study of various kidney diseases,
3. Ultrastructural study of poorly differentiated malignant tumors for diagnosis as well as identification of cellular markers that would delineate histogenesis,
4. Ultrastructural characteristics of lymphocytes in metabolic storage diseases,
5. Ultrastructural study of neuromuscular junctions in developing striated muscle in rats,
6. Ultrastructural study of fetal alcohol cardiomyopathy and skeletal muscle myopathy in guinea pigs,
7. Ultrastructural diagnostic studies of neuromuscular disorders involving brain, peripheral nerve, and skeletal muscle, and
8. Ultrastructural studies of cardiomyopathies associated with arrhythmias.

Application received by Commissioner of Customs: January 27, 1984.

Docket No.: 84–86. Applicant: Vanderbilt University, Department of Pharmacology, Nashville, TN 37232. Instrument: Mass Spectrometer/Data System, Model 70/250. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: The instrument will be used to perform a wide variety of different experiments and analyses in the areas of pharmacology, toxicology, medicine, biochemistry, organic chemistry, analytical chemistry, inorganic chemistry and environmental sciences. Research projects will include:

(1) Application of fast atom bombardment mass spectrometry to the structural characterization of biomolecules,
(2) Studies involving quantitative analysis at high or losw mass spectrometric resolution coupled with high or low resolution gas chromatography of a wide variety of hormones, and
(3) Studies of gas phase ion-molecule reactions.

The primary of these studies is to conduct research to obtain new information about structure and reactions in chemical and biological systems which advances the understanding of biochemical phenomena. In most cases these results will assist in the understanding, prevention and/or cure of human disease. The instrument will also be used from time to time to train graduate students and post doctoral fellows in techniques of advanced biomedical mass spectrometry. Application received by Commissioner of Customs: January 27, 1984.

Docket No.: 83–66R. Applicant: University of Southern California, Department of Electrical Engineering, Mail Code 0484, University Park, Los Angeles, CA 90089. Instrument: Excimer Laser, EMG 50E with Extended Gas Lifetime Option Complete with Optics. Original notice of this resubmitted application was published in the Federal Register of December 17, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-5854 Filed 3-2-84; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 639]

Actions Affecting Export Privileges; Order Modifying Temporary Denial Order; Suin, S.A., et al.

In the matter of Suin, S.A. with locations at both Calle Clot 194 Barcelona 27, Spain and Paseo Manual Girona, 11 Ctra. N-340 Km 243'400 Vilaseca (Tarragona), Spain, and its successor company; Sic, S.A. Avda De Chile 40 2-0 1-A Barcelona 28, Spain Carlos Mira Gallart a.k.a. Carlos Mira with locations at both Barcelona and Tarragona, Spain and Hernandez Inglesias No. 4 Madrid 27, Spain.

The U.S. Department of Commerce (Department) has moved for a Modification of the Temporary Denial Order issued on October 14, 1982 (47 FR 46876, October 21, 1982) against respondent Suin, S.A. and respondent Carlos Mira Gallart, also known as Carlos Mira (Mira), by listing the new or successor name for Suin, S.A. The Temporary Denial Order denies the respondents, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1983)), all privileges of participating, in any manner or capacity, in any export-related transaction involving U.S.-origin commodities or technical data.

The Department presented information showing that in August 1983 Suin, S.A. changed its name and address to, or formed as a successor company, Sic, S.A. The Department additionally stated that the same persons, including Mira, who operated Suin, S.A. are operating Sic, S.A. Based on the Department's presentation, I find that its requested motion is justified.

Accordingly, it is hereby ordered that, effective immediately, the Temporary Denial Order is modified as follows:

Every reference in the Temporary Denial Order to Suin, S.A., including such references as "Suin" and "respondent(s)", shall mean both Suin, S.A. and Sic, S.A., as the names and addresses of both are set forth below:

Suin, S.A., with locations at both Calle Clot 194, Barcelona 27, Spain
and
Paseo Manuel Girona, 11 Ctra. N-340 Km 243'400, Vilaseca (Tarragona), Spain
and its successor company
Sic, S.A., Avda de Chile 40, 2-0 1-A, Barcelona 28, Spain.

A copy of this Modification of the Temporary Denial Order shall be served upon respondents Suin, S.A., Sic, S.A., and Mira, and upon the two business organizations named in Paragraph III of the Temporary Denial Order, and this Modification of the Temporary Denial Order shall be published in the **Federal Register.**

Dated: February 28, 1984; 4:50 pm, e.s.t.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 84-5884 Filed 3-2-84; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Issuance of Permit; Southwest Fisheries Center

On November 9, 1983, Notice was published in the **Federal Register** (48 FR 51505) that an application had been filed with the National Marine Fisheries Service by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, for a permit to collect an unspecified number of harbor porpoise (*Phocoena phocoena*) taken incidentally in commercial fishing for the purpose of scientific research.

Notice is hereby given that on February 22, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Scientific Research Permit to the Southwest Fisheries Center for the above collection subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 29, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-5891 Filed 3-2-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Limit for Certain Cotton Textile Products From Indonesia

February 29, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 6, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377-4212.

Background

On July 26, 1983 a notice was published in the **Federal Register** (48 FR 33928) requesting public comment on bilateral textile consultations with the Government of the Republic of Indonesia concerning women's, girls' and infants' cotton coats in Category 335 under Article 3 of the Arrangement Regarding International Trade in Textiles. Since that time the Governments of the United States and the Republic of Indonesia have exchanged diplomatic notes amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982 to establish, among other things, a new specific limit for Category 335 of 60,000 dozen for the agreement year which began on July 1, 1983. The limit has not been adjusted to account for imports in the category exported on and after July 1, 1983. During the July 1-December 31, 1983 period these imports have amounted to 19,259 dozen and will be charged. Additional charges will be made for imports during the period which began on January 1, 1984 and extends to the effective date of this action, as well as thereafter.

The letter to the Commissioner of Customs which follows this notice establishes the new limit. It also cancels and supersedes the directive of August 26, 1983 (48 FR 39485) which established an import control level of 32,814 dozen for Category 335 during the twelve-month period which began on July 1, 1983 under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December

14, 1983 (48 FR 55607), and December 30, 1983 (48 FR 57584).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of August 26, 1983, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of certain cotton textile products in Category 335, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1983.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 6, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Indonesia, and exported during the twelve-month period which began on July 1, 1983, in excess of 60,000 dozen.[1]

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of cotton textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 533. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-5885 Filed 3-2-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after June 30, 1983.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Chemical Warfare and Biological Defense: Cancellation of Advisory Committee Meeting

The meeting of the Defense Science Board Task Force on Chemical Warfare and Biological Defense scheduled for March 7–8, 1984 in the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 49, No. 17, Wednesday, January 25, 1984, FR Doc. 84–2065) has been cancelled.

Dated: February 29, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-5838 Filed 3-2-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Long Endurance Aircraft; Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Long Endurance Aircraft (LEA) will meet in closed session on April 12, 1984 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on April 12, 1984 the Defense Science Board Task Force on LEA will consider the mission potential for long endurance aircraft.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I (1976)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

Dated: February 29, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-5837 Filed 3-2-84; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the total number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Department of Defense, Acquisition Regulation

The DoD issues approximately 13 million contractual actions annually. Information collection from the public in support of the DoD acquisition process is necessary for the Government to support contractual actions for services, supplies and hardware awarded under the Defense Acquisition Regulation in conformance with the requirements of the Armed Services Procurement Act, Title 10 U.S.C. Implementation of the Federal Acquisition Regulation system on April 1, 1984 will permit the gradual elimination of this clearance over a period of time as contracts awarded under the Defense Acquisition Regulation are completed.

Contractors: 13,000,000 annual responses; 187,940,000 annual hours

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of this information collection proposal may be obtained from Fred J. Kohout, OUSDRE(AM)DARS, Room RE840, 400 Army Navy Drive, Washington, D.C. 20301, telephone (202) 697–7267.

Dated: February 29, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-5839 Filed 3-2-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 3, 1984; Tuesday, April 10, 1984; Tuesday, April 17, 1984; and Tuesday, April 24, 1984 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency." (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (c)(4)).

However, member of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, the Pentagon, Washington, D.C. 20301.

Dated: February 29, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–5872 Filed 3–2–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense (DoD) has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the total number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Questionnaire in support of an independent review of the Federal Acquisition Regulatory System by the Office of the Secretary of Defense.

The DoD awards approximately 12 million annual contracts for supplies/services and hardware. The Defense Acquisition Regulatory System (DARS) is a system of policies and regulations to guide managers in the conduct of DoD acquisition activities and to provide the detailed functional regulations required to govern DoD contractual actions in accordance with applicable laws and the need for efficiency. An independent review of the DARS is being undertaken in view of the overall importance of this system in carrying on the DoD acquisition regulatory role and in view of the increased responsibilities and workload levied on this system as a result of the implementation of the Federal Acquisition Regulation (FAR).

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C., 20301, Telephone: (202) 697–1195.

A copy of the information collection proposal may be obtained from Dr. Richard A. Stimson, OUSDRE(AM)IP, Pentagon, Room 2A318, Washington, D.C. 20301, Telephone: (202) 695–9846

Dated: February 29, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–5873 Filed 3–2–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

DOD Civilian/Military Service Review Board; Acceptance of Group Applications

Under the provisions of Section 401 of Pub. L. 95–202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Certain U.S. Merchant Seamen Who, During World War II, served aboard Army Owned Vessels and Certain Merchant Marine Vessels Which Were Operating in Support of the Armed Forces of the United States, Said Vessels Having Made Some Part of a Qualifying Voyage in Waters Being Contested by the Enemy (December 7, 1941 to September 15, 1945). Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, D.C. 20330. For further information contact Lieutenant Colonel Kenneth D. Phelps, Jr., USAF, Telephone No. 692–4744.

Winnibel F. Holmes,

Air Force Federal Register, Liaison Officer.

[FR Doc. 84–5804 Filed 3–2–84; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

February 27, 1984.

The USAF Scientific Advisory Board Tactical Cross Matrix Panel will meet at Langley AFB, VA on March 27–28, 1984.

The purpose of the meeting will be Target Acquisition and Intelligence Gathering. The meeting wil convene at 8:00 a.m. to 5:00 p.m.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84–5849 Filed 3–2–84; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Vocational Education

AGENCY: National Advisory Council on Vocational Education, Ed.

ACTION: Notice of conference.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming conference of the National Advisory Council on Vocational Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: March 15, 1984 (8:30 A.M.–4:00 P.M.); March 16, 1984 (8:45 A.M.–2:30 P.M.).

ADDRESS: Department of Commerce Auditorium, 14th Street and Constitution Avenue, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education; National Commission for Employment Policy; Office of Vocational and Adult Education, U.S. Department of Education; and National Center for Research in Vocational Education are cosponsoring a *National Conference on Vocational Education and Training Policy for Today and Tomorrow.*

(A) The purpose of the conference is to examine anticipated changes in the economy, social and demographic trends, and governmental roles and the implications of these changes for the preparation of the nation's work force, both now and for the remainder of this century. There will be three main sessions focusing on the economy, social and demographic trends, and governmental roles. Each will feature a presentation by a nationally-recognized expert, reactions from five panelists and audience interaction with the presenter and panelists.

The conference by National Advisory Council on Vocational Education, as announced, is open to the public. The proposed Agenda will include:

March 15

Trends and Changes in Federal, State and Local Government Roles During the Remainder of This Century.

Social and Demographic Trends and Changes During the Remainder of This Century.

March 16

Trends and Changes in the Economy During the Remainder of This Century.

Records are kept of the Council's proceedings, and are available for public inspection at the Office of the National Advisory Council on Vocational Education from 9:00 A.M. to 5:00 P.M.—425 13th Street, NW., Suite 412, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Edwards, NACVE Staff at above address. Telephone (202) 376–8873.

Signed at Washington, D.C. on February 23, 1984.

James W. Griffith,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 84–5710 Filed 3–2–84; 8:45 am]

BILLING CODE 4000–01–M

Grants to State Educational Agencies To Meet the Special Educational Needs of Migratory Children

AGENCY: Office of Elementary and Secondary Education.

ACTION: Application notice for fiscal year 1984 (school year 1984–85).

SUMMARY: Applications are invited for new grants under the Migrant Education Basic State Formula Grant Program which provides financial assistance to State educational agencies (SEAs) for State and local projects designed to meet the special educational needs of migratory children of migratory agricultural workers and migratory fishers. The statutory authority for this program is Section 554(a) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35).

[20 U.S.C. 3803(a)]

Closing Date for Transmittal of Applications: An applicant SEA must mail or hand deliver its application for a grant by April 20, 1984. In the event that an applicant SEA is unable to mail or hand deliver its application by April 20, 1984, the applicant SEA should request an extension of time as soon as possible, stating in the request the reason that an extension is necessary. The applicant SEA is advised, however, that any delay in submitting its application may defer processing and awarding its fiscal year 1984 grant.

Applications Delivered by Mail: An applicant SEA that sends its application by mail must address its application to Mr. Louis J. McGuinness, Director, Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3616, ROB–3), Washington, D.C. 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(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 of Education.

If an applicant SEA sends its application through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant SEA should check with its local post office.

The Secretary encourages applicants to use registered or at least first class mail. The Secretary notifies a late applicant that its application will not be considered unless that SEA has been granted an extension of the closing date.

Applications Delivered by Hand: An applicant SEA that hand delivers its application must take the application to the Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3616, ROB–3), Washington, D.C. 20202.

The division of Migrant Education will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

The Division of Migrant Education will not accept an application that is hand delivered after 4:30 p.m. on the closing date—unless that SEA has been granted an extension of the closing date.

Program Information: The Secretary awards grants under this program to SEAs to establish or improve State programs and local projects designed to meet the special educational needs of migratory children of migratory agricultural workers and migratory fishers. A program plan is required as indicated in 34 CFR 204.10.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12373 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on state and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why not; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects which do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States which have established a process, designated a single point of contact, and have selected this program for review:

Arizona	Maryland	Rhode Island
Arkansas	Michigan	South Caroline
California	Missouri	Tennessee
Connecticut	Montana	Texas
Delaware	Nebraska	Utah
Florida	Nevada	Vermont
Illinois	New Jersey	Virginia
Indiana	New York	West Virginia
Iowa	North Carolina	Wisconsin
Kentucky	Oklahoma	Wyoming
Louisiana	Puerto Rico	

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about and to comply with the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by June 19, 1984 to the following address: The Secretary, U.S. Department of Education, Room 4181 (84.144), 400 Maryland Avenue SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as for applications.)

Please Note That the Above is not the Same Address as the one to Which the Applicant Submits its Completed Application. *Do Not Send Applications to the Above Address.*

Available Funds: There is $250.958 million available for fiscal year 1984 (school year 1984–85) grants. It is estimated these funds will support 51 State program. These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: The U.S. Department of Education's Division of Migrant Education will mail application forms and instructions to all eligible SEAs. An applicant SEA may obtain additional forms and instructions by writing to the Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Deprtment of Education, 400 Maryland Avenue SW. (Room 3616, ROB–3), Washington, D.C. 20202.

An applicant SEA must prepare and submit its application in accordance with the regulations, instructions, and forms included in the program information package. The program information package is intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing this program. The Secretary urges that the narrative portion of an application be as brief as possible. The Secretary also urges that an applicant not submit information that is not requested.

Appicable Regulations: Regulations applicable to this program include the following:

(a) Chapter 1 Migrant Education Program Regulations (34 CFR Part 204), published in the **Federal Register** on April 3, 1980—not superseded by Chapter 1 (Pub. L. 97–35) or the technical amendments to Chapter 1 (Pub. L. 98–211).

(b) 34 CFR 74.62 of Eduation Department General Administrative Regulations (EDGAR) concerning fiscal accountability.

(c) 34 CFR Part 79.

Further Information: For further information, contact Mr. Louis J. McGuinness, Director, Division of Migrant Education, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3616, ROB–3), Washington, D.C. 20202. Telephone (202) 245)–2722.

(20 U.S.C. 3803(a))

(Catalog of Federal Domestic Assistance No. 84.011; Migrant Education/Basic State Formula Grant Program)

Dated: February 29, 1984.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 84–5861 Filed 3–2–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EF84–2011–002, EF84–2011–003, EF84–2011–004, EF84–2011–005, EF84–2011–002, EF84–2021–003, EF84–2021–004, and EF84–2021–005]

U.S. Department of Energy, Bonneville Power Administration; Extension of Time

February 27, 1984.

On February 22, 1984, Bonneville Power Administration (BPA) filed a motion for an extension of time to file reply comments as provided for in the Commission's Order Granting Request for Temporary Interim Rates, Denying Renewed Motion for Partial Summary Disposition, Granting Request for Clarification and Deferring Action on Requests for Hearing issued January 27, 1984, in the above-docketed proceeding. The motion states that additional time is required in order to allow BPA and other parties to review testimony which is due to be filed in two related BPA rate cases

and which might determine the future scope of this proceeding. The motion further states that Southern California Edison Company, Pacific Gas & Electric Company, San Diego Gas & Electric Company, Department of Water and Power of the City of Los Angeles and the Cities of Burbank, Pasadena and Glendale, California Energy Commission, Public Utility Commission of the State of California, Association of Public Agency Customers support this extension request.

Upon consideration, notice is hereby given that an extension of time for the filing of reply comments is granted to and including March 12, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5833 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-133-000]

Detroit Edison Co.; Order Accepting Rates To Become Effective Without Suspension or Hearing, Granting Waiver, and Terminating Docket

Issued: February 27, 1984.

On December 5, 1983, Detroit Edison Company ("Edison") submitted for filing unexecuted amendments to its interchange agreements with the Village of Clinton and the Cities of Detroit and Wyandotte[1] providing for increased transmission rates. The proposed rate for all three customers consists of a demand charge of $0.35/kW/week for service at 120 kV and above or $0.49/kW/week for service below 120 kV plus 110% of the cost of energy not to exceed 1 mill/kWh. Edison requests an effective date of July 1, 1984, for the revised rates.

Notice of the filing was published in the **Federal Register** with comments, protests, or interventions due on or before December 27, 1983.[2] On January 4, 1984, the City of Detroit Public Lighting Department ("Detroit") filed a request for a four week extension of time to file comments. The Commission's Secretary granted an extension to January 13, 1984. On January 12, 1984, Detroit filed a letter protesting the proposed increase and requesting rejection of it, but raising no specific cost of service issues. Detroit does not request intervenor status, but alleges that the proposed rates are excessive and will result in fewer opportunities for it to engage in third-party transactions.

[1] *See* Attachment A for rate schedule designations.

[2] 48 FR 56432 (December 21, 1983).

Discussion

Based on our review of Edision's filing, we find that the proposed transmission rates will not produce excess revenues. Although Detriot's protest requests rejection of the filing, Detroit makes no specific allegations as to why the rate is excessive, but simply states that there has been a 227% increase in demand charges over the last three years and that increases of this magnitude are unfounded. Since our review of the filed rates indicates that Edison's rates are cost justified, we believe that the relative size of the increases over time has resulted from a combination of inflationary factors and the fact that Edison's rates were previously lower than the company could have justified.

Since our own analysis indicates no grounds for investigating the filed rates and Detroit has presented none, we shall decline to suspend or investigate further the rates filed in this docket.

We shall further grant waiver of the 120-day advance filing limitation (18 CFR § 35.3) to permit the rates to become effective on July 1, 1984, as requested. The cost data used to support Edison's filing are 1982 data. Were we to require Edison to refile during 1984 within 120 days of the proposed effective date, Edison could presumably use 1983 or 1984 data to support higher rates than it has requested. Therefore, the customers benefit from the historic data underlying the filing, and we find good cause to grant the waiver.

The Commission orders:

(A) Waiver of the 120-day advance filing limitation is hereby granted.

(B) Edison's rates are hereby accepted for filing to become effective on July 1, 1984, without suspension or hearing. Such permission to become effective does not constitute approval by the Commission of the rate schedule or parts thereof.

(C) Docket No. ER84-133-000 is hereby terminated.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT A—DETROIT EDISON COMPANY, DOCKET NO. ER84-133-000, RATE SCHEDULE DESIGNATIONS

Designation	Description	Other party
Detroit Edison Company:		
(1) Supplement No. 2 to Rate Schedule FERC No. 23.	General Transmission Service Schedule	City of Wyandotte.
(2) Supplement No. 2 to Rate Schedule FERC No. 25.	General Transmission Service Schedule	City of Detroit.
(3) Supplement No. 2 to Rate Schedule FERC No. 28 (Supersedes Supplement No. 1).	General Transmission Service schedule	Michigan South Power Agency.
(4) Supplement No. 3 to Rate Schedule FERC No. 28 (Redesignation of Supplement No. 1 to Supplement No. 1 to Rate Schedule FERC No. 28).	Indemnity Agreement and Assignment by Village of Clinton.	Michigan South Power Agency.

[FR Doc. 84-5831 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF83-5021-000]

Western Area Power Administration; Further Extension of Comment Period

February 27, 1984.

On February 21, 1984, the Colorado Water Conservation Board (CWCB or the Board) filed a motion for an extension of time to file comments pursuant to the Commission's Notice of Additional Comment Period, issued January 31, 1984, in this docket. In support of its motion, the Board states that it has engaged in settlement negotiations with the Western Area Power Administration (WAPA) and the Colorado River Energy Distributors Association (CREDA) which might lead to CWCB's support for the confirmation of the filed rates, that CWCB cannot ratify any settlement until its next meeting, scheduled for March 15 and 16, 1984, and that WAPA does not object to the requested extension.

Notice is hereby given, that a further extension of time is granted for the filing of any objections to WAPA's motion for confirmation and approval of its rates on the basis of the changes in WAPA's future rate development criteria as agreed to in the settlement among CREDA, WAPA, and the Bureau of Reclamation. Substantive comments on

this settlement must be filed no later than April 6, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5834 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA83-7-000]

The 341 Tract Unit of the Citronelle Field, Mobile County, Alabama; Extension of Time

Issued: February 27, 1984.

On February 23, 1984, The 341 Unit of the Citronelle Field (Citronelle Unit) filed a motion for a further extension of time to file a petition for review of a decision and order issued January 31, 1983, by the Secretary of Energy (DOE) (10 DOE ¶81,027). Citronelle Unit requests this further extension pending DOE's ruling on a petition for reconsideration of the contested order.

Upon consideration, notice is hereby given that a further extension of time for the filing of a petition for review is granted to and including April 27, 1984. In the event DOE has not acted by April 20, 1984, Citronelle Unit may file a request for an additional extension of time which shall include a status report on the DOE proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5832 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-22-000]

State of Wyoming Oil and Gas Conservation Commission; NGPA Section 103 Determination; Petro Energy, Inc., Popham 1-22 Well JA Docket No. NG60-81, FERC JD No. 83-25186; Preliminary Finding

February 23, 1984.

Background

On February 28, 1983, the Oil and Gas Conservation Commission of Wyoming (Wyoming) filed with the Federal Energy Regulatory Commission (Commission) notice of its determination that Petro Energy, Inc.'s Popham 1-22 Well qualified as a new, onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1981).

By letter dated March 18, 1983, Commission Staff advised Wyoming that the notice of determination was incomplete without an additional explanatory statement.[1] Staff stated that information in the notice of determination indicated that the Popham 1-22 Well was originally spudded in 1961, was abandoned as a dry hole, and was reentered in June 1977. It appeared then that surface drilling occurred before February 19, 1977, so the well would not qualify under section 103.[2]

Staff, in its letter, also cited the Fifth Circuit's holding in *L&B Oil Co., Inc., v. Federal Energy Regulatory Commission*, (*L&B*) 665 F.2d 758 (1982), that in certain circumstances, surface drilling of a well was not limited to the spudding-in of that well.[3] Staff pointed out that the court stressed that its decision:

> * * * should not be interpreted as implying that the spudding in date is irrelevant to the determination of what is a "new, onshore production well." On the contrary, we merely hold that in certain circumstances a state agency can correctly grant "new, onshore production well" status to a well that was not literally spudded in on or after February 19, 1977.

665 F.2d at 764.

Wyoming responded by letter dated January 3, 1984, which the Commission received on January 9, 1984. Wyoming explained the requirements of Wyoming Statute 30-5-109 (a), (b), (c)(i) and Cause No. 1, Order No. 5, Wyoming Docket No. 60-67. These established 80-acre drilling and spacing units and required that the well be located in the NE¼ or SW¼ of the quarter section in which it was situated. Wyoming states in its letter that "to have a legal location in the NE¼ NE¼ [the northeast quarter of the northeast quarter] the operator re-entered an already legal location in accordance with the above order [No. 5]." Wyoming also presented data "[c]omparing actual cost ($236,010.54) to an estimated average cost of equipping and completing this well, ($24,383.74] * * *." Wyoming concluded:

> Based on the facts that this well never produced natural gas until after the well was re-entered, and since the well was drilled to comply with * * * Order No. 5, which required the well to be drilled in the NE¼ NE¼ * * * and the operator acquired substantially all the exploration and completion cost, * * * this well [should] be determined as a Section 103, New Onshore Production Well.

Discussion

In *L&B Oil Co., Inc. v. Federal Energy Regulatory Commission, supra*, the Fifth Circuit found that the Commission's former policy, which equated spudding-in with surface drilling, and limited such to a single event in any well bore, was too strict. The court stated that *in certain circumstances*, surface drilling of a well should not be limited to the initial spudding-in of that well.

In reviewing the facts surrounding L&B's reentry, the court noted the following factors were relevant in finding that the determination made by the jurisdictional agency was supported by substantial evidence: (1) Surface drilling commenced when *L&B* drilled out the thirty foot cement plug which Webb (the original operator) left in the dry hole; (2) L&B did not merely reactivate or deepen a previously spudded well; (3) L&B only used a few hundred feet of the original wellbore before deviating to a total depth of over 7,000 feet; (4) L&B incurred almost the entirety of normal exploration costs and all of the production efforts; and (5) L&B discovered and produced gas where there was none before. The Commission in a series of recent orders [4] has emphasized that the operator upon reentry must have undertaken substantial additional drilling.

The fact pattern with respect to the Popham 1-22 well does not appear to be totally congruent with the criteria adopted by the Commission as a result of *L&B*, and therefore warrants further examination.

Wyoming does not address the requirement that there be substantial additional drilling, and not merely reactivating of an old wellbore for reentered wells to qualify for section 103 pricing. The Popham 1-22 well does not meet this standard, for no additional drilling was apparently done. As to the state drilling and spacing requirements, these do not appear relevant to whether surface drilling occurred on or after February 19, 1977.

Accordingly, the Commission makes a preliminary finding that there is not substantial evidence in the record to support the Wyoming determination that the Popham 1-22 Well qualifies under NGPA section 103.

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[1] This letter tolled the commencement date of the 45-day review period within which the Commission must act to prevent the jurisdictional agency determination from becoming final under NGPA section 503. *See* § 275.202(b) of the Commission's regulations. 18 CFR 275.202(b) (1983).

[2] Section 103's definition requires that "surface drilling of [the well] began on or after February 19, 1977." 15 U.S.C. 3313(c)(1) (Supp. V 1981).

[3] The Commission has developed a policy based on the criteria suggested by the court in the *L&B case. See e.g.*, orders issued May 27, 1983 in docket Nos. GP83-9 and GP83-10, 23 FERC ¶ 61,299 and ¶ 61,300.

[4] *See* orders issued on November 7, 1983, at 25 FERC ¶¶ 61,198, 61,199, 61,200, and 61,201 in Docket Nos. GP82-9-000, GP82-48-000, GP83-12-000 and GP83-33-000, respectively.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5830 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-247-000]

ANR Pipeline Co.; Request Under Blanket Authorization

February 28, 1984.

Take notice that on February 17, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-247-000 a request pursuant to Section 157.209 of the Regulations under the Natural Gas Act (18 C.F.R. 157.209) that ANR proposes to transport natural gas for The General Tire & Rubber Company (General Tire) under the authorization issued in Docket No. CP82-480-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport up to 3,000 dt equivalent of natural gas per day on an interruptible basis on behalf of General Tire through June 30, 1985. ANR states that General Tire has intered into a gas purchase contract with ANR Production Company (Production Company) for the purchase of up to 1,095,000 MMBtu equivalent of natural gas. ANR further states it would receive the natural gas at one or more of the points of interconnection of the pipeline system of ANR and Production Company in Bechkham and Roger Mills Counties, Okalhoma, and/or at point of interconnection between the pipeline systems of ANR and Producer's Gas Company (Producer's) in Caddo County, Oklahoma, where Production Company will cause Producer's to tender the gas to ANR. ANR would then transport and deliver equivalent volumes to Ohio Gas Company (Ohio Gas) for General Tire's account at the existing point of interconnection of the pipeline systems of Ohio Gas and ANR in Fulton County, Ohio. ANR indicates that Ohio Gas would provide additional transportation services for General Tire for ultimate use at General Tire's facilitis in Ashtabula and Mogadore, Ohio.

ANR proposes to charge General Tire the rate set forth in its Rate Schedule EUT-1 which was accepted by the Commission by order issued February 10, 1984, in Docket No. RP84-1-001.

ANR indicates that the gas would be used for boiler fuel in General Tire's facilities at Ashtabula and Mogadore, Ohio. ANR also indicates that no intermediary participated in the transaction between Production Company and General Tire.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385-214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5812 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2095-000]

Arnold D. Baker; Notice of Application

February 28, 1984.

The filing individual sumbits the following:

Take notice that on February 16, 1984, Arnold D. Baker filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Kentucky Utilities Company

Vice President, Old Dominion Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission , 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5813 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-286-000]

Centel Corp., Western Power Division; Notice of Filing

February 28, 1984.

The filing Company submits the following:

Take notice that on February 17, 1984, Centel Corporation (Centel), Western Power Division, tendered for filing the following proposed rate schedules:

Rate Schedule 84-CWh-2, replacing rate Schedule 83 CWh-2, for service to ten rural electric distribution cooperatives (the RECs);

Rate Schedule 84-MWh-5, replacing Rate Schedule 83 CWh-5, for service to 11 distribution municipalities (the Municipals);

Service Schedule 84-A-1, replacing Service Schedule 83-A-1, for firm partial requirements service to the cities of Anthony, Attica, Beloit, Hoisington, Kingman, Osborne, Pratt, Stockton, Russell, and Washington, Kansas (the Firm Municipals);

Transmission Traiff 84-Tsv-1, replacing Transmission Tariff 83-Tsv-1, for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Service Schedule 84-D, replacing Service Schedule 82-D, for Off-Peak partial requirements customers eligible for service under Service Schedule 84-A-1.

Centel states that the proposed rate schedules set forth increased/decreased rates designed to produce an increase in revenues from jurisdictional sales and service of $1,124,093 based on the twelve month period ending June 30, 1985, and will increase/decrease revenues by 6.06% for service to the RECs, 6.39% for service to the Municipals, −1.94% for service to the Firm Municipals, −4.00% for service to the Off-Peak Municipals and 4.21% for service to KEPCo. Centel states that its proposed increases in rates are due to the increasing cost of providing service.

Centel proposes an effective date of April 18, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon each of the wholesale customers affected by this filing and the Kansas State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5814 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-170-000]

Cogentrix of North Carolina, Inc.—Sheffield; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 28, 1984.

On February 6, 1984, Cogentrix of North Carolina, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Burlington Industries, Sheffield Plant, P.O. Box 1239, Rocky Mount, N.C. 27801. The primary energy source will be coal. The facility will consist of two 157,515 pounds per hour stoker-fired boilers rated 1,515 pounds per square inch and 950 degrees Fahrenheit. The facility will also contain a single condensing steam turbine generator rated 35,000 kilowatts. The turbine will be designed for steam extraction to supply feed water heating and to provide process steam for Burlington Industries' Sheffield textile plant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5815 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-171-000]

Cogentrix of North Carolina, Inc.—Cannon; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 28, 1984.

On February 6, 1984, Cogentrix of North Carolina, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Cannon Mills Co., Plant 10, P.O. Box 367, Concord, North Carolina 28025 and Plant 6, 326 McGill Avenue, NW., Concord, North Carolina 28025. The primary energy source will be coal. The facility will consist of two 157,515 pounds per hour stoker-fired boilers rated 1,515 pounds per square inch and 950 degrees Fahrenheit. The facility will also contain a single condensing steam turbine generator rated 35,000 kilowatts. The turbine will be designed for steam extraction to supply feed water heating and to provide process steam for Cannon Mill's textile Plant 10 and Plant 6.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5816 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-172-000]

Cogentrix of North Carolina, Inc.—Cliffside; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 28, 1984.

On February 6, 1984, Cogentrix of North Carolina, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28010, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Cone Mills Corp., Cliffside Plant, P.O. Box 335, Cliffside, North Carolina 28024. The primary energy source will be coal. The facility will consist of two 157,515 pounds per hour stoker-fired boilers rated 1,515 pounds per square inch and 950 degrees Fahrenheit. The facility will also contain a single condensing steam turbine generator rated 35,000 kilowatts. The turbine will be designed for steam extraction to supply feed water heating and to provide process steam for Cone Mills Corp.'s Clifford textile plant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5817, Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-173-000]

Cogentrix of North Carolina, Inc.—Wiscassett; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 28, 1984.

On February 6, 1984, Cogentrix of North Carolina, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28010, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Cannon Mills' Wiscassett textile plant in Albermarle, North Carolina. The primary energy source will be coal. The facility will consist of two 157,515 pounds per hour stoker-fired boilers rated 1,515 pounds per square inch and 950 degrees Fahrenheit. The facility will also contain a single condensing steam turbine generator rated 35,000 kilowatts. The turbine will be designed for steam extraction to supply feed water heating and to provide process steam for the textile plant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5818. Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-177-000]

Duke Power Co.; Order Accepting for Filing and Suspending Rates, Granting Summary Disposition in Part, Noting Interventions, and Establishing Hearing and Price Squeeze Procedures

Issued: February 28, 1984

Duke Power Company (Duke) tendered for filing, on December 28, 1983, a two-step increase in firm power rates to 17 municipal customers, three investor-owned utilities, and one private customer.[1] Based on a calendar year 1984 test period, the total increase in jurisdictional revenues is approximately $12,673,000 (15.6%).[2] Duke is proposing to implement the increase in two steps: the first step, characterized by the company as "interim rates," would increase revenues by approximately $10.4 million, and the second step, referred to as "proposed rates," would increase revenues by a further $2,273,000. Duke has proposed a March 1, 1984 effective date for both steps. The company requests, however, that both phases be suspended for one day. Duke further states that it will not object to a five month suspension of its "proposed rates."

Notice of Duke's filing was published in the **Federal Register**,[3] with comments due on or before January 27, 1984. Timely motions to intervene were filed by: the South Carolina Association of Municipal Power Systems (SCAMPS); the City of Concord, North Carolina and the Town of Dallas, North Carolina (NC Municipals); and Lockhart Power Company (Lockhart).

SCAMPS and the NC Municipals do not object to a one day suspension of Duke's "interim" rates, provided that the "proposed" rates are suspended for five months. In support of their suspension request, SCAMPS and the NC Municipals raise various cost of service, rate base, and rate of return issues.[4] In addition, they seek to reserve the right to request initiation of price squeeze procedures if the just and reasonable, but for price squeeze, wholesale rate is excessive when compared to the relevant retail rates.

Lockhart requests that Duke's rates be suspended for one day and set for hearing. Lockhart also requests that the rates in this docket and in *Lockhart Power Company*, Docket No. ER84-199-000, become effective simultaneously.[5] Finally, Lockhart requests that the Commission summarily reject Duke's proposed charge for standby service for any customers that have generation facilities operating in parallel with Duke's electric system. Lockhart alleges that this charge conflicts with the availability clause in Duke's rates,[6] is inconsistent with Duke's use of a 12-CP demand allocation method, and is discriminatory and anticompetitive.

On February 13, 1984, Duke responded to Lockhart's motion for summary disposition. Duke asserts that its proposed standby charge is cost justified and consistent with Duke's historic billing practices. The company denies that the charge is foreclosed by the use of a 12-CP allocation method or that the charge is either discriminatory or anticompetitive. In addition, Duke disputes Lockhart's contention that Duke imposes no similar charge in its retail rates to self-generating customers.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions of SCAMPS, the NC Municipals, and Lockhart make them parties to this proceeding.

Our review of Duke's filing indicates that the company has failed to correctly synchronize interest expense in accordance with Commission precedent and has not explained its adjustment. Commission precedent requires that utilities calculate interest expense by multiplying the allocated rate base time the weighted cost of long-term debt used for rate of return purposes. *E.g., Gulf States Utilities Company*, 20 FERC ¶ 61,039 (1982); *Public Service Company of New Mexico*, Opinion No. 133, 17FERC ¶ 61,123 (1981); *Alabama Power Company*, Opinion No. 54, 8 FERC ¶ 61,083 (1979). Accordingly, we shall summarily dispose of this matter and direct Duke to synchronize its interest expense in accordance with

[1] *See* Attachment A for rate schedule designations and affected customers.

[2] Of the $12,673,000 increase, approximately $251,000 is attributable to the inclusion of a charge for standby service, and $12,400,000 to an increase in firm power rates.

[3] 49 FR 1279 (Jan. 10, 1984).

[4] Specifically, SCAMPS and the NC Municipals object to the following elements of Duke's filing: (1) Rate of return on common equity; (2) Period II coal inventory; (3) inclusion of operating reserves in rate base; (4) cash working capital; (5) plant held for future use; (6) amortization of failed mining ventures; (7) salary and wage projections; (8) allocation of general advertising expenses (Account 930.1), miscellaneous general expenses (Account 930.2), customer service and information expenses, and South Carolina Public Service Commission fees to wholesale customers; (9) interest synchronization; (10) the amortization period for cancelled plant; (11) the demand and energy allocation factors; and (12) allocation of general plant and distribution O&M expenses.

[5] Lockhart, which purchases nearly 70% of its power and energy requirements from Duke, filed an increase in rates to its wholesale customer, the City of Union, South Carolina, in Docket No. ER84-199-000, largely to reflect increased purchased power costs resulting from Duke's filing. The Commission is addressing Lockhart's filing in a separate order considered concurrently with this order.

[6] Lockhart points to language in Duke's present Schedule No. 10 providing that "[t]his schedule is not available for standby or breakdown service." We note that the availability clause has been modified in the current filing to permit standby or breakdown service where a customer has parallel-generation.

Commission precedent. However, because of the relatively small revenue effect of this adjustment, we shall not order the company to file revised rates at this time. With respect to Lockhart's motion for summary rejection of Duke's charge for standby service, we believe that the matter raises questions of law or fact more appropriately resolved after an evidentiary hearing. We shall therefore deny Lockhart's motion for summary disposition as to this issue.

Based on preliminary review of Duke's filing and the matters raised by the intervenors, we find that Duke's proposed rates have not been shown to be jsut and reasonable and may be unjust,) unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Duke's "proposed" rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained the Commission's suspension policy and noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the rates may be unjust and unreasonable but may not produce substantially excessive revenues, as defined in *West Texas*. In this case, our review indicates that Duke's "interim" rates as well as its "proposed" rates may yield substantially excessive revenues. Ordinarily, we would therefore suspend both the "interim" and "proposed" rates for one day; this would result, however, in both phases of Duke's increase becoming effective on the same day. Under these circumstances, we shall deem Duke' "interim" rates to have been withdrawn, and we shall suspend the company's "proposed" rates for one day, to become effective on March 2, 1984, subject to refund.[7]

With respect to the concerns that a price squeeze may exist, we shall institute phased price squeeze procedures in accordance with the Commission's policy and practice enuncated in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979).

The Commission orders:

(A) Summary disposition is hereby ordered, as noted in the body of this order, with respect to Duke's method of synchronizing interest expense. This decision shall be reflected in Duke's compliance cost of servie and rates at the conclusion of this proceeding.

(B) Lockhart's motion for summary disposition is hereby denied.

(C) Duke's "interim" rates are deemed to have been withdrawn. Duke's "proposed" rates are hereby accepted for filing and are suspended for one day to become effective, subject to refund, on March 2, 1984.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of Duke's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding by phased so that price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonalbe. The presiding judge may order a change in this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[7] *Cf. West Texas Utilities Company*, 25 FERC ¶ 61,114 (1983).

Attachment

DUKE POWER COMPANY, DOCKET NO. ER84-177-000, RATE SCHEDULE DESIGNATIONS: PROPOSED RATES

Supplement No.	Supersedes Supplement No. (as supplemented)	FPC Rate Schedule No.	Customer
23	22	245	City of Concond, N.C.
20	19	254	Town of Dallas, N.C.
28	25	237	Town of Forest City, N.C.
23	22	260	City of Kings Mountain, N.C.
25	24	231	City of Abbeville, S.C.
17	16	259	Clemson University, S.C.
18	17	249	City of Clinton, S.C.
13	12	269	City of Duke West, S.C.
37	36	241	City of Easley, S.C.
22	21	243	Commissioner of Public Works, Gaffney, S.C.
39	38	250	Commissioner of Public Works, Greenwood, S.C.
28	27	226	City of Greer, S.C.
28	26	244	Commissioner of Public Works, Laurens, S.C.
16	15	268	City of Newberry, S.C.
22	21	242	Town of Prosperity, S.C.
37	36	228	City of Rock Hill, S.C.
15	14	263	Town of Seneca, S.C.
17	16	256	Town of Westminster, S.C.
20	19	236	Health Springs Light and Power Company (S.C.)
27	24	252	Lockhart Power Company (S.C.)
19	18	262	South Carolina Electric & Gas Company (town of Chappels, S.C.)

[FR Doc. 84-5819 Filed 3-2-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EC84-13-000]

The Empire District Electric Co.; Notice of Application

February 28, 1984.

Take notice that on February 23, 1984, The Empire District Electric Company ("Empire") submitted for filing an application pursuant to Section 203 of the Federal Power Act, for approval of its disposal of 2.29 miles of a double circuit 161 KV transmission line to N.W. Electric Power Cooperative Inc. ("NWC") which interconnects the Stockton Dam Hydroelectric Project, in Cedar County, Missouri, with a 161 KV transmission line from Springfield to Clinton, Missouri, owned and operated by NWC.

This transaction enables Empire to dispose of facilities that no longer serve a useful purpose for its system and to expand its system interconnections with the Southwestern Power Administration ("SWPA"). It also permits SWPA to continue to market power from the Stockton Dam and NWC to maintain an interconnection with SWPA at the Stockton Dam.

Any person desiring to be heard or to make any protest to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 16, 1984. 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 protestants parties to any 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. Copies of this filing are on file with the commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5820 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2094-000]

James P. Fenstermaker; Notice of Application

February 28, 1984.

The filing individual submits the following:

Take notice that on February 16, 1984, James P. Fenstermaker filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

President and Chief Operating Officer and Director, Columbus and Southern Ohio Electic Company

Director, Indiana-Kentucky Electric Corporation

Director, Ohio Valley Electric Corporation

Any person desiring to be heard or to protest to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5823, Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-177-000]

Floyd Fairleigh; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 28, 1984.

On February 13, 1984, Floyd Fairleigh, President, Fairleigh Feed Yards, A Division of Fairleigh Corp., Route 2, Scott City, Kansas 67871, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submital constitutes a complete filing.

The topping cycle cogeneration facility, consisting of a reciprocating engine generator system, will be located at the Fairleigh Feed Yards. Thermal energy recovered from the engine cooling system will be used to heat drinking water for cattle. Thermal energy from the exhaust will be used to generate steam to operate steam flaking machinery to prepare corn for cattle feed. The primary energy source will be natural gas. The electric power production capacity will be 600 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5841 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-285-000]

Iowa Power and Light Co.; Notice of Filing

February 28, 1984.

The filing Company submits the following:

Take notice that on February 17, 1984, Iowa Power and Light Company (Iowa) tendered for filing a two-part Interim Agreement dated June 7 and 23, 1982 ("Interim Agreement), a Supplementary Agreement dated May 23, 1983 ("Supplementary Agreement"), Service Schedule B dated July 25, 1983 ("Schedule B") and Service Schedule I dated July 25, 1983 ("Schedule I") between Iowa Power and Indianola Waterworks and Electric Light and Power Board of Trustees (Board of Trustees).

Iowa states that the Interim and Supplementary Agreements provide for a compromise agreement interpreting certain sections of Iowa Power and Light Company Rate Schedule FERC No. 45 between Power and the Board of Trustees. Schedules B I provide for the sale and transmission of Base Load Power and Energy between Iowa and the Board of Trustees.

Iowa requests that the Commission waive its prior notice requirements and accept the Interim Agreement with an effective date of May 1, 1982, the Supplementary Agreement with an effective date of May 1, 1983, and Schedules B I with an effective date of May 1, 1983.

Copies of the filing were served upon each affected party and the Iowa State Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 15, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5822 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-284-000]

Kentucky Utilities Co.; Notice of Filing

February 28, 1984.

The filing Company submits the following:

Take notice that on February 16, 1984, Kentucky Utilities Company (KU) tendered for filing a Service Agreement dated January 1, 1984 between KU and East Kentucky Power Cooperative (East Kentucky). The Service Agreement provides for, among other things, an additional delivery point between the two systems. An Agreement between the parties dated January 13, 1979 which is on file with this Commission (Company Rate Schedule FPC No. 96) provides for additional delivery points.

KU requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to East Kentucky and the Public Service Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1984. Protests will be considered by the Commission in determing 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5826 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2093-000]

John W. Rowe; Notice of Application

February 28, 1984.

The filing individual submits the following:

Take notice on February 9, 1984, John W. Rowe filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

President, Central Maine Power Company
Director, Central Maine Power Company
Director, Maine Yankee Atomic Power Company
President, Maine Electric Power Company, Inc.
Director, Maine Electric Power Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5825 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-113-000]

Superior Water, Light and Power Co.; Notice of Refund Report

February 28, 1984.

Take notice that on February 6, 1984, Superior Water, Light and Power Company submitted its Refund Report in compliance with the Commission's Letter Order of January 18, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Captiol Street, NE., Washington, D.C. 20406, on or before March 14, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5827 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2096-000]

James W. Tipton, Notice of Application

February 28, 1984.

The filing individual submits the following:

Take notice that on February 16, 1984, James W. Tipton filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Kentucky Utilities Company
Vice President, Old Dominion Power Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-5824 Filed 3-2-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Second Stage Refund Procedures

November 30, 1983.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of second stage refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has issued a Decision and Order concerning second stage refund procedures to be implemented for distribution of the consent order funds remitted to the DOE by Belridge Oil Company.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2390.

SUPPLEMENTARY INFORMATION: The Decision and Order which appears below establishes procedures for distribution of the consent order funds, remitted to the DOE by Belridge Oil Company, which remain after the first stage of the refund proceeding. During the first stage of the proceeding, no

injured first purchasers came forth with an Application for Refund. Consequently, the escrowed funds, amounting to $95,821.49 plus interest, shall be distributed for the benefit of unidentifiable end-users in the distribution chain of Belridge product, injured by the alleged overcharges.

In this Decision, the Office of Hearings and Appeals (OHA) apportioned the Belridge consent order fund among the fifty states according to the percentage of national motor gasoline consumption, and among the territories and possessions of the United States according to the percentage of the total population residing in the particular jurisdiction. In this manner, refund shares will be proportional to the probable level of injury sustained by end-users within the jurisdiction. Upon approval by the OHA of a plan submitted by a jurisdiction that will provide restitutionary benefits to consumers of natural gas liquids products within that jurisdiction, the refund amount apportioned to that jurisdiction will be disbursed. As discussed in the Decision below, the DOE has concluded that the state governments are appropriate bodies to formulate a distribution plan in these proceedings because they will provide effective and efficient restitution to petroleum products consumers in the relevant market areas.

Dated: November 30, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Second Stage Refund Procedures

November 30, 1983.

Name of Case: Belridge Oil Company.
Date of Filing: June 20, 1983.
Case Number: HQF-0022.

I. Background

On November 20, 1981, the Office of Hearings and Appeals (OHA) issued a Decision and Order setting forth procedures to distribute $95,821.49 obtained as a result of a consent order entered into by the Department of Energy (DOE) and Belridge Oil Company (Belridge), a seller of natural gas liquids (NGLs). *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), hereinafter cited as the November 20 Order. *See also*, 10 CFR Part 205, Subpart V.

The consent order was entered into on July 20, 1980 and resolved issue involving sales of NGLs during the period August 1, 1975 through July 31, 1979 (consent order period) from Belridge's natural gas process plant. Belridge's major first purchasers during the consent order period were the Standard Oil Company of California (Chevron) and Coast Gas, Inc. (Coast). Notice of the consent order was published in the **Federal Register** on August 28, 1980. *See* 45 FR 57520 (1980). Interested parties were invited to submit written notice to the DOE of potential claims against the settlement fund. Although Chevron informed the DOE of its intent to file a claim against the settlement fund, no such claim was ever actually filed.

In the November 20 Order, the OHA established a two-stage process for distribution of the Belridge consent order monies. During the first stage, determinations would be reached on the merits of refund applications from parties which could establish that they purchased NGLs produced by Belridge. If consent order funds remained after distribution to direct purchasers, the November 20 Order indicated that second-stage procedures would be implemented to refund monies to unidentifiable parties who may have been injured by the alleged overcharges.

The deadline for receiving applications from first purchasers has now passed, and OHA has not received any first stage applications.

II. Comments on Second Stage Refund Procedures

On May 12, 1983, OHA issued a Decision and Order (hereinafter known as the May 12 Order) inviting California and any other interested parties to file a plan for distributing of the consent order funds in the Belridge escrow account. *See Belridge Oil Company/State of California*, 11 DOE ¶ 85,010 (1983). OHA specifically requested that the State of California submit a plan to divide the Belridge consent order funds among states representing overcharged end-users. The May 12 Order requested that California's plan address three points in particular:

(1) procedures for notifying other states of the opportunity for filing refund applications in the Belridge proceeding;

(2) criteria against which to evaluate states' claims; and

(3) a methodology to distribute the funds to those states with meritorious claims.

All state energy offices were served with a copy of the May 12 Order, and were invited to file proposed methodologies for distribution of the Belridge funds among the states.

On June 15, 1983, California submitted an apportionment plan in which it suggests that the funds be distributed based upon the percentage of Belridge product marketed by the two major first purchasers, Chevron and Coast, within each state. California presumes that Coast marketed completely within California and that since Coast bought 18.77% of the product produced by Belridge during that period, a corresponding percentage of the refund monies should be apportioned to California. California further suggests that the 81.23% sold to Chevron be distributed on the basis of Chevron's sales in each state.

In addition, OHA received proposed methodologies from thirteen of the state energy offices contacted. A number of states propose to divide the funds according to the percentages of Belridge product marketed in each state. *See Palo Pinto*, 11 DOE ¶ 82,034 (1983). This methodology is similar to the California plan, since the Belridge NGLs were marketed exclusively by Chevron and Coast. *See* 46 Fed. Reg. 28933 (May 24, 1981). Both methods constitute an equitable way to distribute refunds to end-users. However, we do not believe these methodologies are feasible in the proceeding at hand.

Although the two major marketers of Belridge product have been identified, we have no insight into their marketing practices throughout the states during the consent order period. We have tried to ascertain the nature of these practices by examining the 10K forms and Annual Reports filed with the United States Securities and Exchange Commission (SEC). We also followed California's suggestion and examined the *National News and Petroleum Factbook* for the years covering the consent order period. Neither of these sources, however, held any records for Coast, and the information available for Chevron provided no definitive data on the company's domestic marketing practices.

III. Discussion of Second Stage Refund Procedures

Because of the lack of information, we have been forced to adopt a different methodology in this proceeding. Instead of dividing the funds on the basis of NGL marketing practices of Chevron and Coast, we have decided to distribute funds on the basis of national motor gasoline consumption during the consent order period, as reported in the *State Energy Data Report* (DOE/EIA-0214/81 (1983)). As we indicated in *Palo Pinto Oil & Gas*, 11 DOE ¶ 85,034 (1983), there is a significant connection between prices of NGLs and motor gasoline pricing. It is likely that increased costs for NGLs would have had an impact on gasoline prices because they are used as refinery

feedstock, and natural gas liquid products are an input in the production of gasoline. *Id.* at 88,048. Thus, those firms that purchased NGLs from Belridge for the purpose of producing motor gasoline, would probably have included the alleged Belridge overcharges in their own pricing schedules. We therefore find that there is ample foundation for basing the refund granted to individual states in this proceeding on motor gasoline consumption. Since as discussed above, we have not been able to obtain relevant, specific information regarding the marketing operations of Chevron and Coast, we have concluded that it is appropriate to use national motor gasoline consumption data as the basis for the state refunds. We believe that given the circumstances, this apportionment plan is the most expedient and effective way to distribute the consent order funds. The methodology we have chosen targets all potentially injured end-users of Belridge product, and compensates them in an equitable manner. The percentages of the consent order funds that each state and territory will receive are set forth in the Appendix to this Decision and Order. Finally, we anticipate that the approach adopted in the instant proceeding to divide refund monies among the states may well prove applicable in future Subpart V proceedings in which NGLs are involved.

IV. Application Procedures

Each state or territory that wishes to file a claim for a refund shall file a plan delineating the energy-related project or projects it desires to fund with its share of the Belridge consent order monies. The plan should include a brief description of each project and an explanation of how each project will benefit those citizens who were likely to have borne the impact of the alleged overcharges. Each state's plan should also include a statement that the proposed project(s) is(are) either a new program, or an enlargement of an existing program. It should be noted that funds may not be used to replace state funds already allocated for the project(s) in question, and that furthermore, there is no particular procedure to be followed in formulating a plan.

Each state plan should list the name, position title, and telephone number of a person who may be contacted by the OHA for additional information concerning the plan, and should be signed by a responsible governmental official to whom the refund check should be sent. In addition, each submission shall include the following statement signed by an appropriate state official: I affirm that I am authorized to submit a plan, on behalf of [the state or commonwealth], for distribution of a refund obtained in the Belridge refund proceeding. Since all applications for refund will be available for inspection in the OHA Public Docket Room, each state should submit two copies of its plan, one of which will be placed in the Public Docket Room. The submission should be sent to the following address: Belridge Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

We will review each state's plan to see whether it fulfills the general requirement that the projects undertaken will benefit those citizens who were most likely affected by the transactions covered by the Belridge consent order. Upon approval of a refund plan, the funds will be transferred from the DOE escrow account maintained at the United States Treasury to the State. Since refunds will be approved only upon a favorable evaluation by OHA of each state's plan, the DOE will retain jurisdiction over the refund pool.(2)

Finally, we will, as a condition of an Order approving a state plan, require each state to submit a report, within two years of receipt of a refund, which sets forth the final disposition of the funds.

V. Conclusion

In the foregoing determination, we have prorated the monies remaining in the Belridge refund account and established procedures for filing refund claims to be followed by governments of states and United States territories and possessions in the second stage of the Palo Pinto refund proceeding.

It is therefore ordered that:

(1) The fifty states and territories and possessions of the United States shall be apportioned the percentages of the Belridge Oil Company escrow fund set forth in the Appendix to this Decision, plus a proportionate share of accrued interest.

(2) Payment to each jurisdiction of the amount set forth in paragraph (1) will be made after approval by the Office of Hearings and Appeals of a plan submitted by the jurisdiction which will benefit probable injured parties within the jurisdiction and which conforms with the guidelines set forth in the foregoing Decision.

(3) This is a final order of the Department of Energy.

Dated: November 30, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) Since the consent order period covered only the last five months of 1975 and the first seven months of 1979, plus the years 1976 through 1978, the totals for 1975 and 1979 were adjusted accordingly and added to the totals of the years 1976 through 1978. A different methodology was adopted for the U.S. territories and possessions, for which statistics on motor gasoline consumption were not readily available. In those instances, consumption figures are based upon their relative percentages of the total territorial population.

(2) It should be noted that there is no deadline to submit Applications for Refund. Those jurisdictions entitled to only a relatively insignificant percentage of the Belridge consent order funds are encouraged to postpone Application until additional Subpart V refunds are available, and to file a collective Application at that time.

BELRIDGE OIL COMPANY STATE AND TERRITORIAL REFUNDS

State	Consumption1975–79 (thousand bbls.)	State (percent)	Refund amount
Alabama	194,129	1.866	$1,763
Alaska	18,547	.178	168
Arizona	122,394	1.178	1,112
Arkansas	115,479	1.111	1,049
California	1,054,909	10.152	9,582
Colorado	138,016	1.328	1,254
Connecticut	130,600	1.257	1,186
Delaware	29,082	.280	264
District of Columbia	20,885	.201	190
Florida	431,827	4.156	3,922
Georgia	279,094	2.686	2,535
Hawaii	29,272	.282	266
Idaho	49,016	.472	445
Illinois	496,909	4.782	4,513
Indiana	270,419	2.602	2,456
Iowa	161,629	1.555	1,468
Kansas	132,554	1.276	1,204
Kentucky	173,536	1.670	1,576
Louisiana	191,298	1.841	1,738
Maine	52,970	.510	481
Maryland	184,503	1.776	1,676
Massachusetts	225,968	2.175	2,052
Michigan	454,103	4.370	4,125
Minnesota	203,348	1.957	1,847
Mississippi	119,041	1.146	1,081
Missouri	262,582	2.527	2,385
Montana	46,454	.447	422
Nebraska	86,009	.828	781
Nevada	42,930	.413	390
New Hampshire	40,375	.389	367
New Jersey	314,072	3.022	2,853
New Mexico	71,709	.690	651
New York	565,042	5.438	5,132
North Carolina	286,921	2.761	2,606
North Dakota	41,522	.400	377
Ohio	495,784	4.771	4,503
Oklahoma	166,252	1.600	1,510
Oregon	126,918	1.221	1,153
Pennsylvania	473,027	4.552	4,296
Rhode Island	36,021	.347	327
South Carolina	152,495	1.467	1,385
South Dakota	44,374	.427	403
Tennessee	229,677	2.210	2,086
Texas	771,177	7.421	7,005
Utah	65,618	.631	596
Vermont	24,222	.233	220
Virginia	254,842	2.452	2,315
Washington	179,730	1.730	1,632
West Virginia	83,015	.799	754
Wisconsin	218,217	2.100	1,982
Wyoming	33,025	.318	300
Total	10,391,534	100.000	94,385

REFUND DIVISION BETWEEN STATES AND TERRITORIES

	Population	Percent of total population	Amount of refund
States	226,504,825	98.501	$94,385
Territories	3,447,085	1.499	1,436
Total	229,951,910	100.000	95,821

TERRITORIES REFUND

Territories	Population	Percent of total population	Refund amount
American Samoa	32,395	.940	13
Guam	105,821	3.070	44
Northern Mariana Islands	16,758	.486	7
Puerto Rico	3,196,520	92,731	1,332
U.S. Virgin Islands	95,591	2,773	40
Total	3,447,085	100.000	1,436

[FR Doc. 84-5670 Filed 3-2-84; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of refund procedures for state governments and tribal organizations.

SUMMARY: The Office of Hearings and Appeals has issued a Decision and Order setting forth procedures by which the 49 states in which Amoco motor gasoline and middle distillates were sold and the Native American Tribes within those states may apply for a refund for the unclaimed portion of the refund moneys.

ADDRESS: State and tribal organization plans for distribution of funds should be mailed to: Marcia B. Proctor, Chief, Docket & Publications Branch, Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Deputy Assistant Director; Roger Klurfeld, Assistant Director; Office of Hearings and Appeals, Department of Energy, Washington, DC 20585, Telephone No.: (202) 252-2383.

SUPPLEMENTARY INFORMATION: On December 23, 1983, the Office of Hearings and Appeals issued a Decision and Order establishing procedures to be used in refunding money obtained by the DOE through a consent order with Standard Oil Company (Indiana), commonly known as Amoco. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In that determination, the OHA divided the settlement fund into six pools of money which approximately corresponded to Amoco's sales of crude oil and different refined petroleum products. Approximately $46.2 million was set aside to satisfy claims filed by Amoco's motor gasoline customers, and approximately $6.4 million was designated for refunds to middle distillate customers. In addition, the Decision held that the unclaimed portion of the funds set aside to satisfy claims by consumers would be distributed to the states in which the products were sold.

Today's Decision and Order, which is set out in full at the end of this Notice, sets forth procedures by which the 49 jurisdictions in which Amoco motor gasoline and middle distillates were sold (the lower 48 mainland states plus the District of Columbia) and all independent Native American Tribes within these jurisdictions may apply for a refund for the unclaimed portions of those two product pools. Those entities will now be permitted to submit plans for the use of the designated funds and, once each plan is approved, the money will be disbursed to the submitting agency. The amount of the funds to be distributed is approximately $24 million.

Plans must meet the general restitutionary objective of benefiting the class of persons who were injured by the alleged violations—consumers of motor gasoline and middle distillates. Each plan will be scrutinized to ensure that administrative costs will be minimized. Each plan must be implemented within a reasonable period following receipt of the funds. After implementation of the plan, each submitting agency should file a report with the OHA which includes a certification that the funds were spent in accordance with the approved plan. Agencies submitting plans and post-plan reports should file two copies of their submissions. These copies will be available for public review in the OHA Public Docket Room.

Following the broad guidelines discussed above, the plans that the states and Native American Tribes submit should include the following information:

(1) A statement certifying that the submitting agency or office has authority under state or federal law to submit the plan;

(2) A description of the program or programs to be funded;

(3) A statement explaining whether each program is an enlargement of an existing program or a new project;

(4) An explanation of the manner in which consumers of the covered products will benefit from the programs;

(5) A statement certifying either that the tribal organizations responsible for administering reservations located within a state have agreed that the state's proposal will provide an equitable share of the allocated funds for tribal members residing on the reservations or that those tribal organizations will file a separate proposed plan;

(6) The time frame for implementation of the programs;

(7) A statement committing the agency or office responsible for administering the plan to filing with the OHA a post-plan report, which will include a certification that the funds were spent in accordance with the DOE-approved plan;

(8) The name and address of the agency official to whom the check should be sent.

To the extent that benefits will be derived by the class of persons who are users of the covered products the funds may be used to augment various federal energy-related programs already implemented for these purposes. The states and tribes are free to select any appropriate energy-related project or program, new or existing, so long as the funds will be spent in a manner which satisfies the restitutionary objectives of this special refund proceeding.

The Amoco motor gasoline fund will be distributed among the 49 jurisdictions in which the firm marketed the product in the proportion which each state's sales of Amoco motor gasoline bears to Amoco's national sales of the product during the period March 1973 through December 1979. Each Native American tribe's share of the fund will be subtracted from those of the states within whose borders the tribe resides, if the tribal organization determines to file a separate plan. Tribal organizations are to include as part of their plans a proposal for determining what portion of a state's share should be designated for use by the tribe.

The Amoco middle distillate fund will be distributed among the 48 jurisdictions in which the firm marketed the products in the proportion which each jurisdiction's sales of Amoco middle

distillates bears to Amoco's national sales of the products during the period March 1973 through July 1976. The Native American Tribes' portions of this fund will be determined in the same manner as their portion of the motor gasoline fund.

Dated: November 6, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 16, 1983.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Second Stage Refund Procedures

Name of Petitioner: Standard Oil Company (Indiana).

Date of Filing: April 25, 1983.

Case Number: HQF-0020.

On December 23, 1982, the Office of Hearings and Appeals issued a Decision and Order establishing procedures to be used in refunding money obtained by the DOE through a consent order which it entered into with Standard Oil Company (Indiana), commonly known as Amoco. *See Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*). In that determination, the OHA divided the $100 million settlement fund (approximately $72 million plus interest) into two funds that would be used to pay claims filed by purchasers of crude oil and purchasers of Amoco's refined products. The refined products fund was further subdivided into five pools of money corresponding to the major groups of refined products sold by Amoco. Approximately $46.2 million was set aside to satisfy claims filed by Amoco's motor gasoline customers, and approximately $6.4 million was designated for refunds to middle distillate customers.(*1*) The December 23 Decision specified that the unclaimed portion of the funds set aside to satisfy claims by consumers of motor gasoline and middle distillates would be distributed to the states in which the products were sold upon approval of state plans to benefit those consumers. *Amoco* at 88,215, 88,217. The purpose of this determination is to set forth procedures by which the 49 states in which Amoco motor gasoline and middle distillates were sold may apply for a refund from the pools established for those products.(*2*)

Background

The fund at issue in this proceeding was obtained from Amoco through a consent order which it entered into with the DOE in 1980. The consent order covered almost all of Amoco's production, refining and sales activities that were subject to federal price and allocation controls throughout a seven-year period. Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration's Office of Special Counsel may request the Office of Hearings and Appeals to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On July 18, 1980, the Office of Special Counsel petitioned the Office of Hearings and Appeals to implement special refund procedures to distribute the Amoco settlement moneys because it was "unable to readily identify persons who are entitled to refunds or to readily ascertain the amounts that such persons are entitled to receive." Petition for the Implementation of Special Refund Procedures at 1.

The purpose of the DOE special refund procedures is to provide an equitable mechanism for refunding money to parties who were injured by alleged overcharges. *Office of Enforcement,* 9 DOE ¶ 82,508 (1981). In order to accomplish this goal, certain important assumptions are necessary in view of the difficulty of ascribing injury to any particular party in a case where the existence of actual overcharges has not been established. The DOE regulations governing special refund procedures provide that:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(c).

In formulating the Amoco special refund procedures, the OHA drew on its experience with the use of presumptions in previous cases and adopted a number of presumptions designed to minimize the amount of complex historical information an applicant was obliged to provide to qualify for a refund. The purpose of these presumptions was to make the refund process accessible to the broad range of entities affected by Amoco's regulatory proactices. For example, in *Office of Enforcement,* 8 DOE ¶ 82,597 (1982), the OHA had noted that there was no conclusive finding that the firm making the settlement had violated the DOE regulations and no indication as to the probable distribution of the alleged overcharges. We therefore adopted a presumption that the injurious effects of the consenting firm's regulatory practices were spread evenly over volumes of product purchases by all its customers. Accordingly, each claimant would be paid a refund on a volumetric basis, *i.e.* in the proportion that an applicant's purchase volume bore to the entire volume of petroleum products that were subject to DOE price and allocation controls during the consent order period. *Office of Enforcement,* 8 DOE at 85,393; *but see Office of Enforcement,* 10 DOE ¶ 85,016 (1982) (refunds distributed only to customers named in a final remedial order, based on findings in the remedial order).

The Amoco settlement fund was also obtained through a consent order which the DOE entered into before it had established whether Amoco had violated the DOE regulaitons or the amount of overcharges and identity of overcharge victims. Consequently, the OHA adopted a rebuttable presumption that each applicant suffered equally from Amoco's regulatory practices and that therefore each applicant would be allotted a refund based upon the proportion which his purchases of Amoco product bore to the entire volume of Amoco product sold. Thus, the total amount of money available for refund was divided by the total number of gallons of product sold by Amoco to calculate a per-gallon recovery amount. *See Amoco* at 88,199.

In addition to a presumption that alleged overcharges were dispersed over every gallon of Amoco product, the OHA adopted level-of-distribution presumptions concerning the manner in which the volumetric refund for each gallon of motor gasoline and middle distillate should be divided among the various levels in the distribution chain.(*3*) Thus in applying for a refund any Amoco motor gasoline or middle distillate customer who was willing to have this mechanism applied to its claim was required to provide only the total number of gallons which it purchased and the level of distribution at which it obtained those gallons. The *Amoco* Decision further provided that no refunds for less than $15, the administrative cost of issuing a refund check, would be processed. *See Uban Oil Co.,* 9 DOE ¶ 82,541 (1982) at 85,225.

The adoption of these presumptions provided a mechanism for applying for a refund that could be used by a variety of Amoco customers at all marketing levels. However, in establishing the presumptions for consumers of motor gasoline and middle distillates, the OHA recognized that it was extremely unlikely that many individual consumers of these products purchased sufficient

quantities during the Amoco consent order period to qualify for a refund at or above the $15 minimum level because the per-gallon refund, even without the application of the appropriate level-of-distribution percentage, is less than one-tenth of a cent. In addition, many consumers of motor gasoline and middle distillates would probably not have records of the volume of their purchases. In order to provide for restitution to persons whose claims were too small to be processed and paid individually, we determined that the remainder of the consumers' portions of the motor gasoline and middle distillate refund pools would be distributed on their behalf to the states in which these Amoco products were sold upon the submission by those states of plans to use the funds to benefit consumers of these products. However, inasmuch as we expected the number and complexity of claims filed by resellers and retailers to be enormous, we did not indicate when and to whom the residual funds allotted to those types of claims would be distributed.(4)

We are now ready to distribute the portions of the motor gasoline and middle distillate pools that have gone unclaimed by consumers. In addition, our analysis of applications filed by other types of claimants has progressed to the point that we can now estimate with certainty the maximum amount that will be necessary to satisfy all of the motor gasoline and middle distillate claims filed by Amoco's customers.(5) We now know that the payment of these claims will require a maximum of $30 million of the amounts designated for payment of motor gasoline and middle distillate claimants.(6) We have concluded that it would further the restitutionary goal of this proceeding—refunds to injured parties—and would be administratively efficient to determine at this time the disposition of the $24 million in unclaimed funds ($52.6 million originally in the pools plus $1.4 million in interest minus $30 million in potential claims).

In the course of the deliberations that preceded our December 23 Decision and Order, some commenters in the Amoco refund proceeding suggested that since few consumers were likely to file claims for a portion of the refund money, the entire fund should be divided among all those refund applicants who were successful in establishing their purchases of Amoco product. If this proposal had been adopted, the Amoco refunds would be limited to refiners, resellers, retailers, and very large consumers. We rejected that argument because it was unfair to smaller claimants:

> [T]he fact that claims to specific refunds may not be made does not mean that injuries to customers who did not file claims have not occurred. Rather, the absence of claims for the full amount of the settlement would tend to reflect the small size of these claims as well as the difficulty and expense of filing a claim. Refunding money to benefit adversely affected parties, even through their identities and the amounts which they should receive are not easily ascertainable, is the primary concern of Subpart V proceedings.

Amoco at 88,199. We therefore concluded that state governments should be permitted "to stand in the shoes" of those consumers who were injured but did not file claims. After careful consideration, we have concluded that the restitutionary goal of this proceeding would best be served by permitting the state governments to recover all of these residual funds in order to redress the injury suffered by members of all classes of customers residing in the state who did not file claims in the first stage. These funds will be distributed to the states in the proportion which each state's consumption of these Amoco products bears to Amoco's national sales.(7)

We have in previous cases noted the particular suitability of state governments as a means of channelling the benefits of consent order moneys to persons who most likely were injured by the consenting firm's regulatory practices. In *Office of Enforcement*, 10 DOE ¶ 85,072 (1983), we concluded that the funds remaining from a consent order covering the sale of No. 2 fuel oil to customers in the New York City area would best be distributed through New York State because:

> New York State is familiar with the energy needs of its populace, and with the existing and potential mechanisms for distributing these funds through energy-related programs in a cost-effective manner. A state-formulated plan will therefore provide effective and efficient restitution . . .

Office of Enforcement, 10 DOE at 88,309. In the present case, where the covered transactions involved Amoco customers in 49 states, state governments are likewise in the best position to formulate and implement plans that will best suit the injured parties in their respective jurisdictions. We therefore conclude that the remainder of the refund moneys unpaid and attributable to Amoco's motor gasoline and middle distillates sales should be allocated to state governments whose distribution plans are approved by the Office of Hearings and Appeals. These plans, as explained in detail below, must utilize the money to benefit purchasers of these products.(8)

We have attached as an Appendix to this Decision a chart showing each state's respective percentage share of the motor gasoline and middle distillate pools and the total amount of money to be distributed to each state.(9) We have recently been apprised, however, that there are additional jurisdictions which should also be eligible to file for refunds on behalf of their residents because those residents, who were also consumers of Amoco petroleum products, may not be eligible to receive the benefits of state restitutionary plans. On October 13, 1983, the Navaho Tribe of Indians filed a submission with the Office of Hearings and Appeals in which it sought to participate in the second-stage distribution of Amoco refund money. We have determined that the Navaho Tribe has raised an important issue that warrants modification of the second-stage refund procedures which we had planned to follow in this case.

In their submission, the Navaho Tribe contends that the federally recognized Indian tribes are each self-governing political entities that are autonomous from the states within whose borders their reservations lie. *Worcester* v. *Georgia*, 31 U.S. 515 (1832); *Williams* v. *Lee*, 358 U.S. 217 (1959). The Navaho Tribe states that among the services which it provides for its members is its own Low Income Home Energy Program. *See* 10 CFR Part 440. The Navaho Tribe therefore asks that it be designated as an entity eligible to receive some portion of the second-stage refund moneys for the benefit of the consumers it represents.

Upon review of the Navaho Tribe's submission and the DOE regulations governing federally funded state grants, we have concluded that the Tribe's request should be granted. It also appears that the same treatment should be extended to all Indian tribes whose members would otherwise be excluded from the benefits of these refund proceedings. We are aware, for example, that the DOE regulations governing weatherization assistance for low-income persons provide that a portion of a state's funds may be apportioned to tribal representatives in cases where the DOE Regional Representative determines it appropriate to do so. 10 CFR 440.11. That apportionment of funds is based upon the ratio of low-income Native Americans within the state to all low-income persons within the state. 10 CFR 440.11(b). We have concluded that similar treatment should be extended to tribes whose members would not

receive the benefits of state restitutionary plans approved in this proceeding because the tribal organization administers energy programs that are independent of state programs. Consequently, we shall accept from tribal organizations plans for using a share of the Amoco motor gasoline and middle distillate funds. Those plans should meet the general requirements for state plans which are outlined below. Tribal plans should also include information indicating that tribal members residing on the reservation are not eligible to participate in state programs being funded by the Amoco refund moneys and a proposal for allocating to the tribal organization a portion of the funds allocated to the state or states within whose borders the reservation lies. Of course, many residents of reservations may already be served through agreements between tribal organizations and the respective state governments, and those tribal organizations need not apply for refund money separately from state government.

Requirements for State Distribution Plans

As we have indicated above, the funds to be designated for distribution to the states and tribes will be disbursed upon our approval of each entity's plan for spending this money. The plans should meet the general restitutionary objective of benefiting the class of persons who were injured by the violations—consumers of motor gasoline and middle distillates. Agencies submitting plans and post-plan reports should file two copies of their submissions. These reports will be available for public review in the OHA Public Docket Room.

Each entity's plan will be scrutinized to ensure that administrative costs will be minimized.(*10*) The refunds must not be used as a substitute for state funds to implement projects or programs which would be funded regardless of this distribution. In other words, the money distributed to the states should be used to supplement, not supplant, any state or federal funds which are already budgeted for those purposes. Once the OHA has approved the plan, it will issue an order directing disbursement of the appropriate funds to the applicant. *See, e.g., Worldwide Energy Corp./State of Oklahoma*, 11 DOE ¶ 85.109 (1983). Each plan must be implemented within a reasonable period following receipt of the funds. After implementation of the plan, each refund recipient should file a report with the OHA which includes a certification that the funds were spent in accordance with the approved plan.

Following the broad guidelines discussed above, the plans that the states and tribal organizations submit should include the following information:

(1) A statement certifying that the submitting agency or office has authority under state or federal law to submit the plan;

(2) A description of the program or programs to be funded;

(3) A statement explaining whether each program is an enlargement of an existing program or a new project;

(4) An explanation of the manner in which consumers of motor gasoline and/or middle distillates will benefit from the programs;

(5) A statement certifying either that the tribal organizations responsible for administering reservations located within a state have agreed that the state's proposal will provide an equitable share of the allocated funds for tribal members residing on the reservation or that those tribal organizations will file a separate proposed plan;

(6) The time frame for implementation of the programs;

(7) A statement committing the agency or office responsible for administering the plan to filing with the OHA within two years of our Decision and Order approving the plan, a post-plan report, which will include a certification that the funds were spent in accordance with the DOE-approved plan; and

(8) The name and address of the agency official to whom a refund check should be sent.

To the extent benefits will be derived by users of motor gasoline and middle distillates, the funds may be used to augment various federal energy-related programs already implemented for these purposes. However, the augmentation of federal programs that benefit middle distillate users to the exclusion of motor gasoline users will not be acceptable. The states and tribal organizations are free to select any appropriate energy-related project or program, new or existing, so long as the funds will be spent in a manner which satisfies the restitutionary objectives of this special refund proceeding.

Conclusion

In summary, we have concluded that the Amoco motor gasoline fund will be distributed among the 49 jurisdictions in which the firm marketed the product in the proportion to which each state's sales of Amoco motor gasoline bears to Amoco's national sales of the product during the period March 1973 through December 1979. The Amoco middle distillate fund will be distributed among the 48 jurisdictions in which the firm marketed the products in the proportion to which each jurisdiction's sales of Amoco middle distillates bears to Amoco's national sales of the products during the period March 1973 through July 1976. Representatives of tribal organizations administering reservations located within states in which these Amoco products were sold may file applications for a portion of the funds allocated to the states within whose borders the reservations lie.

Each state and tribal organization will be notified of its eligibility to file a restitutionary plan in a letter accompanying this Decision and Order. States and tribal organizations should now submit plans for the use of the designated funds and, once the plan is approved, the money will be disbursed to the submitting agency.

It is therefore ordered that:

The governments of the lower 48 mainland States of the United States and the District of Columbia and the federally recognized tribal reservations shall be permitted to submit plans in accordance with the standards set forth in this Decision for the use of each jurisdiction's proportionate share of the escrow account established by the consent order entered into by the Department of Energy and Standard Oil Company (Indiana). These plans shall benefit purchasers of motor gasoline and middle distillate within those jurisdictions.

Dated: November 16, 1983.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(*1*) By middle distillates we mean No. 2 heating oil, No. 2D diesel fuel, No. 1 heating oil and No. 1D diesel fuel.

(*2*) Amoco motor gasoline was sold in all 48 mainland states of the United States and the District of Columbia. Amoco middle distillates were sold in the same states, with the exception of California.

(*3*) For a complete discussion of the data used and our analysis thereof, *see* Amoco at 88,205–12.

(*4*) We did, however, state that we preferred distribution to the states in cases involving refined products other than natural gas liquids. Amoco at 88,201.

(*5*) The passage of time has shown that we somewhat overestimated the number of refund applications that would be filed and underestimated OHA's capacity to process rapidly those applications which we did receive. Although more than 12,000 refund applications were filed, we have now resolved over 90 percent of the claims filed by resellers and retailers as well as consumers.

(*6*) Most of the remaining refund applications either are presumption-type

applications that require the submission of further information by the applicant or non-presumption applications in which the applicant seeks recovery of the entire per-gallon refund amount rather than the level-of-distribution presumption percentage. By allotting 100 percent of the per-gallon refund amount to those claims and setting aside the full amount of money claimed in non-presumption applications we can establish the maximum amount of money that will be required to pay all remaining claimants. Using this method, we conservatively estimate that $21 million of the motor gasoline pool and $3 million of the middle distillate pool will remain after payment of all outstanding refund claims in these categories.

(7) Approximately one-fourth of this sum is attributable to interest that has accrued on the Amoco escrow fund.

(8) We did not make any final determination in the December 23 Decision as to the disposition of the remainder of the residual moneys from other product pools, *see* Amoco at 88,217–20. Not enough progress on resolution of those claims has been made for us to make that decision in the present determination.

(9) The states' percentage shares of the respective product pools were calculated using sales information provided by Amoco to the Energy Information Administration during the period of federal petroleum regulations.

(10) In PVM Oil Associates Inc./New York State Energy Office, 11 DOE ¶ 85,072 (1983), we advised the submitting agency that the limitation of administrative expenses to five percent provided for in the regulations governing the Institutional Building Grant Program, 10 C.F.R. Part 455, while not specifically applicable to OHA special refund proceedings, provides a reasonable guideline for the appropriate portion of a restitutionary fund to be dedicated to administrative expenses. We indicated, however, that we might approve a higher level if the need for additional administrative funds was substantiated.

APPENDIX

State	Gasoline sales (percent)	Refund amount (dollars)	Distillate sales (percent)	Refund amount (dollars)	Total State refund (dollars)
Alabama	1.9759	414,943	.6704	20,113	435,056
Arizona	.0788	16,540	.0877	2,631	19,172
Arkansas	.6313	132,573	.2262	6,845	139,419
California	.5045	105,943	.0000	0	105,943
Colorado	1.7207	361,348	.8595	25,786	387,135
Connecticut	1.2269	257,650	.2672	8,016	265,666
Delaware	.0825	17,327	.0719	2,156	19,483
District of Columbia	.5997	125,932	.0550	1,649	127,581
Florida	4.7316	993,644	1.1865	35,595	1,029,239
Georgia	2.8028	588,582	1.2076	36,229	624,811
Idaho	.6029	126,619	.7271	21,814	148,433
Illinois	11.5826	2,432,349	14.2609	427,827	2,860,176
Indiana	5.0508	1,060,662	8.0428	241,285	1,301,947
Iowa	3.6352	763,386	5.3739	161,216	924,602
Kansas	2.0131	422,747	1.4868	44,603	467,351
Kentucky	.2862	60,112	.3279	9,838	69,950
Louisiana	1.5655	328,758	.7390	22,170	350,928
Maine	.4828	101,389	.3743	11,229	112,617
Maryland	2.7734	582,411	2.5604	76,812	659,223
Massachusetts	1.3930	292,529	2.4414	73,243	365,772
Michigan	8.4618	1,776,979	10.2519	307,557	2,084,536
Minnesota	3.8560	809,766	6.3858	191,574	1,001,339
Mississippi	1.3224	277,703	.5144	15,432	293,135
Missouri	3.9197	823,133	3.5393	106,179	929,312
Montana	.5793	121,654	.4680	14,039	135,694
Nebraska	1.3362	280,606	2.1289	63,866	344,472
Nevada	.0379	7,949	.1504	4,513	12,462
New Hampshire	.1723	36,181	.1959	5,876	42,057
New Jersey	2.6384	554,071	2.0087	60,262	614,333
New Mexico	.0828	17,378	.1474	4,423	21,801
New York	4.6715	981,022	3.1023	93,069	1,074,091
North Carolina	3.1330	657,921	3.0836	92,507	750,428
North Dakota	1.4257	299,405	2.6326	78,977	378,382
Ohio	1.7569	368,954	.9323	27,970	396,924
Oklahoma	.4266	89,590	.2180	6,540	96,130
Oregon	.0212	4,446	.0572	1,715	6,161
Pennsylvania	4.2634	895,322	4.6404	139,212	1,034,534
Rhode Island	.1557	32,697	1.3658	40,975	73,672
South Carolina	1.6505	346,601	.9219	27,658	374,258
South Dakota	1.1798	247,751	1.4866	44,599	292,350
Tennessee	2.8521	598,946	1.3948	41,845	640,791
Texas	3.0939	649,715	1.9737	59,210	708,924
Utah	1.0733	225,398	1.7734	53,202	278,600
Vermont	.1095	22,992	.0383	1,150	24,142
Virginia	2.4118	506,477	3.4782	104,345	610,821
Washington	.4649	97,619	.1862	5,587	103,206
West Virginia	.7613	159,882	.5125	15,374	175,257
Wisconsin	3.8704	812,781	4.9386	148,158	960,939
Wyoming	.5315	111,614	.5043	15,130	126,744
Total	100.0000	21,000,000	100.0000	3,000,000	24,000,000

[FR Doc. 84-5671 Filed 3-2-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2536-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management section (PM–223); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Water Programs

All of the following are requests for renewal of ongoing programs. No revisions are proposed. The control authority is EPA or the State agency.

• Title: Pretreatment Fundamentally Different Factors Variance Request (EPA 0003).

Abstract: An industrial user of a publicly owned treatment works (POTW) may request a variance from its applicable categorical standard to obtain individualized effluent limits. A POTW may also request a variance on behalf of a user. Technical data describing the user and its discharge are submitted to the Director (EPA or State agency), who approves/denies the variance.

Respondents: Businesses and publicly owned treatment works.

• Title: Industrial Pretreater Slug Load Notification (EPA 0005).

Abstract: An industrial user of a publicly owned treatment works (POTW) must notify the POTW of the discharge of any pollutant at a flow rate or concentration that will interfere with the POTW's operations. This notification allows the POTW to plan and implement appropriate protective actions.

Respondents: Publicly owned treatment works.

• Title: Pretreatment Net/Gross Request (EPA 0006).

Abstract: An industrial user (IU) of a publicly owned treatment works (POTW) may obtain an adjustment to an applicable categorical pretreatment standard based on the quantity of pollutants in its intake water. To obtain this net/gross adjustment, the IU must submit a request to the EPA Region describing characteristics of its intake water, discharge and treatment technology within 60 days of the standard's effective date.

Respondents: Businesses.

• Title: Industrial User Self-Monitoring Report (EPA 0088).

Abstract: An industrial user [of a publicly owned treatment works (POTW)] subject to a categorical pretreatment standard must report semiannually to the control authority on continued compliance with the standard. The control authority determines whether enforcement actions are necessary.

Respondents: Businesses.

• Title: Industrial User Compliance Schedule Report (EPA 0147).

Abstract: An industrial user of a publicly owned treatment works subject to a specific categorical standard must submit reports that detail its progress in installing pretreatment technology to ensure compliance with the applicable standard. The reports indicate whether the user is following its schedule to achieve compliance with the standard by the appropriate deadline.

Respondents: Businesses.

÷ Title: Removal Credit Pretreatment Self-Monitoring Report (EPA 0148).

Abstract: Publicly owned treatment works (POTWs) that have been granted pretreatment removal credits submit reports to the approval authority (EPA or State agency) demonstrating continuous, consistent pollutant removal and sludge quality maintenance.

Respondents: Publicly owned treatment works.

Toxics Programs

÷ Title: Pesticide Usage Survey of Non-Farm Food Establishments (EPA 1146).

Abstract: EPA is conducting a survey of non-farm food establishments to gather information on pesticide usage. The information collected will ultimately affect regulatory decisions involving registration, data requirements and special studies.

Respondents: Non-farm food establishments.

* * * * *

Comments on all parts of this notice should be sent to:

David Bowers (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460; and

Wayne Leiss, Carlos Tellez or Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington D.C. 20503.

Dated: February 27, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-5702 Filed 3-4-84; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL 2535-5]

Control Techniques Guideline Document; Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of draft control techniques guideline (CTG) document for public review.

SUMMARY: The draft CTG document for control of volatile organic compound (VOC) emissions from air oxidation processes in the synthetic organic chemical manufacturing industry is available for public review and comment. This informational document has been prepared to assist States in analyzing and determining reasonable available control technology (RACT) for VOC emissions from air oxidation processes.

DATES: Comments should be submitted on or before April 19, 1984.

ADDRESSES: Comments should be submitted, in duplicate if possible, to the Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Robert Rosensteel.

Comments will be available for public inspection and copying between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Chemicals and Petroleum Branch, Room 730, Emission Standards and Engineering Division, Environmental Protection Agency, 411 West Chapel Street, Durham, North Carolina.

Copies of the draft CTG document may be obtained by contracting the Environmental Research Library (MD-35), (919) 541-2777, Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Please refer to "Guidelines Series—Control Techniques Guideline Document: Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry."

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel (919) 541-5671, Chemicals and Petroleum Branch (MD-13), Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On June 2, 1981, the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) reviewed a preliminary draft CTG document for control of VOC emissions from air oxidation processes. Five comments were received from industry representatives and trade groups. This draft CTG document was prepared based on the evaluation of the public comments received at NAPCTAC.

This CTG document is part of the third group of CTG documents published to assist the States in determining RACT for various stationary sources of VOC emissions. CTG documents are informational in nature and provide State and local air pollution control agencies with an initial information base for proceeding with their own analysis of RACT for specific stationary source categories of VOC emissions located within areas where an extension was granted to the attainment of the national ambient air quality standard for ozone. The CTG document reviews existing information and data concerning the technology and cost of various control techniques to reduce VOC emissions from air oxidation processes.

Under Executive Order 12291, the EPA must judge whether a rule is "major" and therefore subject to the requirements of a regulatory impact analysis. This CTG document is not a "rulemaking," rather it is a notice of availability. this notice and the draft CTG documents were submitted to the Office of Management and Budget (OMB) for review.

Dated: November 21, 1983.

Sheldon Meyer,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 84-5590 Filed 3-2-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 7590–36.

Title: East Coast Colombia Conference.

Parties:

Delta Steamship Lines, Inc.,
Flota Mercante Grancolombiana S.A.
Lykes Bros. Steampship Co., Inc.

Synopsis: The proposed amendment would authorize the parties to offer alternate port service within the conference trade.

Filing Party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Agreement No.: 7890–19.

Title: West Coast of South America Northbond Conference.

Parties:

Compania Chilean De Navigacion Interoceania
Chilean Line
Lykes Bros. Steampship Co., Inc.
Peruvian State Line
Transnave

Synopsis: The proposed amendment would authorize the parties to offer alternative port service within the conference trade.

Filing Party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Agreement No.: 10390–3.

Title: United States Atlantic & Gulf/Ecuador Freight Conference.

Parties:

Delta Steampship Lines, Inc.,
Ecuadorian Line, Inc.
Transnave

Synopsis: The proposed amendment would authorize the parties to offer alternative port service within the conference trade.

Filing Party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

Agreement No.: 10390–4.

Title: United States Atlantic & Gulf/Ecuador Freight Conference.

Parties:

Delta Steampship Lines, Inc.,
Ecuadorian Line, Inc.
Transnave

Synopsis: The proposed amendment would establish a right of independent action.

Filing Party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

By Order of the Federal Maritime Commission.

Dated February 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 48–5882 Filed 3–2–84; 8:45 am]

BILLING CODE 6730–01–M

Berthing Conditions at Port of Spain, Trinidad; Filing of Petition

February 29, 1984.

The United States Atlantic and Gulf/Southeastern Caribbean Conference [1] has petitioned the Federal Maritime Commission to investigate certain alleged discriminatory actions against Petitioner at Port of Spain, Trinidad. Specifically, it is alleged that the Port Authority of Trinidad and Tobago has established a system of priority berthing for vessels operated by West Indies Shipping company. This system, it is alleged, has (1) created special conditions unfavorable to shipping in the foreign commerce of the United States within the meaning of section 19 of the Merchant Marine Act, 1920 (46 U.S.C. section 876), and (2) resulted in the imposition of unfair and discriminatory burdens by the Government of Trinidad and Tobago on United States-flag vessels within the meaning of section 26 of the Shipping Act, 1916 (46 U.S.C. section 825).

Petitioner requests that the Commission institute an investigation into the matters alleged and issue rules pursuant to 46 CFR 506 to suspend the tariffs of West Indies Shipping Company.

In order for the Commission to make a thorough evaluation of Petitioner's allegations, interested persons are requested to submit views, arguments or data on the petition no later than March 30, 1984. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies. Responses shall also be served on counsel for Petitioner: Nathan J. Bayer, Esquire, Freehill, Hogan and Mahar, 80 Pine Street, New York, New York 10005.

Copies of the petition are available for examination at the Washington, D.C., office of the Commission, 1100 L Street NW., room 11101.

Francis C. Hurney,

Secretary.

[FR Doc. 84–5880 Filed 3–2–84; 8:45 am]

BILLING CODE 6730–01–M

[1] The Shipping Corporation of Trinidad and Tobago Limited, a conference member, disassociates itself from the petition.

[Independent Ocean Freight Forwarder License No. 2106]

Eduardo Ubaldo Lopez, d.b.a. Federal Freight Forward; Reissuance of License

By Notice served and published in the **Federal Register**, Independent Ocean Freight Forwarder License No. 2106 was revoked, effective December 31, 1983, for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on February 16, 1984.

An appropriate surety bond has been received in favor of Eduardo Ubaldo Lopez d.b.a. Federal Freight Forward and compliance pursuant to section 44, Shipping Act, 1916, and section 510.15 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in section 9.09(a) of Commission Order No. 1 (Revised), dated September 27, 1983, Independent Ocean Freight Forwarder License No. 2106 shall be reissued to Eduardo Ubaldo Lopez d.b.a. Federal Freight Forward effective February 21 1984. A copy of this notice shall be published in the **Federal Register** and served upon Eduardo Ubaldo Lopez d.b.a. Federal Freight Forward.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84–5881 Filed 3–2–84; 8:45 am]

BILLING CODE 6730–01–M

Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notice that on February 15, 1984, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1960, Pub. L. 96-325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No. LM-86.

Title: New York Shipping Association and International Longshoremen's Association.

Synopsis: Agreement No. LM-86 is a settlement agreement between the NYSA and ILA on behalf of its locals in the Port of New York, where the parties agree that all New York local conditions under the various NYSA-ILA collective bargaining agreements are hereby settled.

Filing Agent: Peter C. Lambos, Lambos, Flynn, Nyland & Giardino, 29 Broadway, New York, New York 10006.

Dated: February 29, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-5879 Filed 3-2-84; 8:45 am]

BILLING CODE 6730-01-M

Filing and Approval of Agreements

The Federal Maritime Commission hereby gives notice that on February 13, 1984, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, Pub. L. 96-325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No. LM-85.

Title: International Longshoremen's Association and Various Undersigned Carriers.

Synopsis: Agreement No. LM-85 is between the ILA for itself and on behalf of all affiliated locals in all 36 ILA ports in the North Atlantic, South Atlantic and Gulf Coasts of the United States and undersigned Steamship Carriers. The ILA is recognized as the exclusive Collective Bargaining Agent representing all longshoremen, checkers, clerks, and other ILA employees employed by such carriers. The carriers by executing Agreement No. LM-85, will become parties to various other approved agreements with the ILA.

Filing Agent: Peter C. Lambos, Lambos, Flynn, Nyland & Giardino, 29 Broadway, New York, New York 10006.

Dated: February 29, 1984.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-5878 Filed 3-2-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banner County Bancorp; Formation of a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Banner County Bancorp,* Harrisburg, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of Banner County Bank, Harrisburg, Nebraska. Comments on this application must be received not later than March 19, 1984.

Board of Governors of the Federal Reserve System, February 28, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5776 Filed 3-2-84; 8:45 am]

BILLING CODE 6210-01-M

Barclays Bank PLC, et al.; Applications to Engage DE NOVO in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are indsispute, 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 22, 1984.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and *Barclays Bank International Limited* both in London, England; to engage *de novo* through its subsidiary, BarclaysAmericanCorporation ("BAC"), in the operation of a consumer finance business, including without limitation direct installment loans to individuals and the purchase of retail installment notes (sales finance), such as loans made to individuals for personal, family or household purposes, including loans secured by real estate; the purchase on a discounted basis of contracts and related security agreements arising principally from the sale by dealers of titled goods (including automobiles and mobile homes) and not-titled goods

(including furniture, television sets and appliances, travel trailers and campers, and boat and marine equipment); servicing loans and other extensions of credit for its own account and the account of others; and related wholesale financing consisting of financing dealer's inventories of automobiles, mobile homes and other chattels; the operation of credit card business, including without limitation the creation or acquisition of credit card debt and the issuance by BAC or a subsidiary of its own credit card; the operation of mortgage lending business, including first and second mortgage loans on residences and commerical porperties as well as the servicing for a fee of loans originated by others or by BAC and its subsidiaries and sold in the secondary market; the operation of a commerical finance and factoring business, including loans secured by receivables, inventory, equipment and real estate; The operation of a lease finance business, including lease financing of both personal and real property. Commercial finance involves the making of revolving credit loans to clients secured generally by assignments of accounts receivable and/or liens on inventory. Factoring involves the purchase of accounts receivable on a non-recourse basis from clients which are manufacturers and distributors. BAC's leasing activities involve the direct leasing of property to the customer, whether real estate or equipment, such as motor vehicles, aircraft, machinery and other equipment. Generally, all maintenance, insurance, taxes and other costs are paid by the lessee and are not included in rental payments. Applicant also proposes to engage in the sale as agent through offices of BAC and its subsidiaries of credit insurance directly related to extensions of credit by BAC and its subsidiaries, including decreasing term credit life insurance, credit accident and health insurance, credit employment insurance and credit property insurance designed to protect the borrower's property which serves as collateral for loans from BAC and its subsidiaries; (the expansion of BAC's insurance agency business will be limited by applicable law, including the Garn-St Germain Depository institutions Act of 1982;) underwriting or reinsuring credit life and credit accident and health insurance sold by BAC and its subsidiaries as agent; the sale at retail of money orders having a face value not exceeding $1,000 (or such other amount as may from time to time be permitted by the Fedral Reserve Board) through consumer finance offices of BAC and its subsidiaries; and the sale at retail of travelers checks at consumer finance offices of BAC and its subsidiaries.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ninescah Banc Shares, Inc.*, Arlington, Kansas, to engage *de novo* through its subsidiary, Arlington Insurance Agency, Arlington, Kansas; in the sale of general insurance in a town with a population not exceeding 5,000. This activity would be performed in the city of Arlington, Kansas, and the surrounding rural area. Applicant also proposes to engage in the sale of credit insurance, money orders, savings bonds, and travelers checks at its offices in the state of Kansas.

Board of Governors of the Federal Reserve System, February 27, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5808 Filed 3-2-84; 8:45 am]

BILLING CODE 6210-01-M

Citizens Guaranty Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 Federal Register 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 26, 1984.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Guaranty Bancshares, Inc.*, Irvine, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Guaranty Bank, Irvine, Kentucky.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bitterroot Holding Company*, Lolo, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Bitterroot Valley Bank, Lolo, Montana.

2. *Darwin Bancshares, Inc.*, Darwin, Minnesota; to acquire 100 percent of the voting shares or assets of Farmers & Merchants State Bank, Paynesville, Minnesota.

3. *Metropolitan Bancorporation, Inc.*, Minneapolis, Minnesota; to acquire 71 percent of the voting shares or assets of Metropolitan State Bank of Plymouth, Plymouth, Minnesota.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *National Bancshares Corporation*, San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Parkdale Bank, Corpus Christi, Texas.

2. *University Bancorporation, Inc.*, College Station, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of University National Bank, College Station, Texas.

Board of Governors of the Federal Reserve System, February 28, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5777 Filed 3-2-84; 8:45 am]

BILLING CODE 6210-01-M

Old National Bancorp, et al.; Notice of Applications to Engage DE NOVO in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be excepted to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggreived 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 26, 1984.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to engage *de novo* through its subsidiary, Indiana Old National Insurance Company, Phoenix, Arizona, in insurance underwriting as reinsurance company of credit life and accident and health insurance on credit extended to borrowers of Old National Bank in Evansville.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells Fargo & Company*, San Francisco, California; to engage through its subsidiaries, Wells Fargo Mortgage Company, Santa Rosa, California, Wells Fargo Realty Finance Corporation, Santa Rosa, California, and Ben G. McGuire & Company, Houston, Texas in commercial real estate equity financing.

Board of Governors of the Federal Reserve System, February 28, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-5777 Filed 3-2-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Baltimore District Office, chaired by Thomas L. Hooker, District Director. The topic to be discussed is Drug Use and the Elderly.

DATE: Monday, March 12, 1984, 10 a.m. to 12 m.

ADDRESS: The Edgar Allen Poe Room, Enoch Pratt Free Library, 400 Cathedral St., Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Anne Lane, Consumer Affairs Officer, Food and Drug Administration, 900 Madison Ave., Baltimore, MD 21201, 301-962-3731.

Orlando District Office, chaired by Adam J. Trujillo, District Director. The topic to be discussed is Drug Use and the Elderly.

DATE: Friday, March 16, 1984, 9:30 a.m. to 11:30 a.m.

ADDRESS: Conference Room, FDA Orlando District Office, Orlando Central Park, 7200 Lake Ellenor Drive, Suite 120, Orlando, FL 32809.

FOR FURTHER INFORMATION CONTACT: Lynne Isaacs, Consumer Affairs Officer, Food and Drug Administration, P.O. Box 118, Orlando, FL 32802, 305-855-0900.

Seattle District Office, chaired by Kenneth A. Hansen, District Director. The topic to be discussed is Drug Use and the Elderly.

DATE: Tuesday, March 20, 1984, 1:30 p.m. to 3:30 p.m.

ADDRESS: Lloyd Center Audtiorium, 2201 Lloyd Center, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Ellen M. Miller, Consumer Affairs Officer, Food and Drug Administration, 5009 Federal Office Bldg., Seattle, WA 98174, 206-442-1311.

Brooklyn District Office, chaired by George J. Gerstenberg, District Director. The topic to be discussed is Hypertension in Blacks, Hispanics, and the Elderly—Communicating Awareness of Sodium (Salt) and Health.

DATE: Tuesday, March 27, 1984, 1 p.m. to 3 p.m.

ADDRESS: Harlem State Office Bldg., 163 West 125th St., New York, NY 10027.

FOR FURTHER INFORMATION CONTACT: Albert Gonzalez, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212-965-5754.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 28, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-5799 Filed 3-2-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0022]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Flowers Industries, Inc., to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than June 4, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0107

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Flowers Industries, Inc., Thomasville, GA 31792.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of the U.S. RDA of vitamin B-6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115 with the exception of these deviations.

The permit provides for the temporary marketing of 480,000 pounds per day of the product. The test product will be distributed in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The test product is to be manufactured at the Flowers Baking Co. plants located in Birmingham and Opelika, AL; Jacksonville, FL; Thomasville, GA; High Point, NC; Paris, Port Arthur, and Tyler, TX; Lynchburg and Norfolk, VA; at Atlanta Baking Co., Atlanta, GA; and at Schott's Bakery, Inc., Houston, TX.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as requaired by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than June 4, 1984.

Dated: February 24, 1984.

John M. Taylor,

Acting Director, Bureau of Foods.

[FR Doc. 84-5800 Filed 3-2-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0021]

Food for Human Consumption; Enriched Bread Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Consumer Direction, Inc., to market test a bread enriched to the nutrient levels recommended by the National Academy of Sciences, Food and Nutrition Board (FNB), in 1974 (with the exception that iron will remain at the level required by the standard of identity for enriched bread). The purpose of the temporary permit it to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than June 4, 1984.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-485-0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Consumer Direction, Inc., Pompton Plains, NJ 07444.

The permit covers limited interstate marketing tests of enriched special formula bread. The test product deviates from the standard of identity for enriched bread, 21 CFR 136.115, in that it will contain in each 2-slice (approximately 2 ounces) serving: (1) 6 percent of the U.S. Recommended Daily Allowance (RDA) of vitamin A, (2) 8 percent of the U.S. RDA of vitamin b-6, (3) 8 percent of the U.S. RDA of folic acid, (4) 6 percent of the U.S. RDA of magnesium, and (5) 6 percent of the U.S. RDA of zinc. The test product meets all requirements of § 136.115 with the exception of these deviations.

The permit provides for the temporary marketing of 400,000 pounds per week of the product. The test product will be distributed in the States of Connecticut and Massachusetts. The test product is to be manufactured at Dreikorn's Bakery, Inc., Holyoke, MA 01040.

The principal display panel of the label states the product name as "enriched special formula bread", and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. A side-by-side comparison of the percentage of U.S. RDA's for nutrients in the test product and in regular enriched bread is shown on the label for the applicable nutrients. This permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than June 4, 1984.

Dated: February 24, 1984.

John M. Taylor,

Acting Director, Bureau of Foods.

[FR Doc. 84-5801 Filed 3-2-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Prospecting Application and Permit

AGENCY: Bureau of Land Management, Interior.

ACTION: Bureau Form Submitted for Review.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made to the Bureau Clearance Officer and the Office of Management Budget Reviewing Official at (202) 395-7340.

Title: 43 CFR Part 3511, Prospecting Application and Permit
Bureau Form Number: 3510-1
Frequency: Once
Description of Respondents: Individuals or Households, Businesses or other For-Profit, and SMall Businesses or Organizations.
Annual responses: 410
Annual Buredn Hours: 259
Bureau clearance officer (alternate): Linda Gibbs (202) 653-8853

Dated: February 2, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84-5795 Filed 3-2-84; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The following applicants have applied for permits 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.*):

APP. #147573
International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in foreign commerce two captive-born Asian elephants (*Elephas maximus*) from Rangoon Zoo, Burma to Seoul Grand Park Zoo, Korea for enhancement of propagation.

APP. #145453
International Animal Exchange, Frendale, MI

The applicant requests a permit to export six female captive-born hog deer [*Axis* (=*Cervus*) *porcinus annamaticus*] to Seoul Grand Park Zoo, Korea for enhancement of propagation.

APP. #151975
Rare Feline Breeding Center, Inc., Center Hill, FL

The applicant requests a permit to import one captive-born Amur leopard (*Panthera pardus orientalis*) from the Howletts and Port Lympne Estates Limited, Kent, England, for propagation.

APP. #107506
Robert G. Travnicek, Wilber, NE

The applicant requests a permit to import 4 golden-shouldered parakeets (*Psephotus chrysopterygius dissimilis*), 12 turquoise parakeets (*Neophema pulchella*) and 12 scarlet-chested parakeets (*N. splendida*), all captive born, from Heinz Koester, West Germany for enhancement of propagation.

Documents and other information submitted with these applicantions are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO. P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: February 29, 1984.

R. K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 84-5835 Filed 3-2-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2104, Block 295, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 24, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838–0867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 24, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-5802, Filed 3-2-84; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related materials may be obtained by contacting Shirley Vaughn at (703) 860–7564. Comments and suggestions on the collection of information should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, Washington, D.C. 20503; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; U.S. Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Semiannual Gas Well Test Report.
Bureau Form Number: MMS–1870.
Frequency: Semiannually.

Description of Respondents: Federal oil and gas lessees performing operations offshore under OCS Order No. 11, "Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights"; 30 CFR 250.16, Well potentials and permissible flow; and 30 CFR 250.39, Tests, surveys, and samples.

Annual Responses: 6,000.
Annual Burden Hours: 12,000.

Dated: February 9, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-5797 Filed 3-2-84; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related materials may be obtained by contacting Shirley Vaughn at (703) 860–7564. Comments and suggestions on the collection of information should be made directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Office of Management and Budget, Washington, D.C. 20503; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; U.S. Department of the Interior; 12230 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Request for Well Maximum Production Rate (MPR).
Bureau Form Number: MMS–1867.
Frequency: On Occasion.

Description of Respondents: Federal oil and gas lessees performing operations offshore under OCS Order No. 11, "Oil and Gas Production Rates, Prevention of Waste, and Protection of Correlative Rights;" 30 CFR 250.16, Well

potentials and permissible flow; and 30 CFR 250.30, Lease provisions, regulations waste, damage, and safety.

Annual Responses: 12,000.

Annual Burden Hours: 3,000.

Dated: February 9, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-5798 Filed 3-2-84; 8:45 am]

BILLING CODE 4310-MR-M

Norton Basin Lease Sale 100 (October 1985); Call for Information and Intent To Prepare an Environmental Impact Statement

Call for Information

Purpose of Call for Information

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331–1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23, with regard to proposed OCS Lease Sale 100 in the Norton Basin area tentatively scheduled for October 1985.

This initial information gathering step is important for ensuring that all interests and concerns are communicated to the Department for future decision points in the leasing process. It should be recognized that this Notice does not indicate a preliminary decision to lease in the area described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process—Area Identification—to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for May 1984.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent on scoping is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering potential conflicts between offshore oil and gas activities and the State's coastal zone management program.

Description of Area

The Norton Basin Call area is generally located in the northern Bering Sea, west and south off the coast of the Seward Peninsula in the State of Alaska. It is bounded on the sourth by 63° N. latitude; on the west as shown on the Call map; on the north by 65° 34′ N. latitude; and on the east by the 3-geographical mile line from 65° 34′ N. latitude to 63° N. latitude.

Indications of interest and comments are requested for all Federal acreage within the boundaries of the Call area. Indications of interest are not requested for blocks excluded from the Call as listed below. Boundaries of the Call area are shown, in general, on the map at the end of this Call and are shown in detail on the standard Call for Information Map available free from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service (MMS), P.O. Box 101159, 620 East 10th Avenue, Anchorage, Alaska 99510.

The following list identifies the Official Protraction Diagrams and blocks as appropriate which comprise the Call area. The diagrams may be purchased for $2.00 each from the Regional Supervisor, Leasing and Environment, Alaska OCS Region.

NP 2–1, Gambell (approved February 25, 1981), all Federal blocks *except*:
Blocks 15–32, 58–76, 100–119, 143–162, 186–200, 203–205, 229–244, 247–249, 272–288, 291, 292, 315–332, 357–375, 400–419, 443–463, 486–505, 529–547, 573–590, 617–633, 661–676, 705–719, 749–761, 793–804, 837–847, 881–890, 925–932, and 969–975.

NP 2–2, St. Lawrence (approved December 13, 1976), all Federal blocks

NP 3–1, Norton Sound (approved December 13, 1976), all Federal blocks

NP 3–2, St. Michael (approved December 13, 1976), all Federal blocks

NP 4–1, Unalakleet (approved December 13, 1976), all Federal blocks

NQ 2–6 Little Diomede Island, (approved February 25, 1981), *only* Federal Blocks 857, 858, 900–902, 943–946, and 986–989.

NQ 2–7 and 2–8, Ukivok (approved February 25, 1981), all Federal blocks *except*:
Blocks 25–41, 72–89, 119–136, 166–183, 213–230, 260–277, 307–324, 354–371, 401–418, 448–465, 495–512, 542–559, 589–606, 636–653, 682–699, 729–746, 776–793, 823–840, 870–887, 917–934, 964–981, 1010–1028, 1057–1075, and 1104–1122.

NQ 3–5, Teller (approved July 21, 1977), all Federal blocks *except*:
Blocks 2–9, 46–52, 90–95, 134–137, 178, 179, 442, 486–488, 529–532, 573–578, 617–621, 661–664, 705–708, 749–751, and 793.

NQ 3–7, Nome (approved December 13, 1976), all Federal blocks

NQ 3–8, Solomon (approved December 13, 1976), all Federal blocks

NQ 4–7, Cape Denbigh (approved December 13, 1977), all Federal blocks

Instructions on Call

The standard Call map delineates the Call area and shows the area as identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in any or all of the Federal acreage within the Call area that they wish to have included in the Norton Basin Lease Sale 100. Although individual indications of interest are considered to be privileged and confidential information, the names of persons or entities indicating intrest or submitting comments will be of public record. These indicating such interest are required to do so on the standard Call for Information Map, available free from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area," telephone (907) 261–2453 or 261–2414. Interest should be shown by outlining the area(s) of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area for which respondents have no interest, no priority should be assigned to them. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information submitted by individual companies will be held confidential and will be used as a criterion in determining the area to be analyzed in the EIS. Further consideration of areas for analysis in the EIS will be based on indications of interest, geologic potential, and a balancing with environmental,

economic, and multiple use considerations.

In addition to indications of interest, comments are sought from all interested parties about particular geological, environmental, biological, archeological, or socioeconomic conditions or conflicts, or other information, including coastal zone management considerations, or other information which might bear upon potential leasing and development of particular areas. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be submitted no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Indications of Interest for Leasing for the Call for Information on Norton Basin Lease Sale 100 (October 1985)" or "Comments on the Call for Information on the Norton Basin Lease Sale 100 (October 1985)", as appropriate. The original standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area." Send two copies of the standard Call map showing interest and any comments to the Chief, Offshore Leasing Management Division, MMS, Mail Stop 645, 12203 Sunrise Valley Drive, Reston, Virginia 22091. Hand deliveries may be made to the Chief, Offshore Leasing Management Division, Room 2510, Department of the Interior, 18th and C Sts., NW., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for competitive bidding will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (40 CFR 1501.7), and the OCSLA, as amended. A final Notice of Sale will be published in the **Federal Register**, detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for October 1985.

Comments due on the Call: April 1984
Area Identification: May 1984
Scoping comments due: June 1984
Draft EIS published: February 1985
Hearings on draft EIS held: March 1985
Final EIS and proposed Notice of Sale published: June 1985
Governor's comments due on proposed Notice: August 1985
Final Notice of Sale published: September 1985
Sale: October 1985

Notice of Intent to Prepare an Environmental Impact Statement

Purpose of Notice of Intent

Pursuant to the regulation implementing the procedural provision of the National Environmental Policy Act of 1969 (40 CFR 1501.7), the Alaska OCS Region, MMS, is announcing its intent to prepare an EIS regarding the proposed Norton Basin Lease Sale 100. The Notice of Intent serves to announce the scoping process which will be followed for this EIS. The scoping process is intended to involve Federal, State, and local governments, and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

Scoping meetings will be held in locations adjacent to the proposed lease sale area for the purpose of obtaining comments and information regarding the scope of the EIS following a decision on an Area Identification. The dates, times, and locations of these scoping meetings will be announced at a future date in the **Federal Register** and by press release.

Instructions on Notice of Intent

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale. Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of Area" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Norton Basin Lease Sale 100 (October 1985)." Comments are due no later than June 29, 1984.

Existing Information

Much information has already been collected and analyzed during consideration of past OCS activity in the same area. This information will be integrated with new information supplied during this process. Information already available includes an EIS covering part of this area for Sale 57 as well as the EIS for the 5-Year Oil and Gas Leasing Program.

In addition, comments previously received by the Department from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used.

The following is a list of other data available in the Department which will be available for decisions regarding OCS Lease Sale 100.

Norton Basin Summary Reports and Index

1. Alaska Index, December 1981 through April 1983, prepared by MMS.
2. Bering Sea Summary Report, December 1983, prepared by MMS.
3. Geological and Operational Summary—Norton Sound Cost No. 1 Well, Norton Sound, Alaska. Open File Report 83–124; prepared by MMS.
4. Geological and Operational Summary—Norton Sound Cost No. 2 Well, Norton Sound, Alaska. Open File Report 83–557, prepared by MMS.

Norton Basin Planning Area—Completed Environmental Studies

1. Bering-Norton Petroleum Development Scenarios; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: January 1980
2. Bering-Norton, Economic and Demographic Analysis; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: June 1980
3. Western Alaska and Bering-Norton, Commercial Fishing Industry Analysis; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: August 1980
4. Bering-Norton Transportation Systems Analysis; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: March 1980
5. Bering-Norton Sociocultural Systems Analysis; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: June 1980
6. Bering-Norton Sociocultural Systems Analysis; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: August 1981
7. Western Alaska, St. George Local Socioeconomic Systems; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: January 1982

8. Norton Sound/Yukon Delta Sociocultural Systems Analysis; Area: Norton Basin; Completed: October 1981
9. Economic Analysis of Cumulative OCS Development in the Bering Sea; Area: Navarin, North Aleutain, Norton Basin, St. George Basin; Completed: August 1982
10. Aircraft Support (Logistic Support for IAI–5); Area: Barrow Arch, Diapir Field, Hope Basin, Norton Basin; Completed: September 1981
11. Aerial Surveys of Endangered Whales, Northern Bering, Chukchi and Beaufort Seas; Area: Diapir Field, North Aleutian, Norton Basin, St. George Basin; Completed: September 1983
12. Bering—Chukchi Sea Benthic Studies; Area: Barrow Arch, Navarin, Norton Basin; Completed: September 1981
13. A Seismotectonic Analysis of the Seismic and Volcanic Hazards in the Pribilof Islands and Eastern Aleutian Islands Region of the Bering Sea; Area: Barrow Arch, Hope Basin, North Aleutian, Norton Basin; Completed: September 1982
14. Inshore Distribution and Abundance of Larval Juvenile and Forage Fish Species, Abundance, and Life Histories of Benthic Organisms; Area: Cook Inlet, Hope Basin, North Aleutian, Norton Basin, St. George Basin; Completed: September 1979
15. Razor Clam Density and Distribution; Area: Aleutian Basin, Barrow Arch, Gulf of Alaska, Kodiak, North Aleutian, Norton Basin, St. George Basin; Completed: September 1977
16. Analysis of Marine Mammal Remote Sensing Data; Area: Barrow Arch, Diapir Field, Hope Basin, Norton Basin; Completed: September 1976
17. The Physiological Effect of Acute and Chronic Exposure to Hydrocarbons on Coastal Fish, Area: Norton Basin, St. Matthew Hall; Completed: September 1976
18. Baseline Characterization of Marine Mammals; Area: North Aleutian, Norton Basin, St. George Basin, St. Matthew Hall; Completed: September 1978
19. Collection and Analysis of National Marine Fisheries Service Marine Mammal Platforms of Opportunity Program Data; Area: Gulf of Alaska, Kodiak, North Aleutian, Norton Basin, St. George Basin; Completed: September 1981
20. Abundance and Seasonal Distribution of Bowhead and Belukha Whales at Barrow, Diapir, Hope and Norton Basins; Area: Barrow Arch, Diapir Field, Hope Basin, Norton Basin; Completed: September 1978
21. Lethal and Sublethal Effects on Selected Alaskan Marine Species After Acute and Long-Term Exposure to Oil and Oil Components; Area: Norton Basin; Completed: April 1982
22. Sublethal Effects of Petroleum Hydrocarbons Including Bio-Transformations as Reflected by Morphological, Chemical, Physiological, Pathological and Behavioral Indices; Area: Norton Basin; Completed: April 1982
23. Baseline Characterization of Littoral Biota in the Gulf of Alaska and Bering Sea (Gulf of Alaska, Kodiak, N. Aleutian, Norton and St. George Basins); Area: Gulf of Alaska, Kodiak, North Aleutian, Norton Basin, St. George Basin; Completed: September 1978
24. The Interaction of Oil With Ice; Area: Navarin, Norton Basin; Completed: December 1981
25. Distribution, Abundance, and Feeding Ecology of Birds Associated with Sea Ice; Area: Barrow Arch, Diapir Field, Hope Basin, Norton Basin; Completed: January 1983
26. Surface Current Measurements—Gulf of Alaska; Area: Gulf of Alaska, Kodiak, North Aleutian, Northon Basin, St. George Basin; Completed: September 1978
27. Ecology and Behavior of Southern Hemisphere Shear Waters and Other Seabirds; Area: Barrow Arch, Diapir Field, North Aleutian, St. George Basin, St. Matthew Hall; Completed: September 1977
28. Morphology of Nearshore Ice Conditions by Means of Remote Sensing; Area: Barrow Arch, Diapir Field, Hope Basin, North Aleutian, Norton Basin, St. Matthew Hall; Completed: September 1978
29. In Situ Measurements of the Mechanical Properties of Sea Ice; Area: Barrow Arch, Diapir Field, Hope Basin, Norton Basin; Completed: September 1982
30. Microbial Release of Soluble Trace Metals from Oil Impacted Sediments; Area: Navarin, North Aleutian, Norton Basin, St. George Basin; Completed: September 1977
31. Trophic Relationships in the Benthic and Demersal Fishes of the Gulf of Alaska, Bering Sea (Barrow, Diapir, N. Aleutian, St. George, St. Matthew Hall); Area: Barrow Arch, Diapir Field, North Aleutian, Norton Basin, St. George Basin, St. Matthew Hall; Completed: September 1977
32. Preparation of Illustrated Keys to Skeletal Remains and Otoliths of Forage Fishes; Area: Barrow Arch, Diapir Field, North Aleutian, Norton Basin, St. George Basin, St. Matthew Hall; Completed: September 1976
33. Shallow Faulting, Bottom Instability, and Movement of Sediments in Shelikof Strait and Western Gulf of Alaska; Area: Norton Basin; Completed: September 1981
34. Alaska Marine Ichthyoplankton Key; Area: Gulf of Alaska, Kodiak, North Aleutian, Norton Basin, St. George Basin; Completed: September 1976
35. Distribution, Abundance and Migration Routes of Salmonid Fish; Area: Barrow Arch, Diapir Field, North Aleutian, Norton Basin, St. George Basin, St. Matthew Hall; Completed: September 1977
36. Review of Literature on Non-Salmonid Fishes in the Eastern Bering; Area: North Aleutian, Norton Basin, St. George Basin, St. Matthew Hall; Completed: September 1976
37. Plankton Studies in the Beaufort, Chukchi, and Bering Seas; Area: Diapir Field, Navarin, Norton Basin; Completed: September 1981
38. Zooplankton Studies in the Nearshore Bering and Chukchi Seas; Area: Barrow Arch, Hope Basin, Norton Basin; Completed: September 1977
39. Faulting, Sediment Instability, Erosion, and Deposition Hazards of the Norton Basin Seafloor; Area: Norton Basin; Completed: September 1981
40. Coastal Processes of the Eastern Bering Sea; Area: North Aleutian, Norton Basin, St. George Basin, St. Matthew Hall; Completed: September 1978
41. Avian Community Ecology in Norton Bay; Area: Norton Basin; Completed: September 1977
42. Analysis of Populations and Trophics at Large Seabird Colonies in the Arctic; Area: Barrow Arch, Hope Basin, Norton Basin; Completed: September 1982
43. Studies of Community Structure of Marine Birds on St. Lawrence Island; Area: Norton Basin; Completed: September 1977
44. Evaluation of Earthquake Activity Around Norton and Kotzebue Sounds; Area: Barrow Arch, Hope Basin, Norton Basin; Completed: September 1981
45. Travel Survey of Benthic Epifauna; Area: Barrow Arch, Hope Basin, Norton Basin; Completed: September 1977
46. Norton Sound and Chukchi Sea Oceanographic Processes; Area:

Barrow Arch, Hope Basin, Norton Basin; Completed: September 1980

47. Under Ice Current and Pressure Measurements in the Norton Sound; Area: Norton Basin; Completed: September 1980

48. Sediment Geotechnical Studies on the Alaskan Continental Shelf; Area: Norton Basin; Completed: September 1982

49. Biodegradation of Aromatic Hydrocarbons By High Latitude Microalgae and Cyanobacteria; Area: Cook Inlet, North Aleutian, Norton Basin; Completed: September 1981

50. Analysis of Non-OCSEAP Marginal Ice Zone Data; Area: Norton Basin; Completed: January 1982

William D. Bettenberg,

Director, Minerals Management Service.

February 10, 1984.

Approved:

Garrey E. Carruthers,

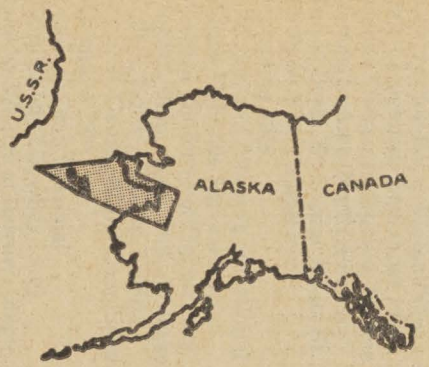
Assistant Secretary for Land and Minerals Management.

February 23, 1984.

BILLING CODE 4310-MR-M

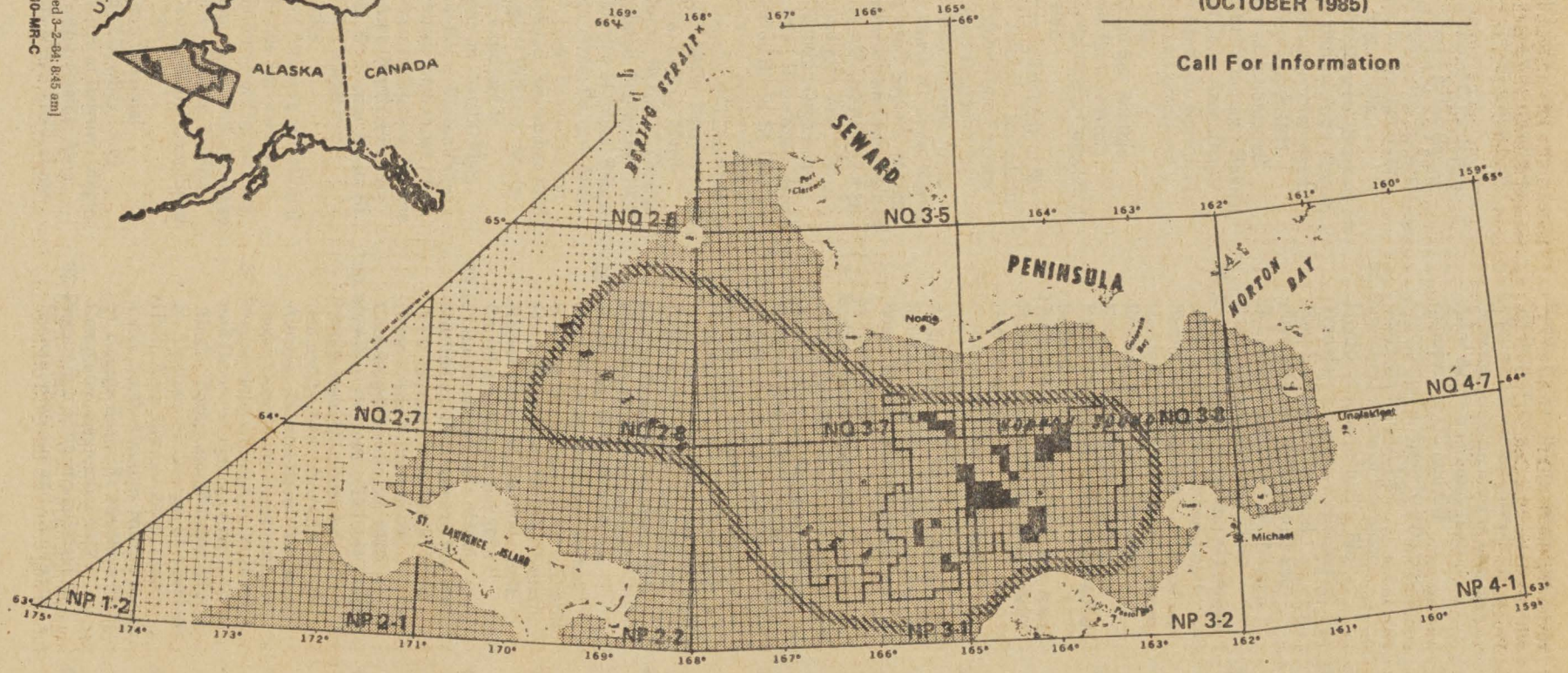
U.S. DEPARTMENT OF THE INTERIOR MINERALS MANAGEMENT SERVICE ALASKA OCS REGION

[FR Doc. 84-5785 Filed 3-2-84; 8:45 am]
BILLING CODE 4310-MR-C



NORTON BASIN LEASE SALE 100
(OCTOBER 1985)

Call For Information



CALL AREA

AREA OF GEOLOGIC POTENTIAL

AREAS UNDER LEASE

SALE 57 AREA

February 3,1984

Plan of Development/Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Seagull Energy E and P, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3991, Block 45, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 26, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resource Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; phone (504) 838–0873.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated February 24, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84–5803, Filed 3–2–84; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Proposed Lease Sale of Cobalt-Rich Manganese Crusts on the Hawaiian Outer Continental Shelf Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given that an Environmental Impact Statement (EIS) will be prepared for a proposed lease sale of cobalt-rich manganese crusts (hereinafter referred to as crusts) on the Outer Continental Shelf (OCS) in the Pacific Ocean offshore of Hawaii. The lease sale is planned to be held in the latter part of calendar year 1985.

Federal, State, or local government agencies, public interest groups, and members of the public having questions or comments on the EIS and the leasing proposal, and others wishing to assist in determining the scope of the EIS should contact the individuals named below.

ADDRESSES: Written comments on the scope of the EIS should be submitted to Mr. John C. Wiltshire, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, telephone (808) 548–6262.

FOR FURTHER INFORMATION CONTACT: Michael Cruickshank, Minerals Management Service, Department of the Interior, Mail Stop 646, 12203 Sunrise Valley Drive, Reston, Virginia 22901, telephone (703) 860–7571.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 1501.7 of the Regulations for Implementation of the Procedural Provision of the National Environmental Policy Act (NEPA) of 1969, the Minerals Management Service (MMS) is announcing its intent to prepare an EIS for leasing crusts on the OCS offshore of Hawaii. The EIS analysis will focus on leasing alternatives and their potential environmental effects and will discuss exploration and development activities considering alternative scenarios for extraction, transportation, and processing of crusts.

Section 8(k) of the OCS Lands Act, 43 U.S.C. 1337, authorizes the Secretary to grant leases for minerals other than oil, gas, and sulfur on the OCS. The National Minerals Policy Research and Development Act of 1980 (Pub. L. 96–479) requires, among other things, that responsible agencies assist in the pursuit of measures to assure the availability of critical materials and promote and encourage private enterprise in the development of economically sound and stable domestic materials industries. The crusts represent potential sources of critical minerals. The proposed leasing action is consistent with the aforementioned laws and with the Secretary's announced program of January 19, 1982, for hardrock mineral leasing activities in U.S. offshore areas.

The EIS will be prepared in cooperation with the State of Hawaii. The proposed lease sale of the crusts is scheduled for the latter part of calendar year 1985.

Background

Ferro-manganese crusts ranging from 1 to 7 centimeters (0.4 to 2.8 inches) in thickness and containing in excess of 1 percent cobalt have been found on the submerged slopes of islands and seamounts in the northeast Pacific Ocean at depths of 800 to 2400 meters (2,600 to 8,000 feet). In addition to cobalt, the crusts contain potentially economic deposits of nickel and manganese. These metals are widely used in specialty steel alloys. Cobalt, for example, gives steel greatly enhanced characteristics necessary to accommodate the high temperatures and pressures required for jet engines used in aircraft design. The United States is at present almost totally dependent on foreign sources for these metals critical to national defense.

On February 6, 1984, Governor George R. Ariyoshi and U.S. Secretary of the Interior, William P. Clark, announced the formation of a joint State/Federal Work Group to consider the economic potential and environmental impact related to ocean mining for the recovery of these resources. The goal of the Work Group is to establish a close working relationship between State and Federal authorities which may permit the potential leasing, exploration, development, and production of these

resources. The Work Group will evaluate the necessary terms required to meet the environmental requirements and the economic desires of both the State of Hawaii and the Federal Government.

Area of Interest

The primary area of interest for mining delineated by the Work Group are the areas which lie between the depths of 800 to 2400 meters on submerged island slopes and seamounts of the OCS, to the limit of the Exclusive Economic Zone, surrounding the Hawaiian Islands. The Hawaiian Islands National Wildlife Refuge and the submerged slopes of the islands of Niihau, Kauai, Oahu, Lanai, Maui, Kahoolawe, Hawaii, and Molokai are not considered as part of this proposal. These areas are depicted on a chart available from the Minerals Management Service or the Hawaiian Department of Planning and Economic Development.

Scope of Environmental Impacts

Preliminary determinations by the Work Group have identified the following areas of concern which would be addressed in the draft EIS.

At Sea

(i) Surface and bottom currents in the area of the northwest Hawaiian Islands and seamounts.

(ii) Multiple-use concerns related to principal commerical species and related food chains (including larvae and larval prey). Commercial species identified include squid, albacore, deepwater shrimp, bottom fish, ground fish (armorhead and alfonsin), lobsters, skipjack, yellowfin, bigeye (in southern latitudes), and precious corals.

(iii) Primary productivity and food chains.

(iv) Benthic organisms.

(v) Fishing vessel/gear conflicts.

(vi) Naval operations and priorities.

(vii) Use of commercial shipping lanes and incidental effects including bilge/processing discharge and spillage.

(viii) Fuel transfer/spills/related accidents.

(ix) Toxicity/thermal/eutrophication effects of discharge.

(x) Siltation potential.

(xi) Diurnal/nocturnal migration of mesoplagic species.

(xii) Marine mammals and sea turtles (migration patterns, food sources, and other life cycle concerns).

(xiii) Noise (possible effect on marine mammals and Department of Defense installations).

(xiv) Air pollution.

(xv) Impact on seabirds and their food sources.

(xvi) Direct and indirect impacts to National Wildlife Refuge and State Wildlife Refuge operations.

(xvii) Specific information on possible effects on endangered and threatened species.

Shoreside Processing Concerns

(i) Socio/economic concerns (including construction and dredging) as indentified for manganese nodule processing in:

Jenkins, R.W., M.K. Jugel, K.M. Keith, and M.A. Meylan, 1981, *The Feasibility and Potential Impact of Manganese Nodule Processing in the Puna and Kohala Districts of Hawaii*, State of Hawaii Department of Planning and Economic Development and U.S. Department of Commerce, National Oceanic and Atmospheric Administration. p. 271.

(ii) Sea water use in cooling and processing, and if so, the risk of fauna/flora impingement and entrainment. Hot water discharge, eutrophication/toxicity; Siltation.

(iii) Site-specific endangered and threatened species; possible impacts.

Literature Needs

Information is requested on the availability of published or unpublished data on the following:

(i) Foreign involvement in fishing and resource investigations in the region.

(ii) Foreign scientific and technical information available covering the region.

(iii) Present intensity and patterns of use by foreign vessels.

Alternatives

The MMS is presently considering alternatives for anlysis in the EIS. These include the following:

Alternative 1: No action—do not lease the crusts at this time.

Alternative 2: Delay sale—await the results of further studies of the proposed lease area.

Alternative 3: Hold a lease sale for the crusts in the proposed lease sale area.

Comments on Scope of EIS

Written comments on the scope of the EIS, on the area of interest delineated, and on the preliminary list of concerns identified are invited from all interested parties. Comments must be addressed to Dr. Wiltshire at the address listed below. Comments should be postmarked or delivered no later than May 30, 1984.

Public Meetings

Meetings for the purpose of receiving oral comment will be held in Hawaii at the following locations and dates:

At Honolulu

In the State Capitol Auditorium Building at 10:30 a.m. and 7:30 p.m. on April 30, 1984

At Hilo

In the State Building, 75 Aupuni Street at 10:30 a.m. and 7:30 p.m. on May 1, 1984

Those wishing to speak should give notice in writing of their intent with their name, address, and the location they wish to speak to Dr. Wiltshire prior to the meeting or at the door on the day of the meeting. The order of speakers will be based on the order of receipt of notice. Additional information and location maps showing the areas of interest may be obtained on request from the following:

Dr. John C. Wiltshire, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804, Telephone: (808) 548–6262

Dr. Michael J. Cruickshank, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091, Telephone: (703) 860–7571

Dated: February 29, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84–5852 Filed 3–2–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Historic Landmark Architecture and Recreation Theme Studies

AGENCY: National Park Service, Washington Office, Interior.

ACTION: Notice of National Historic Landmark Architecture and Recreation Theme Studies.

SUMMARY: This notice announces the continuation of National Historic Landmark theme studies of the history of architecture and recreation in the United States and solicits comments on them. The purpose of the studies is to identify nationally significant properties that illustrate and commemorate the development of American architecture and recreation. Notice of these studies is required by the National Historic Landmarks Program regulations. The History Division of the National Park Service will conduct the studies.

DATES: To be fully considered, comments should be received by the History Division on or before June 1, 1984.

ADDRESS: Written comments should be addressed to the Chief Historian, History Division, National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin C. Bearss, Chief Historian, Division of History, National Park Service, United States Department of the Interior, Washington, DC 20240 (202–343–8163).

SUPPLEMENTARY INFORMATION: The architecture theme study will survey a wide range of historic properties including public and private structures that have had a major impact on the building arts. Examples of the types of historic resources to be covered in the study are buildings and districts that date from the 18th to the 20th centuries and include regional and vernacular types, as well as outstanding works by individual American architects and architectural firms.

The recreation theme study will include a similarly wide range of historic properties, such as public and private facilities that have had a major impact on recreational activities to the homes of people who have made important contributions in the field of recreation. Examples of the types of historic resources to be examined in the study are historic indoor multipurpose structures, outdoor spectator and participant sports facilities, and natural areas that have been used historically for recreational purposes. The History Division welcomes comments concerning the theme studies and suggestions of properties to be included in the study.

Dated: February 27, 1984.

Jerry L. Rogers,

Associate Director, Cultural Resources.

[FR Doc. 84–5875 Filed 3–2–84; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Wayne National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of close of comment period.

SUMMARY: In a Federal Register notice on November 15, 1983, (48 FR 51988) the Office of Surface Mining (OSM) requested public comments on the subject of the Belville Mining Company's (Belville) proposed surface coal mining operations on Federal lands in the Wayne National Forest. Belville is seeking a determination that its proposed operations are not prohibited or limited by section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Specifically, Belville has requested that the Director of OSM determine that Belville has "valid existing rights" under section 522(e) of SMCRA. The comment period was to be held open until an announcement of the close of the comment period was published. This notice is to announce that the comment period will close at 5:00 p.m. Eastern Standard Time on March 20, 1984.

DATES: Written comment may be submitted until 5:00 p.m. Eastern Standard Time on March 20, 1984.

ADDRESSES: Written comments may be mailed to: Administrative Record (VER, Wayne National Forest), Office of Surface Mining, Room 5313–L, 1951 Constitution Avenue N.W., Washington, D.C. 20240.

Written comments may be hand-carried to, and relevant material is available for inspection at: Office of Surface Mining, Administrative Record, Room 5313, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James M. Kress, U.S. Department of the Interior, Office of Surface Mining, 1951 Constitution Avenue N.W., Washington, D.C. 20240, Telephone: (202) 343–5361.

Dated: February 27, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84–5883 Filed 3–2–84; 8:45 am]

BILLING CODE 4310–05–M

Abandoned Mine Land Reclamation Program—Grant Application From the State of Wyoming Addressing All Coal-Related Impacts From Pre-August 3, 1977, Mining Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed use of Abandoned Mine Land funds for non-coal projects in Wyoming.

SUMMARY: The State of Wyoming has indicated to the Office of Surface Mining (OSM) that its next proposed Abandoned Mine Land Reclamation (AMLR) grant application under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), if approved and funded by OSM, will mark the addressing, for the present, of all known existing coal-related impacts in the State eligible for funding under the AMLR program. Under Section 409 of SMCRA, funding for noncoal reclamation projects not directly related to the protection of the public health or safety may be approved only after a State has addressed all reclamation with respect to abandoned coal mined lands. OSM is seeking public comment on the adequacy of the State grant application and the State's certification that it has addressed, or will complete through funding of the present grant agreement, all reclamation relating to abandoned coal mine lands. In addition, OSM is aware of the potential for problems occurring in the future which relate to pre-August 3, 1977, coal mining. For example, the cities of Rock Springs and Glen Rock have extensive underground mining and may experience subsidence problems in the future. Accordingly, OSM is seeking specific comments on existing or potential coal-related problems in the State and on OSM's policy for funding future State grant requests for coal-related impacts that occur.

DATES: Written comments: Accepted until 5:00 p.m. (Rocky Mountain time) April 4, 1984.

Public meetings: Scheduled on request only.

ADDRESSES: Written comments: Hand deliver or mail to the Office of Surface Mining, Casper Field Office, P.O. Box 1420, 935 Pendell Boulevard, Mills, Wyoming 82644.

Public meetings: Office of Surface Mining Reclamation and Enforcement, Casper Field Office, same address as above.

FOR FURTHER INFORMATION CONTACT: James Fary, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, telephone (202) 343–7921 or William Powell, Casper Field Office, Office of Surface Mining, P.O. Box 1420, 935 Pendell Boulevard, Mills, Wyoming 82644, telephone (307) 261–5827.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

II. Background

III. Discussion of Proposed Action

I. Public Commenting Procedures

Written Comments

Written comments must specifically pertain only to the issues proposed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "dates" or at locations other than the addresses listed above under "Addresses", will not

necessarily be considered or included in the Administrative Record.

Public Meetings

Persons wishing to meet with OSM representatives to discuss this notice may request a meeting at the OSM Office in Casper, Wyoming or Washington, D.C. by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT".**

II. Background

Title IV of the SMCRA of 1977, Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal law.

Each State having within its borders coal-mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary a State Reclamation Plan demonstrating its capability for administering an abandoned mine lands reclamation program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSM on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the approved State reclamation plan. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

AMLR funds are to be utilized to address the problems caused by past mining in the following order. First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining. Certain noncoal mining-related problems may also be addressed at the same time, however, if they involve direct threats to the public health and safety. Second, following the completion of all coal-related impacts, a State program may then direct its efforts to alleviating the problems caused by all other types of mining. Finally, when all coal- and noncoal-related impacts have been addressed, and if certain other conditions set forth in Section 402(g)(2) of SMCRA are satisfied, AML funds may be used for construction of specific public facilities in communities impacted by coal mining development.

On April 15, 1982, the State of Wyoming submitted to OSM its proposed Abandoned Mine Land Reclamation Plan. Following discussions with OSM, the State subsequently submitted a revised AMLR plan on August 16, 1982. After opportunity for public review and comment, the Assistant Secretary for Energy and Minerals of the Department of the Interior approved the Wyoming Plan of February 14, 1983. Since this Plan approval, the State has received OSM approval of approximately 107 coal construction sites at a total reclamation cost of $36,013,417. In addition, 14 noncoal construction sites at a cost of $407,066 have also been approved by OSM. At the current time the State of Wyoming has approximately $75 million in its State share of the AML Fund.

III. Discussion of Proposed Action

The State of Wyoming has officially notified OSM that, following the submission in June 1984, of the Hanna Subsidence Project in Hanna, Wyoming, the State will have addressed all of its known coal impacted areas. Accordingly, it is requesting additional funds to reclaim low priority noncoal sites. The Surface Mining Act, however, provides that the Secretary may fund these lower priority noncoal projects only after all coal-related impacts have been addressed.

The purpose of this notice is to seek public comment and input concerning the State's assertion that it has addressed all coal-related impacts. This notice does not represent any decision by the Secretary concerning the merits of the Wyoming Abandonded Mine Land program but is published solely for the purposes of expediting the review of Wyoming's grant application and obtaining public input concerning the conditions for funding noncoal projects set forth in Section 409(c) of SMCRA. Accordingly, OSM seeks public comment and information concerning any known or suspected unreclaimed lands or water in the State that may have been adversely affected by coal mining practices prior to August 3, 1977 and for which there is no continuing reclamation responsibility under State or other Federal laws.

In this regard, both OSM and the State are acutely aware of the potential subsidence-related problems faced by various communities in Wyoming. To deal with such potential threats, the State previously requested monies for the creation of a subsidence reserve fund. This request, however, was denied.

As an alternative for handling future problems, the State has agreed to a plan which would give top priority to any coal-related problem that occurs during the life of the AML program; that is, if and when a coal-related problem occurs which meets the eligibility requirements of Section 404 of SMCRA, the State would seek immediate funding for the reclamation efforts. This plan appears acceptable to OSM. The State currently has approximately $75 million alloted to its State-share of the AML fund. Based on these figures, the State tentatively appears to have the ability to fund all potential coal problems if they occur during the life of the AML program.

To assist in its analysis of Wyoming's grant application and the proposed plan for funding future coal-related problems, OSM solicits comments on all relevant economic, environmental and legal issues involving the reclamation of potential coal-related problems and the State's request to fund projects for low priority noncoal problem sites.

Dated: February 2, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 84-5578 Filed 3-2-84; 8:45 am]

BILLING CODE 4310-05-M

Rescheduling of Public Hearing for National Wildlife Federation/Wyoming Wildlife Federation Petition To Designate Certain Lands, Known as the Red Rim Area, in Carbon and Sweetwater Counties, Wyoming, as Unsuitable for Surface Coal Mining Operations; Notice of Change in Hearing Procedures; Notice of Extension of Comment Period for the Draft Petition Evaluation Document/ Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of Public hearing to receive comments on the Red Rim petition and draft petition evaluation document/environmental impact statement notice of change of hearing procedures; notice of extension of comment period.

SUMMARY: OSM and the Wyoming Environmental Quality Council (EQC) will jointly hold a public hearing to receive comments on the National Wildlife Federation/Wyoming Wildlife Federation petition to designate the Red Rim area of Wyoming unsuitable for surface coal mining operations and on the draft petition evaluation document/ environmental impact statement (the draft document) analyzing this petition. The hearing will be held starting at 1

p.m. on April 9, 1984, in Rawlins, Wyoming. The hearing will follow legislative procedures. The date by which comments on the draft document must be received has been extended to April 20, 1984. Additional information on the location of the public hearing and the mailing addresses for comments is given below.

DATES: Written comments on the draft document must be received by 5:p.m., April 20, 1984, at the OSM or the Wyoming department of Environmental Quality. (DEQ) addresses given below. A public hearing will be held starting at 1 p.m. on April 9, 1984, at the address given below, and will continue until all who desire to speak have been heard.

ADDRESSES: The public hearing will be held at the Bel Air Best Western Motel, Carbon Room, 23rd and Spruce Streets, Rawlins, Wyoming.

Copies of the draft document are available from OSM and the Wyoming DEQ at the addresses listed below, and also are available for review at the following two locations:

Bureau of Land Management, 1300 North 3rd Street, Rawlins, Wyoming 82301, Telephone: (307) 324–7171

Office of the County Clerk, Carbon County Courthouse, Fifth and Spruce Streets, Rawlins, Wyoming 82301, Telephone: (307) 328–2668

Written comments on the draft document may be mailed or hand-carried, and must be received by the date and time given above, to Mr. Allen Klein, Administrator, Western Technical Center, OSM, 1020 15th Street, Denver, Colorado 80202 or Mr. Patrick Boles, Wyoming DEQ, Equality State Bank Building, 401 West 19th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, OSM, Western Technical Center, 1020 15th Street, Denver, Colorado 80202, (telephone (303) 837–5421), or Patrick Boles, Wyoming DEQ (telephone (307) 777–7756) at the address listed above.

SUPPLEMENTARY INFORMATION: Originally, the date of the hearing was December 6, 1983, and the date for close of public comments on the draft document was December 23, 1983. (See October 20, 1983, **Federal Register** notice: 48 FR 48724.) On December 2, 1983, OSM and the Wyoming EQC granted the petitioners' and an intervenor's request for continuance of the hearing. The date for the hearing was continued until at least February 6, 1984, and the comment period on the petition and draft document was extended until further notice. (See January 4, 1984, **Federal Register** notice: 49 FR 521.) The hearing originally allowed for cross examination of expert witnesses. In February 1984, OSM and the Wyoming EQC agreed to conduct a joint legislative type hearing without cross examination. The Wyoming EQC may, separately from OSM and subsequent to the public hearing, conduct further proceedings which may include contested case (adjudicative) procedures.

The public hearing has been rescheduled for the time and place indicated under "**DATES**" and "**ADDRESSES**" above. Parties to the petition (the petitioners and intervenors) will be allowed to present their statements beginning at 1 p.m. on April 9, 1984. After these statements are made, anyone who wishes to comment will be given the opportunity to do so, but comments will be limited to 10 minutes of oral testimony. Persons wishing to present testimony should contact OSM, Western Technical Center, or Wyoming DEQ at the addresses given above, and should register to speak at the hearing. All persons giving oral testimony at the hearing are strongly encouraged to bring three copies of written statements for presentation to the hearing panel. Submission of written statements to the OSM and Wyoming DEQ addresses given above, in advance of the hearing date, would be helpful by giving OSM and the Wyoming EQC officials an opportunity to consider appropriate questions, which could be asked to clarify or to elicit more specific information from the person commenting.

All written comments may be mailed or hand-carried to OSM, Western Technical Center, or to Wyoming DEQ at the addresses listed above, but must be received no later than the time indicated under "**DATES**" in order to be considered.

Until April 5, 1984, at 5:00 p.m., any person may file an application for intervention in the proceedings at the above OSM and Wyoming DEQ addresses. Such application must contain allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

For further information on the petition allegations, petition events, location of the petition area, and locations of the public record on the petition, see the January 5, 1983, **Federal Register** notice of complete petition (48 FR 523). For further information on the draft document, see the notice of intent to prepare a combined unsuitability petition evaluation document/environmental impact statement in the **Federal Register** on June 29, 1983 (48 FR 29961).

Dated: February 27, 1984.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 84–5829 Filed 3–2–84; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 97)]

Rail Carriers; Seaboard System Railroad, Inc.—Abandonment—in Pinellas County, FL; Notice of Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc., to abandon its 7.20-mile rail line between milepost SY–886.6 near Jungle, FL, and milepost SY–893.8 near St. Petersburg, FL, in Pinellas County. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–5844 Filed 3–2–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 102)]

Rail Carriers; Seaboard System Railroad, Inc.—Abandonment—in Levy County, FL; Notice of Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc., to abandon its 5.97-mile rail line between Williston (milepost SR–729.18) and Montbrook (milepost SR–735.15) in Levy County, FL. The abandonment certificate will become effective 30 days after this publication

unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: Rail Section, AB–OFA. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

[FR Doc. 84–5845 Filed 3–2–84; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 30408]

Rail Carriers; the Atchison, Topeka and Santa Fe Railway Co.—Exemption—Acquisition and Operation in Buchanan County, Mo.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition and operation by the Atchison, Topeka and Santa Fe Railway Company of a 19.62 mile line in Buchanan County, MO from the requirement of prior approval under 49 U.S.C. 10901.

DATES: This exemption shall be effective on April 4, 1984. Petitions to stay must be filed by March 15, 1984. Petitions for reconsideration must be filed by March 26, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30408 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Michael W. Balszak, 80 East Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: February 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–5846 Filed 3–2–84; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 30410]

Rail Carriers; Union Pacific Railroad Co.—Acquisition Exemption—Missouri Pacific Railroad Co.; Notice of Exemption

Union Pacific Railroad Company (UP) and Missouri Pacific Railroad Company (MP), wholly-owned subsidiaries of Pacific Rail Systems, Inc., have filed a notice of exemption for UP to purchase a portion of an MP rail line known as the Hutchinson Subdivision between milepost 537.9 and milepost 538.5 at Kanapolis, Ellsworth County, KS. The transaction involves main and side track, right-of-way, and other land. UP will operate over the line after conveyance.

The transaction will result in operating economies for both railroads. UP will perform switching service to each shipper presently served by both UP and MP. MP will no longer need to operate beteeen Genesco and Kanapolis. Line haul service will be more efficient and expeditious

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employee affected by the transfer shall be protected pursuant to *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Decided: February 24, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–5847 Filed 3–2–84; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002 (a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 13, 1983, Applied Science Laboratories Inc., a Division of Altech Associate Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as an importer of Tetrahydrocannabinols (7370), a basic class controlled substance in Schedule I.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than April 14, 1984.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 23, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84–5843 Filed 3–2–84; 8:45 am]
BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Nuclear Power Station); Issuance of Interim Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated July 20, 1983 filed by Michael D. Ernst on behalf of the Massachusetts Public Interest Research Group. The petitioner had requested that the Commission take immediate action to remedy alleged serious deficiencies in the offsite emergency response plans for the Pilgrim Nuclear Power Station in Plymouth, Massachusetts. The petitioner also requested immediate initiation of the four-month time period for correction of alleged emergency planning deficiencies and a determination as to whether the state of emergency preparedness at the Pilgrim facility in conjunction with that facility's alleged poor safety record and the high summer population in the area warranted an immediate shutdown or operation of the Pilgrim facility at reduced power. The Director, Office of Inspection and Enforcement, has determined to deny in part and defer in part the petitioner's request.

The reasons for this decision are explained in the "Interim Director's Decision" under 10 CFR 2.206 (DD-84-5) which is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the local Public Document Room for the Pilgrim Nuclear Power Station at the Pilgrim Public Library, North Street, Plymouth, Massachusetts 02360.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the decision within that time.

Dated at Bethesda, Maryland this 27th day of February 1984.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 84-5857 Filed 3-2-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems and Decay Heat Removal; Meeting

The Combined ACRS Subcommittee on Emergency Core Cooling Systems and Decay Heat Removal will hold a meeting on March 20 and 21, 1984, Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published Tuesday, January 24, 1984 (49 FR 2973).

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information (SUNSHINE ACT EXEMPTION 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, March 20, 1984—8:30 a.m. until the conclusion of business; Wednesday, March 21, 1984—8:30 a.m. until the conclusion of business.* The Combined Subcommittee will discuss the status of feed-and-bleed capability in PWRs.

During the initial portion of the meeting, the Combined Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the PWR Owners Groups, Vendors, Licensees, the NRC Staff, their respective consultants, and other interested persons regarding this subject.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., e.s.t.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: February 28, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-5856 Filed 3-2-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Maintenance Practices and Procedures; Exemption Change

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a metting on March 14, 1984, Room 1046, 1717 H Street, NW, Washington, DC. The Subcommittee will discuss the current status, and future needs and plans of maintenance at nuclear reactors, with the NRC Staff and invited experts. Notice of this meeting was published Monday, February 27, 1984 (49 FR 7164).

In accordance with the procedures outlined in the **Federal Register** on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, it consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss information provided in confidence by a foreign government. One or more closed sessions may be necessary to discuss such information. (Sunshine Act

Exemption (9)(B)). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Wednesday, March 14, 1984—8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

I have determined, in accordance with Subsection 10(d) Pub. L. 92–463 that it may be necessary to close portions of this meeting as noted above. The authority for such closure is Exemption (9)(B) to the Sunshine Act, 5 U.S.C. 552b (c)(9)(B).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., e.s.t.

Dated: February 29, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–5855 Filed 3–2–84; 8:45 am]

BILLING CODE 7950–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Certain reports are required annually or every five years. Other reports are submitted as events occur.

5. Who will be required or asked to report: Applicants for or holders of a licenses to manufacture or intially transfer items containing byproduct material.

6. An estimate of the number of reponses: 11,725

7. An estimate of the total number of hours needed to complete the requirement or request: 9,280

8. An indication of whether Section 3504 (h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 32 prescribes requirements for the issuance of specific licenses to persons who manufacture or initially transfer items containing byproduct material for sale or distribution to exempt persons or general licensees, and requirements for licenses to introduce byproduct material into a product or material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 28th day of February 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84–5858 Filed 3–2–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 27–48]

License Issuance and Negative Declaration; US Ecology, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: License issuance and negative declaration.

SUMMARY: NRC has issued an amended license for US Ecology, Inc. of Louisville, Kentucky, for disposal of special nuclear material (SNM) at US Ecology's low-level waste disposal facility located at Hanford (Richland), Washington. The amended license reflets the implementation of the waste manifest, waste form, and waste classification requirements of 10 CFR Parts 20 and 61. The amended license also reflects the operational changes in disposal necessary to implement the new requirements. NRC has determined that issuance of this amended SNM license will not result in any significant impact on the environment and therefore does not require preparation of an environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Mr. Leo B. Higginbotham, Chief, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 427–4433.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has issued to US Ecology, Inc. an amended license for disposal of special nuclear material (SNM) at US Ecology's low level waste disposal facility located in Hanford (Richland), Washington.[1] The amended SNM license supersedes the previous one authorizing disposal activities at US Ecology's facility in Richland, Washington.

The amended SNM license incorporates the waste manifest, waste form, and waste classification requirements of 10 CFR Parts 20 and 61, along with operational changes necessary to implement the new requirements. The requirements of 10 CFR Part 20, § 20.311, that apply to waste generators, brokers, and shippers became effective on December 27, 1983 and the amended license implements these requirements for the disposal facility operator that are necessary for disposal of SNM wastes.

The State of Washington, Department of Social and Health Services (DSHS) has already issued an amended State license for disposal of source and byproduct material that implements the new requirements of 10 CFR Parts 20 and 61. The amendments to the NRC SNM license were coordinated with the Washington DSHS and reflect the waste form and packaging requirements contained in the State of Washington license. The NRC and State licenses have been made as consistent as possible to minimize confusion on the part of waste generators, brokers and shippers.

The NRC issued a Draft Environmental Impact Statement (DEIS), NUREG–0782 and a Final Environmental Impact Statement (FEIS), NUREG–0945 during the development of the requirements for waste disposal

[1] US Ecology's main office is located at 9200 Shelbyville Road, Suite 526, Louisville, Kentucky 40207.

established in 10 CFR Parts 20 and 61. Based on the analyses done as part of the rulemaking and presented in these environmental statements, the NRC concludes that issuance of this amended SNM license to implement these requirements will not result in any significant impact on the environment and therefore does not require preparation of an environmental impact statement. The DEIS and FEIS may be obtained by writing to the Division of Technical Information and Document Control. U.S.N.R.C. Washington, D.C. 20555.

The Commission finds that the issuance of the amended license complies with the requirements of the Atomic Energy Act of 1954, as amended, and the requirements of Title 10, Chapter 1, Code of Federal Regulations.

Dated at Silver Spring, Maryland this 24th day of February, 1984.

For the Nuclear Regulatory Commission.

Leo B. Higginbotham,

Chief, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management.

[FR Doc. 84-5860 Filed 3-2-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-463-CP and 50-464-CP; ASLBP No. 76-300-01]

Philadelphia Electric Co. (Fulton Generating Station, Units 1 and 2); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Philadelphia Electric Company* (Fulton Generating Station, Units 1 and 2), Docket Nos. 50-463-CP and 50-464-CP, is hereby reconstituted by appointing Administrative Judge Ivan W. Smith in place of Administrative Judge Donald P. de Sylva who is unable to serve. Administrative Judge Ivan W. Smith is also appointed as Alternate Chairman of the Board.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr, Chairman
Ivan W. Smith, Alternate Chairman
Gustave A. Linenberger, Jr.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Ivan W. Smith, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 28th day of February 1984.

Frederick J. Shon,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 84-5859 Filed 3-2-84; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Coal Options Task Force Meeting

AGENCY: Coal Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

SUMMARY: On February 2, 1984 in a public meeting in Coeur d'Alene, Idaho, the Northwest Power Planning Council established a Coal Options Task Force (Task Force) as an advisory committee to the Council. This notice describes the Task Force, provides information on how to obtain notices of Committee meetings, and explains how to request copies of the Task Force's advisory committee charter.

ADDRESSES: Individuals and entities wishing to receive notices of Task Force meetings or copies of the Task Force's advisory committee charter should contact Michele Sterling by writing her at the Council's central office, Suite 200, 700 S.W. Taylor St., Portland, Oregon 97205, or by calling her at (toll free) 1-800-222-3355, from Montana, Idaho, Washington, and California; (toll free) 1-800-452-2324 in Oregon; or (503) 222-5161, from other states. The charter is also available for inspection and copying in the public reading room of the Council's central office, Suite 200, 700 S.W. Taylor Street, Portland, Oregon on weekdays between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Foley, Manager, Conservation and Resources at (toll free) 1-800-222-3355, from Montana, Idaho, Washington, and California; (toll free) 1-800-452-2324 in Oregon; or (503) 222-5161, from other states.

SUPPLEMENTARY INFORMATION: On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted the first Northwest Conservation and Electric Power Plan (Plan), as required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 16 U.S.C. 839 et seq. (Act). Action Item 13 of the Plan's two-year action plan addresses the concept of acquiring options on resources. Specifically, Action Item 13 lays out an approach to demonstrate whether the options concept is viable for long-term energy planning. Action Item 13.5 is a Council action to explore for each specific resource significant regulatory barriers that could limit the effectiveness of the options program and to propose means of minimizing those limitations. The activities detailed in Action Item 13.5 are to be achieved with the assistance of an advisory task force composed of the Council, Bonneville, utilities, and other interested parties. This advisory committee is established as part of a network of advisory committees satisfying the Council's obligation under the Northwest Power Act to establish a Scientific and Statistical Advisory Committee. 16 U.S.C. 839(b)(c)(11). Under section 4(a)(4) of the Act, the terms of the Federal Advisory Committee Act, 5 U.S.C., Appendix I, Sections 1-14, apply "to the extent appropriate" to the Council's advisory committees. 16 U.S.C. 839b(a)(4).

The Council established the Coal Options Task Force, named Task Force members, selected a Task Force chairman, and adopted a charter for the Task Force in a public meeting on February 2, 1984, in Coeur d'Alene, Idaho. The charter describes the objectives and activities of the Task Force, its authority, and related matters. It also contains rules for Task Force procedures on meeting notices, public participation, minutes, records, conflicts of interest, and reimbursement of certain Task Force member expenses. Requests for copies of the charter or meeting notices and for additional information may be made as provided above in this notice.

Edward Sheets,

Executive Director.

[FR Doc. 84-5842 Filed 3-2-84; 8:45 am]

BILLING CODE 0000-01-M

Options Evaluation Task Force; Regular Meeting Notice

AGENCY: Options Evaluation Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Task Force goals
- Identify general methodology
  - Review example problems
  - Review of decision analysis model development
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Evaluation Task Force.

DATE: Friday, March 9, 1984. 10:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 S.W. Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Wally Gibson (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84–5841 Filed 3–2–84; 8:45 am]

BILLING CODE 0000–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–20698; File No. SR–NASD–84–2]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc.; Sales Incentives Provided in Direct Participation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 20, 1984, the National Association of Securities Dealers, Inc. ("Association" or "NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing a rule change to Subsections 5 (e) and (f) of Appendix F ("Appendix F") under Article III, Section 34 of the Association's Rules of Fair Practice. Set forth below is the text of the proposed rule change. New language is italicized; deleted language bracketed. All other section of Appendix F remain unchanged. The full text of Appendix F may be found in the NASD Manual at ¶ 2192.

(e) No sponsor, affiliate of a sponsor (other than a member dealing with persons associated with that member), or program shall provide any sales incentive item [, including, but not limited to, travel bonuses, prizes, and awards,] directly to a person associated with a member unless:

(1) the aggregate value of all such items to be received by each associated person during any year does not exceed $50.00;

(2) the value of all such items to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of [paragraph] *subsection* (b) [(1)] of this section; and

(3) the proposed payment or transfer of all such items *to be made available in connection with an offering is* [are] disclosed in the prospectus or similar offering document.

(f) No sponsor, affiliate of a sponsor, or program shall provide compensation to a member in the form of sales *incentives or bonuses* [items including, but not limited to, travel bonuses, prizes, and awards] unless all of the following conditions are satisfied:

(1) all sales incentives and bonuses are paid directly to the member in cash and the distribution, if any, of incentives or bonuses to associated persons is controlled by the member;

[(1) a fair market dollar value of the incentive items has been established;]

(2) the value of all [such items] *incentives or bonuses* to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of subsection (b) of this section;

(3) arrangements relating to the proposed payment [or transfer] of all [such items] *incentives or bonuses,* are disclosed in the prospectus or similar offering document; *and*

[(4) the manner of receiving all such items and their subsequent disposition, whether to associated persons or otherwise, is controlled solely by the member in a manner which enables the member to properly supervise its associated persons; and]

(4) [(5)] the value of all [such times] *incentives and bonuses* is reflected on the books and records of the recipient member as compensation received in connection with the offering.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The Association has become concerned about the continuing proliferation of sales incentives provided by the sponsors of public direct participation programs. The proposed rules change would amend subsections 5 (e) and (f) of Appendix F to place additional restrictions on sales incentive programs.

Appendix F presently contains restrictions on two different types of sales incentives, those paid directly to salespersons by sponsors and those paid by sponsors to broker/dealers. Subsection 5(e) regulates direct payments to individual associated persons of members and limited those incentives to $50.00 per person per year. Any incentive item paid in connection with an offering must be counted as underwriting compensation and arrangements relating to its receipt must be disclosed in the offering material. Subsection 5(f) permits sales incentives to be provided by sponsors to broker/dealers if certain criteria are met. In short, a fair market value must be established for incentive items, the value of all items must be included as underwriting compensation, payment arrangements must be disclosed, the manner of disposition of the item must be controlled solely by the member, and the value of such item must be reflected on the member's books and records as underwriting compensation.

Notwithstanding these restrictions, there has been a proliferation of incentive programs. The Association has concluded that the availability of sales incentives in the form of trips to exotic locations or elaborate selections of merchandise, often promoted by sponsors through direct contact with salespersons, could lead to a lessening of the emphasis placed on suitability considerations in recommending particular programs to customers. Additionally, because these programs offer incentives only in an non-cash form and use direct appeals, it is often difficult for member firms to adequately control salespersons' participation in the programs.

Although Appendix F requires recordation, there is some questions as to whether the value of non-cash incentive items is reflected on the books and records of all broker/dealers as additional underwriting compensation. There is also concern about the adequacy of disclosure in prospectuses of the details on some programs.

For all of the above reasons, it was concluded that the present restrictions which Appendix F places on sales incentives should be revised.

The proposed rule change to Appendix F would amend both Subsections 5 (e) and (f). The amendment to Subsection 5(e) is technical in nature and is intended to clarify the subsection's present requirements.

The amendment to Subsection 5(f) would require that all sales incentives and bonuses be paid directly by a sponsor, affiliate, or program to a member and that such incentives and bonuses be paid only in the form of cash. Incentives and bonuses could be paid only if any distribution of the incentives or bonuses to associated persons is controlled solely by the recipient member.

This provision is intended to permit broker/dealers to distribute sales incentives in any manner or to retain the incentives at the firm level. The new language that the distribution of incentives be "controlled by the member" is intended to include the same degree of control, i.e. pervasive control of the description, promotion, and distribution of incentives which permits the member firm to adequately supervise its associated persons. In the past, this control has been interpreted as extending to the control of direct contacts by sponsors to associated persons with the result that any sponsors' literature promoting incentive programs directly to associated persons has been required to emphasize broker/dealer control of each associated person's participation. This interpretation is intended to be incorporated into the new language. The remaining proposed changes to Subsection 5(f) are conforming in nature.

The Association is charged under both Sections 15A(b)(2) and 15A(b)(6) of the Securities Exchange Act of 1934 ("1934 Act") with the responsibility of promulgating rules which prevent fraudulent and manipulative practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and generally protect investors. The proposed rule change will specifically further these purposes by increasing the ability of broker/dealers to effectively supervise their sales personnel, and ensure compliance with the suitability requirements of Appendix F.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association believes the proposed rule change will not impose an unreasonable burden on competition. Requiring all sales incentives and bonuses to be paid only in the form of cash will foster a consistent approach to these items of compensation throughout the securities industry. Competition will be furthered as a result of all sales incentive programs having a common denominator with which investors may judge the various incentives being granted to salespersons. This clarification of regulatory parameters will further the purposes expressed in the 1934 Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Association solicited comments on the proposed rule change in Notice-to-Members 83–13, (March 18, 1983). Twenty-six letters of comment were received by the Association concerning the proposed rule change.

Overall, a majority of commentators approved of the proposed amendment with a few variations. Some commentators offered suggestions to its provisions. Others would eliminate sales incentive programs entirely and expressed concern that such items show a lack of professionalism and "carnivalize" the industry.

Several commentators expressed concern that sales incentive programs, particularly those involving trips to exotic locations or elaborate selections of merchandise, may lead salespersons to place less emphasis on suitability requirements in recommending particular direct participation programs. In short, the offering of trips or material prizes may distort the objective selection of investments for clients.

One commentator suggested that sales incentives tend to be utilized to move a slow product with weak investment value, in detriment to the client.

A large number of commentators indicated concern over the issue of supervision. According to several commentators, sponsors and wholesalers often call directly on registered representatives and offer prizes as sales incentives which are not cleared by member firms. Therefore, it is often difficult for broker/dealers to adquately control salespersons' participation in the program. It was proposed that direct communications with registered representatives containing more than just educational data be eliminated. Additionally, the elimination of trips resulting from direct communications to registered representatives was advocated.

Suggestions that each member firm marketing direct participation programs designate an officer to be specifically responsible for administering sales incentive programs funded by external sources were also received. Finally, to assist members in discharging supervisory responsibility over their registered sales personnel, one comment letter suggested requiring the express written permission of a member prior to the distribution of any sales incentive items directly to a person associated with such member.

Although Appendix F requires recordation, there is some question as to whether the value of non-cash incentive items is reflected on the books and records of all broker/dealers as additional underwriting compensation.

Several commentators indicated that there should be a service fee, annual fee or due diligence fee for the member firm if sales incentives are offered. It was suggested that a service fee could also be used to improve the ability of a member to serve the interests of its clients, particularly with respect to the performance of due diligence.

With respect to the enforcement of Appendix F under the amendment, it was proposed that consideration be given to ways in which the rules regarding sales contests can be applied equitably to both member firms which sponsor and sell their own programs and sponsors who sell their programs through non-affiliated members.

While supporting the disclosure requirements of the proposed amendment, it was suggested that the $50.00 limit in Subsection 5(e) on all sales incentive items to be received by each associated person per year be increased. Another commentator indicated that a maximum dollar limit per account executive should be set on the cost or value of all sales incentives paid or awarded under Subsection 5(f). A $1,000 limit per registered representative per year under this subsection was proposed.

Some commentators voiced objection to certain provisions of the amendment. While favoring the prospectus disclosure requirements of the amendment, one commentator stated that there has been no demonstration of a need for substantive restrictions on sales incentives, particularly with respect to its impact on suitability. Another commentator expressed its doubt that in spite of enormous exposure to financial loss and the potential damage to its business reputation, a member would distribute a questionable program simply so that its salespersons could participate in an incentive program. With repect to the issue of supervison, the commentator

suggested that sponsors should be willing to honor requests from member firms that salespersons not be contacted regarding incentive programs without specific written authorization from the member.

A few commentators expressed concern that substantive restrictions on sales incentives would place a burden on member firms because the firms would be faced with the task of collecting and distributing cash incentives to each salesperson.

It was further suggested that the payment of sales incentives in cash is not in the best interest of investors because it would tend to reduce the number of educational conferences for salespersons. One commentator would support a requirement that attendance records and records concerning the substance of the educational program be maintained.

Comments were received indicating that so long as sales incentives must be paid directly to a member under the proposed rule change, the exact form of payment is not relevant.

As to the issue of additional disclosure which was proposed in the amendment published for comment, concern was expressed that it is simply not possible to describe in detail a commitment to pay or to provide for the payment of incentives which may or may not be available at a certain cost in the future. Furthermore, one commentator suggested that explicit disclosure requirements may lead certain sponsors to provide unrealistic incentives. Finally, another commentator questioned the need for a prospectus disclosure requirement under Subsection 5(e) since the provision permits only sales incentives of de minimus value.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-5892 Filed 3-2-84: 8:45 am]

BILLING CODE 8010-01-M

[File No. SR-NASD-84-1; Rel. No. 20699]

Self Regulatory Organizations; Filing of Proposed Rule Change; National Association of Securities Dealers, Inc.

February 27, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 10, 1984, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, filed with the Securities and Exchange Commission the proposed rule change (NASD-84-1) as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would modify several sections of the NASD's Uniform Practice Code (the "Code"). First, the proposal would modify section 9(c) relating to "Don't Know" (DK) notices, a voluntary procedure that members use to accept or DK a trade that has not been compared by both parties to the trade. Section 9(c) currently requires members to send the DK notice by certified mail-return receipt. The proposed rule change would retain the method of delivery specified in 9(c) while adding Section 9(d) that allows a DK notice to be sent by any means of transmission which will provide for verification of delivery and receipt of that notice.

The Board of Governors of the NASD (the "Board") believes that the proposal will allow firms to transmit DK notices by means that are more efficient than the postal service. The Board believes that the present rule is restrictive and causes inefficiencies that could be eliminated by using modern telecommunications systems.

Second, the proposal amends Section 12 of the Code that sets forth the requirements for time and place of delivery of securities. NASD rules currently require delivery to be made at the office of the purchaser between specified hours. This proposed rule change would permit the purchaser to issue special delivery instructions at the time of the transaction. The Board feels that the parties involved in these transactions should be able to negotiate individual delivery arrangements.

Third, the proposed rule change deletes Section 5(b)(3) of the Code relating to the designation of ex-dividend dates of investment company shares. The Board determined it appropriate to delete this sub-section because investment company securities are no longer within the scope of the Code as set forth in Section 1 of the Code.

Finally, the proposal deletes Section 30 of the Code which requires that a third party witness a signature to an assignment of a physical stock certificate or a power of substitution which allows the designation of a new owner of the certificate. The Board states that this procedure is not required under the rules of the Stock Transfer Association and that Section 30 has become obsolete.

The Board believes that the proposal is consistent with Section 15A(b)(6) of the Securities Exchange Act of 1934 that applies to registered securities associations and requires that the rules of the association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." The Board believes that the proposed amendments will further these goals by eliminating certain unnecessary or out-of-date subsections and by simplifying or making available more expeditious procedures regarding

transmission of DK notices and delivery instructions.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-84-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5893 Filed 3-2-84; 8:45 am]

BILLING CODE 8010-01-M

[811-3331; Rel. No. 13794]

AC Daily Income Fund, Inc.; Filing of Application

February 2, 1984.

Notice is hereby given that AC Daily Income Fund, Inc. ("Applicant"), 200 Park Avenue, New York, N.Y. 10166, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act") filed an application on January 6, 1984, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order of the Commission, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicant states that on November 23, 1981, Applicant filed a notification or registration on Form N-8A pursuant to Section 8(a) of the Act. On November 24, 1981, Applicant filed a registration statement on Form N-1 pursuant to Section 8(b) of the Act, relating to an unlimited number of shares of its common stock, $.01 par value. Such registration statement become effective on July 12, 1982. Applicant has never engaged in a public offering of its common stock. Prior to the date on which Applicant's registration statement became effective, Applicant changed its name from N.B.L. Cash Fund, Inc. to AC Daily Income Fund, Inc.

According to the application, as of September 30, 1983, Applicant had 351,086 shares of common stock $.01 par value, issued and outstanding in the hands of eight shareholders and total net assets of $351,086 ($1.00 per share). Acting by unanimous written consent, the Board of Directors of Applicant adopted Articles of Dissolution dated November 30, 1983. As of that date, Applicant redeemed shares of its common stock from all eight stockholders at net asset value in the manner described in Applicant's registration statement on Form N-1 and the prospectus contained in Part I thereof, and in accordance with the provisions of Applicant's Articles of Incorporation and Bylaws. Applicant's portfolio securities were liquidated at market value in order to pay the proceeds of such redemptions. At the time of this filing, Applicant has no remaining assets. On December 30, 1983, Applicant filed the Articles of Dissolution with the State of Maryland. The Articles of Dissolution became effective upon filing and Applicant was dissolved under the laws of the State of Maryland.

Applicant states that it has no securityholders and that it is not a party to any litigation or administrative proceedings. Applicant further maintains that it is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5895 Filed 3-2-84; 8:45 am]

BILLING CODE 8010-01-M

[812-5687; Rel. No. 1379]

Exempt Assets Portfolios; Filing of Application

February 27, 1984.

Notice is hereby given that Exempt Assets Portfolios ("Applicant" or "Fund"), 111 West Jackson Boulevard, Chicago, Ill. 60604, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 26, 1983, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant from the provisions of Sections (2)(a)(41) and 12(d)(3) of the Act and Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant's Short-Term Tax-Exempt Portfolio (the "Portfolio") (and similar money market fund portfolios which Applicant may create in the future) to acquire rights ("puts") to sell its portfolio securities to broker-dealers solely to facilitate portfolio liquidity and to value puts as described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the text of the Act and the Rules thereunder for the various provisions thereof pertinent to a consideration of the application.

Applicant is a "money market fund" having an investment objective of providing its unitholders with a high level of income exempt from Federal income tax by investing primarily in municipal instruments. Applicant states that the Portfolio seeks to achieve its investment objective by investing primarily in high quality short-term instruments, the interest on which is, in the opinion of Bond Counsel for the issuers, exempt from Federal income tax ("Municipal Instruments").

Applicant states that it proposes to acquire puts from banks, brokers, dealers and other persons solely to facilitate portfolio liquidity. In this regard, the Applicant expects to make same-day payment for redeemed units in immediately available funds. Although the Applicant intends generally to hold its portfolio securities to maturity, it represents that the maturity dates of available tax-exempt obligations are sufficiently infrequent that Applicant does not wish to rely merely on scheduled maturities to meet net redemptions.

According to the application, the puts will have the following features: (1) they will be in writing and will be physically held by the Applicant's custodian; (2) they may (but not necessarily will) be exercisable by the Applicant at any time prior to the maturity of the underlying security; (3) they will be entered into only with banks, broker-dealers and other persons which in the judgment of the investment adviser's opinion present minimal risk of default; (4) Applicant's right to exercise them will be unconditional and unqualified; (5) although they may not be transferable, Municipal Instruments purchased subject to such puts could be sold to a third party at any time, even though the put was outstanding; and (6) their exercise price will be (i) Applicant's acquisition cost of the Municipal Instruments which are subject to the put (excluding any accrued interest which the Applicant paid on their acquisition), less any amortized market premium or plus any amortized or original issue discount during the period Applicant owned the securities, plus (ii) all interest accrued on the securities since the last interest payment date during the period the securities were owned by the Applicant.

If necessary and advisable, Applicant proposes to pay for puts either separately in cash or by paying a higher price for the portfolio securities which are acquired subject to the put (thus reducing the yield to maturity otherwise available for the same securities). As a matter of policy, the total amount "paid" in either manner for outstanding puts held in its Portfolios would not exceed 1/2 of 1% of the value of its total assets calculated immediately after any put is acquired. The acquisition or exercisability of a put will not affect the valuation or assumed maturity of the underlying Municipal Instruments which would continue to be valued on an amortized cost basis pursuant to Rule 2a–7.

Applicant states that, during the term of a put, it would be very difficult if not impossible to evaluate the likelihood of eventual exercise of the put or to quantity the potential benefit to Applicant, if that put were exercised. In light of such uncertainties, it is represented that the Board of Trustees of Applicant will deem the put to have a "fair value" of zero, regardless of whether Applicant paid any direct or indirect consideration for the put. When Applicant pays for a put, its cost will be reflected as unrealized depreciation for the period during which the put is held by the Applicant. Notwithstanding the foregoing, in calculating the dollar-weighted average maturity of the Portfolios, puts would always be valued at zero and the dollar-weighted average maturity will not be affected by the acquisition of the puts.

Applicant states that it believes there to be little risk of an event occurring which would make amortized cost valuation of its portfolio instruments inappropriate. However, in the unlikely event that the market or fair value of Applicant's portfolio instruments was not substantially equivalent to their amortized cost value, the Trustees may determine that the Municipal Instruments should be valued on the basis of available market quotations.

Applicant contends that its rights under a put will be secured to the extent of the value of the underlying Municipal Instruments which are subject to the put and, therefore, the risk of loss is not qualitatively different from the risk of loss faced by any investment company which is holding securities pending settlement after having agreed to sell the securities in the ordinary course of business. Applicant states that its investment adviser intends to periodically evaluate the credit of institutions issuing puts to the Applicant in accordance with current procedures similar to those used in evaluating the creditworthiness of issuers of short-term debt securities. In the event of a default under a put, Applicant states that it expects that it will be an unsecured creditor but only to the extent, if any, that the amount due under the put exceeds the current value of the underlying Municipal Instruments owned by Applicant.

In addition, Applicant states that it will value puts at zero. Accordingly, the acquisition of such puts will not, it is claimed, meaningfully expose Applicants assets "to the entrepreneurial risks of the investment banking business" (Investment Company Act Release No. 10666, April 18, 1979), nor require the Fund to evaluate the credit of dealers in determining its net asset value. The Fund further states that it will not acquire puts to promote reciprocal practices, to encourage unit distribution efforts or to obtain research services.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84–5884 Filed 3–2–84; 8:45 am]

BILLING CODE 8010–01–M

[811–2501; Rel. No. 13795]

Wright Investment Shares, Inc.; Filing of Application

February 27, 1984.

Notice is hereby given that Wright Investment Shares, Inc. ("Applicant"), Park City Plaza, 10 Middle Street, Bridgeport, Conn. 06604, an open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act") filed an application on January 4, 1984, pursuant to Section 8(f) of the Act and Rule 8f–1 thereunder, for an order of the Commission, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the act and the rules thereunder for a statement of the relevant provisions.

On July 12, 1974, Applicant filed a notification of registration on Form N–8A. On July 17, 1974, Applicant filed a registration statement on Form S–5 relating to 20,000 shares of common stock equally divided into two classes of shares at $100.00 per share.

Applicant states that it has never made a public offering of any of its securities. Applicant further states that it has no security holders, no assets and that it is not a party to any litigation or administrative proceedings. Applicant maintains that it is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 23, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-5896 Filed 3-2-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 3019; Amdt. No. 2]

Ohio; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166

The above numbered declaration (48 FR 55795 and Amendment No. 1—48 FR 57396) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

STATE OF OHIO

FmHA		Incident and date
Number	Date	
SO89	02/14/84	Severe losses to crops caused by drought and high temperatures beginning July 1, 1983, and continuing through September 30, 1983.

Counties

Clinton and Fayette.

As a result of this designation, I have determined the above Counties in the State of Ohio constitute a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status: corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns. The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural Enterprises With Credit Available Elsewhere	10.5
Agricultural Enterprises Without Credit Available Elsewhere	8.0
Non-farm Small Businesses (Economic Injury)	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on August 14, 1984. The number assigned this disaster is 3019 for Physical damage to eligible agricultural enterprises and is 609201 for Economic Injury.

Eligible enterprises may file applications for loans for physical damage or economic injury at: Area 2 Disaster Office, 75 Spring Street, SW., Suite 822, Atlanta, Georgia 30303, (800) 554-3455 and in Georgia (800) 241-5625, or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 27, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-5897 Filed 3-2-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5472]

Financial Venture Corp.; Application for a License To Operate as a Small Business Investment Company (SBIC)

An application for a license to operate as a small business investment company, under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Financial Venture Corporation, Fernandez Jucos Ave., #801 Santurce, Puerto Rico 00907 with the Small Business Administration (SBA), pursuant to § 107.102 of Revision 6 [48 FR 45014 (9/30/83)].

The officers and directors of the Applicant are as follows:

		Percent
Jorge L. Fernandez, Montebelow, Montebello DA-11, El Retiro, Guaynabo, Puerto Rico 00625.	Chairman, President & Director.	10
Jose E. Fernandez, 1893 Narcisco Street, Rio Predras, Puerto Rico 00927.	Vice President, Treasurer and Director.	90
Alejandro Asmar, 92 Pina Street, Milaville, Rico, Puerto Rico 00926.	Secretary CEO and Director.	0

The applicant will begin operations with a capitalization of $1,000,000 which will be a source of equity capital and long term loans for qualified small business concerns.

The Applicant will conduct its operations principally in the Commonwealth of Puerto Rico.

As an SBIC under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Santurce, Puerto Rico area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 24, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-5898 Filed 3-2-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0262]

Round Table Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Round Table Capital Corporation (Round Table), 601 Montgomery Street, San Francisco, California 94111, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction.

Round Table proposes a $140,000 equity investment as the sole limited partner in Shapiro Limited Partnership (Shapiro), 601 Montgomery Street, Suite 500, San Francisco, California 94111. Mr. Daniel E. Jones would be the general partner. Shapiro would be created solely for the purpose of purchasing a Western Pizza Restaurant in Lafayette, California and converting and operating the same as a Round Table Pizza Restaurant.

The conflict of interest arises because Mr. Jones is currently a vice president of Round Table Franchise Corporation, another subsidiary of Round Table Pizza, Inc., parent of Round Table. Thus, Mr. Jones is deemed as an Associate of Round Table under § 107.3(c) of SBA Rules and Regulations. Because Mr. Jones is a control person of Shapiro, Shapiro is considered an Associate of Round Table. Therefore, the proposed transaction falls within the purview of § 107.903(b)(3) of the Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in newspapers of general circulation in the San Francisco and Lafayette, California areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: February 22, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-5900 Filed 3-2-84; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulations governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State Usury ceilings, and to its forfeiture and penalty provisions.

Effective March 1, 1984, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 12.175% per annum.

Dated: February 29, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-5899 Filed 3-2-84; 8:45 am]

BILLING CODE 8025-01-M

Region II—Advisory Council Meeting

The Small Business Administration, Region II Advisory Council, located in the geographical area of Syracuse, will hold a public meeting at 9:00 a.m. on Wednesday, April 4, 1984, at the Holiday Inn, 701 East Genesee Street, 20th Floor Conference Room, Syracuse, New York, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call J. Wilson Harrison, District Director, U.S. Small Business Administration, 100 South Clinton Street, Room 1071, Syracuse, New York 13260, (315) 423-5371.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 27, 1984.

[FR Doc. 84-5901 Filed 3-2-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

February 27, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0008
Form Number: N/A
Type of Review: Existing Collection
Title: Wage and Tax Settlement

OMB Number: 1545-0014
Form Number: N/A
Type of Review: Revision
Title: Registration for Tax-Free Transactions Under Chapters 31 and 32 of the Internal Revenue Code

OMB Number: None
Form Number: None
Type of Review: Existing Collection
Title: Request for Release of Right of Redemption

OMB Number: 1545-0034
Form Number: N/A
Type of Review: Revision
Title: Employer's Quarterly Tax Return for Household Employees

OMB Number: 1545-0710
Form Number: N/A
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan, Return/Report of Employee Pension Benefit Plan, Assoc. Schedules

Alcohol, Tobacco and Firearms

OMB Number: 1512–0369
Form Number: ATF REC 5300/1
Type of Review: Reinstatement
Title: Licensed firearms manufacturers records of production, disposition, and supporting data
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Gary Kowalczyk,
Departmental Reports Management Office.
[FR Doc. 84–5851 Filed 3–2–84; 8:45 am]
BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 14]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable reinsurer on Federal bonds is hereby issued to the following company under Sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $1,104,000 has been established for the company.

Name of Company: Frankona Reinsurance Company—U.S. Branch
Business Address: P.O. Box 1069; 2440 Pershing Road, Suite 200, Kansas City, MO 64108
State of Incorporation: Missouri

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1983 Revision, at page 30543 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff, Banking and Cash Management, Department of the Treasury, Washington, DC 20226.

Dated: February 23, 1984.
W. E. Douglas,
Commissioner.
[FR Doc. 84–5784 Filed 3–2–84; 8:45 am]
BILLING CODE 4810–35–M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on March 19 and 20, 1984. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The sessions will convene at 9 a.m. both days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Von Hudson, Program Assistant, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–2298) prior to March 14, 1984.

Dated: February 24, 1984.
By direction of the Administrator.
Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 84–5862 Filed 3–2–84; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 44
Monday, March 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

February 29, 1984.

Deletion of Agenda Item From March 1st Open Meeting

The following item has been deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the March 1, 1984, Open Meeting and previously listed in the Commission's Notice of February 23, 1984.

Agenda, Item No., and Subject

General—1—Title: Policy Regarding Character Qualifications in Broadcast Licensing (Gen. Docket No. 81–500); Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees (BC Docket No. 78–108). Summary: The Commission will consider whether to adopt a Report, Order and Policy Statement resolving the issues raised in the above-referenced proceedings.

Issued: February 29, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–5921 Filed 3–1–84; 11:39 am]

BILLING CODE 6712–01–M

2

FEDERAL COMMUNICATIONS COMMISSION

February 28, 1984.

Deletion of Agenda Item From March 1st Closed Meeting

The following item has been deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the March 1, 1984 Closed Meeting and previously listed in the Commission's Notice of February 23, 1984.

Agenda, Item No., and Subject

Hearing—3—Application for Review and Petition to Enlarge Issues in the Burbank, California, AM radio comparative renewal proceeding (Docket No. 20629 and BC Docket No. 79–65).

Issued: February 29, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–5922 Filed 3–1–84; 11:39 am]

BILLING CODE 6712–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

February 28, 1984.

Deletion of Agenda Item From March 1st Open Meeting

The following item has been deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the March 1, 1984 Open Meeting and previously listed in the Commission's Notice of February 23, 1984.

Agenda, Item No., and Subject

General—2—Title: Notice of Proposed Rulemaking Concerning a Further Policy Statement on Comparative Broadcast Hearings. Summary: The Commission will consider whether to initiate a rulemaking proceeding looking into modification of the comparative factors utilized in evaluating mutually exclusive broadcast applicants in order to improve the performance of the comparative hearing process.

Issued: February 29, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–5923 Filed 3–1–84; 11:39 am]

BILLING CODE 6712–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 29, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, March 7, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Secretary of Labor, MSHA v. Carbon County Coal Co., Docket No. WEST 82–106. (Issues include whether the judge erred in denying the operator's motion for summary decision in a civil penalty proceeding involving the operator's ventilation plan.)

TIME AND DATE: Immediately following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above mentioned item.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84–5939 Filed 3–1–84; 12:06 pm]

BILLING CODE 6735–01–M

5

NATIONAL SCIENCE BOARD

DATE AND TIME:

March 15, 1984, 8:30 a.m.—Closed Session
March 15, 1984, 9:00 a.m.—Open Session
March 16, 1984, 8:30 a.m.—Closed Session
March 16, 1984, 9:00 a.m.—Open Session

PLACE: National Science Foundation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS:

Thursday, March 15, 1984—9:00 a.m.

1. Minutes—February 1984 Meeting
2. Chairman's Items
3. Director's Report
4. Report of Committee on Institutes
5. Reporting Requirements to NSB on Peer Review

Friday, March 16, 1984—9:00 a.m.

6. Grants, Contracts, and Programs
7. Policy on Copyrightable Material
8. Scientific Colloquium on Gravitational Radiation
9. Reports of Board Committees
10. Board Representation at Advisory Committee and Other Meetings
11. Other Business
12. Next Meetings

MATTERS TO BE CONSIDERED AT THE CLOSED SESSIONS:

Thursday, March 15, 1984—8:30 a.m.

A. Minutes—February 1984 Meeting
B. NSB and NSF Staff Nominees
C. Alan T. Waterman Award
D. Vannevar Bush Award

Friday, March 16, 1984—8:30 a.m.

E. Grants, Contracts, and Programs

Margaret L. Windus,

Executive Officer.

[FR Doc. 84-5937 Filed 3-1-84; 11:46 am]

BILLING CODE 7555-01-M

6

POSTAL RATE COMMISSION

TIME AND DATE: 10:50 a.m., Friday, February 24, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C. 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Discussion of matters in Docket No. R83-1. (Closed pursuant to 5 U.S.C. 552b(c)(10).)

CONTACT PERSON FOR MORE INFORMATION: Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone: (202) 254-5614.

Charles L. Clapp,

Secretary.

[FR Doc. 84-5940 Filed 3-1-84; 12:06 pm]

BILLING CODE 7715-01-M

federal register

Monday
March 5, 1984

Part II

Environmental Protection Agency

40 CFR Part 471

Nonferrous Metals Forming and Iron and Steel/Cooper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 471

[OW-FRL-2513-8]

Nonferrous Metals Forming and Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing effluent limitations guidelines and standards under the Clean Water Act to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTW) from particular nonferrous metals forming and iron and steel/copper/aluminum metal powder production and powder metallurgy facilities. The Clean Water Act and a consent decree require EPA to propose and promulgate this regulation. The purpose of this action is to propose effluent limitations based on best practicable technology, best available technology, and best conventional technology; new source performance standards based on best demonstrated technology; and pretreatment standards for existing and new indirect discharges. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted by May 4, 1984.

ADDRESSES: Send comments to: Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Nonferrous Metals Forming Comments. Technical information and copies of technical documents may be obtained from Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or call 202/382-7156. The economic analysis report may be obtained from Dr. Joseph Yance, Economic Analysis Staff (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or call 202/382-5379.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding, 202/382-7156.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

These proposed regulations are supported by three major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in the *Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Forming and Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category* (EPA 440/1-84/019-b). The Agency's economic analysis is found in *Economic Analysis of Proposed Effluent Limitations and Standards for the Nonferrous Metals Forming Indsutry* (EPA-440/2-84-005).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Organization of This Notice

1. Legal Authority.

II. Background.

A. The Clean Water Act and the Settlement Agreement.
B. Prior EPA Regulations.
C. Overview of the Category.

III. Scope of this Rulemaking and Summary of Methodology.

IV. Data Gathering Efforts.

V. Sampling and Analytical Program.

VI. Industry Subcategorization.

VII. Available Wastewater Control and Treatment Technology.

A. Control and Treatment Technologies Considered.
B. Status of In-Place Technology.
C. Control and Treatment Options Considered.

VIII. Summary of Generic Issues.

IX. Best Practicable Technology (BPT) Effluent Limitations.

X. Best Available Technology (BAT) Effluent Limitations.

XI. New Source Pereformance Standards (NSPS).

XII. Pretreatment Sttandards for Existing Sources (PSES).

XIII. Pretreatment Standards for New Sources (PSNS).

XIV. Best Conventional Technology (BCT).

XV. Regulated Pollutants.

XVI. Polluitants and Subcategories Not Regulated.

XVII. Economic Considerations.

A. Costs and Economic Impacts.
B. Executive Order 12291.
C. Regulatory Flexibility Analysis.
D. SBA Loans.

XVIII. Nonwater Quality Aspects of Pollution Control.

XIX. Best Management Practices (BMPs).

XX. Upset and Bypass Provisions.

XXI. Variances and Modifications.

XXII. Implementation of Limitations and Standards.

A. Relationship to NPDES Permits.
B. Indirect Dischargers.

XXIII. Solicitation of Comments.

XXIV. List of Subject in 40 CFR Part 471.

XXV. Appendices:

A. Abbreviations, Acronyms, and Other Terms Used in this Notice.
B. Pollutants Selected for Regulation by Subcategory.
C. Toxic Pollutants Excluded From Regulation in All Subcategories.
D. Toxic Pollutants Excluded From Regulation in Certain Subcategories.
E. Subcategories Excluded.

I. Legal Authority

EPA is proposing the regulation described in this notice under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217) ("the Act"). These regulations also are proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), *modified* by orders of October 26, 1982, August 2, 1983, and January 6, 1984.

II. Background

A. The Clean Water Act and the Settlement Agreement

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT"), Section 301(b)(1)(A). By July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable—which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards ("NSPS"), based on best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. The requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System ("NDPES") permits issued under Section 402 of the Act. Pretreatment standards were made enforceable directly against dischargers to POTWs (indirect dischargers).

Although Section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

EPA was unable to promulgate many of these regulations by the dates contained in the Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the District Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), modified by additional orders of October 26, 11982, August 2, 1983, and January 6, 1984.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makers several important changes in the Federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984 of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMP") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those mentioned specifically in Section 304(a)(4) (biochemical oxygen demanding pollutants (BOD_5) total suspended solids (TSS), fecal coliform, and PH), and any additional pollutants defined by the Administrator as "conventional." (To date, the Agency has added one such pollutant, oil and grease, 44 FR 44501, July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two-part "cost-reasonableness" test, *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent that BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

On October 29, 1982, the Agency proposed a revised BCT methodology, 47 FR 49176. This methodology has been applied to each of the subcategories in the nonferrous metals forming point source category and is discussed in Section XIV of today's notice.

For non-toxic, nonconventional pollutants, Sections 301 (b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BPT, BAT and BCT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA has not previously proposed or promulgated regulations for the Nonferrous Metals Forming Point Source Category.

C. Overview of the Category

Because of the diversity of the nonferrous metals industry, EPA has divided it into different segments for regulation. This proposed regulation

only covers nonferrous metals forming operations; nonferrous metals manufacturing operations are covered under separate regulations, 40 CFR Part 421, (nonferrous metals manufacturing phase I, proposed at 46 FR 7032, February 17, 1983, to be promulgated shortly, nonferrous metals manufacturing phase II, scheduled for proposal shortly). The nonferrous metals forming category is generally included within SIC 3356, 3357, 3463, and 3497 of the *Standard Industrial Classification Manual*, prepared in 1972 and supplemented in 1977 by the Office of Management and Budget, Executive Office of the President. The category includes establishments engaged in the forming of nonferrous metals and their alloys, except for copper and aluminum for which separate regulations have recently been promulgated. 40 CFR Part 468 (48 FR 36942, August 15, 1983), 40 CFR Part 467 (48 FR 49126, October 24, 1983). For regulatory convenience, this point source category also includes metal powder production and powder metallurgy of iron and steel, copper, and aluminum, as well as alloys of these metals (except that metal powders produced as an intergral part of a smelting or refining operation are covered under 40 CFR Part 421, nonferrous metals manufacturing or 40 CFR Part 420, iron and steel). Wastewater discharges covered by the nonferrous forming point source category are not subject to regulation under 40 CFR Part 413 (electroplating) or 40 CFR Part 433 (metal finishing).

Forming is the deformation of a metal into specific shapes by hot or cold working. The major forming operations include rolling, extruding, forging, and drawing. Monor forming operations in this category include cladding, and metal powder production and powder metallurgy (except for metal powders produced as an integral part of a smelting or refining operation). Associated operations performed as an integral part of the forming process are also included in the nonferrous metals forming category. These operations are casting for subsequent forming, heat treatment, surface treatment, alkaline cleaning, solvent degreasing, sawing, grinding, tumbling, burnishing, and product testing. Wastewater streams associated with air pollution controls on nonferrous metals forming and related operations are also included in this point source category.

The nonferrous metals forming category covers forming operations performed on 31 nonferrous metals and their alloys. The Agency did not identify any other nonferrous metals (except for copper and aluminum, which are already regulated, as noted above) that are subjected to forming operations. Alloys are considered as only one metal type. The metal type of any particular alloy is defined to be the metal that is the major component is percent by weight. Thus, an alloy which is 53 percent lead and 47 percent zinc is considered as lead, and an alloy which is 40 percent nickel, 35 percent zinc, and 25 percent tim is considered as nickel. Forming of an alloy containing greater than 50 percent iron, steel, copper, or aluminum is not included in the category since these are covered by the Iron and Steel, Copper Forming, and Aluminum Forming Point Source Category Effluent Limitations Guidelines and Standards, respectively.

EPA studied 294 nonferrous metals forming plants distributed throughout the United States, with the majority located east of the Mississippi River. Of these plants, 146 discharge process wastewater, 32 directly to surface water (direct dischargers), 107 to POTWs (indirect dischargers), and seven both directly and to POTWs. The remaining 148 plants do not discharge process wastewater.

As a result of the study of nonferrous metals forming plants, nine of the 31 metal types of the catgory are proposed for exclusion under Paragraph 8 of the Settlement Agreement. EPA proposes to exclude these metal types from regulation because the forming operations performed on these metals do not use process water and therefore there are no discharges of proces wastewater. In addition to the pure metals, alloys of these nine are also excluded from regulation.

The remainder of this overview briefly describes operations included in and products manufactured by the nonferrous metals forming category. The Development Document describes these operations in greater detail.

Rolling transforms cast ingot by exerting pressure as the metal passes between rollers, reducing the thickness and cross-sectional area of the metal. Hot rolling, sometimes referred to as "breakdown" rolling, may be followed by cold rolling to further reduce thickness. Square ingots are usually rolled to produce rod, bar, or wire. A cooling and lubricating compound may be used during rolling to prevent excessive wear on the rolls, to prevent adhesion of metal to the rolls, and to maintain a suitable uniform rolling temperature. Oil-water emulsions are used for this purpose in hot rolling, while most cold rolling operations use mineral oil or kerosene-based lubricants. The rolls used in the rolling operations require periodic machining to remove metal build-up in an operation called roll grinding. The common lubricant used in this operation is an oil-water emulsion which is recirculated and discharged periodically with other emulsion waste streams.

Extrusion is the application of force to a billet causing the metal to flow through a die orifice. The resulting product is an elongated shape or tube of uniform cross-sectional area. Heat treatment is frequently performed after extrusion. At some plants, the extrusion is cooled by direct contract with water as it leaves the press. This is called press heat treatment.

Forging is deforming metal, usually hot, with compressive force into desired shapes, with or without dies. Colloidal graphite in either a water or an oil medium may be sprayed onto dies as a lubricant.

Drawing refers to the pulling of metal through a die or succession of dies to reduce its diameter, alter the cross-sectional shape, or increase its hardness to produce rod, wire, or reduced diameter tubing. To ensure uniform drawing temperatures and avoid excessive wear on the dies and mandrels, a suitable lubricant is applied during drawing. A wide variety of lubricants, including oil-based lubricants, oil-water emulsions, and soap solutions or powders are used for this purpose. Drawing oils are usually recirculated until their lubricating properties are exhausted.

Heat treatment is frequently used both in-process and as a final step in forming to give the nonferrous metal the desired mechanical properties. The general types of heat treatment applied are: homogenizing, annealing, solution heat treatment, and artificial aging. Homogenizing, annealing, and aging are dry processes, while solution heat treatment typically involves significant quantities of contact cooling water.

The quenching techniques used in solution heat treatment are usually critically to achieving the desired mechanical properties. Contact cooling water is commonly used to quench solution heat-treated products. The process is usually performed by immersing the formed products into a water bath, but spray or flush quenching is also used. Air, glycol, or alcohol-water solutions can also be used to cool certain products.

All surface treatment operations performed as an integral part of the forming process are considered to be within the scope of the nonferrous metals forming category.

The most common surface treatments are designed to remove the surface layer of oxidized metal created during the forming of nonferrous metals at elevated temperatures. Acid etching or pickling, the most common deoxidizing surface treatment, is used on many metal types. Molten salt (480–540° C) is also used to remove oxide scale from nickel alloys. Usually formed metal is dipped into a surface treatment bath and then rinsed by dipping in an overflowing bath or spraying with clear water. The surface treatment rinses are the major source of wastewater in the nonferrous metals forming category.

Other surface treatments are used to clean metal surfaces, alkaline cleaning being the most common method. The alkalinr cleaning solutions, usually detergents, vary in pH and chemical composition. Inhibitors are frequently added to minimize or prevent corrosion of the metal. Alkaline cleaners are used to remove lard, oil, and other such componds, but mineral oil and grease are not removed. Nonferrous metal products can be cleaned with an alkaline solution either by immersion or spray. Rinsing, preferably with warm water, may follow the alkaline cleaning process to prevent the solution from drying on the product.

Solvent cleaners are used to remove oil and grease compounds from the surface of metal products. Vapor degreasing, the predominant method of solvent cleaning, uses the hot vapors of chlorinated solvents to remove oils, greases, and waxes. Trichloroethylene, 1,1,1-trichloroethane, and perchloroethylene are the solvents most commonly used. Vapor degreasing solvents are frequently recovered by distillation, which does not usually generate process wastewater.

Some surface treatments use mechanical means to alter the surface of formed nonferrous metals. Machining, grinding, polishing, and sawing operations commonly use a recirculated oil-water emulsion to cool and lubricate the contact between the metal and finishing tool. Spent or rancid lubricant is discharged periodically.Tumbling, or barrel finishing, is used to clean and debur large quantities of small formed parts, usually forgings and parts pressed from metal powder. Parts are finished by tumbling with abrasive suspended in water.

Only casting which is an integral part of nonferrous metals forming, i.e., shot-casting and casting of billets, ingots, bars, and strip which are subsequently formed on-site, is included in the category. The method of casting most widely practiced at nonferrous metals forming plants is stationary or pig casting which allows for recycle of in-house scrap. In this process, molten metal is poured into cast iron molds and allowed to air cool. Lubricants and cooling water are not required. Although water may be sprayed onto the molten metal to increase the cooling rate, this generally does not result in any discharge.

Direct chill is another method of casting nonferrous metals for subsequent forming. The molten metal is tapped from the melting furnace and flows through a distributor channel into a shallow mold. Noncontact cooling water circulates within this mold causing the metal to solidify. The base of the mold is attached to a hydraulic cylinder which is gradually lowered as pouring continues. As the solidified metal leaves the mold, it is sprayed with contact cooling water to reduce the temperature of the ingot. The cylinder continues to lower into a tank of water, further cooling the ingot as it is immersed. When the cylinder has reached its lowest position, pouring stops and the ingot is lifted fron the pit.

Arc casting is a form of direct chill casting used for metals with melting points too high to easily cast by conventional techniques (tungsten, molybdenum, tantalum, columbium, vanadium, and rhenium). The end product of refining these metals is a powder which can be compacted and sintered into solid bars. The bars serve as consumable electrodes in an arc-melting process.

Nonferrous metals forming plants also use continuous casting to produce sheet, bar, and strip. Most of the various continous casting methods use a water spray to cool the cast metal.

Cladding operations are included in the nonferrous metals forming category. A clad metal is a composite metal containing two or more layers that have been bonded together. The bonding may have been accomplished by roll bonding (co-rolling), solder application (brazing), or explosion bonding. In the roll bonding process, a permanent bond between two metals is obtained by rolling under high pressure in a bonding mill. Clad metals consisting of a base metal with an overlay or inlay or precious metal are produced for the electrical/electronics industry and for jewelery applications (e.g., gold-filled wire). In the solder applications or brazing process, a thin layer (film or foil) of a low melting point metal is place between two layers of metal to be bonded. The three-layer assembly is then placed into a furnace at the melting temperature of the filler metal. Bonding results from the intimate contact produced by the dissolution of a small amount of the base metal and the top metal in the molten filler metal, without direct fusion of the two metal layers. Upon cooling, the clad material can then be formed by any of the forming operations previously described. The term soldering is used where the temperature falls below 425° C (800° F). The term brazing is used where the temperature exceeds 425° C (800° F). The metallurgical joining of two or more metals can also be accomplished by the force of a carefully detonated explosion.

All of the cladding processes described above are essentially dry processes. The main source of process wastewater in metal cladding operations is in cleaning the metal surfaces prior to bonding.

Production of metal powders, ferrous and nonferrous, in operations which do not significantly increase their purity is included in this nonferrous metals forming category.

Of all metal powders produced, iron, stainless steel, and copper powders are produced in the largest quantities and by the greatest number of manufacturers. There is a high demand for these metal powers because of their large-scale applications in the auto manufacturing and machining industries. Atomization is the most common method of producing metal powders. In this process, a stream of fluid (water or gas) impinges upon a molten metal stream, breaking it into droplets which solidify as powder particles. Water atomization is used to produce irregularly shaped particles, required for powder metallurgy operations in which a powder is cold pressed into a compact. Powders are also produced by disintegration of solid metal into powder by mechanical comminution.

Metal powders are formed into parts by a "press and sinter" operation, consisting of blending metal powders, compacting the mixture in a die, and then heating or sintering the compacted powder in a controlled atmosphere to bond the particles into a strong shape. Noncontact cooling water is the only water used in this operation. Parts formed from metal powders can be subject to the chemical and mechanical surface treatments previously described. Tumbling is the most common surface treatment used and the major source of process wastewater.

Products manufactured by nonferrous metals forming operations generally serve as stock for subsequent fabricating operations. Because the metals included in this category have a wide range of physical, chemical, and electrochemical properties, they are

used in a wide range of fabricated products. For example:

—Beryllium, used in aerospace applications because of its high strength and light weight, is rolled into sheet products. Because it is difficult to cast, it is commonly consolidated into billets by powder metallurgy techniques.
—Bismuth has a low melting point and thus is rolled into strip for use in fuses. When alloyed with lead, tin, and/or cadmium, it is also extruded and drawn into solder wire.
—Cobalt is often alloyed with nickel, and is formed by the same methods used to form steels. It is used for applications requiring strength and corrosion resistance at high temperatures, such as turbine blades.
—Hafnium is formed into control rods for nuclear reactors because of its special properties.
—Lead is extruded and swaged into bullets because it is dense and inexpensive. When alloyed with tin and bismuth it is extruded into solder, an application which makes use of its low melting point. Lead is formed into cases for automobile batteries because of its electrochemical properties.
—Magnesium is extruded into cases for batteries used in portable communications equipment. The application takes advantage or the metal's electrochemical properties and light weight.
—Nickel is often alloyed with chrome and iron to make stainless steel alloys, many greater than 50 percent nickel. It is formed by all major forming operations and is used in applications requiring corrosion resistance at high temperatures, such as tubing for steam and gas turbines and in jet engines.
—Precious metals (silver, gold, platinum, and palladium) are corrosion-resistant and good electrical conductors, but expensive. Because of their expense, they are often used as a thin layer clad to a layer of base metal (usually copper or nickel) which is rolled into strip and stamped into electrical contacts. Pure and clad precious metals are also drawn to wire used to fabricate jewelry. Their corrosion resistance makes than useful in dentistry.
—Refractory metals (columbium, molybdenum, rhenium, tantalum, tungsten, and vanadium) must be formed at high temperatures (relative to other metals) or as powders because they have melting points above 1,960° C. Their unique properties make them useful for specialized applications. Columbium is used as a structural material in nuclear reactors. Molybdenum is drawn into semiconductor wires. Tantalum used in very small capacitors and heat transfer and furnace equipment. Tungsten finds wide application as filaments for electric light bulbs. As tungsten carbide, it is used in cutting tools and abrasives because of its extreme hardness.
—Tin is used in solder, usually alloyed with lead.
—Titanium, used in aerospace applications because of its high strength and light weight, is formed by all major forming techniques. It is also used for corrosion-resistant hardware and surgical implants.
—Uranium, when composed of 0.2 to 0.3 percent 235 (the fissionable isotope), is called depleted uranium. This material is extruded into armor piercing projectiles because it is extremely dense.
—Zinc is lightweight and corrosion-resistant. It is rolled into sheet for architectural uses and stamped into pennies. Its chemical properties make it useful for battery cases and lithographic plates.
—Zirconium is used to clad nuclear fuel rods in water cooled reactors and as a construction material in chemical plants because of its high melting point and corrosion resistance. It is extruded into tubes and rolled into plate and sheet.

III. Scope of This Rulemaking and Summary of Methodology

This proposed regulation is a part of the Agency's continuing effort in water pollution control requirements. The 1973–1976 round of rulemaking emphasized the achievment of best practicable technology (BPT) by July 1, 1977. In general, this technology level represents the average of the best existing performances of well-known technologies for control of familiar (or "classical") pollutants.

In this round of rulemakings, EPA is establishing both nationally applicable BPT effluent limitations guidelines and nationally applicable effluent limitations guidelines based on the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. In general, this technology level represents the very best economically achievable performance in any industrial category or subcategory. The Act requires achievement of BAT by July 1, 1984. As a result of the Clean Water Act of 1977, the emphasis of EPA's program generally shifted from "classical" pollutants to the control of a lengthy list of toxic substances. The Agency is also establishing best conventional technology (BCT), new source performance standards, and categorical pretreatment standards in this round of rulemakings.

In developing this regulation, EPA studied the nonferrous metals forming category to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water use, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments (or subcategories) of the industry. This study included the identification of raw waste and treated effluent characteristics, including: The sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters. Sampling and analysis of specific waste streams enabled EPA to determine the presence and concentration of toxic pollutants in wastewater discharges.

EPA also identified both actual and potential control and treatment technologies (including both in-process and end-of-process technologies). The Agency analyzed both historical and newly generated data on the performance, operational limitations, and reliability of these technologies. In addition, EPA considered the impacts of these technologies on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency then estimated the costs of each control and treatment technology using cost equations developed by standard engineering analyses. EPA derived unit process costs for 23 discharging plants, representative of the entire category. These costs were derived using data and characteristics (production and flow) applied to each treatment process (e.g., chemical precipitation, sedimentation, granular bed—multi-media filtration, etc.) and were added to yield the total plant cost at each treatment level. The Development Document gives in detail the method used to extrapolate the costs for each subcategory from the costs estimated for the 23 representative plants. The Agency intends to conduct a plant-by-plant cost analysis prior to final promulgation to refine the cost estimates for each subcategory.

After confirming the reasonableness of this methodology by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency

evaluated the economic impacts of these costs.

On the basis of these factors, EPA identified various control and treatment technologies as BPT, BAT, BCT, NSPS, PSES, and PSNS. The proposed regulation, however, does not require the installation of any particular technology. Rather, it requires achievement of effluent limitations equivalent to those achieved by the proper operation of these or equivalent technologies.

Except for pH requirements, the effluent limitations for BPT, BAT, BCT, and NSPS are expressed as mass limitations—a mass of pollutant per unit of production (mg/kkg). They were calculated by using three figures: (1) Treated effluent concentrations determined by analyzing control technology performance data; (2) production-weighted wastewater flow for the operations in each subcategory; and (3) any relevant process or treatment variability factor (e.g., mean versus maximum day). This basic calculation was performed for each regulated pollutant or pollutant parameter for each operation of each subcategory. Pretreatment standards—PSES and PSNS—are also expressed as mass limitations rather than concentration limits to ensure a reduction in the total quantity of pollutant discharges. Regulation on the basis of concentration only is not appropriate because it will not ensure that the effluent reduction benefits associated with reduced water use are realized. Therefore, the Agency is not proposing concentration-based effluent limitations guidelines or standards.

IV. Data Gathering Efforts

The data gathering program is described in Sections III and V of the Development Document. A data collection portfolio (dcp) was developed to collect information about the industry and was mailed out in 1983, under the authority of Section 308 of the Clean Water Act, to each company known or believed to be engaged in forming in the United States the metals discussed in Section III of this notice. Analytical data were collected from 17 sampled plants. Supplemental data were obtained from NPDES permit files and engineering studies on treatment technologies.

EPA reviewed and evaluated existing literature for background information to clarify and define various aspects of the nonferrous metals forming category and to determine general characteristics and trends in production processes and wastewater treatment technology. Review of current literature continued throughout the development of these guidelines.

A listing of plants believed to be in the nonferrous metals forming category was compiled from a Dun and Bradstreet computer listing, publications, telephone contacts with various trade associations believed to represent parts of the industry, the Thomas Register, and telephone contacts with commodity specialists at the Bureau of Mines. Four SIC codes were used resulting in the indentification of approximately 1,000 plants as being possibly engaged in nonferrous metals forming activities. The SIC codes used were: (1) 3356: Rolling, Drawing, Extruding of Nonferrous Metals; (2) 3357: Drawing and Insulating Nonferrous Wire; (3) 3463: Nonferrous Forgings; and (4) 3497: Metal, Foil and Leaf.

A comprehensive telephone survey was undertaken in order to determine which plants should comprise a final dcp mailing list, i.e., whether or not in-scope forming operations were present at each of the plants on the original list. A comprehensive list of those plants believed to be a part of the category was then compiled in preparation for dcp distribution.

On April 19, 1983, these 365 dcp's were sent out under the authority of Section 308 of the Clean Water Act to companies on the mailing list. The dcp's were sent to the corporate office of each company and addressed to the highest ranking corporate official who could be identified.

An additional 47 dcp's were sent out on June 21, 1983 when the Agency decided to include metal powder production and powder metallurgy operations of all metals, including iron and steel, copper, and aluminum, in the scope of the category. All but five of these dcp's were sent to companies which had been sent a nonferrous metals forming dcp earlier. Between April 19, 1983 and July 11, 1983, seven more dcp's were sent out, as additional facilities believed to be in the category were identified. All companies were allowed 30 days from receipt of the dcp in which to complete and return the portfolio.

In all, dcp's were sent to 377 firms. Approximately 95 percent of the companies responded to the survey. In many cases, companies contacted were not actually members of the nonferrous metals forming category as it is defined by the Agency. Where firms had nonferrous metals forming operations at more than one location, a dcp was returned for each plant. A total of 294 dcp's applicable to the nonferrous metals forming category were returned. In cases where the dcp responses were incomplete or unclear, additional information was requested by telephone or letter.

The dcp's requested information regarding plant size, age and production; the production processes used; and the quantity, treatment, and disposal of wastewater generated at these plants. The dcp's also requested economic information including plant capacity, employment, sales, and existing regulatory costs for the base year of 1981. In addition, frequent contact has been maintained with industry personnel throughout the regulation development process. Contributions from these sources were particularly useful for clarifying differences in production processes.

V. Sampling and Analytical Program

The sampling and analysis program for this rulemaking concentrated on the toxic pollutants designated in the Clean Water Act. However, we sampled and analyzed nonferrous metals forming wastewaters for conventional and nonconventional pollutants as well as inorganic and organic toxic pollutants. The Agency has not promulgated analytical methods for many of the organic toxic pollutants under Section 304(h) of the Act, although a number of these methods have been proposed (44 FR 69464 (December 3, 1979); 44 FR 75028 (December 18, 1979)). Additional information on the development of sampling and analysis methods for toxic organic pollutants is contained in the preamble to the proposed regulations for the Leather Tanning Point Source Category, 40 CFR Part 425 (44 FR 38749 (July 2, 1979)).

The primary objective of the field sampling program was to produce composite samples of wastewater from which to determine the concentrations of toxic pollutants. During this program, 17 plants were sampled. These plants were selected to be representative of the industry, based on information obtained during the telephone survey. Considerations included how well each facility represented the subcategory as indicated by available data, potential problems in meeting technology-based standards, differences in production processses used, and wastewater treatment-in-place. With the exception of the uranium forming subcategory, at least one plant in every subcategory was sampled. Some plants provided data for more than one subcategory.

The only data available from uranium forming plants are self-monitoring data, which included the toxic metals

cadmium, copper, and nickel only. We have no data on the other toxic pollutants. The Agency intends to obtain data on toxic pollutants in wasterwater at uranium forming plants after proposal. In addition, the Agency sampled one plant each in the beryllium forming and zinc forming subcategories but the results of the analyses for toxic organic pollutants in these two subcategories are not yet available. We will add the results of the analyses for all three of these subcategories to the record of rulemaking when they become available and consider these data in promulgating the final effluent limitations and standards. We have no reason to expect that the presence of toxic organic pollutants in these three subcategories would be any different than in the other eight subcategories where only insignificant amounts were found. We invite comments and data on the presence of toxic organic pollutants in nonferrous metals forming wastewater.

After selection of the plants to be sampled, each plant was contacted by telephone, and a letter of notification was sent to each plant as to when a visit would be expected. In most cases, a preliminary visit was made to the plant to select the sources of wastewater to be sampled at each plant. The sample points included, but were not limited to, untreated and treated discharges, process wastewater, partially treated wastewater, and intake water.

The samples were analyzed for 21 metals, including seven of the priority metal pollutants (beryllium, cadimum, chromium, copper, nickel, lead, and zinc) using inductively-coupled argon plasma emission spectroscopy (ICAPES) as proposed in 44 FR 69464, December 3, 1979. The remaining six priority metal pollutants, with the exception of mercury, were analyzed by atomic absorption spectroscopy (AA) as described in 40 CFR Part 136. Mercury analysis was performed by automated cold vapor atomic absorption. Analysis for the seven toxic metals analyzed by ICAPES was also performed by AA on 10 percent of the samples to determine test comparability. Because the results showed no significant differences in detection or quantification levels, ICAPES data were used for the seven toxic metals.

EPA did not expect to find any asbestos in nonferrous metals forming wastewaters because this category only includes metals that have already been refined from any ores that might contain absestos. Therefore, analysis for asbestos fibers was not performed.

Pesticide priority pollutants were also not expected to be significant in the nonferrous metals forming industry. Samples from one facility were anaylzed for pesticide priority pollutants by electron capture-gas chromatography by the method specified in 44 FR 69464, December 3, 1979. Pesticides were not detected in these samples, so no other samples were analyzed for these pollutants.

Analyses for the remaining organic priority pollutants (volatile fraction, base/neutral, and acid compounds) were conducted using an isotope dilution method which is a modification of the analytical techniques specified in 44 FR 69464, December 3, 1979. The isotope dilution method has been recently developed to improve the accuracy and reliability of the analysis. this method is described in the Development Document and a copy of the method is in the record of rulemaking for this proposed regulation. However, no standard was used in the analysis of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (TCDD, pollutant 129). Instead, screening for this compound was performed by comparing analytical results to EPA's gas chromatography/mass spectroscopy (GC/MS) computer file.

Analysis for cyanide used methods specified in 40 CFR Part 136 and described in "Methods for Chemical Analysis for Water and Wastes," EPA-600/4-79-020 (March 1979).

Analyses for conventional pollutants (BOD_5, TSS, pH, and oil and grease) and nonconventional pollutants (acidity, alkalinity, total solids, total dissolved solids, ammonia, total phosphorus, total organic carbon, total phenolics, and sulfate) were also performed by the methods specified in 40 CFR Part 136 and described in EPA-600/4-79-020.

VI. Industry Subcategorization

A. Subcategorization

In developing this regulation, it was necessary to determine whether different effluent limitations and standards were appropriate for different segments (subcategories) of the industry. Technology-based effluent limitations are based primarily upon the treatability of pollutants in wastewaters generated by the category under review. The treatability of these pollutants is, of course, directly related to the flow and characteristics of the untreated wastewater, which in turn can be affected by factors inherent to a manufacturing plant in the category. Therefore, these factors and the degree to which each influences wastewater flow and characteristics form the basis for subcategorization of the category, i.e., those factors which have a strong influence on untreated wastewater flow and characteristics are applied to the category to subcategorize it in an appropriate manner.

The Agency considered the following subcategorization factors: metal formed and raw materials used, manufacturing processes, products manufactured, process water use, water pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, location of plant, number of employees, total energy requirements, nonwater quality characteristics, waste streams produced, and unique plant characteristics. EPA concluded that the metals formed and manufacturing processes used were the most meaningful factors on which to base the subcategorization of this category.

A comprehensive analysis of each factor that might warrant separate limitations and standards for different segments of the industry is presented in Section IV of the Development Document. The Agency proposes the following subcategorization scheme for proposal of BPT, BCT, and BAT effluent limitations guidelines and NSPS, PSNS, and PSES:

Beryllium Forming
Lead/Tin/Bismuth Forming
Magnesium Forming
Nickel/Cobalt Forming
Precious Metals Forming
Refractory Metals Forming
Titanium Forming
Uranium Forming
Zinc Forming
Zirconium/Hafnium Forming
Iron and Steel/
Copper/Aluminum
Metal Powder Production and Powder Metallurgy

Forming of lead, tin, and bismuth have been combined into a single subcategory since these three metals represent the components of most solder alloys and it is difficult for solder makers to report production for individual alloys. Since most of the solder makers produce some solder products with each of the three metals as the major component in percent by weight, a grouping of these three metals is justified.

Forming of nickel and cobalt have been combined into a single subcategory because 15 of the 16 surveyed plants which form cobalt alloys also form nickel alloys by identical or very similar operations, generating commingled wastewaters of similar characteristics. Also, the metals are often alloyed with each other, making reporting of production of individual metals difficult.

The precious metals subcategory includes the forming of gold, silver, palladium, and platinum. Combining

these metals into a single subcategory is justified because all of the precious metals are usually formed at any single plant.

The refractory metals subcategory includes the forming of the high melting temperature metals tungsten, molybdenum, tantalum, columbium, rhenium, and vanadium. Combining these metals into a single subcategory is justified because all of the refractory metals are usually formed at any single plant.

The zirconium/hafnium subcategory includes the forming of both zirconium and hafnium because both are usually formed at any single plant.

The iron and steel, copper, and aluminum metal powder production and powder metallurgy subcategory covers manufacturing activities involved in producing metal powders as a product and in producing finished parts from metal powders of iron and steel, copper, and aluminum only. These manufacturing activities, when performed on other metal types, are covered under the specific metal type subcategories.

B. Production Normalizing Parameter Selection

The objective of effluent limitations and standards is to reduce the total quantity of pollutants discharged into surface waters. Because plants could attempt to meet a concentration-based standard by dilution rather than treatment, mass limitations have been developed for the nonferrous metals forming industry. In order for regulations to be equitable for plants with large productions and small productions, the mass limitations must be normalized by an appropiate unit of production called a production normalizing parameter (PNP). That is, pollutant discharge limitations are written as allowable mass of pollutant discharge per PNP (kg/PNP).

Therefore, for a PNP to be appropriate, kg/PNP must be independent of both production and wastewater volume, for a particular waste stream. Mass of metal, number of pieces, surface area, and mass of process chemicals used were considered as possible PNPs. An evaluation of these alternatives follows.

Mass of Metal Processed. The nonferrous metals forming category typically maintains production records of the pounds of metal processed. Availability of these production data and lack of data for other production parameters, such as number of pieces produced, makes this the most convenient parameter to use. The nonferrous metals forming dcp requested three production values: the capacity production rate for specific unit operations, the average production rate for 1981 in off-lbs/hr, and the total off-pounds of final product formed in 1981. The PNP for each operation is based on the average production rates in off-lbs/hr reported in the dcp.

Number of Pieces Processed. The number of pieces processed by a given plant would not account for the variations in size and shape typical of formed products. Forgings, for instance, are produced in a wide range of sizes. It would be unreasonable to expect the quenching of a large forging to use the same amount of water required for a smaller forged product and yield a constant mass of pollutant per piece. Therefore, the Agency concluded that the number of pieces processed is not an appropriate PNP.

Surface Area of Metal Processed. Surface area may be an appropriate production normalizing parameter for formed metal which has been rinsed (i.e., the mass of pollutants generated may correlate with surface area). Where surface area phenomena are involved, such as cleaning and pickling rinses, the use of surface area as a PNP may be the appropriate parameter. However, other phenomena, such as cooling, are unrelated to surface area. Hence, surface area might be adequate for some processes but would be wholely inappropriate for others. In addition, the area of metal processed is not generally kept or known by industry. In some cases, such as forging of miscellaneous shapes, surface area would be very difficult to determine. In any case, surface area data would be difficult to collect. For these reasons, surface area is an inappropriate PNP for the nonferrous metals forming category.

Mass of Process Chemicals Used. The mass of pollutants discharged is more dependent on the processes which the metal undergoes than on the amount of process chemical used in the process. Some operations, such as heat treatment with water, generate pollutants but do not use any process chemicals. In addition, the use of this parameter as the production normalizing parameter would tend to discourage regeneration and reuse of process chemicals. For these reasons, mass of process chemicals used is an inappropriate PNP for the nonferrous metals forming category.

The Agency has selected mass of product formed as the most appropriate PNP. The mass of pollutants can be related to the mass of metal processed and most companies keep production records in terms of mass.

The PNP for nonferrous metals forming is "off-kilograms" or the kilograms of product removed from a machine at the end of a process cycle. For example, in the rolling process, an ingot enters the mill to be processed. Following one process cycle which may substantially reduce the ingot's thickness, the metal is removed from the rolling mill where it may be processed through another operation, such as annealing, sizing, or, cleaning, or it may simply be stored before being brought back to the rolling mill for another process cycle, further reducing the thickness. The mass of metal removed from the rolling mill after each process cycle multiplied by the number of process cycles is the PNP for that process.

The dcp's indicate that a number of nonferrous metals forming operations do not generate process wastewater. For those operations, the PNP is zero, and EPA is proposing a discharge allowance of zero for each of those operations.

The Agency also is proposing a PNP of zero discharge for one waste stream, tube reducing spent lubricant, because analysis for toxic organics at the one plant sampled (in the nickel/cobalt forming subcategory) showed treatable concentrations of N-nitrosodiphenylamine. That waste stream has a small flow and can be most economically handled by intercepting the waste stream before mixing it with other process wastewaters and disposing of it as a solid waste under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* Treatment of the wastes with activated carbon after mixing with other process wastewaters would be much more expensive. The Agency recognizes that the total amount of N-nitrosodiphenylamine discharged in the tube reducing spent lubricant is only a few pounds per year, but believes the potentially carcinogenic properties of nitrosamines justifies prohibiting its discharge. We invite comment and data on the no discharge requirement for this waste stream.

VII. Available Wastewater Control and Treatment Technology

A. Control and Treatment Technologies Considered

The control and treatment technologies available for this category include both in-process and end-of-pipe treatments. These technologies are considered appropriate for the treatment of nonferrous metals forming wastewaters and form the basis of the regulatory options. These control and

treatment technologies are discussed in greater detail in Section VII of the Development Document.

In-process treatment includes a variety of water flow reduction steps and major process changes. The following in-process treatments are considered for this proposal:

Recycle. Recycling or process water is the practice of treating and returning water to be used again for the same purpose. EPA considered partial recycle of process water by using cooling towers and holding tanks. In doing so, we considered that it may be necessary to discharge a bleed stream to purge dissolved and suspended solids that tend to accumulate in the system. We also considered recycle of the water used in wet scrubbers.

Countercurrent cascade rinsing. Countercurrent cascade rinsing is a mechanism commonly encountered in metal processing operations. The cleanest water is used for final rinsing of an item, preceded by rinse stages using water with progressively more contaminants to partially rinse the item. Clean make-up water is added at the final rinse and contaminated rinse water is discharged from the initial rinse stage. The make-up water for all but the final rinse is from the following rinse stage.

End-of-pipe treatment includes modules used to reduce pollutant concentrations prior to discharge. The following end-of-pipe treatments are considered for this proposal:

Chemical Precipitation. Chemical (hydroxide) precipitation generally involves adjusting the pH and adding a flocculating agent to precipitate out of solution metal ions (i.e., copper) and certain anions (e.g., fluoride). The chemical commonly associated with this treatment is lime, but other alkalis can also be used. Lime must be used to control fluoride. This technology will remove a broad range of ions from solution. Thus, if chemical precipation is used to control regulated pollutants, nonregulated metals will be controlled as well.

Sedimentation. Sedimentation is a process which removes solid particles from a liquid matrix by gravitational force. This is done by reducing the velocity of the feed stream in a large volume tank or lagoon so that gravitational settling can occur. This treatment when combined with chemical precipitation is referred to as lime and settle treatment in this preamble.

Ammonia Steam Stripping. Steam is commonly used to evaporate ammonia from process wastewater. Generally, the steam is introduced into a separation column countercurrent to the process wastewater. The evaporated ammonia is absorbed into the steam. It is usually necessary to elevate the pH of the wastewater in order to remove ammonia.

Cyanide Oxidation or Precipitation. With the addition of oxidizing agents or complexing agents cyanide can either be oxidized or complexed. Cyanide can also be precipitated out of solution using ferrous sulfate. Cyanide precipitation removes both the oxidizable and nonoxidizable parts of the total cyanide in the wastewater.

Chromium Reduction. The addition of a strong reducing agent produces a chemical reaction reducing hexavalent chromium to trivalent chromium. The reduction is necessary for removal of chromium from solution in conjunction with other metallic salts by chemical precipitation.

Oil Skimming. Oil and other materials with a specific gravity less than water often float unassisted to the surface of wastewater. Skimming removes these floating wastes. This is done by reducing the velocity of the wastewater in a large volume tank to allow low specific gravity material to rise. The floating layer is skimmed off while the remaining wastewater flows out a lower outlet. A variety of devices is used to remove the floating layer from the surface.

Chemical Emulsion Breaking. Chemical emulsion breaking is used to break stable oil and water emulsions. By adding chemicals, and adjusting the pH, the oil to water attraction induced in the emulsion is diminished thus allowing the oil fraction to separate and float on the water fraction where it can be skimmed off.

Multimedia Filtration. Gravity mixed-media filtration may be used as an end-of-pipe polishing step for further removal of metal hydroxide precipitates and other suspended solids. Rapid sand filters would perform as well but are generally used with higher water flows than are commonly encountered in the nonferrous forming industry.

We considered other, more advanced technologies which are described in Section VII of the Development Document. However, none of these technologies was selected as the technology basis for BPT, BAT, BCT, NSPS, PSES, or PSNS for this industry because the technologies are not demonstrated and are quite expensive.

B. Status of In-Place Technology

Current wastewater treatment practices in the nonferous metals forming category range from no treatment to treatment with chemical precipitation, sedimentation, and filtration. Of the 146 discharging plants, 46 use chemical precipitation and sedimentation to remove metals and suspended solids. Two of the 46 plants have equipment for multimedia filtration and 10 of the 46 plants have a secondary sedimentation step. The Agency's screening sampling data from three of those 10 plants and long-term data from a fourth plant indicates that these plants are achieving metal hydroxide and suspended solids removal equivalent to multimedia filtration.

Many plants in the nonferrous metals forming category do not discharge any process wastewater because they only use dry processes that do not generate wastewater. EPA is not proposing allowable discharge limitations or standards for these processes. Other processes used in the nonferrous metals forming industry do generate wastewater, however. EPA is today proposing effluent limitations and standards for these wet processes.

C. Control and Treatment Options Considered

EPA considered the following treatment and control options as the basis for BPT, BAT, BCT, NSPS, PSES, and PSNS for facilities within the nonferrous metals forming category.

Option 1—End-of-pipe treatment consisting of lime precipitation and sedimentation, and preliminary treatment, where necessary, consisting of oil skimming, cyanide precipitation, chromium reduction, ammonia steam stripping, and chemical emulsion breaking. This combination of technology reduces toxic metals and conventional and nonconventional pollutants.

Option 2—Option 2 is equal to Option 1 preceded by flow reduction of process wastewater through the use of countercurrent cascade rinsing, cooling towers for contact cooling water, and holding tanks for all other process wastewater subject to recycle.

Option 3—Option 3 is equal to Option 2 plus end-of-pipe polishing filtration for further reduction of toxic metals and TSS.

VIII. Summary of Generic Issues

EPA has identified several issues that are generic to many of the subcategories and to the limitations and standards proposed in today's notice. These issues are discussed in this secion.

A. *Building Blocks.* The regulations proposed today use the so-called building block approach, whereby EPA considers both end-of-pipe treatment technologies and process changes and controls within the plant prior to discharge to a common end-of-pipe

treatment system. This approach is preferable because it allows regulations to be tailored to reflect particular circumstances. This examination, of course, is mandated by the Clean Water Act. See, e.g., Sections 304(b)(2)(A) and 306(a)(1).) As a result, the proposed regulation identifies principal process steps that discharge wastewater, determines what wastewater flows (and in some cases, pollutant concentrations) are permissible for this indigenous operation, and establishes a mass-based limitation or standard for each such step ("building block"). These limitations (or standards) then are added together to give the permissible mass-based discharge for the entire process.

Under the building block approach proposed today, to determine the allowable discharge from a point source, a discharger must first identify the specific process sources that comprise that discharge. Then the discharger should multiply the limitations or standards (mg/kkg) for each wastewater present in the plant, shown today in 40 CFR Part 471, by the production of that source (kkg), in the units specified, to yield the mass discharge from each source. The mass from all of the sources should then be added to yield the maximum for any one day and the maximum monthly averages for that discharge point. Waste streams (both process and nonprocess) not identified in today's notice may be regulated on a case-by-case basis by the permit writer pursuant to the authority granted in Section 402.

We stress that a plant is to receive a discharge allowance for a particular building block *only if it is actually operating that particular process.* The plant need not be discharging wastewater from the process to receive the allowance, however. For example, if the regulation contains a discharge allowance for wet scrubber effluent and a particular plant has dry scrubbers, it cannot include a discharge allowance for wet scrubbers as part of its aggregate limitation. On the other hand, if it has wet scrubber and discharges less than the allowable limit (or does not discharge from the scrubbers), it could receive the full regulatory allowance. In this way, the building block approach recognizes and accommodates the fact that not all plants use identical processes in forming a given metal.

Building Block Approach Applied to Integrated Facilities. There are many facilities within this category that have integrated manufacturing operations; that is, they combine wastewater from forming operations, which are part of this point source category, with wastewater from other manufacturing operations which are not a part of this category, and treat the combined stream prior to discharge. Indirect dischargers that are integrated facilities are subject to discharge standards as specified by the "combined waste stream formula" set forth at 40 CFR 403.6(e). In establishing direct discharge permit requirements for integrated facilities subject to effluent guidelines that are mass-based for each category, the permit writer can apply the same building block approach discussed above, simply aggregating each allowable discharge.

The building block approach is only to be used when the individual discharger combines wastewater from various processes and co-treats the wastewater before discharge through a single discharge pipe. The building block approach allows the determination of appropriate effluent limitations for the discharge point by combining appropriate limitations based upon the various processes that contribute wastewater to the discharge point.

In establishing limitations for integrated facilities for which a portion of the plant is covered by concentration-based limitations, the permit writer can determine the appropriate mass limitations for the entire facility or point source as follows. The portion of the wastewater covered by this category receives mass limitations according to the building block methodology described above. The permit writer must then determine an appropriate flow for the portion of the facility subject to concentration-based limitations and multiply it by the concentration limitations to yield mass limitations. The mass limitations applicable to the discharge are obtained by summing these two sets of mass limitations.

The Agency recognizes that there may be different technology bases for the limitations and standards applicable to an integrated facility. EPA developed these limitations based on specified in-plant controls and end-of-pipe treatment technologies; however, it does not require that the facility implement these specific in-plant controls and end-of-pipe technologies. The facility combining wastewater from manufacturing operations covered by categories with different technology bases must install technology and modify the manufacturing operations so as to comply with the mass limitations calculated using the building block approach.

B. *Data Bases to Determine Achievable Concentrations and Variability Factors for Hydroxide Precipitation-Sedimentation and for Filtration.* As discussed in Section VII of this preamble, hydroxide precipitation-sedimentation and filtration were considered as a part of various treatment options for BPT, BAT, BCT, NSPS, PSES, and PSNS. The methods of determining achievable concentrations and variability factors used to compute monthly average and daily maximum concentrations are discussed for these technologies below.

Hydroxide Precipitation-Sedimentation. In considering the performance achievable using hydroxide (usually lime) precipitation-sedimentation of metals with and without polishing filtration, EPA evaluated data from nonferrous metals forming plants and plants in other categories with similar wastewater. The data base we selected for lime precipitation and sedimentation (lime and settle) without filtration is the revised combined metals data base (CMDB). This data base is a composite of data for nine pollutants from wastewaters treated by lime and settle technology drawn from EPA sampling and analysis of wastewaters from copper forming, aluminum forming, battery manufacturing, porcelain enameling, and coil coating categories. These wastewaters are similar to nonferrous metals forming wastewater in all material respects because they contain the same dissolved metals at comparable concentrations that can be removed uniformly by precipitation and solids removal.

We regard the combined metals data base as the best available measure for establishing the concentrations attainable with hydroxide precipitation and sedimentation for nonferrous metals forming industry. Our determination is based on the general similarity of limited data on nonferrous metals forming raw and treated wastewaters to the CMDB (as determined by statistical analysis for homogeneity (see Chapter VII of the Development Document)), and the larger number of plants in the CMDB (18 plants versus seven nonferrous metals forming plants available), and the extensive engineering and statistically-based evaluation that CMDB has undergone in response to comments and issues raised in various other rulemakings for related metals industries where the Agency has relied on the CMDB. The general quality and quantity of data in the combined metals data base, as well as a greater variety of influent concentrations, enhances the Agency's ability to estimate long-term performance and variability for lime and

settle treatment technology through statistical analysis.

We view the use of the combined metals data base as appropriate for nonferrous metals forming plants because properly operated hydroxide precipitation and sedimentation (lime and settle) will result in effluent concentrations that are directly related to pollutant solubilities. These effluent concentrations are known as the treatment effectiveness of lime and settle technology. Since the nonferrous metals forming raw wastewater matrix contains the same toxic pollutants at concentrations of the same order of magnitude as the combined metals data base raw wastewater and the technology is solubility-based, we believe the mean treatment process effluent and variability will be identical. We also do not believe any interfering properties (such as chelating agents) exist in nonferrous metals forming wastewater that would interfere with metal precipitation and so prevent attaining concentrations calculated from the combined metals data base.

We also are proposing limits based on this technology for certain pollutants not included in the combined metals data base. Treatment effectiveness for silver and antimony are calculated from nonferrous metals manufacturing data because many nonferrous metals forming plants are also nonferrous metals manufacturers and combine the wastewater from both processes for common treatment. Therefore, it is reasonable for the Agency to assume that nonferrous metals forming plants with lime and settle treatment will achieve the same effluent concentrations that are achieved for those two pollutants at nonferrous metals manufacturing plants. No treatment effectiveness concentrations are available for columbium, hafnium, magnesium, molybdenum, tantalum, titanium, uranium, vanadium, and zirconium, metals which are proposed for limitation in some subcategories. We believe that lime and settle technology wil result in effluent concentrations of these metals of not more than 0.50 mg/l. This estimate is based on the ability of the lime and settle technology to reduce the concentration of the majority of the metals in the combined metals data base to this value or less. Sampling data from one nonferrous metals forming plant with significant titanium concentrations in the raw waste show that lime and settle treatment achieved a titanium effluent concentration of 0.5 mg/l or less at that plant. The Agency intends to obtain additional data on treatment effectiveness for these metals after proposal.

Filtration. The pollutant concentrations achievable with lime precipitation, sedimentation, and polishing filtration are based on data from three plants with that technology in place: one nonferrous metals manufacturing plant and two porcelain enameling plants. These three plants provide extensive long-term data. We believe tht the use of polishing filtration data from porcelain enameling plants is justified because the pollutants and pollutant concentrations in porcelain enameling and in non ferrous metals forming wastewaters are similar. We know this because data from porcelain enameling was included in the combined metals data base, which we have determined to be homogeneous with data from nonferrous metals forming. We believe that use of polishing filtration data from the nonferrous metals manufacturing plant is justified because many nonferrous metals forming plants are also nonferrous metals manufacturing plants and combine the wastewaters for treatment. Therefore, it is reasonable for the Agency to assume that polishing filters treating nonferrous metals forming wastewaters from lime ands settle treatment and nonferrous metals manufacturing wastewaters from lime and settle treatment will achieve the same effluent concentrations.

We solicit comment on our use of the combined metals data base for nonferrous metals forming, the transfer of data from the nonferrous metals manufacturing category, and treatment effectiveness values assumed for some metals. We specifically request submission of additional treatment effectiveness data from nonferrous metals forming plants using properly operated lime and settle and lime, settle and filtration systems.

C. *pH.* We are proposing pH limitations of 7.5 to 10. These levels vary somewhat from the pH limitations of 6 to 9 in guidelines for most other subcategories. We are proposing the higher range to allow for proper performance of the lime precipitation and sedimentation technology in this industry. The technology generally requires a wastewater pH of 8.8 to 9.3 (depending on wastewater compositions) to achieve optimum precipitation of some metals. Because a pH limitation of 6 to 9 might require pH adjustment of wastewater properly treated by lime precipitation and sedimentation technology, a higher pH limitation has been set.

D. *Frequency of Sampling to Demonstrate Compliance With 30-Day Average Limitations.* The proposed regulation establishes monthly average limitations that are based on the average of 10 consecutive sampling days (not necessarily consecutive calendar days). The 10-day average value was selected as the minimum number of consecutive samples because it approximates the most frequent monitoring requirements of direct discharge permits. The monthly average numbers shown in the regulation are to be used by plants with combined waste streams that use the "combined waste stream formula" set forth at 40 CFR 403.6(e) and by permit writers in writing direct discharge permits.

E. *Compliance Date for PSES.* Section 307(b)(1) of the Act requires that the date for compliance with PSES be no more than three years from the regulation's final promulgation date. Few indirect dischargers in this category have installed and are properly operating the treatment technology proposed as the basis for PSES. The readjustment of internal processing conditions to achieve reduced wastewater flows may require further time above installation of end-of-pipe treatment equipment. Many plants in this and other industries also will be installing the treatment equipment suggested as model technologies for this regulation which may result in delays in engineering, ordering, installing, and operating this equipment. Under these circumstances, we believe that three years is the appropriate compliance deadline under Section 307(b)(1) of the Act. We invite comment on the appropriateness of this compliance date.

F. *Recycle of Wet Scrubber and Contact Cooling Wastewater.* We are proposing BAT and PSES limitations for most subcategories based on 90 percent recycle of wet air pollution control and contact cooling wastewater (we have proposed limitations based on a higher rate for certain subcategories where reported rates of recycle are even higher). Water is used in wet air pollution control systems to capture particulate matter or fumes generated during the forming of nonferrous metals and associated operations. Cooling water is used to remove excess heat from metal products.

We observed extensive recycle of these streams throughout the industry. Indeed, some plants reported 100 percent recycle of process wastewater from these operations. The Agency believes, however, that most plants may have to discharge a portion of the recirculating flow to prevent the buildup

of dissolved solids. The Agency believes based on the data submitted in dcp's that through operation of cooling towers with a discharge of 10 percent of the recirculating flow, contact cooling water and scrubber water can be reused while controlling scale formation and equipment corrosion, and maintaining product quality.

We solicit comments on the ability of nonferrous metals forming plants to achieve 90 percent recycle of wet scrubber liquor and contact cooling wastewater.

IX. Best Practicable Technology (BPT) Effluent Limitations

The factors considered in defining best practicable control technology currently available (BPT) include the total cost of applying the technology in relation to the effluent reduction benefits derived, the age of equipment and facilities involved, the processes employed, nonwater quality environmental impacts (including energy requirements), and other factors the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performances of plants of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. Limitations based on transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limits. See *Tanners' Council of America* v. *Train*, 540 F.2d 1188 (4th Cir. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such are common industry practice.

The cost-benefit inquiry for BPT is a limited balancing, commited to EPA's discretion, which does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. Accordingly, water quality considerations were not the basis for selecting the proposed BPT. See *Weyerhaeuser Company* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978).

In developing the proposed BPT limitations, the Agency considered the amount of water used per unit production in each waste stream. These data were used to determine the average (mean) water discharge for each subcategory operation. Aberrant flows were excluded from mean calculations. Since the proposed BPT limitations were based on the average water discharge, plants with greater than average discharge flows may have to implement some method of flow reduction in order to achieve the effluent limits of BPT.

Next, we evaluated the appropriate treatement technology for BPT treatment. The proposed BPT level treatment for each subcategory was based on the average of the best existing performance currently demonstrated throughout that subcategory. As stated above, BPT was based on end-of-pipe treatment technologies except in those instances where a process change or internal control is common practice in the subcategory.

The effluent concentrations resulting from the application of the proposed model BPT technology are identical for all wastewater streams; however, the mass limitations vary for each waste stream depending on the regulatory flow. The BPT limitations were calculated by multiplying the effluent concentrations achievable by the selected option technology by the regulatory flow established for each waste stream.

The proposed BPT effluent mass limitations for all 11 subcategories are based on Option 1 technology (lime precipitation and sedimentation; and preliminary treatment, where necessary, consisting of oil skimming, ammonia stripping, cyanide precipitation, chromium reduction and chemical emulsion breaking) to remove toxic metals, oil and grease, and TSS. This technology is currently in place at 24 of the 39 direct dischargers in the category. The conventional pollutants specifically regulated in all 11 subcategories at BPT are oil and grease, TSS, and pH. Appendix B lists all the pollutants specifically regulated at BPT in each subcategory. Specific effluent mass limitations have been developed for each of these pollutants.

The proposed BPT will result in the removal of an estimated 19,300 kg (42,500 pounds) of toxic pollutants per year from estimated current discharge levels. The estimated capital investment cost of BPT is $2.91 million and the estimated annual cost is $1.59 million in 1982 dollars. These costs represent wastewater treatment equipment not currently in place.

We do not project any plant closures or unemployment as a result of meeting the BPT limitations. The Agency has determined that the pollutant reduction benefits associated with compliance justify the costs.

More stringent technology options were not selected since they would require in-process changes or end-of-pipe technologies which are not widely practiced by plants in the category and, therefore, are more appropriately considered under BAT.

X. Best Available Technology (BAT) Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements) and the costs of applying such technology (Section 304(b)(2)(B) of the Clean Water Act). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes, or other shared characteristics. As with BPT, where the Agency has found the existing performance to be uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include feasible process changes or internal controls, even when not in common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of cost. The Agency has considered the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is still effluent reduction capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution. The Agency evaluated the three major technology options set out in Section VII of the preamble for BPT-level technology.

We propose Option 2 (flow reduction of process wastewater and lime precipitation and sedimentation) as the

BAT technology option for the following two subcategories:

—Lead/Tin/Bismuth
—Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy

We propose Option 3 (Option 2 plus filtration) for the following nine subcategories:

—Beryllium
—Magnesium
—Nickel/Cobalt
—Precious Metals
—Refractory Metals
—Titanium
—Uranium
—Zinc
—Zirconium/Hafnium

Flow reductions at Options 2 and 3 are based on recycle of heat treatment contact cooling water through cooling towers, recycle of air pollution control scrubber liquor, countercurrent cascade rinsing of alkaline cleaning and surface treatment rinsewater, and use of holding tanks for all other process water subject to recycle. Approximately 30 percent of the direct dischargers have already achieved the reduced flow that forms the basis of Options 2 and 3 or have operations where EPA did not assume any flow reduction technology. In addition, in the nine subcategories for which we are proposing Option 3 as BAT, approximately 28 percent of the direct dischargers already have filtration in place or provide additional sedimentation which achieves toxic pollutant effluent concentrations equivalent to the levels achieved by filtration in the nonferrous metals forming industry.

The pollutants specifically limited under BAT in each subcategory are listed in Appendix B. These pollutants were selected because they were present in the largest quantities in the raw wastewater.

Implementation of BAT as proposed by EPA by all the direct dischargers in the 11 subcategories would remove an additional 1,900 pounds per year of total toxic metals beyond BPT at an additional capital cost of $0.7 million and additional annualized costs of $0.2 million. The Agency estimates that implementation of this proposed BAT would remove a total of 479,950 kg/year (1,058,100 lbs/year) of pollutants at a total annualized cost of $1.82 million from current levels. No potential plant closures are indicated as a result of meeting these proposed standards in our economic impact analysis. The Agency has therefore concluded that this level of BAT control is economically achievable.

EPA is not proposing BAT limitations based on Option 3 in the lead/tin/bismuth and iron and steel/copper/aluminum metal powder and powder metallurgy subcategories because requiring filters would remove very few additional pounds of pollutants. Filters would remove an estimated 322 pounds per year of additional pollutants but only 22.5 pounds per year of toxic metals. The mass of pollutants which Option 3 would remove and the costs of such removal for each of these two subcategories are presented in Section X of the Development Document.

In the other nine subcategories, however, the Agency believes that installation of filters in addition to the Option 2 technology would effectively remove significant amounts of additional pollutants and that based on available information the costs of these removals are achievable. The Agency recognizes, however, that many nonferrous metals forming plants not only perform operations that fall under more than one nonferrous metals forming subcategory, but also have discharges that are subject to regulations under other point source categories. Therefore, it was difficult to estimate the costs specifically associated with treating nonferrous metals forming wastewaters. After proposal, the Agency intends to conduct a plant-by-plant analysis of the degree of integration in nonferrous forming plants and the costs associated with each technology option. Based on this evaluation, and any data provided during the public comment period, EPA may choose to promulgate Option 2, rather than Option 3, as the BAT technology for one or more of these nine subcategories.

In particular, four subcategories, nickel/cobalt, refractory metals, titanium, and zirconium/hafnium, are highly integrated within themselves and with other industrial categories, some of which are not subject to effluent limitations based on the addition of filtration and typically combine process wastewaters from all operations for common treatment. If EPA determines that it has significantly underestimated the costs for these plants to either segregate their nonferrous metals forming flows subject to effluent limitations based on the addition of filtration or cotreat their combined wastewater flows and achieve the applicable effluent limitations, the Agency may choose to promulgate BAT based on Option 2 for those four subcategories and any other subcategories similarly situated. The Agency estimates that implementation of BAT based on Option 2 for these four subcategories and the lead/tin/bismuth and iron and steel/copper/aluminum metal powder production and powder metallurgy subcategories and Option 3 for the remaining five subcategories would remove a total of 478,000 kg/year (1,053,900 lbs/year) of pollutants at a total annualized cost of $1.73 million and would result in an incremental discharge of 273 pounds per year of toxic pollutants to surface waters over the proposed BAT. The Agency estimates that implementation of BAT based on Option 2 for all eleven subcategories would remove a total of 477,900 kg/year (1,053,600 lbs/year) of pollutants at a total annualized cost of $1.70 million.

EPA invites comments on the proposed BAT technology. EPA is especially interested in comments on the appropriateness of choosing Option 3, as well as the alternative technology it is considering, Option 2, for the nine subcategories. The Agency solicits information on the degree of integration of nonferrous metals forming plants and the cost of co-treating nonferrous metals forming wastewaters and other wastewaters relative to the cost of segregating these wastes and treating them separately. The effluent limitations which would be imposed if Option 2 were selected for any of these 9 subcategories are detailed in Section X of the Development Document. EPA invites comment on the achievability of these limitations.

The Agency is also considering promulgating Option 3 for both the lead/tin/ bismuth and the metal powder production and powder metalurgy of iron and steel/copper/aluminum subcategories, if the plant-by-plant analysis and additional data show that filtration does remove significant additional quantities of pollutants in these two subcategories and that the filtration technology is economically achievable. The limitations that would be imposed if Option 3 were selected for either of these two subcategories are detailed in Section X of the Development Document. EPA also invites comment on the achievability of these limitations.

XI. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design and use the best and the most efficient nonferrous metals forming processes and wastewater treatment technologies, without facing the added costs and

restrictions encountered in retrofitting an existing plant. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

The Agency has considered three major technology options, discussed in Section VII of this preamble, which might be applied as the best available demonstrated technology level. Each of these options would substantially reduce the discharge of toxic pollutants. These options are described in detail in Section XI of the Development Document.

EPA is proposing NSPS for all 11 subcategories based on BAT level technology for those subcategories, since the Agency did not identify any additional technology which would remove significant quantities of additional pollutants. The technology basis for setting discharge limits for conventional pollutants for each subcategory would also be the BAT technology (even when BCT is less stringent than BAT for that subcategory). Because NSPS does not include any additional cost compared to BAT, we do not believe it will prevent the entry of new plants.

As discussed above, the Agency will consider promulgating Option 2 as the NSPS model technology for subcategories where the Agency is proposing NSPS based on Option 3 if we find that we have significantly under estimated the costs of NSPS based on the addition of filtration. Once again, integration of plants is a particular concern, so the Agency solicits comments on both Option 2 and Option 3 as the basis for NSPS, and data on the costs of both cotreatment, and segregation and separate treatment. Commenters should take into account the fact that it is generally easier and less expensive to install appropriate wastewater treatment technology in new plants than to retrofit existing plants.

XII. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES) to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTWs. These standards must be achieved within three years of promulgation. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, and generally analogous to BAT for direct dischargers. (Conference Report 95–830 at 87; *Reprinted in* Comm. on Environment and Public Works, 95th Cong. 2d Sess., *A. Legislative History of the Clean Water Act of 1977*, Vol. 3 at 272.)

Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by the industry pass through the POTW or interfere with the POTW operation or its chosen sludge disposal practices. In determining whether pollutants pass through a POTW, the Agency compares the percentage of a pollutant removed by a well-operated POTW achieving secondary treatment with the precentage removed by direct dischargers applying the best available technology economically achievable. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by well-operated POTWs meeting secondary treatment requirements is less than the percentage removed by direct dischargers complying with BAT effluent limitations guidelines for that pollutant. See generally, 46 FR 9415–9416 (January 28, 1961).

This definition of pass through satisfies two competing objectives set by Congress: (1) That standards for indirect discharges be equivalent to standards for direct dischargers, while at the same time, (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. The Agency compares percentage removal rather than the mass or concentration of pollutants discharged because the latter would not take into account the mass of pollutants discharged to the POTW from non-indusrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations due to the addition of large amounts of non-industrial wastewater.

A study of 40 well-operated POTWs with biological treatment and meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70 percent. POTWs with only primary treatment have even lower rates of removal. In contrast, BAT level treatment by nonferrous metals forming industrial facilities can achieve removals of approximately 99 percent. Thus it is evident that metals from this industry do pass through POTWs. Many of the pollutants present in nonferrous metals forming waste streams, at sufficiently high concentrations, can also inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW use of sludge management alternatives, including the beneficial use of sludges on agricultural lands. Appendix B lists the specific pollutants regulated in each subcategory. Section XII of the Development Document compares the percent of pollutant remaining after treatment by a well-operated POTW with the percent removed by BAT leval treatment for each pollutant regulated in this category.

EPA is proposing PSES equal to BAT for all subcategories except the zinc and beryllium forming subcategories. Therefore, Option 2 is the technology basis for PSES in the lead/tin/bismuth and iron and steel/ copper/aluminum metal powder production and powder metallurgy subcategories, while the technology basis for PSES in the remaining seven subcategories is Option 3. Three of the indirect dischargers in the category have filtration technology or provide additional sedimentation which is achieving effluent concentrations equivalent to those achieved by filtration. Implementation of the proposed PSES would remove annually an estimated 64,000 kg (141,200 pounds) of toxic pollutants over the current discharge. Capital costs for achieving the proposed PSES are $6.6 million, with an annualized cost of $3.66 million.

Just as with BAT, the Agency will give consideration to adopting Option 2 as the PSES technology for those subcategories where it is proposing Option 3 if we determine that we have seriously underestimated the costs of this treatment level. The pollutant removals and costs of removal for each subcategory are provided in Section XII of the Development Document for both Options 2 and 3. We estimate that implementation of the proposed PSES would remove a total of 1,001,600 pounds per year of pollutants at an annualized cost of $3.66 million. Implementation of Option 2 technology by all indirect dischargers in all nine subcategories regulated under PSES would remove 997,700 pounds per year of pollutants at an annualized cost of $3.31 million. Implementation of Option 2 technology at the nickel/cobalt, refractory metals, titanium, and zircomium/hafmium subcategories, in addition to the lead/tin/bismuth and iron and steel/copper/aluminum metal powder and powder metallurgy subcategories, and Option 3 technology at the remaining three subcategories, would remove a total of 998,400 pounds per year of pollutants at an annualized cost of $3.44 million. The Agency invites comments on both options, and solicits data on the extent of integration among

indirect dischargers in this category, and the cost of cotreatment versus the cost of segregation and separate treatment of wastewaters from such integrated facilities.

The Agency is also considering promulgating Option 3 for both the lead/tin/bismuth and the metal powder production and powder metallurgy of iron and steel/copper/aluminum subcategories, if the plant-by-plant analysis and additional data show that filtration does remove significant additional quantities of pollutants in these two subcategories and that the filtration technology is economically achievable. The limitations that would be imposed if Option 3 were selected for either of these two subcategories are detailed in Section XII of the Development Document. EPA also invites comment on the achievability of these limitations.

EPA is proposing to exclude beryllium forming from PSES under the provisions of Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the beryllium forming subcategory. EPA is not proposing any categorical PSES for zinc forming because, on the basis of available information, it appears that the economic impacts of all available technology options are disproportionate for this subcategory. Our economic impact analysis indicates that one of the two indirect dischargers in that subcategory may close if required to comply with any categorical standard we could identify. The plant projected to close is by far the larger of the two indirect dischargers. The other plant is integrated, and therefore, its zinc forming wastewater would probably not escape treatment since it is likely to be cotreated with another waste stream at the plant which is regulated. Both zinc forming plants would still be subject to the general pretreatment standards. The Agency plans to reassess the costs for treatment at those two plants prior to promulgation and may decide to promulgate categorical standards for this subcategory if that reassessment indicates that the plant would not close if PSES equal to BAT, or some less stringent technology, were applied. The Development Document contains the PSES EPA would establish for the zinc forming subcategory based on application of the BAT technology, which is Option 3 (lime and settle, flow reduction, and filtration) and Option 2 (lime and settle plus flow reduction) and Option 1 (lime and settle.) EPA invites comments on its proposed exclusion of the zinc forming subcategory from PSES and comment on the achievability of PSES based on Option 1, 2, or 3.

XIII. Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers will produce wastes having the same pass through problems as described for existing dischargers. In selecting the technology basis for PSNS, the Agency compares the toxic pollutant removals achieved by a well-operated POTW to that achieved by a direct discharger meeting NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation.

We are proposing mass-based PSNS for all subcategories to assure that the identified flow reduction technologies are considered in new plant designs. In addition, we are proposing PSNS for the zinc forming and beryllium forming subcategories for which BAT and NSPS, but not PSES, are proposed.

The technology basis for the proposed PSNS is identical to NSPS, that is BAT/PSES. In addition, we are proposing PSNS equal to BAT for the beryllium forming and zinc forming subcategories. It is necessary to propose PSNS for all regulated toxic metals for the reasons gven above under PSES. We know of no economically feasible, demonstrated technology that removes significantly more pollutants than BAT/PSES technology. Because PSNS does not include any additional costs compared to PSES, we do not believe it will prevent the entry of new plants.

For the same reasons as discussed for BAT, NSPS, and PSES, EPA is considering promulgating Option 2 as the technology basis for PSNS for the subcategories where it is proposing Option 3 as PSNS. The Agency invites comments on the two options and solicits information on the cost of cotreatment versus the cost of segregation and separate treatment of wastewaters from integrated facilities.

XIV. Best Conventional Pollutant Control Technology (BCT)

The 1977 amendments to the Clean Water Act added Section 301(b)(2)(E), establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) (biological oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform, and pH), and any additional pollutants defined by the Administrator as "conventional" (oil and grease, 44 FR 44501, July 30, 1979).

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. In addition to the other factors specified in Section 304(b)(4)(B), the Act requires that limitations for conventional pollutants be assessed in light of a two-part cost-reasonableness test. On October 29, 1982, the Agency proposed a revised methodology for carrying out BCT analyses (47 FR 49176, October 29, 1982). The purpose of the proposal was to correct errors in and respond to a judicial remand of the BCT methodology originally established in 1977. A more specific explanation of the BCT methodology than this notice provides appears in the October 29, 1982 **Federal Register** notice.

Part 1 of the proposed BCT test requires that the cost and level of reduction of conventional pollutants by industrial dischargers be compared with the cost and level of reduction to remove the same type of pollutants by POTWs. The difference in cost is divided by the difference in pounds of conventional pollutants removed, resulting in an estimate of the "dollars per pound" of pollutant removed, that is used as a benchmark value. The proposed POTW test benchmark is $0.27 per pound in 1976 dollars. (The benchmark cost is $0.48 per pound in 1982 dollars.) If the conventional pollutant removal cost per pound for the candidate BCT is less than the POTW benchmark, Part 1 of the cost-reasonableness test is passed. Part 2 of the cost-reasonableness test is then performed.

Part 2 of the BCT test is an industry cost-effectiveness test which requires the evaluation of the incremental costs of removing conventional pollutants by the BCT technology in relation to the cost of removing conventional pollutants by BPT technology in the same industry. As a benchmark to assess the reasonableness of the ratio between the cost per pound of removal to achieve BPT and to achieve BCT, EPA has developed a ratio for POTW costs which compares the dollars per pound of conventional pollutant removed in going from primary to secondary treatment levels with that of going from secondary to a more advanced treatment level. The proposed benchmark is 1.43. if the ratio as defined for a given subcategory is lower than 1.43, the subcategory passes

the BCT ratio test. Both cost-tests must be passed to establish BCT limitations more stringent than BPT limits. If all candidate BCT technologies fail the cost-reasonableness test, the BCT requirements for conventional pollutants are equal to BPT.

The Agency considers two conventional pollutants in the cost test: TSS and an oxygen-demanding pollutant. Although both oil and grease and BOD_5 are considered to be oxygen-demanding pollutants by EPA (see 44 FR 50733, August 29, 1979), only oil and grease, the pollutant accounting for the greatest removal, was included in the cost analysis. See 47 FR 49181, October 29, 1982. Oil and grease is used rather than BOD_5 in the cost analysis performed for nonferrous metals forming waste streams (in addition to TSS) due to the common use of oils in this industry.

It should be noted that the cost used in the BCT test for the nonferrous metals forming category are somewhat different from those used in the economic impact analysis and in estimating the total cost of compliance with this regulation. For the BCT test, the costs used for Option 1 are the engineering estimates of costs to implement the technology used as the basis for BPT, i.e., lime and settle. However, for the economic impact analysis and the estimate of total compliance cost, if a plant could meet the BPT limitation at a lower cost by installing flow reduction in conjunction with its lime and settle system, i.e., Option 2, EPA assumed the plant would do so. In this case, the cost of BPT would then be the lower cost estimated for Option 2, even through flow reduction would be unnecessary to meet the pollutant removals achievable by the BPT technology.

The Agency's decision to use the actual engineering cost estimates for Option 1 when using the proposed BCT cost test, rather than assume that a company would install the cost-minimizing flow reduction is consistant with the Agency's previous BCT proposals. The Agency invites comment on the choice of costs for the BCT test.

The Agency has applied the proposed BCT cost test to assess candidate BCT technologies by comparing the annualized cost for the candidate technologies to the annualized cost for the selected BCT technology. The incremental costs of each candidate BCT technology was then divided by the incremental amounts of conventional pollutants (TSS and oil and grease) removed by the additional technology. The annualized costs for each option considered as a candidate technology for each subcategory are given below. Option 1, lime and settle without flow reduction, was selected as the BPT technology in all subcategories. Option 2 is lime and settle with flow reduction, and Option 3 is lime and settle plus filtration plus flow reduction.

Subcategory	Option1	Option 2	Option 3
Lead/Tin/Bismuth	30,301	14,482	35,981
Nickel/Cobalt	119,721	71,844	94,392
Titanium	858,341	729,081	797,492
Zirconium/Hafnium	88,523	79,063	92,881
Refractory Metals	70,374	102,479	114,577
Precious Metals	113,936	158,200	184,855
Powder Metallurgy	77,523	77,523	101,641
Zinc	26,708	36,841	[1] 36,841
Magnesium	70,850	44,564	44,570
Beryllium	0	310	[1] 310
Uranium	148,395	126,619	[1] 126,619

[1] There is only one direct discharger in this subcategory. This plant already has a filter or provides additional treatment which achieves equivalent results in the nonferrous metals forming industry, and no additional costs would be incurred for the additional treatment.

It is apparent from this table that in many cases the higher level options are less expensive than Option 1. In those cases, the incremental cost is negative (i.e., there is a savings in annualized costs) and the higher level option automatically passes both BCT cost tests. Those higher level options with the same annualized costs as the annualized BPT cost also pass both BCT cost tests, since there are no incremental costs in those cases. Therefore, we need only assess the incremental costs and incremental pollutant removals for those cases where the higher level options have greater annualized costs than the BPT option. An example of the calculation is as follows:

BCT cost for Lead/Tin/Bismuth direct dischargers:

	Per year
Annualized Cost of Option I	$30,301
Annualized Cost of Option III	35,981
Incremental Cost	5,680

Conventional Pollutants Discharged at Option 1=1,114 pounds per year.

Conventional Pollutants Discharged at Option 3=134 pounds per year.

Incremental Removal=980 pounds per year.

Dollars Per Pound=$5,680÷980=$5.80 per pound.

The calculated cost in dollars per pound of conventional pollutants removed exceeds the benchmark cost for the first BCT cost test, $0.48, and the candidate technology fails the proposed BCT cost test. Therefore, there is no need to consider the second BCT cost test, and the candidate technology would not be selected for BCT. We selected Option 2 as BCT technology in this subcategory because the cost of Option 2 is less than the cost of Option 1. (Option 2 was also selected as the BAT technology in this subcategory.)

In all cases where the annualized cost per pound of the candidate BCT technology exceeds the annualized cost per pound of the BPT technology in a subcategory of the nonferrous metals forming category, the candidate BCT technology failed the BCT cost test.

An alternative calculation of costs for each option which could have been appled is to assign the cost of the lowest cost option for each model plant to BPT as long as it is not negative. When the cost of Option 2 was negative, the cost was set equal to zero for that model. Then this method is used, the following annualized costs for each option for each subcategory are estimated:

Subcategory	Option 1	Option 2	Option 3
Lead/Tin/Bismuth	12,822	14,482	35,981
Nickel/Cobalt	74,504	80,897	94,392
Titanium	719,325	755,546	797,492
Zirconium/Hafnium	61,020	84,569	92,881
Refractory Metals	67,811	102,935	114,577
Precious Metals	113,936	158,200	184,855
Powder Metallurgy	77,523	77,523	101,641
Zinc	26,708	36,841	36,841
Magnesium	44,561	44,564	44,570
Beryllium	0	310	310
Uranium	126,619	126,619	126,619

Significantly different technology options would be selected in several subcategories as BCT technology if EPA had used the above costs because in no case, using the above cost estimates, is the annualized cost of a higher level option less than the annualized cost of BPT. Those cases where the annualized costs are the same would still pass the proposed BCT cost test since the incremental cost is zero. However, where the annualized cost of the higher level option exceeds that of BPT, the higher level option fails the proposed BCT cost test. An example calculation is as follows:

BCT cost test for Lead/Tin/Bismuth direct dischargers:

	Per year
Annualized Cost of BPT	$12,822
Annualized Cost of Option 2	14,482
Incremental Cost	1,660

Conventional Pollutants Discharged at Option 1=1,114 pounds per year.

Conventional Pollutants Discharged at Option 2=234 pounds per year.

Incremental Removals=880 pounds per year.

Dollars per pound=$1,660÷880 pounds=$1.89 per pound.

The candidate BCT technology failed the BCT cost test. Therefore, we would have selected Option 1 as BCT for this subcategory if we had used the

alternative costs. The Agency invites comment on using the two alternative sets of costs in evaluating BCT options.

Based on the first set of costs described above, we propose BCT based on Option 1 (BPT) for the following four subcategories because both higher level options failed the proposed BCT cost test:

—Zinc
—Beryllium
—Precious Metals
—Refractory Metals

The costs ranged from $2.21 to $167.48 per pound of conventional pollutants removed when BCT is based on Option 2 technology. The costs ranged from $2.61 to $173.25 per pound of conventional pollutants removed when BCT is based on the BAT technology.

We propose BCT based on Option 2, lime and settle plus flow reduction, for the following subcategory:

—Lead/Tin/Bismuth
—Zirconium/Hafnium
—Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy

These subcategories failed the proposed BCT cost test with a cost of $4.09 to $137.95 per pound of conventional pollutants removed. However, the annualized cost of Option 2 is less than the annualized cost of the BPT technology (Option 1) for these subcategories. Therefore, Option 2 is appropriate for BCT.

We propose BCT based on Option 3 for the following four subcategories because the Option 3 technology passed the proposed BCT cost test:

—Nickel/Cobalt
—Titanium
—Magnesium
—Uranium

In all four subcategories, the reduced operating costs which result from flow reduction more than offset the increased costs for the additional technology so that the annualized cost for the BAT (BCT) technology is less than the annualized cost for the BPT technology.

XV. Regulated Pollutants

The basis upon which the controlled pollutants were selected, as well as the general nature and environmental effects of these pollutants, is set out in Sections V, VI, IX and X of the Development Document. Some of these pollutants are designated as toxic under Section 307(a) of the Act. Three pollutants have been deleted from the list of 129. These are dichlorodifluoromethane, and trichlorofluromethane (46 FR 2266, January 8, 1981) and bis(chloromethyl) ether (46 FR 10723, February 4, 1981).

The pollutants selected for regulation are listed by subcategory in Appendix B.

In general, in each subcategory we have selected for regulation the two or three toxic metals present at the highest concentrations in the raw waste, because in removing these two or three toxic metals, the lime and settle treatment system also provides adequate removal of the other toxic metals present at lower concentrations. The lime and settle treatment system removes all metals, particularly the metal present at the highest concentration.

In each subcategory, the metal present at highest concentration is the metal being subjected to the forming operations. In several subcategories the metal present in the greatest amount is a toxic metal (nickel in the nickel forming subcategory, for example). In other subcategories the metal present in greatest amount is a nonconcentional pollutant (titanium in the titanium subcategory, for example). In these cases, we have also selected the nonconventional metal for regulation to ensure that all the toxic metals are adequately removed from the wastewater by the treatment system. Regulation of only two or three toxic metals in these subcategories, would not ensure adequate control of all toxic metals because the toxic metals are present at relatively low concentrations in these subcategories. The Agency believes that control of the nonconventional metals in the magnesium, refractory metals, titanium, uranium, and zirconium/hafnium subcategories is necessary to ensure adequate removal of all toxic metals, both regulated and unregulated. We invite comment and data on this conclusion.

We have selected radium for regulation in the uranium forming subcategory, in addition to the toxic metals and uranium, because radium is a contaminant of uranium and would be expected to be present in uranium forming process wastewater.

We have selected the nonconventional pollutants ammonia and fluoride for regulation in those subcategories where these pollutants are found at treatable levels. Ammonia is not removed by the lime and settle treatment system, and we have included the cost of the additional treatment (steam stripping) necessary for control of ammonia. Fluoride is removed by a lime and settle treatment system when lime is used for precipitation of the metals, but it is not removed when caustic or soda ash is used instead of lime for precipitation of metals.

XVI. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories.

A. Exclusion of Pollutants

Under Paragraph 8(a)(iii) of the Settlement Agreement, EPA is excluding certain toxic pollutants from regulation for one or all of the following reasons:

(a) The pollutant is not detectable in the effluent with the use of analytical methods approved pursuant to Section 304(h) of the Act or other state-of-the-art methods.

(b) The pollutant cannot be quantified in the effluent with the use of analytical methods approved pursuant to Section 304(h) of the Act or other state-of-the-art methods.

(c) The pollutant is present in amounts too small to be effectively reduced by technologies known to the Administrator.

(d) The pollutant is present in the effluent from only a small number of sources.

Appendix C lists those toxic pollutants which were not regulated in any subcategory. Appendix D lists those toxic pollutants which were not regulated in particular subcategories.

As noted in Section V of this preamble, we do not have date available at this time on the toxic organic pollutants in the beryllium forming, zinc forming, and uranium forming subcategories. Although there is no reason to expect that the presence of toxic organics is different in these three subcategories than the other eight subcategories, where only insignificant amounts were found, the Agency will modify this proposed exclusion if the data, when it becomes available, shows significant, treatable levels of toxic organics in any of those three subcategories.

B. Exclusion of Subcategories

Under Paragraph 8(a)(iv) of the Settlement Agreement, EPA is excluding certain metals from regulation because there are no dischargers in the subcategory. Appendix E lists the subcategories which were not regulated for this reason.

XVII. Economic Considerations

A. Costs and Economic Impacts

EPA's economic impact assessment is set forth in *Economic Analysis of Proposed Effluent Limitations and Standards for the Nonferrous Metals*

Forming Industry (EPA 440/2–84–005). This report presents the required investment and annual costs for existing sources in the industry as a whole and for typical new sources covered by the proposed regulation. The report also estimates the impacts of the costs of the regulation in terms of price changes, production changes, profitability changes, plant closures, employment changes, local community impacts, shifts in imports and exports, and industry structure changes.

EPA has identified 294 plants that perform nonferrous metals forming operations. Of these 294 plants, 148 do not discharge process wastewater, 32 are direct dischargers, 107 are indirect dischargers, and seven are both direct and indirect dischargers. Total investment cost to achieve BAT and PSES is estimated to be $10.2 million and annual cost is estimated to be $5.5 million beyond current costs of waste treatment. These costs are expressed in 1982 dollars. The annual costs include depreciation and interest.

The costs of implementing the regulation were extrapolated on a plant-by-plant basis for a sample of 86 discharging plants (compliance costs were not estimated for 37 discharging plants due to lack of data) based on plant-specific compliance cost estimates for 23 plants that represent 22 homogeneous groups of plants in terms of wastewater characteristics, wastewater flow, and treatment-in-place. Compliance cost estimates for each of these 23 plants were extrapolated to each of the remaining plants in the respective costing groups based on the plant's wastewater flow rate or, when flow data were not available, on annual plant production volume.

The wastewater treatment systems for each of the 23 plants used as models were sized to include all process wastewaters from all nonferrous metals forming subcategories at the plants. The combined nonferrous metals forming wastewaters at the costed plants were assumed to be cotreated in a common wastewater treatment system, which is the normal practice followed by those plants with treatment-in-place. Many of the other plants represented by a model plant are included in several subcategories and often these other plants are not included in one or more of the same subcategories included at the model plant (or are included in different subcategories), so allocation of costs by subcategories was difficult. Many plants also are included in other point source categories in addition to nonferrous metals forming. The normal practice at such plants where treatment is currently installed is to cotreat all wastewaters from all operations at those plants. Cotreatment of nonferrous metals forming wastewater with wastewater from other categories was not considered formally in developing the costs of compliance with this proposed nonferrous metals forming rule. The Agency intends to develop costs on a plant-by-plant basis after proposal, which will, to the extent possible, take into account integration of nonferrous metals forming subcategories and other categories at specific plants, and the relative costs of cotreatment versus segregation and separate treatment, when different waste streams are not subject to the same requirements. Since cotreatment allows for economics of scale , the Agency expects that the plant-by-plant analysis will show a lower cost of compliance. We invite comments on the cost of cotreatment of nonferrous metals forming wastewater with other wastewater and the cost of segregating nonferrous metals forming wastewaters for separate treatment.

The industry is subcategorized by the type of metal produced. The economic impact assessment began with a microeconomic model which projects the price and output behavior of each industry segment. It is used, in conjunction with plant compliance cost estimates, to determine after-compliance price and production levels for each industry segment and for each regulatory option.

A financial profile was developed for each of the plants based on average financial ratios for the industry subcategories in which the plant competes. The primary variables of interest in estimating the potential economic impacts of the proposed regulation on individual plants were profitability, as measured by the after-compliance net present value (NPV); and the ability of individual plants to raise capital, as measured by the after-compliance fixed charge coverage ratio. The plant NPV represents the excess of the discounted value (i.e., present value) of the projected cash flows from operating the plant over the present value of the cash flows generated by liquidating the plant and investing the proceeds in an alternative investment. The fixed charge coverage ratio is defined as earnings before interest and taxes over interest payments. Other factors considered in judging the likelihood of closure include the degree of integration, and market characteristics such as the degree of competition and the existence of specialty markets.

Price increases resulting from the regulation are expected to range from 0.1 percent for precious metals forming to 2.4 percent for uranium forming. Three potential plant closures (all indirect dischargers) are projected; these three plants form nickel, titanium, and refractory metals products. The production loss for these plants would range from 400,000 pounds per year to 2.5 million pounds per year. The closure of these three nonferrous metals forming facilities would affect about 280 jobs. Community, industry structure, and balance of trade effects would be insignificant.

Finally, EPA has conducted an analysis of the incremental removal cost per pound-equivalent for each of the proposed technology-based options. A pound-equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The use of "pound-equivalent" gives relatively more weight to removal of more toxic pollutants. Thus, for a given expenditure the cost per pound-equivalent removed would be lower when a highly toxic pollutant is removed. This analysis is included in the record of this rulemaking, and is entitled *Cost-Effectiveness Analysis of Proposed Effluent Limitations and Standards for the Nonferrous Metals Forming Industry.*

BPT: Thirty-nine plants are direct dischargers. One plant is achieving the proposed BPT effluent limitations. The proposed BPT regulation is projected to cost $2.9 million in investment costs and $1.6 million in annual costs for these plants. No plant closures or job losses are anticipated as a result of the proposed BPT regulation. Price increases over current prices would range from less than 0.1 percent to 2.4 percent. The cost estimates take into account treatment-in-place.

Since the BPT regulatory flow is on tthe whole larger than the BAT flow, and the in-process controls tend to be relatively inexpensive, the cost of treatment with flow reduction is less than the cost of treating the BPT regulatory flows for a number of plants. For the purpose of evaluating the economic impacts, it was assumed that plants with no treatment-in-place would install the least expensive treatment to meet the requirements of BPT. Hence, in those cases where the cost of treating the reduced flows was maller, it was assumed that the lower costs would be

incurred to meet the BPT Limits and no incremental cost would be incurred in meeting the BAT limits.

BAT: The proposed BAT regulation will also affect the 39 direct dischargers in the nonferrous metals forming industry. Total investment costs are estimated to be $3.6 million, with annual costs of $1.8 million. The incremental costs over BPT are estimated to be $0.7 million in investment costs and $0.2 million in annual costs. There are no plant closures or job losses projected as a result of the BAT regulation. Price increases over current prices would range from 0.1 percent to 2.4 percent, about the same as the BPT increases. Thus, EPA has determined that the proposed BAT regulation is economically achievable.

BCT: The proposed BCT standards are equal to or less stringent than BAT for all subcategories and hence have no economic impact beyond the proposed BPT and BAT standards.

PSES: One hundred and fourteen plants are identified as indirect dischargers. The pollution control technology for the pretreatment standards is identical to the BAT treatment technology, with one exception. The impact analysis indicates that four indirect discharging plants are potential closures under each option considered. One plant produces zinc; the other three plants produce combinations of nickel/cobalt, titanium, and refractory metals. The Agency is proposing exclusion of the zinc forming subcategory from national PSES because one of the two indirect dischargers in that subcategory, which produces zinc and no other nonferrous metals covered under this regulation, is expected to close at each of the technology options considered. EPA has determined that imposing any categorical standards on the zinc forming subcategory would result in a disproportionate impact on this segment of the industry. However, as discussed earlier in this preamble, the Agency will be conducting a plant-by-plant analysis of costs after proposals. Based on this analysis, EPA may find that it is appropriate to promulgate PSES for the zinc forming subcategory.

In the other subcategories which include potential closures, similar exclusions are not appropriate because there are a large number of plants and a size cutoff would leave many plants unregulated, even when the control costs are economically achievable for the subcategory as a whole.

With the PSES exclusion for the zinc forming subcategory, investment costs for the remaining 113 indirect dischargers are estimated to be $6.6 million and annual costs to be $3.7 million. In terms of unemployment, the three potential closures associated with PSES could affect approximately 280 employees. Total loss in industry production would be about 0.7 percent. Price increases would range from 0.1 to 0.3 percent. Thus, the Agency has determined that PSES is economically achievable.

As noted above, the impact analysis is based on engineering cost estimates for 23 typical plants, and extrapolated costs for the remaining plants. The plants projected to close are among the latter group. If the plant-by-plant engineering cost estimates planned for the post-proposal period indicate a change in impacts, the Agency will modify its analysis.

NSPS–PSNS: The proposed effluent standards and associated technologies for new sources are identical to those for existing sources except that EPA has also included PSNS for the beryllium forming and zinc forming subcategories. Consequently, the economic impacts for new sources will be similar to those of existing sources and the proposed regulations are not expected to cause barriers to entry.

B. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major rule because its annualized cost, as discussed above, is significantly less than $100 million and it meets none of the other criteria specified in Section 1 (b) of the Executive Order. The economic impact analysis prepared for this rulemaking meets the requirements for non-major rules.

C. Regulatory Flexibility Analysis

Pub. L. 96–354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. The economic impact analysis described above indicates that there will not be a significant impact on any segment of the regulated populations, large or small. Therefore, a formal regulatory flexibility analysis is not required.

D. SBA Loans

The Agency is continuing to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Business Loan Program. Eligibility for SBA programs varies by industry. Generally, the programs require that a company be independently owned and not dominant in its field, the workforce range from 250 to 1,500 employees industry, and annual sales revenue range from $275,000 to $22 million (varies by industry).

For further information and specifics on the Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, 703/235–2902.

The Section 503 Program, as amended in July 1980, allows long-term loans to small- and medium-sized businesses. These loans are made by SBA-approved local development companies. These companies are authorized to issue Government-backed debentures that are brought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Business Loan Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan and Section 503 Programs, persons should contact their district or local SBA office. The coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at 202/382–5373.

XVIII. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals. The vairous EPA offices responsible for these programs have reviewed this proposed regulation and concur with its provisions and the assessment of anticipated effects, described below.

The following are the nonwater quality environmental impacts

(including energy requirements) associated with the proposed regulations:

A. Air Pollution

Imposition of BPT, BAT, BCT, NSPS, PSES, and PSNS will not create any substantial air pollution problems.

B. Solid Waste

EPA estimates that nonferrous metals forming facilities generated 14,000 kkg (15,400 tons) of solid wastes (wet basis) in 1981 as a result of wastewater treatment-in-place. These wastes were composed of treatment system sludges containing toxic metals, including antimony, cadmium, chromium, copper, lead, nickel, and zinc.

EPA estimates that the proposed BPT will generate an additional 3,900 kkg (4,300 tons) per year of solid wastes. The proposed BAT will increase these wastes by approximately 5.9 kkg (6.5 tons) per year beyond BPT levels. PSES will increase these wastes by approximately 9,900 kkg (10,900 tons) per year beyond current levels. New nonferrous metals forming plants subject to PSNS/NSPS would also generate treatment system sludges. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

Wastes generated by nonferrous metal formers are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) if they are hazardous. However, the Agency examined solid wastes similar to those that would be generated at nonferrous metals forming plants by the suggested treatment technologies (that is, the sludges from lime and settle treatment) and believes they are not hazardous wastes under the Agency's regulations implementing Subtitle C of RCRA. None of these wastes are specifically listed as hazardous, nor are they likely to exhibit one of the four characteristics of hazardous waste (See 40 CFR Part 261), based on the recommended technology of chemical precipitation and sedimentation, preceded where necessary by hexavalent chromium reduction. By the addition of a small excess of lime during treatment, similar sludges, specifically toxic metal-bearing sludges generated by other industries such as the iron and steel industry passed the Extraction Procedure (EP) toxicity test. See 40 CFR 261.24. Thus, the Agency believes that treatment sludges from nonferrous metals forming wastewaters will similarly not be EP toxic if the recommended technology is applied. The Agency requests comment on this conclusion. We specifically request cost information if there is reason to believe these sludges would be classified as hazarous.

The Agency is not proposing an allowance for discharge of spent solvents from the solvent degreasing operations at nonferrous metals forming plants. Disposal of the spent solvent may be subject to regulation under RCRA. However, no plant in the nonferrous metals forming industry is known to currently discharge the spent solvents. Therefore, the cost of disposal of the spent solvents has not been included in estimating the costs of this proposed regulation because all plants which use solvent degreasing are already incurring those costs.

The Agency is proposing a no discharge requirement for tube-reducing spent lubricant because, based on analytical data for that wastestream at the one plant sampled, that wastestream contains treatable levels of N-nitrosodiphenylamine. That wastestream would have to be disposed of as a solid waste. We have not estimated the cost of that disposal but expect it to be quite small because the wastestream is quite small. We invite comments and data on the cost of disposal of that wastestream as a solid waste.

Although it is the Agency's view that solid wastes generated by the treatment technologies which serve as the basis for these guidelines are not expected to be hazardous, generators of these wastes must test the waste to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR 262.10). The Agency also may list these wastes as hazardous under 40 CFR 261.11.

If these are hazardous, as defined by RCRA, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulation from the point of generation to point of final disposition. EPA's generator standards require generators of hazardous wastes to meet containerization, labeling, recordkeeping, and reporting requirements; if plants dispose of hazardous wastes off-site, they have to prepare a manifest which tracks the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 40 CFR 262.20. The transporter regulations require transporters of hazardous wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 40 CFR 263.20. Finally, RCRA regulations establish standards for hazardous waste treatment, storage, and disposal facilities allowed to receive such wastes. See 40 CFR Part 264.

Even if these wastes are not identified as hazardous, they still must be disposed of in compliance with the Subtitle D open dumping standards, implementing Section 4004 of RCRA. See 44 FR 53438 (September 13, 1979). The Agency has calculated as part of the costs for wastewater treatment the cost of hauling and disposing of these wastes. For more details, see Section VIII of the Development Document.

C. Energy Requirements

EPA estimates that the achievement of proposed BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 3.9 million kilowatt-hours per year. The BAT technology should not substantially increase the energy requirements over the requirements of BPT because the additional pumping requirements for filtration should be offset by the reduced pumping requirements, the agitation requirement for mixing wastewater, and other volume-related energy requirements, as a result of reducing process wastewater discharge to treatment. Therefore, the BAT limitations are assumed to require an equivalent energy consumption to that of the BPT limitations. To achieve the BPT and BAT effluent limitations, a typical direct discharger will increase total energy consumption by 110,000 kilowatt-hours per year.

The Agency estimates that PSES will result in a net increase in electrical energy consumption of approximately 6.0 million kilowatt-hours per year. To achieve PSES, a typical existing indirect discharger will increase energy consumption by 50,000 kilowatt-hours per year.

The Agency estimates that the NSPS and PSNS technology will, in general, require as much energy as BAT and PSES, respectively.

XIX. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" (BMPs) described under Legal Authority and Background, above. EPA is not proposing specific BMPs for the nonferrous metals forming category at this time.

XX. Upset and Bypass Provisions

A recurring issue is whether industry limitations and standards should include provisions that authorize noncompliance during "upsets" or "bypasses." An upset, sometimes called an "excursion,"

is unintentional noncompliance beyond the reasonable control of the permittee. EPA believes that upset provisions are necessary because upsets will inevitably occur, even if the control equipment is properly operated. Because technology-based limitations can require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on the questions of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, Supra* and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir. April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded, a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. EPA has, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that include upset and bypass permit provisions. See 40 CFR 122.41. The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the nonferrous metals forming industry will be entitled to upset and bypass provisions in NPDES permits, this proposed regulation does not address these issues. Upset provisions are also contained in the General Pretreatment regulation, 40 CFR Parts 125 and 403.

XXI. Variances and Modifications

Upon the promulgation of the final regulation, the numerical effluent limitations for the appropriate subcategory must be applied to all federal and state NPDES permits thereafter issued to nonferrous metals forming direct dischargers. In addition, upon promulgation, the pretreatment standards are directly applicable to indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973–1976 industry regulations, it is now included in the general NPDES regulations and will not be included in the nonferrous metals forming or other specific industry regulations. See the general NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines.

The economic modification section of the Act (Section 301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1978, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that applications for modification under Section 310 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES Program, a copy must be sent to the Director of the State Program. Initial applications to comply with Section 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for a 301(c) or 301(g) modification of both.

Indirect discharges subject to PSES and PSNS are eligible for credits for toxic pollutants removed by a POTW. See 40 CFR 403.7. New sources subject to NSPS are not eligible for any other statutory or regulatory modifications. See *E.I. duPont de Nemours & Co.* v. *Train, supra.*

Indirect dischargers subject to PSES have, in the past, been eligible for the "fundamentally different factors" variance. See 40 CFR 403.13. However, on September 20, 1983, the United States Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants are forbidden by the Act," and remanded 403.13 to EPA. *NAMF et al.* v. *EPA*, Nos. 79–2256 et al. (3rd Cir.). EPA is considering the effect of that decision.

In a few cases, information which would affect these PSES may not be available to EPA or affected parties in the course of this rulemaking. As a result, it may be appropriate to issue specific categorical standards for such facilities, treating them as a separate subcategory with more, or less, stringent standards as appropriate. This will only be done if a different standard is appropriate because of unique aspects of the factors listed in Section 304(b)(2)(B) of the Act: The age of equipment and facilities involved, the process employed, the engineering

aspects of applying control techniques, nonwater quality environmental impacts (including energy requirements), or the cost of required effluent reductions (but not of ability to pay that cost).

After this regulation is promulgated, indirect dischargers and other affected parties may petition the Administrator to examine those factors and determine whether these PSES are properly applicable in specific cases or should be revised. Such petitions must contain specific and detailed support data, documentation, and evidence indicating why the relevant factors justify a more, or less, stringent standard, and must also indicate why those factors could not have been brought to the attention of the Agency in the course of this rulemaking. Accordingly, persons should submit all available information suggesting that alternative limitations should be established for specific facilities during the comment period for this regulation.

XXII Implementation of Limitations and Standards

A. Relationship to NPDES Permits

The BPT, BAT, and BCT limitations and NSPS in this regulation will be applied to individual nonferrous metals forming plants through NPDES permits issued by EPA or approved State agencies under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are dicussed below.

One subject that has received different judicial rulings is the scope of NPDES permit proceedings when effluent limitations and standards do not exist. Under current EPA regulations, States and EPA regions that issue NPDES permits before regulations are promulgated must do so on a case-by-case basis. This regulation provides a technical and legal base for new permits.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. EPA has developed the limitations and standards in this regulation to cover the typical facility for this point source category. In specific cases, the NPDES permitting authority may have to establish permit limits on toxic pollutants that are not covered by this regulation. The promulgation of this regulation will not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutants on a case-by-case basis when such actions conform with the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), the permit-issuing authority must apply those limitations.

A second topic that warrants discussion is the operation of EPA's NDPES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. *Sierra Club* v. *Train*, 557 F. 2d 485 (5th Cir. 1977). EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts.

B. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR Part 403. The table below may be of assistance in resolving questions about the operation of that program. A brief explanation of some of the submissions indicated on the table follows:

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS Limits it will be required to meet. See 40 CFR 403.6(a).

A "request for fundamentally different factors variance" for nontoxic, nonconventional pollutants is a mechanism by which a categorical pretreatment standard may be adjusted, making it more or less stringent, on a case-by-case basis. If an indirect discharger, a POTW, or any interested person believes that factors relating to a specific indirect discharger are fundamentally different from those factors considered during development of the relevant categorical pretreatment standard and that the existence of those factors justifies a different discharge limit from that specified in the categorical standard, then they may submit a request to EPA for such a variance. See 40 CFR 403.13.

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes: an identification of the indirect discharger; a description of its operations; a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams; a statement of the discharger's compliance or noncompliance with the standard; and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process wastestreams; the average and maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance and/or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report must provide the concentrations of the regulated pollutants in its discharge to the POTW; the average and maximum daily flow rates of the facility; the methods used by the indirect discharger to sample and analyze the data; and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e)

INDIRECT DISCHARGERS SCHEDULE FOR SUBMITTAL AND COMPLIANCE

Item	Applicable sources	Date or time period	Measured from—	Submitted to—
Request for category determination	Existing	60 days or 60 days	From effective date of standard or From Federal Register development document availability.	Director.[1]

INDIRECT DISCHARGERS SCHEDULE FOR SUBMITTAL AND COMPLIANCE—Continued

Item	Applicable sources	Date or time period	Measured from—	Submitted to—
Request for fundamentally different factors variance.	New	Prior to commencement of discharge to POTW.		Director.[1]
	Existing nonconventional pollutants only.	180 days	From effective date of standard	
Baseline monitoring	All	180 days	From effective date of standard or final decision on category determination.	Control authority.[2]
Report on compliance	Existing	90 days	From date for final compliance	Control authority.[2]
	New	90 days	From commencement of discharge to POTW	
Periodic compliance reports	All	June and December		Control authority.[2]

[1] Director—(a) Chief Administrative Officer of a state water pollution control agency with an approved pretreatment program, or (b) EPA Regional Water Division Director, if state does not have an approved pretreatment program.
[2] Control Authority—(a) POTW if its pretreatment program has been approved, or (b) Director of state water pollution control agency with an approved pretreatment program, or (c) EPA Regional Administrator, if state does not have an approved pretreatment program.

XXIII. Solicitation of Comments

EPA invites public participation in this rulemaking. We ask that any perceived deficiencies in the record be addressed specifically. We also ask that any suggested revisions or corrections be supported by data.

In addition to issues already addressed in the preamble, EPA is particularly interested in receiving additional comments and information, supported by appropriate data, on the following issues:

1. In our discussion of choices for BPT, BAT, BCT, PSES, NSPS, and PSNS for each subcategory, we described the range of options we considered. We formally solicit comment on whether we should adopt less or more stringent options in each subcategory, and if so, why.

2. The Agency is continuing to seek additional data to support these proposed imitations and standards. The treatment effectiveness data for lime and settle and lime, settle and filter technology are based on the results of Agency sampling of the raw wastewaters and treated effluents from a broad range of plants generating similar wastewaters and (for filtration) on long-term self-monitoring data from two porcelain enameling plants and one nonferrous metals manufacturing plant. The Agency invites comments on the treatment effectiveness results, and the statistical analysis and underlying assumptions discussed in Section VII of the Development document as they pertain to nonferrous metals forming plants. The Agency specifically requests long-term sampling data (especially paired raw wastewater—treated effluent data) from nonferrous metals forming plants having well-operated treatment systems using the treatment technologies relied upon for this regulation, and also other equally effective treatment technologies.

3. In its cost estimates the Agency has considered cost savings associated with water flow reduction, such as reduced costs for new equipment and reduced operating costs for existing equipment, but has not considered other cost savings associated with reduced flow, such as reduced charges for water use and sewerage savings. The Agency invites comments and requests that cost data be submitted to the Agency.

4. Nonferrous metals forming plants in most of the subcategories discharge to POTWs. Because their wastewaters contain substantial amounts of nonconventional metals, the Agency invites comments and any supporting data concerning incompatibility of those nonconventional wastewaters with the POTW treatment systems or sludge disposition.

5. Approximately 56 percent of the facilities in the nonferrous metals forming category discharge process wastewater in other industrial categories for which effluent guidelines have already been proposed or promulgated. We request comment as to whether nonferrous metals forming plants could incur disproportionate costs as a result of treating both nonferrous metals forming wastewaters and wastewaters from a different point source category when the treatment requirements are different. Commenters should provide data on nonferrous metals forming process wastewater flow as a percentage of total process wastewater flow and any available data on the comparative costs of segregating and treating the various wastestreams separately versus cotreating all the plants' wastestreams.

6. We request that commenters identify any process wastewater streams not identified by EPA which they believe should receive a discharge allowance. We also request comments on any wastewater streams for which the flow identified by EPA is inappropriate. We specifically request comments on metal cleaning operations associated with tube reducing. For any such streams, commenters should identify flow (in relation to production) and raw wastewater characteristics (pollutant concentrations).

7. The Agency is proposing BAT, BCT, NSPS, PSES, and PSNS based on Options 2 and 3 which include in-process flow reduction of many wastewater streams. We solicit comments on the ability of nonferrous metals forming plants to achieve 90 percent recycle of wet scrubber liquor; contact cooling wastewater; tumbling wastewater; and nickel, precious metals, and titanium rolling emulsions. We also solicit comments on the ability of nonferrous metals forming plants to achieve 90 percent reduction in flow of rinses from alkaline cleaning and surface treatment operations by the use of countercurrent cascade rinsing.

8. The Agency may decide to promulgate BAT, BCT, NSPS, PSES, and PSNS which include in-process flow reduction of additional wastewater streams. We solicit comments on the ability of nonferrous metals forming plants to achieve 90 percent recycle of water used in metal powder atomization.

9. The methodology used to estimate the economic effects of these regulations is discussed in Section XVII of this preamble and in the economic analysis report. We solicit comments on the methodology and criteria used to screen for economic impacts and on the methodology presented for financial analyses of individual plants.

10. A number of firms have not responded to the survey mailed to them under the authority of Section 308 of the Clean Water Act. The Agency asks each facility that has failed to respond to submit their responses immediately. If the questionnaire has been misplaced a duplicate of the survey will be sent directly upon request.

11. The Agency is proposing PSES and PSNS based on Options 2 and 3 technology which include flow reduction in addition to end-of-pipe treatment. The Agency invites comments and data on whether the impact of the flow reduction portion of the PSES technology on indirect dischargers would be any

different than the impact on direct dischargers.

12. We have proposed that the date for compliance with PSES be three years from the regulation's final promulgation date. We invite comments on the appropriateness of the compliance date.

13. The Agency is proposing a PNP of zero discharge for one waste stream, tube reducing spent lubricant, because analysis for toxic organics at the one plant sampled (in the nickel/cobalt forming subcategory) showed treatable concentrations of N-nitrosodiphenylamine. That waste stream has a small flow and can be most economically handled by intercepting the waste stream before mixing it with other process wastewaters and disposing of it as a hazardous waste under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* Treatment of the wastes with activated carbon after mixing with other process wastewaters would be much more expensive. The Agency recognizes that the total amount of N-nitrosodiphenylamine discharges in the tube reducing spent lubricant is only a few pounds per year, but believes the potentially carcinogenic properties of nitrosamines justify prohibiting its discharge. We invite comment and data on the no discharge requirement for this waste stream.

14. In many industries, indirect dischargers are located in urban areas, whereas direct dischargers tend to be located in more rural areas. This can sometimes place indirect dischargers at a disadvantage in terms of space availability for installing wastewater treatment. However, EPA has concluded that space availability presents no greater problem for existing indirect dischargers than for existing direct dischargers in the nonferrous metals forming category. We request comment on this conclusion.

15. The Agency requests comments on the appropriateness of the cyanide limitations proposed for the beryllium forming, precious metals forming, titanium forming, zinc forming, zirconium/hafnium forming, and iron and steel/copper/aluminum metal powder production and powder metallurgy subcategory.

16. Section XIV of this notice outlines our application of the proposed BCT cost test to the 11 subcategories in the nonferrous metals forming category. We have compared the engineering costs for higher level options to the engineering costs for the selected BPT option, as was done in assessing BCT options in other categories. For several subcategories in the nonferrous metals forming category, the reduced annual operating costs resulting from reduced flow more than offset the annualized costs for the additional equipment, so that the annualized costs of the higher level options are less than the annualized costs for the selected BPT technology. Consequently, since there is a reduction in annualized costs, the higher level options pass the proposed BCT cost test. An alternative approach is to assume that plants affected by the proposed BPT would reduce the water flow voluntarily to take advantage of the reduced operating costs, and assign the lowest cost option (usually Option 2) as the annualized cost of the BPT technology. The latter approach was used in our economic impact analysis. If that approach is used, many of the higher level technology options would fail the proposed BCT cost test. We invite comment on these two alternatives for assessing BCT when using the proposed BCT cost test.

17. Most plants in the iron and steel/copper/aluminum metal powder production and powder metallurgy subcategory do not have the lime and settle technology selected for BPT. However, several do have settling or settling plus filtration but without lime precipitation. That technology might be sufficient for BPT if the pollutants are present mainly as undissolved metal particles, but we do not have any data demonstrating the effectiveness of settling alone for pollutant removal in that subcategory. We solicit wastewater treatment data from plants with only solids removal technology so we may assess the effectiveness of that technology.

18. The Agency will evaluate the costs of the technology options on a plant-by-plant basis before promulgating this proposed regulation. To the extent possible, we will consider the costs associated with cotreatment of wastes from all categories and subcategories included at each plant. We solicit comments and data on : (a) The extent to which cotreatment is currently practiced in the industry, (b) the extent to which cotreatment is projected to be practiced in the future, (c) the costs of cotreatment currently experienced or projected, (d) method(s) of allocating costs for cotreatment to individual product lines, and (e) the effectiveness of cotreatment in reducing pollutant discharges.

19. The Agency is not proposing PSES for the zinc forming subcategory at this time because of the impact (i.e., potential closure) on one of the two indirect discharging plants in the subcategory. We solicit comments on the necessity for and appropriateness of this exemption.

This regulation was submitted to the Office of Management and Budget for review as required by Exceutive Order 12291. This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.*

XXIV. List of Subjects in 40 CFR Part 471

Nonferrous metals forming, Water pollution control, Waste treatment and disposal.

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technololgy economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under Section 304(b)(4) of the Act.

BMP—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatement works.

NPDES Permits—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect dischargers under Sections 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waste Disposal Act.

Appendix B—Pollutants Selected for Regulation by Subcategory

The following is a list of pollutants limited for each subcategory:

Beryllium Forming Subcategory (Subpart A)

beryllium
copper
cyanide
fluoride
oil and grease
total suspended solids
pH

Lead/Tin bismuth Forming Subcategory (Subpart B)

antimony
lead
oil and grease
total suspended solids
pH

Magnesium Forming Subcategory (Subpart C)

chromium
zinc
ammonia
fluoride
magnesium
oil and grease
total suspended solids
pH

Nickel Cobalt Forming Subcategory (Subpart D)

chromium
nickel
fluoride
oil and grease
total suspended solids
pH

Precious Metals Forming Subcategory (Subpart E)

cadmium
copper
cyanide
silver
oil and grease
total suspended solids
pH

Refractory Metals Forming Subcategory (Subpart F)

copper
nickel
fluoride
columbium
molybdenum
tantalum
tungsten
vanadium
oil and grease
total suspended solids
pH

Titanium Forming Subcategory (Subpart G)

cyanide
lead
zinc
ammonia
fluoride
titanium
oil and grease
total suspended solids
pH

Uranium Forming Subcategory (Subpart H)

cadmium
copper
nickel
ammonia
fluoride
radium
uranium
oil and grease
total suspended solids
pH

Zinc Forming Subcategory (Subpart I)

chromium
cyanide
zinc
oil and grease
total suspended solids
pH

Zirconium/Hafnium Forming Subcategory (Subpart J)

chromium
cyanide
nickel
ammonia
fluoride
hafnium
zirconium
oil and grease
total suspended solids
pH

Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Subcategory (Subpart K)

copper
cyanide
lead
aluminum
iron
oil and grease
total suspended solids
pH

Appendix C—Toxic Pollutants Excluded From Regulation in all Subcategories

Under Paragraph 8(a)(iii) of the Settlement Agreement, EPA is excluding certain toxic pollutants from regulation in all subcategories, for one or all of the following reasons:

(a) The pollutant is not detectable in the effluent with the use of analytical methods approved pursuant to Section 304(h) of the Act or other state-of-the-art methods.

(b) The pollutant cannot be quantified in the effluent with the use of analytical methods approved pursuant to Section 304(h) of the Act or other state-of-the-art methods.

(c) The pollutant is present in amounts too small to be effectively reduced by technologies known to the Administrator.

(d) The pollutant is present in the effluent from only a small number of sources.

The reason(s) for each of the following exclusions is keyed to the above lists.

acenaphthene (a,d)
acrolein (a,d)
acrylonitrile (a)
benzene (a,b,c)
benzidene (a,d)
carbon tetrachloride (tetrachloromethane) (a,b)
chlorobenzene (a,b)
1,2,4-trichlorobenzene (a)
hexachlorobenzene (a)
1,2-dichloroethane (a,c)
1,1,1-trichlorethane (a,b,c)
hexachloroethane (a,c)
1,1-dichloroethane (a,b,d)
1,1,2-trichloroethane (a,b)
1,1,2,2-tetrachloroethane (a,b,c)
chloroethane (a)
bis (chloromethyl) ether (a)
bis (2-chloroethyl) ether (a)
2-chloroethyl vinyl ether (mixed) (a)
2-chloronaphthalene (a)
2,4,6-trichlorophenol (a)
parachlorometa cresol (a,d,c)
chloroform (trichloromethane) (a,b,c)
2-chlorophenol (a,b)
1,2-dichlorobenzene (a)
1,3-dichlorobenzene (a)
1,4-dichlorobenzene (a)
3,3'-dichlorobenzidine (a,d)
1,1-dichloroethylene (a,b,c,d)
1,2-trans-dichloroethylene (a,d)
2,4-dichlorophenol (a)
1,2-dichloropropane (a)
1,2-dichloropropylene (1,3-dichloropropene) (a)
2,4-dimethylphenol (a,c,d)
2,4-dinitrotoluene (a,d)
2,6-dinitrotoluene (a,d)
1,2-diphenylhydrazine (a,b)
ethylbenzene (a,c)
fluoranthene (a,b,d)
4-chlorophenyl phenyl ether (a)
4-bromophenyl phenyl ether (a)
bis(2-chloroisopropyl) ether (a)
bis(2-chloroethoxy) methane (a,b)
methylene chloride (dichloromethane) (a,c,d)
methyl chloride (chloromethane) (a,d)
methyl bromide (bromomethane) (a)
bromoform (tribromomethane) (a)
dichlorobromomethane (a)
trichlorofluoromethane (a)
dichlorodifluoromethane (a)
chlorodibromomethane (a,b)
hexachlorobutadiene (a)
hexachlorocyclopentadiene (a)
isophorone (a)
naphthalene (d)
nitrobenzene (a,c)
2-nitrophenol (a,b,c,d)
4-nitrophenol (a,d)
2,4-dinitrophenol (a)
4,6-dinitro-o-cresol (a,d)
N-nitrosodimethylamine (a,b)
N-nitrosodiphenylamine (a,d)
N-nitrosodi-n-propylamine (a,d)
pentachlorophenol (a,d)
phenol (a,c,d)
bis(2-ethylhexyl) phthalate (a,c,d)
butyl benzyl phthalate (a,b,d)
di-n-butyl phthalate (a,b,d)
di-n-octyl phthalate (a,b,d)
diethyl phthalate (a,b,d)
dimethyl phthalate (a,b)
benzo (a)anthracene (1,2-benzanthracene) (a,b,d)
benzo (a)pyrene (3,4-benzopyrene) (a,d)
3,4-benzofluoranthene (a)
benzo(k)fluoranthane (11,12-benzofluoranthene) (a,b)
toluene (a,c,d)
trichloroethylene (a,b,c)
vinyl chloride (chloroethylene) (a,d)

aldrin (a)
dieldrin (a)
chlordane (technical mixture and metabolites) (a)
4,4'-DDT (a)
4,4'=DDE(p,p'DDX) (a)
4,4'-DDD(p,p'TDE) (a)
a-endosulfan-Alpha (a,b)
b-endosulfan-Beta (a)
endosulfan sulfate (a)
endrin (a)
endrin aldehyde (a)
heptachlor (a)
heptachlor epoxide (a)
a-BHC-Alpha (a)
b-BHC-Beta (a)
r-BHC-(lindane)-Gamma (a,b)
g-BHC-Delta (a)
PCB-1242 (Arochlor 1242) (a)
PCB-1254 (Arochlor 1254) (a)
PCB-1221 (Arochlor 1221) (a)
PCB-1232 (Arochlor 1232) (a)
PCB-1248 (Arochlor 1248) (a)
PCB-1260 (Arochlor 1260) (a)
PCB-1016 (Arochlor 1016) (a)
toxaphene (a)
arsenic, (a,b,c,d)
asbestos (fibrous) (a)
mercury (a,b,c)
selenium (a,b,d)
thallium (a,b,c,d)
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) (a)

Appendix D—Toxic Pollutants Excluded From Regulation in Certain Subcategories

Under Paragraph 8(a)(iii) of the Settlement Agreement, EPA is excluding certain toxic pollutants from regulation in particular subcategories, for one or all of the following reasons:

(a) The pollutant is not detectable in the effluent with the use of analytical methods approved pursuant to Section 304(h) of the Act or other state-of-the-art methods.

(b) The pollutant cannot be quantified in the effluent with the use of analytical methods approved pursuant to Section 304(h) of the Act or other state-or-the-art methods.

(c) The pollutant is present in amounts too small to be effectively reduced by technologies known to the Administrator.

(d) The pollutant is present in the effluent from only a small number of sources.

(e) The pollutant will be effectively controlled by the technologies upon which are based other effluent limitations and guidelines, standards of performance, or pretreatment standards.

The reason(s) for each of the following exclusions is keyed to the above list.

Beryllium Forming Subcategory (Subpart A)

antimony (b)
cadmium (e)
chromium (e)
lead (b)
nickel (e)
silver (c)
zinc (e)

The toxic pollutants limited are beryllium, copper, and cyanide.

Lead/Tin/Bismuth Forming Subcategory (Subpart B)

beryllium (c)
cadmium (c)
chromium
copper (d)
cyanide (d)
nickel (c)
silver (b)
zinc (e)

The toxic pollutants limited are antimony and lead.

Magnesium Forming Subcategory (Subpart C)

antimony (c)
beryllium (d)
cadmium (b)
copper (c)
cyanide (d)
lead (d)
nickel (b)
silver (c)

The toxic pollutants limited are chromium and zinc.

Nickel/Cobalt Forming Subcategory (Subpart D)

antimony (d)
beryllium (d)
cadmium (e)
copper (3)
cyanide (d)
lead (e)
silver (d)
zinc (e)

The toxic pollutants limited are chromium and nickel.

Precious Metals Forming Subcategory (Subpart E)

antimony (c)
beryllium (b)
chromium (e)
lead (e)
nickel (e)
zinc (e)

The toxic pollutants limited are cadmium, copper, cyanide, and silver.

Refactory Metals Forming Subcategory (Subpart F)

antimony (c)
beryllium (c)
cadmium (e)
chromium (e)
cyanide (d)
lead (d)
silver (e)
zinc (e)

The toxic pollutants limited are copper and nickel.

Titanium Forming Subcategory (Subpart G)

antimony (c)
beryllium (b)
cadmium (b)
chromium (e)
copper (e)
nickel (e)
silver (b)

The toxic pollutants limited are cyanide, lead, and zinc.

Uranium Forming Subcategory (Subpart H)

antimony
beryllium
chromium
cyanide
lead
silver
zinc

The toxic pollutants limited are cadmium, copper, and nickel.

Zinc Forming Subcategory (Subpart I)

antimony (b)
beryllium (b)
cadmium (b)
copper (b)
lead (b)
nickel (e)
silver (b)

The toxic pollutants limited are chromium, cyanide, and zinc.

Zirconium /Hafnium Forming Subcategory (Subpart J)

antimony (e)
beryllium (b)
cadmium (d)
copper (d)
lead (e)
silver (b)
zinc (d)

The toxic pollutants limited are chromium, cyanide, and nickel.

Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Subcategory (Subpart K)

antimony (c)
beryllium (b)
cadmium (b)
chromium (e)
nickel (e)
silver (b)
zinc (e)

The toxic pollutants limited are copper, cyanide, and lead.

Appendix E—Subcategories Excluded

Paragraph 8(a)(iv) of the Settlement Agreement authorizes the Administrator to exclude from regulation subcategories in which the amount and toxicity of each pollutant in the discharge does not justify developing national regulations. Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from pretreatment standards a subcategory if: (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants which are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment works; or (ii) the toxicity and amount of the incompatible pollutants introduced by such point sources into POTWs is so insignificant that

developing a pretreatment regulation is not justified.

1. The following subcategories are proposed for exclusion because there are no discharges from the subcategory (Paragraph 8(a)(iv)):

cadmium forming
chromium forming
gallium forming
germanium forming
indium forming
lithium forming
manganese forming
neodymium forming
praseodymium forming

2. The following subcategory is proposed for exclusion from further national PSES regulation development under Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the subcategory:

beryllium forming

A new Part 471 is proposed to be added to 40 CFR to read as follows:

PART 471—NONFERROUS METALS FORMING AND IRON AND STEEL/ COPPER/ALUMINUM METAL POWDER PRODUCTION AND POWDER METALLURGY POINT SOURCE CATEGORY

General Provisions

Sec.

471.01 Applicability.
471.02 General definitions.
471.03 Monitoring requirements.
471.04 Compliance date for pretreatment.

Subpart A—Beryllium Forming Subcategory

471.10 Applicability; description of the beryllium forming subcategory.
471.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.13 New source performance standards (NSPS).
471.14 Pretreatment standards for existing sources. [Reserved]
471.15 Pretreatment standards for new sources (PSNS).
471.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart B—Lead/Tin/Bismuth Forming Subcategory

471.20 Applicability; description of the lead/tin/bismuth forming subcategory.
471.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.23 New source performance standards (NSPS).
471.24 Pretreatment standards for existing sources (PSES).
471.25 Pretreatment standards for new sources (PSNS).
471.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart C—Magnesium Forming Subcategory

471.30 Applicability; description of the magnesium forming subcategory.
471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.33 New source performance standards (NSPS).
471.34 Pretreatment standards for existing sources (PSES)
471.35 Pretreatment standards for new sources (PSNS).
471.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart D—Nickel-Cobalt Forming Subcategory

471.40 Applicability; description of the nickel/cobalt forming subcategory.
471.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.43 New source performance standards (NSPS).
471.44 Pretreatment standards for existing sources (PSES).
471.45 Pretreatment standards for new sources (PSNS).
471.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart E—Precious Metals Forming Subcategory

471.50 Applicability; description of the precious metals forming subcategory.
471.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.53 New source performance standards (NSPS).
471.54 Pretreatment standards for existing sources (PSES).
471.55 Pretreatment standards for new sources (PSNS).
471.56 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart F—Refractory Metals Forming Subcategory

471.60 Applicability; description of the refractory metals forming subcategory.
471.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.63 New Source performance standards (NSPS).
471.64 Pretreatment standards for existing sources (PSES).
471.65 Pretreatment standards for new sources (PSNS).
471.66 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart G—Titanium Forming Subcategory

471.70 Applicability; description of the titanium forming subcategory.
471.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.73 New source performance standards (NSPS).
471.74 Pretreatment standards for existing sources (PSES).
471.75 Pretreatment standards for new sources PSNS).
471.76 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart H—Uranium Forming Subcategory

471.80 Applicability; description of the uranium forming subcategory.
471.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

471.83 New source performance standards (NSPS).
471.84 Pretreatment standards for existing sources (PSES).
471.85 Pretreatment standards for new sources (PSNS).
471.86 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart I—Zinc Forming Subcategory

471.90 Applicability; description of the zinc forming subcategory.
471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.93 New source performance standards (NSPS).
471.94 Pretreatment standards for existing sources. [Reserved]
471.95 Pretreatment standards for new sources (PSNS).
471.96 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

SubpartJ—Zirconium/Hafnium Forming Subcategory

471.100 Applicability; description of the zirconium/hafnium forming subcategory.
471.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
47.103 New source performance standards (NSPS).
471.104 Pretreatment standards for existing sources (PSES).
471.105 Pretreatment standards for new sources (PSNS).
471.106 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart K—Iron and Steel/Copper/Aluminum Metal Powder Production and Metal Powder Metallurgy Subcategory

471.110 Applicability; description of the iron and steel/copper/aluminum metal powder production and metal powder metallurgy subcategory.
471.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.113 New source performance standards (NSPS).
471.114 Pretreatment standards for existing sources (PSES).
471.115 Pretreatment standards for new sources (PSNS).
471.116 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"); 13 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. 95-217.

General Provisions

§ 471.01 Applicability.

(a) This part applies to discharges of pollutants to waters of the United States and introduction of pollutants into a publicly owned treatment works from the forming of nonferrous metals, except copper and aluminum, and nonferrous metal alloys, except alloys which contain 50 percent or more by weight of copper or aluminum. The forming operations covered are not rolling, cold rolling, drawing, extrusion, forging, metal powder production, powder metallurgy, cladding, sawing, grinding, tumbling, burnishing, and tube reducing. This part also covers ancillary operations associated with these forming operations including surface and heat treatment, hydrotesting, surface coating, wet air pollution control scrubbers, and casting (when it is an integral part or a nonferrous metal forming operation, e.g., shot-casting and casting of billets, ingots, bars, and strip which are subsequently formed on-site).

(b) This part applies to discharges of pollutants to waters of the United States and introduction of pollutants into a publicly owned treatment works from metal powder production which does not significantly increase the purity of the metal, and powder metallurgy of: (1) Iron, steel, copper, and aluminum, and (2) alloys which contain 50 percent or more by weight of iron, steel, copper, or aluminum. This part also covers ancillary operations associated with these forming operations including surface and heat treatment, surface coating, and wet air pollution control scrubbers.

(c) Discharges covered by this Part 471 are not subject to the effluent limitations guidelines, pretreatment standards, and new source performance standards for the electroplating and metal finishing point source categories, 40 CFR Parts 413 and 433.

§ 471.01 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Nonferrous metal" is any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent in percent by weight.

(b) "Nonferrous metals forming" is a set of manufacturing operations in which nonferrous metals and nonferrous alloys are made into semifinished products by hot or cold working.

(c) "Alkaline cleaning" uses a solution, usually detergent, to remove lard, oil, and other such compounds from a metal surface.

(d) "Atomization" is the process in which a stream of water or gas impinges upon a molten metal stream, breaking it into droplets which solidify as powder particles.

(e) "Burnishing" is a surface finishing process in which minute surface irregularities are displaced rather than removed.

(f) "Cladding" or "metal clading" is the art of producing a composite metal containing two or more layers that have been metallurgically bonded together by roll bonding (co-rolling), solder application (or brazing) and explosion bonding.

(g) "Contact cooling water" is any wastewater which contacts the nonferrous metal workpiece or the raw materials used in forming nonferrous metals.

(h) "Continuous casting" is the production of sheet, rod, or other long shapes by solidifying the metal while it is being poured through an open-ended mold.

(i) "Direct chill casting" is the pouring of molten nonferrous metal into a water-cooled mold. Contact cooling water is sprayed onto the metal as it is dropped into the mold, and the metal ingot falls into a water bath at the end of the casting process.

(j) "Drawing" is the process of pulling a metal through a die or succession of dies to reduce the metal's diameter or alter its shape.

(k) "Emulsions" are stable dispersions of two immiscible liquids. In the nonferrous metals forming category this is usually an oil and water mixture.

(l) "Extrusion" is the application of pressure to a billet of nonferrous metal, forcing the metal to flow through a die orifice.

(m) "Forging" is deforming metal, usually hot, with compressive force into desired shapes, with or without dies. Where dies are not used, the metal is forced to take the shape of the die.

(n) "Grinding" is the process of removing stock from a workpiece by the use of a tool consisting of abrasive grains held by a rigid or semi-rigid grinder. Grinding includes surface finishing, sanding, and slicing.

(o) "Heat treatment" is the application of heat of specified temperature and duration to change the physical properties of the metal.

(p) "In-process control technology" is the conservation of chemicals and water throughout the production operations to reduce the amount of wastewater to be discharged.

(q) "Metal powder production" operations are any process operations which convert metal to a finely divided form without an increase in metal purity.

(r) "Neat oil" is a pure oil with no or few impurities added. In nonferrous metals forming its use is mostly as a lubricant.

(s) "Powder metallurgy" is the art of producing metal powders and using metal powders for the production of massive materials (ingots, billets) and shaped objects (parts).

(t) "Rolling" is the reduction in thickness or diameter of a workpice by passing it between lubricated steel rollers.

(u) "Roll bonding" is the process by which a permanent bond is created between two metals by rolling under high pressure in a bonding mill (co-rolling).

(v) "Sawing" is cutting a workpiece with a band, blade, or circular disc having teeth.

(w) "Stationary casting" is the pouring of molten nonferrous metal into molds and allowing the metal to cool.

(x) "Surface treatments" are operations such as pickling, etching, conversion coating, phosphating, and chromating which chemically alter the metal surface.

(y) "Tumbling" or "barrel finishing" is an operation in which castings, forgings, or parts pressed from metal powder are rotated in a barrel with ceramic or metal slugs or abrasives to remove scale, fins, or burrs. It may be done dry or with an aqueous solution.

(z) "Wet scrubbers" are air pollution control devices used to remove particulates and fumes from air by entraining the pollutants in a water spray.

(aa) "Grab sample" is a single sample which is collected at a time and place most representative of total discharge.

(bb) "Composite sample" is a sample composed of no less than eight grab samples taken over the compositing period.

(cc) A "flow proportional composite sample" is composed of grab samples collected continuously or discretely in proportion to the total flow at time of collection or to the total flow since collection of the previous grab sample. The grab volume or frequency of grab collection may be varied in proportion to flow.

(dd) The term "control authority" is defined as the POTW if it has an approved pretreatment program; in the absence of such a program, the NPDES State if it has an approved pretreatment program or EPA if the State does not have an approved program.

(ee) "Continuous operations" means that the industrial user introduces regulated wastewaters to the POTW throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(ff) "Intermittent operations" means the industrial user does not have a continuous operation.

(gg) The "production normalizing mass" (/kkg) for each operation is the mass (off-kg or off-lb) processed through that operation.

(hh) The term "off-kilogram (off-pound)" means the mass of metal or metal alloy removed from a forming operation at the end of a process cycle for transfer to a different machine or process.

§ 471.03 Monitoring requirements.

The "monthly average" regulatory values shall be the basis for the monthly average discharge limits in direct discharge permits and for pretreatment standards. Compliance with the monthly discharge limit is required regardless of the number of samples analyzed and averaged.

§ 471.04 Compliance date for pretreatment.

The compliance date for PSES under this regulation is proposed to be three years after the date of promulgation.

Subpart A—Beryllium Forming Subcategory

§ 471.10 Applicability; description of the beryllium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the beryllium forming subcategory.

§ 471.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30—125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations of the beryllium forming subcategory representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Area cleaning wastewater.

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pounds) formed	(pound/billion of beryllium
Beryllium	26,000	11,000
Copper	40,000	21,000
Cyanide	6,200	2,600
Fluoride	1,300,000	560,000
Oil and grease	430,000	260,000
TSS	870,000	420,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Billet washing wastewater.

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium billets washed	
Beryllium	47.0	19.0
Copper	73.0	38.0
Cyanide	11.0	4.0
Fluoride	2,300.0	1,000.0
Oil and grease	760.0	460.0
TSS	1,600.0	740.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Surface treatment spent baths.

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium surface treated	
Beryllium	3,300	1,400
Copper	5,100	2,700
Cyanide	770	320
Fluoride	160,000	70,000
Oil and grease	53,000	32,000
TSS	110,000	52,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Surface treatment rinsewater.

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium surface treated	
Beryllium	9,400	3,900
Copper	15,000	7,700
Cyanide	2,200	920
Fluoride	460,000	200,000
Oil and grease	150,000	92,000
TSS	310,000	150,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Sawing/grinding spent lubricants.

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium sawed or ground	
Beryllium	520	220
Copper	810	420
Cyanide	120	51
Fluoride	25,000	11,000
Oil and grease	8,500	5,100
TSS	17,000	8,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Inspection/testing water.

There shall be no discharge of process wastewater pollutants.

(g) Spent degreasing solvent.

There shall be no discharge of process wastewater pollutants.

§ 471.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Area cleaning wastewater.

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium formed	
Beryllium	17,000	7,200
Copper	27,000	13,000
Cyanide	4,300	1,700
Fluoride	1,300,000	560,000

(b) Billet washing wastewater.

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium billets washed	
Beryllium	31.0	13.0
Copper	49.0	23.0
Cyanide	7.6	3.1
Fluoride	2,300.0	1,000.0

(c) Surface treatment spent baths.

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium surface treated	
Beryllium	250	100
Copper	390	190
Cyanide	62	25
Fluoride	18,000	8,100

(d) Surface treatment rinsewater.

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium surface treated	
Beryllium	630	260
Copper	980	470
Cyanide	150	61
Fluoride	46,000	20,000

(e) Sawing/grinding spent lubricants.

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium sawed or ground	
Beryllium	350	140
Copper	540	260
Cyanide	85	34
Fluoride	25,000	11,000

(f) Inspection/testing water.

There shall be no discharge of process wastewater pollutants.

(g) Spent degreasing solvent.

There shall be no discharge of process wastewater pollutants.

§ 471.13 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards:

(a) Area cleaning wastewater.

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium formed	
Beryllium	17,000	7,200
Copper	27,000	13,000
Cyanide	4,300	1,700
Fluoride	1,300,000	560,000
Oil and grease	210,000	210,000
TSS	320,000	260,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Billet washing wastewater.

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium billets washed	
Beryllium	31.0	13.0
Copper	49.0	23.0
Cyanide	7.6	3.1
Fluoride	2,300.0	1,000.0
Oil and grease	380.0	380.0
TSS	570.0	460.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Surface treatment spent baths.

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium surface treated	
Beryllium	250	100
Copper	390	190
Cyanide	62	25
Fluoride	18,000	8,100
Oil and grease	3,100	3,100
TSS	4,600	3,700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Surface treatment rinsewater.

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound billion pounds) of beryllium surface treated	
Beryllium	630	260
Copper	980	470
Cyanide	150	61
Fluoride	46,000	20,000
Oil and grease	7,700	7,700
TSS	12,000	9,200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Sawing/grinding spent lubricants.

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of beryllium sawed or ground	
Beryllium	350	140
Copper	540	260
Cyanide	85	34
Fluoride	25,000	11,000
Oil and grease	4,200	4,200
TSS	6,400	5,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f), Inspection/testing water.

There shall be no discharge of process wastewater pollutants.

(g) Spend degreasing solvent.

There shall be no discharge of process wastewater pollutants.

§ 471.14 Pretreatment standards for existing sources [Reserved]

§ 471.15 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources: The limitations for beryllium, copper, cyanide, and fluoride are the same as specified in § 471.13.

§ 471.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30—125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by application of the best conventional pollutant control technology (BCT): The limitations for TSS, oil and grease, and pH are the same as specified in § 471.11.

Subpart B—Lead/Tin/Bismuth Forming Subcategory

§ 471.20 Applicability; description of the lead/tin/bismuth forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the lead/tin/bismuth forming subcategory.

§ 471.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30—125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Rolling spent emulsions.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth rolled with emulsions	
Antimony	67.0	30.0
Lead	10.0	4.7
Oil and grease	470.0	280.0
TSS	960.0	450.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Rolling spent soap solutions.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth rolled with soap solutions	
Antimony	120.0	55.0
Lead	18.0	8.6
Oil and grease	860.0	520.0
TSS	1,800.0	840.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(d) Drawing spent emulsions.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth drawn with emulsions	
Antimony	48.0	21.0
Lead	7.0	3.3
Oil and grease	330.0	200.0
TSS	680.0	330.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Drawing spent soap solutions.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth drawn with soap solutions	
Antimony	21.0	10.0
Lead	3.1	1.5
Oil and grease	150.0	90.0
TSS	310.0	150.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Extrusion press and solution heat treatment contact cooling water.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth heat treated	
Antimony	5,000	2,200
Lead	740	350
Oil and grease	35,000	21,000
TSS	72,000	34,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Extrusion press hydraulic fluid leakage.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth extruded	
Antimony	140	63
Lead	21	10
Oil and grease	990	590
TSS	2,000	960
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Continuous strip casting contact cooling water.

SUBPART B—BPT

Pollutant or pollutant property	maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth cast by the continuous strip method	
Antimony	2.90	1.30
Lead	.40	.20
Oil and grease	20.00	12.00
TSS	41.00	20.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Semi-continuous ingot casting contact cooling water.

SUBPART B—BPT

Pollutant or pollutant property	maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth ingot cast by the semi-continuous method	
Antimony	84.0	38.0
Lead	12.0	5.9
Oil and grease	590.0	350.0
TSS	1,200.0	570.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Shot casting contact cooling water.

SUBPART B—BPT

Pollutant or pollutant property	maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth cast	
Antimony	120.0	54.0
Lead	18.0	8.4
Oil and grease	840.0	500.0
TSS	1,700.0	820.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Shot-forming wet APC blowdown.

SUBPART B—BPT

Pollutant or pollutant property	maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth shot formed	
Antimony	.20	.10
Lead	.00	.00
Oil and grease	1.70	1.00
TSS	3.50	1.70
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Alkaline cleaning spent baths.

SUBPART B—BPT

Pollutant or pollutant property	maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth alkaline cleaned	
Antimony	1,700	780
Lead	250	120
Oil and grease	12,000	7,300
TSS	25,000	12,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Alkaline cleaning rinsewater.

SUBPART B—BPT

Pollutant or pollutant property	maximum for any one day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth alkaline cleaned	
Antimony	19,000	8,300
Lead	2,700	1,300
Oil and grease	130,000	78,000
TSS	260,000	130,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Swaging spent emulsions.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth swaged with emulsions	
Antimony	5.10	2.30
Lead	.70	.40
Oil and grease	35.00	21.00
TSS	73.00	35.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(p) Miscellaneous nondescript wastewater sources.

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth formed	
Antimony	170	75
Lead	25	12
Oil and grease	1,200	700
TSS	2,400	1,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30—125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Rolling spent emulsions.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth rolled with emulsion	
Antimony	67.0	30.0
Lead	10.0	4.7

(b) Rolling spent soap solutions.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth rolled with soap solutions	
Antimony	120.0	55.0
Lead	18.0	8.6

(c) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(d) Drawing spent emulsions.

SUBART B—BAT

Pollutan or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound/billion pounds) of lead/tin/bismuth drawn with emulsions	
Antimony	48.0	21.0
Lead	7.0	3.3

(e) Drawing spent soap solutions.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth drawn with soap solutions	
Antimony	21.0	10.0
Lead	3.1	1.5

(f) Extrusion press and solution heat treatment contact cooling water..

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth heat treated	
Antimony	500	220
Lead	74	35

(g) Extrusion press hydraulic fluid leakage.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth extruded	
Antimony	140	63
Lead	21	10

(h) Continuous strip casting contact cooling water.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth cast by the continuous strip method	
Antimony	2.90	1.30
Lead	.40	.20

(i) Semi-continuous ingot casting contact cooling water.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Antimony	8.40	3.80
Lead	1.20	.60

(j) Shot casting contact cooling water.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth shot cast	
Antimony	12.00	5.40
Lead	1.80	.80

(k) Shot-forming wet APC blowdown.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth shot formed	
Antimony	.00	.00
Lead	.00	.00

(l) Alkaline cleaning spent baths.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth alkaline cleaned	
Antimony	1,700	780
Lead	250	120

(m) Akaline cleaning rinsewater.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth akaline cleaned	
Antimony	1,900	830
Lead	270	130

(n) Swaging spent emulsions.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth swaged with emulsions	
Antimony	5.10	2.30
Lead	.70	.40

(o) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(p) Miscellaneous nondescript wastewater sources.

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth formed	
Antimony	170	75
Lead	25	12

§ 471.23 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards: The limitations for antimony and lead are the same as specified in § 471.22. The limitations for TSS, oil and grease, and pH are the same as specified in § 471.26.

§ 471.24 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by 36 months after promulgation achieve the following pretreatment standards for existing sources (PSES): The limitations for antimony and lead are the same as specified in § 471.22.

§ 471.25 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new sources subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources: The limitations for antimony and lead are the same as specified in § 471.22.

§ 471.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technoloyg (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Rolling spent emulsions.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth rolled with emulsions	
Oil and grease	470	280
TSS	960	450
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Rolling spent soap solutions.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of lead/tin/bismuth rolled with soap solutions	
Oil and grease	860	520
TSS	1,800	840
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(d) Drawing spent emulsions.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth drawn with emulsions	
Oil and grease	330	200
TSS	680	330
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Drawing spent soap solutions.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth drawn with soap solutions	
Oil and grease	150	90
TSS	310	150
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Extrusion press and solution heat treatment contact cooling water.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth drawn with emulsions	
Oil and grease	3,500	2,100
TSS	7,200	3,400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Extrusion press hydraulic fluid leakage.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth extruded	
Oil and grease	990	590
TSS	2,000	960
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Continuous strip casting contact cooling water.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth drawn with emulsions	
Oil and grease	20	12

SUBPART B—BCT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
TSS	41	20
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Semi-continuous ingot casting contact cooling water.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth ingot cast by the semi-continuous method	
Oil and grease	59	35
TSS	120	57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Shot casting contact cooling water.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth shot cast	
Oil and grease	84	50
TSS	170	82
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Shot-forming wet APC blowdown.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth shot formed	
Oil and grease	.20	.10
TSS	.40	.20
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Alkaline cleaning spent baths.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth alkalinecleaned	
Oil and grease	12,000	7,300
TSS	25,000	12,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Alkaline cleaning rinsewater.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth alkaline cleaned	
Oil and grease	13,000	7,800
TSS	26,000	13,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Swaging spent emulsions.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth swaged with emulsions	
Oil and grease	35	21
TSS	73	35
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Degreasing spent solvents.

There shall be no discharge or process wastewater pollutants.

(p) Miscellaneous nondescript wastewater sources.

SUBPART B—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of lead/tin/bismuth formed	
Oil and grease	1,200	700
TSS	2,400	1,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

Subpart C—Magnesium Forming Subcategory

§ 471.30 Applicability; description of the magnesium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the magnesium forming subcategory.

§ 471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representating the degree of effluent reduction attainable by the application of the best

practicable control technology currently available (BPT):

(a) Rolling spent emulsions.

There shall be no discharge of process wastewater pollutants.

(b) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(c) Forging wet APC blowdown.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium forged	
Chromium	120,000	48,000
Zinc	390,000	160,000
Ammonia	35,000,000	16,000,000
Fluoride	16,000,000	7,000,000
Magnesium	550,000	240,000
Oil and grease	5,300,000	3,200,000
TSS	11,000,000	5,200,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Forging solution heat treatment contact cooling water.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged magnesium heat treated	
Chromium	2,800	1,100
Zinc	9,200	3,900
Ammonia	840,000	370,000
Fluoride	380,000	170,000
Magnesium	13,000	5,800
Oil and grease	130,000	76,000
TSS	260,000	120,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Forging equipment cleaning wastewater.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium forged	
Chromium	710	290
Zinc	2,400	990
Ammonia	220,000	95,000
Fluoride	96,000	43,000
Magnesium	3,300	1,500
Oil and grease	32,000	19,000
TSS	66,000	32,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Direct Chill Casting Contact Cooling Water.

There shall be no discharge of process wastewater pollutants.

(g) Surface treatment spent baths.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium surface treated	
Chromium	200	84
Zinc	680	280
Ammonia	62,000	27,000
Fluoride	28,000	12,000
Magnesium	950	420
Oil and grease	9,300	5,600
TSS	19,000	9,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment rinsewater.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium surface treated	
Chromium	7,800	3,200
Zinc	26,000	11,000
Ammonia	2,400,000	1,000,000
Fluoride	1,100,000	470,000
Magnesium	36,000	16,000
Oil and grease	350,000	210,000
TSS	730,000	350,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Sawing/grinding spent lubricants.

There shall be no discharge of process wastewater pollutants.

(j) Sanding and repairing wet APC blowdown.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium sanded and repaired	
Chromium	190	77
Zinc	620	260
Ammonia	57,000	25,000
Fluoride	25,000	11,000
Magnesium	880	390
Oil and grease	6,600	5,100
TSS	18,000	8,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Rolling spent emulsions.

There shall be no discharge of process wastewater pollutants.

(b) Forging spent lubricants.

The shall be no discharge of process wastewater pollutants.

(c) Forging wet APC blowdown.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium forged	
Chromium	98,000	40,000
Zinc	270,000	110,000
Ammonia	35,000,000	16,000,000
Fluoride	16,000,000	7,000,000
Magnesium	180,000	80,000

(d) Forging solution heat treatment contract colling water.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged magnesium heat treated	
Chromium	230	95
Zinc	650	270
Ammonia	84,000	37,000
Fluoride	38,000	17,000
Magnesium	440	190

(e) Forging equipment cleaning wastewater.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium forged	
Chromium	60	24
Zinc	170	68
Ammonia	22,000	9,500
Fluoride	9,600	4,300
Magnesium	110	49

(f) Direct chill casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(g) Surface treatment spent baths.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium surface treated	
Chromium	170	70
Zinc	470	200
Ammonia	62,000	27,000
Fluoride	28,000	12,000
Magnesium	320	140

(h) Surface treatment rinsewater.

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billions pounds) of magnesium surface treated	
Chromium	650	270
Zinc	1,800	740
Ammonia	240,000	100,000
Fluoride	110,000	47,000
Magnesium	1,200	530

(i) Sawing/grinding spent lubricants.

There shall be no discharge of process wastewater pollutants.

(j) Sanding and repairing wet APC blowdown.

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billions pounds) of magnesium sanded and repaired	
Chromium	160	64
Zinc	440	180
Ammonia	57,000	25,000
Fluoride	25,000	11,000
Magnesium	300	130

(k) Degreasing spent solvent.

There shall be no discharge of process wastewater pollutants.

§ 471.33 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards: The limitations for chromium, zinc, ammonia, fluoride, and magnesium are the same as specified in § 471.32. The limitations for pH, total suspended solids, and oil and grease are the same as those specified in § 471.36.

§471.34 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for chromium, zinc, ammonia, fluoride, and magnesium are the same as specified in § 471.32.

§ 471.35 Pretreatment standards for new sources (PSNS)

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for chromium, zinc, ammonia, fluoride, and magnesium are the same as specified in § 471.32.

§ 471.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Rolling spent emulsions.

There shall be no discharge of process wastewater pollutants.

(b) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(c) Forging wet APC blowdown.

SUBPART C—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium forged	
Oil and grease	2,700,000	2,700,000
TSS	4,000,000	3,200,000
pH	(1)	(1)

[1]Within the range of 7.5 to 10.0 at all times.

(d) Forging solution heat treatment contact cooling water.

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged magnesium heat treated	
Oil and grease	6,300	6,300
TSS	9,500	7,600
pH	(1)	(1)

[1]Within the range of 7.5 to 10.0 at all times.

(e) Forging equipment cleaning wastewater.

SUBPART C—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium forged	
Oil and grease	1,600	1,600
TSS	2,400	1,900
pH	(1)	(1)

[1]Within the range of 7.5 to 10.0 at all times.

(f) Direct chill casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(g) Surface treatment spent baths.

SUBPART C—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium surface treated	
Oil and grease	4,700	4,700
TSS	7,000	5,600
pH	(1)	(1)

[1]Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment rinsewater

SUBPART C—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium surface treated	
Oil and grease	18,000	18,000
TSS	27,000	21,000
pH	(1)	(1)

[1]Within the range of 7.5 to 10.0 at all times.

(i) Sawing/grinding spent lubricants.

There shall be no discharge of process wastewater pollutants.

(j) Sanding and repairing wet APC blowdown.

SUBPART C—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of magnesium sanded and repaired	
Oil and grease	4,300	4,300
TSS	6,400	5,100
pH	(1)	(1)

[1]Within the range of 7.5 to 10.0 at all times.

(k) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

Subpart D—Nickel/Cobalt Forming Subcategory

§471.40 Applicability; description of the nickel/cobalt forming subcatetory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the nickel/cobalt forming subcategory.

§ 471.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Chromium	660	270
Nickel	2,900	1,900
Fluoride	89,000	39,000
Oil and grease	30,000	18,000
TSS	61,000	29,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Rolling contact lubricant-collant water.

SUBPART D—BPT

Poliutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with contact lubricant-coolant water	
Chromium	5,900	2,400
Nickel	26,000	17,000
Fluoride	800,000	350,000
Oil and grease	270,000	160,000
TSS	550,000	260,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Rolling solution heat treatment contact cooling water

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt heat treated	
Chromium	.00	.00
Nickel	.50	.30
Fluoride	16.00	7.20
Oil and grease	5.40	3.30
TSS	11.00	5.30
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Tube reducing spent lubricant.

There shall be no discharge of process wastewater pollutants.

(f) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(g) Drawing spent emulsions.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt drawn with emulsion	
Chromium	42	17
Nickel	180	120
Fluoride	5,700	2,500
Oil and grease	1,900	1,100
TSS	3,900	1,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Extrusion spent lubricants.

There shall be no discharge of process wastewater pollutants.,

(i) Extrusion press and solution heat treatment contact cooling water.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded nickel/cobalt heat treated	
Chromium	37	15
Nickel	160	110
Fluoride	5,000	2,200
Oil and grease	1,700	1,000
TSS	3,400	1,600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Forging, extrusion, and isostatic press hydraulic fluid leakage.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt forged, extruded, or pressed	
Chromium	55	22
Nickel	240	160
Fluoride	7,400	3,300
Oil and grease	2,500	1,500
TSS	5,100	2,400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Forging equipment cleaning wastewater.

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt forged	
Chromium	720	290
Nickel	3,100	2,100
Fluoride	97,000	43,000
Oil and grease	33,000	20,000
TSS	67,000	32,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Forging die contact cooling water.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt forged	
Chromium	550	230
Nickel	2,400	1,600
Fluoride	75,000	33,000
Oil and grease	25,000	15,000
TSS	52,000	25,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Forging/swaging spent neat oils.

There shall be no discharge of process wastewater pollutants.

(n) Stationary and direct chill casting contact cooling water.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion lbs) of nickel/cobalt cast by the stationary or direct chill method	
Chromium	7,800	3,200
Nickel	34,000	23,000
Fluoride	1,100,000	470,000
Oil and grease	360,000	210,000
TSS	730,000	350,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Casting/vacuum melting steam condensate.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt vacuum melted	
Chromium	74	30
Nickel	320	210
Fluoride	10,000	4,400
Oil and grease	3,400	2,000
TSS	6,900	3,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Metal power production atomization wastewater.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt metal power	
Chromium	1,200	510
Nickel	5,500	3,600
Fluoride	170,000	75,000
Oil and grease	57,000	34,000
TSS	120,000	55,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) Annealing solution heat treatment contact cooling water.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt annealed	
Chromium	2,000	820
Nickel	8,800	5,800
Fluoride	270,000	120,000
Oil and grease	91,000	55,000
TSS	190,000	89,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) Wet APC blowdown.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt formed	
Chromium	110	45
Nickel	460	320
Fluoride	15,000	6,600
Oil and grease	5,000	3,000
TSS	10,000	4,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) Surface treatment spent baths.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt surface treated	
Chromium	380	150
Nickel	1,700	1,100
Fluoride	51,000	23,000
Oil and grease	17,000	10,000
TSS	35,000	17,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) Surface treatment rinsewater.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt surface treated	
Chromium	4,700	1,900
Nickel	20,000	13,000
Fluoride	630,000	280,000
Oil and grease	210,000	130,000
TSS	430,000	210,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) Alkaline cleaning spent baths.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt alkaline cleaned	
Chromium	13.0	5.5
Nickel	59.0	39.0
Fluoride	1,800.0	810.0
Oil and grease	610.0	370.0
TSS	1,300.0	600.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) Alkaline cleaning rinsewater.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt alkaline cleaned	
Chromium	2,200	890
Nickel	9,500	6,300
Fluoride	300,000	130,000
Oil and grease	99,000	60,000
TSS	200,000	97,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) Molten salt rinsewater.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt treated with molten salt	
Chromium	560	230
Nickel	2,500	1,600
Fluoride	76,000	34,000
Oil and grease	26,000	15,000
TSS	52,000	25,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) Ammonia rinse wastewater.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt treated with ammonia solution	
Chromium	6.9	2.8
Nickel	30.0	20.0
Fluoride	930.0	410.0
Oil and grease	310.0	190.0
TSS	640.0	310.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) Sawing/grinding spent lubricants.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt sawed or ground	
Chromium	440	180
Nickel	1,900	1,300
Fluoride	60,000	26,000
Oil and grease	20,000	12,000
TSS	41,000	20,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) Steam cleaning condensate.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt steam cleaned	
Chromium	10.0	4.2
Nickel	45.0	29.0
Fluoride	1,400.0	610.0
Oil and grease	460.0	280.0
TSS	950.0	450.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) Hydrostatic tube testing wastewater.

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Mmaximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt tube tested by the hydrostatic method	
Chromium	590	240
Nickel	2,600	1,700
Fluoried	80,000	36,000
Oil and grease	27,000	16,000
TSS	55,000	26,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(cc) Miscellaneous nondescript wasterwater sources

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt formed	
Chromium	26	11
Nickel	110	74
Fluoride	3,500	1,500
Oil and grease	1,200	700
TSS	2,400	1,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Chromium	550	220
Nickel	820	550
Fluoride	89,000	39,000

(c) Rolling contact lubricant-coolant water.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with contact lubricant-coolant water	
Chromium	500	200
Nickel	740	500
Fluoride	80,000	35,000

(d) Rolling solution heat treatment contact cooling water.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt heat treated rolled	
Chromium	.00	.00
Nickel	.00	.00
Fluoride	1.60	.70

(e) Tube reducing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(f) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(g) Drawing spent emulsions.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt drawn with emulsions	
Chromium	35	14
Nickel	52	35
Fluoride	5,700	2,500

(h) Extrusion spent lubricants.

There shall be no discharge of process wastewater pollutants.

(i) Extrusion press and solution heat treatment contact cooling water.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Chromium	31	12
Nickel	46	31
Fluoride	5,000	2,200

(j) Forging, extrusion, and isostatic press hydraulic fluid leakage.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt forged, extruded, or presed	
Chromium	46	19
Nickel	68	46
Fluoride	7,400	3,300

(k) Forging equipment cleaning wastewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt forged	
Chromium	60	24
Nickel	90	60
Fluoride	9,700	4,300

(l) Forging die contact cooling water.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt forged	
Chromium	47	19
Nickel	69	47
Fluoride	7,500	3,300

(m) Forging/swaging spent oils.

There shall be no discharge of process wastewater pollutants.

(n) Stationary and direct chill casting contact cooling water.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt cast by the stationary or direct chill method	
Chromium	660	270
Nickel	980	660
Fluoride	110,000	47,000

(o) Casting/vacuum melting steam condensate.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt vacuum melted	
Chromium	62	25
Nickel	92	62
Fluoride	10,000	4,400

(p) Metal powder production atomization wastewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt metal powder atomized	
Chromium	1,100	430
Nickel	1,800	1,100
Fluoride	170,000	75,000

(q) Annealing solution heat treatment contact cooling water.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt annealed	
Chromium	170	69
Nickel	250	170
Fluoride	27,000	12,000

(r) Wet APC blowdown.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt formed	
Chromium	93	38
Nickel	140	93
Fluoride	15,000	6,600

(s) Surface treatment spent baths.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt surface treated	
Chromium	320	130
Nickel	470	320
Fluoride	51,000	23,000

(t) Surface treatment rinsewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion poundsbs) of nickel/cobalt surface treated	
Chromium	390	160
Nickel	580	390
Fluoride	63,000	28,000

(u) Alkaline cleaning spent baths.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt alkaline cleaned	
Chromium	11.0	4.6
Nickel	17.0	11.0
Fluoride	1,800.0	810.0

(v) Alkaline cleaning rinsewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt alkaline cleaned	
Chromium	180	75
Nickel	270	180
Fluoride	30,000	13,000

(w) Molten salt rinsewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt treated with molten salt	
Chromium	470	190
Nickel	700	470
Fluoride	76,000	34,000

(x) Ammonia rinse wastewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt treated with ammonia solution	
Chromium	5.8	2.4
Nickel	8.6	5.8
Fluoride	930.0	410.0

(y) Sawing/grinding spent lubricants.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt sawed or ground	
Chromium	370	150
Nickel	550	370
Fluoride	60,000	26,000

(z) Steam cleaning condensate.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt steam cleaned	
Chromium	8.6	3.5
Nickel	13.0	8.6
Fluoride	1,400.0	610.0

(aa) Hydrostatic tube testing wastewater.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt tube tested by the hydrostatic method	
Chromium	50	20
Nickel	74	50
Fluoride	8,000	3,600

(bb) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(cc) Miscellaneous nondescript wastewater sources.

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt formed	
Chromium	22.0	8.8
Nickel	32.0	22.0
Fluoride	3,500.0	1,500.0

§ 471.43 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations for chromium, nickel, and fluoride are the same as specified in § 471.42. The limitations for pH, total suspended solids, and oil and grease are the same as specified in § 471.46.

§ 471.44 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by (36 months after promulgation) achieve the following pretreatment standards for existing sources (PSES): The limitations for chromium, nickel, and fluoride are the same as specified in § 471.42.

§ 471.45 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for chromium, nickel, and fluoride are the same as specified in § 471.42.

§ 471.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Oil and grease	15,000	15,000
TSS	22,000	18,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Rolling contact lubricant-coolant water.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Oil and grease	13,000	13,000
TSS	20,000	16,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Rolling solution heat treatment contact cooling water.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Oil and grease	.30	.30
TSS	.40	.30

SUBPART D—BCT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Tube reducing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(f) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(g) Drawing spent emulsions.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Oil and grease	950	950
TSS	1,400	1,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Extrusion spent lubricants.

There shall be no discharge of process wastewater pollutants.

(i) Extrusion press and solution heat treatment contact cooling water.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Oil and grease	830	830
TSS	1,200	1,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Forging, extrusion, and isostatic press hydraulic fluid leakage.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of nickel/cobalt rolled with emulsions	
Oil and grease	1,200	1,200
TSS	1,900	1,500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Forging equipment cleaning wastewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt forged	
Oil and grease	1,600	1,600
TSS	2,400	2,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Forging die contact cooling water.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt forged	
Oil and grease	1,300	1,300
TSS	1,900	1,500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Forging/swaging spent neat oils.

There shall be no discharge of process wastewater pollutants.

(n) Stationary and direct chill casting contact cooling water.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt cast by the stationary or direct chill method	
Oil and grease	18,000	18,000
TSS	27,000	21,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Casting vacuum melting steam condensate.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt vacuum melted	
Oil and grease	1,700	1,700
TSS	2,500	2,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Metal powder production atomization wastewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt metal powder atomized	
Oil and grease	28,000	28,000
TSS	43,000	34,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) Annealing solution heat treatment contact cooling water.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt annealed	
Oil and grease	4,600	4,600
TSS	6,900	5,500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) Wet APC blowdown.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt formed	
Oil and grease	2,500	2,500
TSS	3,800	3,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) Surface treatment spent baths.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of nickel/cobalt surface treated	
Oil and grease	8,600	8,600
TSS	13,000	10,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) Surface treatment rinsewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt surface treated	
Oil and grease	11,000	11,000
TSS	16,000	13,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) Alkaline cleaning spent baths.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt alkaline cleaned	
Oil and grease	310.0	310.0
TSS	460.0	370.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) Alkaline cleaning rinsewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt alkaline cleaned	
Oil and grease	5,000	5,000
TSS	7,500	6,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) Molten salt rinsewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt treated with molten salt	
Oil and grease	13,000	13,000
TSS	19,000	15,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) Ammonia rinse wastewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt treated with ammonia solution	
Oil and grease	160.0	160.0
TSS	240.0	190.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) Sawing/grinding spent lubricants.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt sawed or ground	
Oil and grease	10,000	10,000
TSS	15,000	12,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) Steam cleaning condensate.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt steam cleaned	
Oil and grease	230.0	230.0
TSS	350.0	280.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) Hydrostatic tube testing wastewater.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound billion pounds) of nickel/cobalt tube tested by the hydrostatic method	
Oil and grease	1,400	1,400
TSS	2,000	1,600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(cc) Miscellaneous nondescript wastewater sources.

SUBPART D—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	g/kkg (pound per billion pounds) of nickel/cobalt formed	
Oil and grease	580.0	580.0
TSS	880.0	700.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

Subpart E—Precious Metals Forming Subcategory

§ 471.50 Applicability; description of the precious metals forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the precious metals forming subcategory.

§ 471.5 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable

by the application of the best practicable control technology currently available (BPT):

(a) Rolling spent emulsions.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	g/kkg (pound per billion pounds) of precious metals rolled with emulsions	
Cadmium	120	54
Copper	680	360
Cyanide	100	43
Silver	150	61
Oil and grease	7,200	4,300
TSS	15,000	7,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) Rolling solution heat treatment contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	g/kkg (pound per billion pounds) of rolled precious metals heat treated	
Cadmium	2,400	1,100
Copper	13,000	7,000
Cyanide	2,000	840
Silver	2,900	1,200
Oil and grease	140,000	84,000
TSS	280,000	140,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(d) Drawing spent emulsions.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	g/kkg (pound per billion pounds) of precious metals drawn with emulsions	
Cadmium	72	32
Copper	400	210
Cyanide	62	26
Silver	87	36
Oil and grease	4,300	2,600
TSS	8,700	4,200
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) Drawing spent soap solutions.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals drawn with soap solutions	
Cadmium	2.40	1.00
Copper	13.00	6.90
Cyanide	2.00	.80
Silver	2.80	1.20
Oil and grease	140.00	83.00
TSS	280.00	140.00
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) Extrusion press and solution heat treatment contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded precious metals heat treated	
Cadmium	4,700	2,100
Copper	26,000	14,000
Cyanide	4,000	1,600
Silver	5,600	2,300
Oil and grease	270,000	160,000
TSS	560,000	270,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) Semi-continuous and continuous casting contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) cast by the semi-continuous or continuous method	
Cadmium	3,800	1,700
Copper	21,000	11,000
Cyanide	3,200	1,300
Silver	4,600	1,900
Oil and grease	220,000	130,000
TSS	460,000	220,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) Stationary casting contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) cast by the stationary method	
Cadmium	1.40	.60
Copper	7.90	4.20
Cyanide	1.20	.50
Silver	1.70	.70
Oil and grease	83.00	50.00
TSS	170.00	81.00
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) Direct chill casting contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the direct chill method	
Cadmium	280	120
Copper	1,600	820
Cyanide	240	98
Silver	340	140
Oil and grease	16,000	9,800
TSS	34,000	16,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) Shot casting contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals shot cast	
Cadmium	300	130
Copper	1,700	890
Cyanide	260	110
Silver	370	150
Oil and grease	18,000	11,000
TSS	37,000	17,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) Casting wet APC blowdown.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast	
Cadmium	20.0	8.8
Copper	110.0	59.0
Cyanide	17.0	7.0
Silver	24.0	10.0
Oil and grease	1,200.0	700.0
TSS	2,400.0	1,100.0
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(l) Metal powder production atomization wastewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals powder wet atomized	
Cadmium	2,300	1,000
Copper	13,000	6,700
Cyanide	1,900	800
Silver	2,700	1,100
Oil and grease	130,000	80,000

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
TSS	270,000	130,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Metal powder production ball milling wastewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals powder wet ball milled	
Cadmium	7,400	3,300
Copper	41,000	22,000
Cyanide	6,300	2,600
Silver	8,900	3,700
Oil and grease	430,000	260,000
TSS	890,000	420,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Pressure bonding contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals metal and base metal pressure bonded	
Cadmium	28	13
Copper	160	84
Cyanide	24	10
Silver	34	14
Oil and grease	1,700	1,000
TSS	3,400	1,600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Annealing solution heat treatment contact cooling water.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals annealed	
Cadmium	3,400	1,500
Copper	19,000	10,000
Cyanide	2,900	1,200
Silver	4,100	1,700
Oil and grease	200,000	120,000
TSS	410,000	200,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Surface treatment spent baths.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals surface treated	
Cadmium	53	23
Copper	290	160
Cyanide	45	19
Silver	64	26
Oil and grease	3,100	1,900
TSS	6,400	3,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(q) Surface treatment rinsewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds)precious of metals surface treated	
Cadmium	970	430
Copper	5,400	2,800
Cyanide	820	340
Silver	1,200	480
Oil and Grease	57,000	34,000
TSS	120,000	55,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) Alkaline cleaning spent baths.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals alkaline cleaned	
Cadmium	1.20	.60
Copper	7.00	3.70
Cyanide	1.10	.40
Silver	1.50	.60
Oil and Grease	73.00	44.00
TSS	150.00	72.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) Alkaline cleaning rinsewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals alkaline cleaned	
Cadmium	2,400	1,000
Copper	13,000	6,900
Cyanide	2,000	830
Silver	2,800	1,200
Oil and Grease	140,000	83,000
TSS	280,000	130,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) Pre-bonding cleaning wastewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metal and base metal cleaned prior to bonding	
Cadmium	1,200	510
Copper	6,500	3,400
Cyanide	990	410
Silver	1,400	580
Oil and Grease	68,000	41,000
TSS	140,000	66,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) Tumbling wastewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals tumbled	
Cadmium	390	170
Copper	2,200	1,200
Cyanide	330	140
Silver	470	200
Oil and Grease	23,000	14,000
TSS	47,000	22,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) Burnishing wastewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals burnished	
Cadmium	8,700	3,900
Copper	49,000	26,000
Cyanide	7,500	3,100
Silver	11,000	4,400
Oil and Grease	510,000	310,000
TSS	1,100,000	500,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) Sawing/Grinding Spent Emulsions.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals sawed or ground	
Cadmium	2.10	.90
Copper	11.00	6.10
Cyanide	1.80	.70
Silver	2.50	1.00
Oil and Grease	120.00	73.00
TSS	250.00	120.00
ph	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(x) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants

§ 471.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Rolling Spent Emulsions.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals rolled with emulsions	
Cadmium	7.2	2.9
Copper	46.0	22.0
Cyanide	7.2	2.9
Silver	10.0	4.3

(b) Rolling solution heat treatment contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of rolled precious metals heat treated	
Cadmium	140	56
Copper	900	430
Cyanide	140	56
Silver	200	84

(c) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(d) Drawing spent emulsions.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals drawn with emulsions	
Cadmium	4.3	1.7
Copper	27.0	13.0
Cyanide	4.3	1.7
Silver	6.2	206

(e) Drawing spent soap solutions.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals drawn with soap solutions	
Cadmium	140	.60
Copper	8.90	4.20
Cyanide	140	.60
Silver	2.00	.80

(f) Extrusion press and solution heat treatment contact cooling.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded precious metals heat treated	
Cadmium	270	110
Copper	1,800	840
Cyanide	270	110
Silver	400	160

(g) Semi-continuous and continuous casting contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	220	90
Copper	1,400	680
Cyanide	220	90
Silver	320	130

(h) Stationary casting contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the stationary method	
Cadmium	.80	.30
Copper	5.30	2.50
Cyanide	.80	.30
Silver	1.20	.50

(i) Direct chill casting contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the direct chill method	
Cadmium	160	65
Copper	1,000	500
Cyanide	160	65
Silver	240	96

(j) Shot casting contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals shot cast	
Cadmium	18.0	7.1
Copper	110.0	54.0
Cyanide	18.0	7.1
Silver	26.0	11.0

(k) Casting wet APC blowdown.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast	
Cadmium	1.20	.50
Copper	7.50	3.60
Cyanide	1.20	.50
Silver	1.70	.70

(l) Metal powder production atomization wastewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals powder wet atomized	
Cadmium	1,300	530
Copper	8,500	4,100
Cyanide	1,300	530
Silver	1,900	800

(m) Metal power production ball milling wastewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals powder wet ball milled	
Cadmium	430	170
Copper	2,800	1,300
Cyanide	430	170

SUBPART E—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Silver	630	260

(n) Pressure bonding contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals and base metal pressure bonded	
Cadmium	1.70	70
Copper	11.00	5.10
Cyanide	1.70	.70
Silver	2.40	1.00

(o) Annealing solution heat treatment contact cooling water.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals annealed	
Cadmium	200	80
Copper	1,300	610
Cyanide	200	80
Silver	290	120

(p) Surface treatment spent baths.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals surface treated	
Cadmium	31	12
Copper	200	95
Cyanide	31	12
Silver	45	19

(q) Surface treatment rinsewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals surface treated	
Cadmium	570	230
Copper	3,600	1,700
Cyanide	570	230
Silver	820	340

(r) Alkaline cleaning spent baths.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals alkaline cleaned	
Cadmium	.70	.30
Copper	4.70	2.20
Cyanide	.70	.30
Silver	1.10	.40

(s) Alkaline cleaning rinsewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals alkaline cleaned	
Cadmium	140	55
Copper	890	420
Cyanide	140	55
Silver	200	83

(t) Pre-bonding cleaning wastewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metal and base metal cleaned prior to bonding	
Cadmium	210	82
Copper	1,300	630
Cyanide	210	82
Silver	300	120

(u) Tumbling wastewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals tumbled	
Cadmium	88	35
Copper	570	270
Cyanide	88	35
Silver	130	53

(v) Burnishing wastewater.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals burnished	
Cadmium	510	210
Copper	3,300	1,600
Cyanide	510	210
Silver	750	310

(w) Sawing/grinding spent emulsions.

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals sawed or ground	
Cadmium	1.20	.50
Copper	7.70	3.70
Cyanide	1.20	.50
Silver	1.80	.70

(x) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.53 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Rolling spent emulsions.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals rolled with emulsions	
Cadmium	7.2	2.9
Copper	46.2	22.0
Cyanide	7.2	2.9
Silver	10.0	4.3
Oil and grease	360.0	360.0
TSS	540.0	430.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Rolling solution heat treatment contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of rolled precious metals heat treated	
Cadmium	140	56
Copper	900	430
Cyanide	140	56
Silver	200	84
Oil and grease	7,000	7,000
TSS	11,000	8,400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Drawing spent neat oils.

There shall be no discharge of process wastewater pollutants.

(d) Drawing spent emulsions.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals drawn with emulsions	
Cadmium	4.3	1.7
Copper	27.0	13.0
Cyanide	4.3	1.7
Silver	6.2	2.6
Oil and grease	210.0	210.0
TSS	320.0	260.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Drawing spent soap solutions.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals drawn with soap solutions	
Cadmium	1.40	.60
Copper	8.90	4.20
Cyanide	1.40	.60
Silver	2.00	.80
Oil and grease	69.00	69.00
TSS	100.00	83.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Extrusion press and solution heat treatment contact cooling.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded precious metals heat treated	
Cadmium	270	110
Copper	1,800	840
Cyanide	270	110
Silver	400	160
Oil and grease	14,000	14,000
TSS	21,000	16,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Semi-continuous and continuous casting contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	220	90
Copper	1,400	680
Cyanide	220	90
Silver	320	130
Oil and grease	11,000	11,000
TSS	17,000	13,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Stationary casting contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the stationary method	
Cadmium	.80	.30
Copper	5.30	2.50
Cyanide	.80	.30
Silver	1.20	.50
Oil and grease	42.00	42.00
TSS	63.00	50.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Direct chill casting contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast by the direct chill method	
Cadmium	160	65
Copper	1,000	500
Cyanide	160	65
Silver	240	98
Oil and grease	8,200	8,200
TSS	12,000	9,800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Shot casting contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals shot cast	
Cadmium	18.0	7.1
Copper	110.0	54.0
Cyanide	18.0	7.1
Silver	26.0	11.0
Oil and grease	890.0	890.0
TSS	1,300.0	1,100.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Casting wet APC blowdown.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals cast	
Cadmium	1.20	.50
Copper	7.50	3.60
Cyanide	1.20	.50
Silver	1.70	.70
Oil and grease	59.00	59.00
TSS	88.00	70.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Metal powder production atomization wastewater.

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals powder wet atomized	
Cadmium	1,300	530
Copper	8,500	4,100
Cyanide	1,300	530
Silver	1,900	800
Oil and grease	67,000	67,000
TSS	100,000	80,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Metal powder production ball milling wastewater.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals powder wet ball milled	
Cadmium	430	170
Copper	2,800	1,300
Cyanide	430	170
Silver	630	260
Oil and grease	22,000	22,000
TSS	33,000	26,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Pressure bonding contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals drawn with soap solutions	
Cadmium	1.70	.70
Copper	11.00	5.10
Cyanide	1.70	.70
Silver	2.40	1.00
Oil and grease	84.00	84.00
TSS	130.00	100.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Annealing solution heat treatment contact cooling water.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals annealed	
Cadmium	200	80
Copper	1,300	610
Cyanide	200	80
Silver	290	120
Oil and grease	10,000	10,000

SUBPART E—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
TSS	15,000	12,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Surface treatment spent baths.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals surface treated	
Cadmium	31	12
Copper	200	95
Cyanide	31	12
Silver	45	19
Oil and grease	1,600	1,600
TSS	2,300	1,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) Surface treatment rinsewater.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals surface treated	
Cadmium	570	230
Copper	3,600	1,700
Cyanide	570	230
Silver	820	340
Oil and grease	28,000	28,000
TSS	43,000	34,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) Alkaline cleaning spent baths.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals alkaline cleaned	
Cadmium	.70	.30
Copper	4.70	2.20
Cyanide	.70	.30
Silver	1.10	.40
Oil and grease	37.00	37.00
TSS	55.00	44.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) Alkaline cleaning rinsewater.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals alkaline cleaned	
Cadmium	140	55
Copper	890	420

SUBPART E—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	140	55
Silver	200	83
Oil and grease	6,900	6,900
TSS	10,000	8,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) Pre-bonding cleaning wastewater.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metal and base metal cleaned prior to bonding	
Cadmium	210	82
Copper	1,300	630
Cyanide	210	82
Silver	300	120
Oil and grease	10,000	10,000
TSS	15,000	12,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) Tumbling wastewater.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals tumbled	
Cadmium	88	35
Copper	570	270
Cyanide	88	35
Silver	130	53
Oil and grease	4,400	4,400
TSS	6,600	5,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) Burnishing wastewater.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals burnished	
Cadmium	510	210
Copper	3,300	1,600
Cyanide	510	210
Silver	750	310
Oil and grease	26,000	26,000
TSS	39,000	31,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) Sawing/grinding spent emulsions.

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of precious metals sawed or ground	
Cadmium	1.20	.50
Copper	7.70	3.70
Cyanide	1.20	.50
Silver	1.80	.70
Oil and grease	61.00	61.00
TSS	91.00	73.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.54 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for cadmium, copper, silver, and cyanide are the same as specified in § 471.52.

§ 471.55 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for cadmium, copper, silver, and cyanide are the same as specified in § 471.52.

§ 471.56 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations for TSS, oil and grease, and pH are the same as specified in §471.51.

Subpart F—Refractory Metals Forming Subcategory

§ 471.60 Applicability; description of the refractory metals forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works

from the process operations of the refractory metals forming subcategory.

§ 471.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals rolled with emulsions	
Copper	2,300	1,200
Nickel	2,300	1,500
Columbium	2,500	1,100
Fluoride	71,000	32,000
Molybdenum	2,500	1,100
Tantalum	2,500	1,100
Tungsten	2,500	1,100
Vanadium	2,500	1,100
Oil and grease	24,000	14,000
TSS	49,000	23,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded refractory metals heat treated	
Copper	6,600	3,500
Nickel	6,600	4,400
Columbium	7,100	3,100
Fluoride	210,000	91,000
Molybdenum	7,100	3,100
Tantalum	7,100	3,100
Tungsten	7,100	3,100
Vanadium	7,100	3,100
Oil and grease	69,000	42,000
TSS	140,000	67,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Extrusion press hydraulic fluid leakage.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals	
Copper	2,300	1,200
Nickel	2,300	1,500
Columbium	2,300	1,100
Fluoride	71,000	31,000
Molybdenum	2,400	1,100
Tantalum	2,400	1,100
Tungsten	2,400	1,100
Vanadium	2,400	1,100
Oil and grease	24,000	14,000
TSS	49,000	23,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(g) Forging solution heat treatment contact cooling water.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged refractory metals heat treated	
Copper	11,000	5,800
Nickel	11,000	7,400
Columbium	12,000	5,300
Fluoride	340,000	150,000
Molybdenum	12,000	5,300
Tantalum	12,000	5,300
Tungsten	12,000	5,300
Vanadium	12,000	5,300
Oil and grease	120,000	69,000
TSS	240,000	110,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Extrusion and forging equipment cleaning wastewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals extruded or forged	
Copper	790	420
Nickel	800	530
Columbium	850	380
Fluoride	25,000	11,000
Molybdenum	850	380
Tantalum	850	380
Tungsten	850	380
Vanadium	850	380
Oil and grease	8,300	5,000
TSS	17,000	8,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Metal power production wastewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals power produced	
Copper	3,100	1,600
Nickel	3,100	2,100
Columbium	3,400	1,500
Fluoride	98,000	43,000
Molybdenum	3,400	1,500
Tantalum	3,400	1,500
Tungsten	3,400	1,500
Vanadium	3,400	1,500
Oil and grease	33,000	20,000
TSS	67,000	32,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Metal powder production wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(k) Metal powder pressing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(l) Casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(m) Post-casting billet washwater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of cast refractory metals billet washed	
Copper	57	30
Nickel	57	38
Columbium	61	27
Fluoride	1,800	790
Molybdenum	61	27
Tantalum	61	27
Tungsten	61	27
Vanadium	61	27
Oil and grease	600	360
TSS	1,200	580
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Surface treatment spent baths.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	24	13
Nickel	24	16
Columbium	26	12
Fluoride	760	340
Molybdenum	26	12
Tantalum	26	12
Tungsten	26	12
Vanadium	26	12
Oil and Grease	250	150
TSS	520	250
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Surface treatment rinsewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	230,000	120,000
Nickel	230,000	150,000
Columbium	250,000	110,000
Fluoride	7,200,000	3,200,000
Molybdenum	250,000	110,000
Tantalum	250,000	110,000
Tungsten	250,000	110,000
Vanadium	250,000	110,000
Oil and Grease	2,400,000	1,500,000
TSS	5,000,000	2,400,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Surface treatment wet APC blowdown.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	22,000	12,000
Nickel	23,000	15,000
Columbium	24,000	11,000
Fluoride	700,000	310,000
Molybdenum	24,000	11,000
Tantalum	24,000	11,000
Tungsten	24,000	11,000
Vanadium	24,000	11,000
Oil and Grease	240,000	140,000
TSS	480,000	230,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) Surface coating wet APC blowdown.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface coated	
Copper	2,100	1,100
Nickel	2,100	1,400
Columbium	2,200	980
Fluoride	64,000	29,000
Molybdenum	2,200	980
Tantalum	2,200	980
Tungsten	2,200	980
Vanadium	2,200	980
Oil and Grease	22,000	13,000
TSS	44,000	21,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) Alkaline cleaning spent baths.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals alkaline cleaned	
Copper	58	31
Nickel	59	39
Columbium	63	28
Fluoride	1,800	810
Molybdenum	63	28
Tantalum	63	28
Tungsten	63	28
Vanadium	63	28
Oil and Grease	610	370
TSS	1,300	600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) Alkaline cleaning rinsewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals alkaline cleaned	
Copper	270,000	140,000
Nickel	270,000	180,000
Columbium	290,000	130,000
Fluoride	8,300,000	3,700,000
Molybdenum	290,000	130,000
Tantalum	290,000	130,000
Tungsten	290,000	130,000
Vanadium	290,000	130,000
Oil and Grease	2,800,000	1,700,000
TSS	5,700,000	2,700,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) Molten salt cleaning rinsewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals cleaned with molten salt	
Copper	170,000	90,000
Nickel	170,000	110,000
Columbium	180,000	82,000
Fluoride	5,400,000	2,400,000
Molybdenum	180,000	82,000
Tantalum	180,000	82,000
Tungsten	180,000	82,000
Vanadium	180,000	82,000
Oil and grease	1,800,000	1,100,000
TSS	3,700,000	1,800,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) Tumbling/burnishing wastewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals tumbled or burnished	
Copper	42,000	22,000
Nickel	42,000	28,000

SUBPART F—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Columbium	45,000	20,000
Fluoride	1,300,000	580,000
Molybdenum	45,000	20,000
Tantalum	45,000	20,000
Tungsten	45,000	20,000
Vanadium	45,000	20,000
Oil and grease	440,000	270,000
TSS	910,000	430,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) Sawing/grinding spent neat oils.

There shall be no discharge of process wastewater pollutants.

(w) Sawing/grinding spent emulsions.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground with emulsions	
Copper	410	220
Nickel	420	280
Columbium	440	200
Fluoride	13,000	5,700
Molybdenum	440	200
Tantalum	440	200
Tungsten	440	200
Vanadium	440	200
Oil and grease	4,300	2,600
TSS	8,900	4,200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) Sawing/grinding contact lubricant-coolant water.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground with contact lubricant-coolant water	
Copper	1,500	810
Nickel	1,600	1,000
Columbium	1,700	740
Fluoride	48,000	21,000
Molybdenum	1,700	740
Tantalum	1,700	740
Tungsten	1,700	740
Vanadium	1,700	740
Oil and grease	16,000	9,700
TSS	33,000	16,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) Sawing/grinding wet APC blowdown.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground	
Copper	2,100	1,100

SUBPART F—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	2,100	1,400
Columbium	2,200	980
Fluoride	64,000	29,000
Molybdenum	2,200	980
Tantalum	2,200	980
Tungsten	2,200	980
Vanadium	2,200	980
Oil and grease	22,000	13,000
TSS	44,000	21,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) Post sawing/grinding rinsewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of sawed or ground refractory metals rinsed	
Copper	970	510
Nickel	980	650
Columbium	1,100	470
Fluoride	31,000	14,000
Molybdenum	1,100	470
Tantalum	1,100	470
Tungsten	1,100	470
Vanadium	1,100	470
Oil and grease	10,000	6,200
TSS	21,000	10,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) Product testing wastewater.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals product tested	
Copper	150	78
Nickel	150	99
Columbium	160	71
Fluoride	4,600	2,000
Molybdenum	160	71
Tantalum	160	71
Tungsten	160	71
Vanadium	160	71
Oil and grease	1,600	930
TSS	3,200	1,500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals rolled with emulsions	
Copper	1,500	730
Nickel	660	440
Columbium	830	360
Fluoride	71,000	32,000
Molybdenum	830	360
Tantalum	830	360
Tungsten	830	360
Vanadium	830	360

(c) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded refractory metals heat treated	
Copper	440	210
Nickel	190	130
Columbium	240	100
Fluoride	21,000	9,100
Molybdenum	240	100
Tantalum	240	100
Tungsten	240	100
Vanadium	240	100

(e) Extrusion press hydraulic fluid leakage.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals product tested	
Copper	1,500	730
Nickel	650	440
Columbium	820	360
Fluoride	71,000	31,000
Molybdenum	820	360
Tantalum	820	360
Tungsten	820	360
Vanadium	820	360

(f) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(g) Forging solution heat treatment contact cooling water.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged refractory metals heat treated	
Copper	740	350
Nickel	320	210
Columbium	400	170
Fluoride	34,000	15,000
Molybdenum	400	170
Tantalum	400	170
Tungsten	400	170
Vanadium	400	170

(h) Extrusion and forging equipment cleaning wastewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals extruded or forged	
Copper	53	25
Nickel	23	15
Columbium	29	13
Fluoride	2,500	1,100
Molybdenum	29	13
Tantalum	29	13
Tungsten	29	13
Vanadium	29	13

(i) Metal powder production wastewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals powder produced	
Copper	2,100	1,000
Nickel	900	610
Columbium	1,100	490
Fluoride	98,000	43,000
Molybdenum	1,100	490
Tantalum	1,100	490
Tungsten	1,100	490
Vanadium	1,100	490

(j) Metal powder production wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(k) Metal powder pressing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(l) Casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(m) Post-casting billet washwater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals billet washed	
Copper	38.0	16.0
Nickel	16.0	11.0
Columbium	21.0	8.9
Fluoride	1,800.0	790.0
Molybdenum	21.0	8.9
Tantalum	21.0	8.9
Tungsten	21.0	8.9
Vanadium	21.0	8.9

(n) Surface treatment spent baths.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	16.0	7.7
Nickel	7.0	4.7
Columbium	8.8	3.8
Fluoride	760.0	340.0
Molybdenum	8.8	3.8
Tantalum	8.8	3.8
Tungsten	8.8	3.8
Vanadium	8.8	3.8

(o) Pickling rinsewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	15,000	7,400
Nickel	6,700	4,500
Columbium	8,300	3,600
Fluoride	720,000	320,000
Molybdenum	8,300	3,600
Tantalum	8,300	3,600
Tungsten	8,300	3,600
Vanadium	8,300	3,600

(p) Surface treatment wet APC blowdown.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	15,000	7,200
Nickel	6,500	4,400
Columbium	8,100	3,500
Fluoride	700,000	310,000
Molybdenum	8,100	3,500
Tantalum	8,100	3,500
Tungsten	8,100	3,500
Vanadium	8,100	3,500

(q) Surface coating wet APC blowdown.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface coated	
Copper	1,400	660
Nickel	590	400
Columbium	750	320
Fluoride	64,000	29,000
Molybdenum	750	320
Tantalum	750	320
Tungsten	750	320
Vanadium	750	320

(r) Alkaline cleaning spent baths.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals alkaline cleaned	
Copper	39.0	19.0
Nickel	17.0	11.0
Columbium	21.0	9.2
Fluoride	1,800.0	810.0
Molybdenum	21.0	9.2
Tantalum	21.0	9.2
Tungsten	21.0	9.2
Vanadium	21.0	9.2

(s) Alkaline cleaning rinsewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals alkaline cleaned	
Copper	1,800	850
Nickel	770	520
Columbium	970	420
Fluoride	83,000	37,000
Molybdenum	970	420
Tantalum	970	420
Tungsten	970	420
Vanadium	970	420

(t) Molten salt cleaning rinsewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals cleaned with molten salt	
Copper	120,000	55,000
Nickel	50,000	33,000
Columbium	62,000	27,000
Fluoride	5,400,000	2,400,000
Molybdenum	62,000	27,000
Tantalum	62,000	27,000
Tungsten	62,000	27,000
Vanadium	62,000	27,000

(u) Tumbling/burnishing wastewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals tumbled or burnished	
Copper	2,800	1,300
Nickel	1,200	820
Columbium	1,500	660
Fluoride	130,000	58,000
Molybdenum	1,500	660
Tantalum	1,500	660
Tungsten	1,500	660
Vanadium	1,500	660

(v) Sawing/grinding spent neat oils.

There shall be no discharge of process wastewater pollutants.

(w) Sawing/grinding spent emulsions.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground with emulsions	
Copper	280	130
Nickel	120	80
Columbium	150	65
Fluoride	13,000	5,700
Molybdenum	150	65
Tantalum	150	65
Tungsten	150	65
Vanadium	150	65

(x) Sawing/grinding contact lubricant-coolant water.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground with contact lubricant-coolant water	
Copper	1,000	500
Nickel	450	300
Columbium	560	240
Fluoride	48,000	21,000
Molybdenum	560	240
Tantalum	560	240
Tungsten	560	240
Vanadium	560	240

(y) Sawing/grinding wet APC blowdown.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground	
Copper	140	66
Nickel	59	40
Columbium	75	32
Fluoride	6,400	2,900

SUBPART F—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Molybdenum	75	32
Tantalum	75	32
Tungsten	75	32
Vanadium	75	32

(z) Post sawing/grinding rinsewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of sawed or ground refractory metals rinsed	
Copper	66	31
Nickel	28	19
Columbium	35	15
Fluoride	3,100	1,400
Molybdenum	35	15
Tantalum	35	15
Tungsten	35	15
Vanadium	35	15

(aa) Product testing wastewater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals product tested	
Copper	10.0	4.7
Nickel	4.3	2.9
Columbium	5.4	2.3
Fluoride	460.0	200.0
Molybdenum	5.4	2.3
Tantalum	5.4	2.3
Tungsten	5.4	2.3
Vanadium	5.4	2.3

(bb) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.63 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals rolled with emulsions	
Copper	1,500	730
Nickel	660	440
Columbium	830	360
Fluoride	71,000	32,000

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Molybdenum	830	360
Tantalum	830	360
Tungsten	830	360
Vanadium	830	360
Oil and Grease	12,000	12,000
TSS	18,000	14,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded refractory metals heat treated	
Copper	440	210
Nickel	190	130
Columbium	240	100
Fluoride	21,000	9,100
Molybdenum	240	100
Tantalum	240	100
Tungsten	240	100
Vanadium	240	100
Oil and Grease	3,500	3,500
TSS	5,200	4,200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Extrusion press hydraulic fluid leakage.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals extrudeds	
Copper	1,500	730
Nickel	650	440
Columbium	820	360
Fluoride	71,000	31,000
Molybdenum	820	360
Tantalum	820	360
Tungsten	820	360
Vanadium	820	360
Oil and Grease	12,000	12,000
TSS	18,000	14,000
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(f) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(g) Forging solution heat treatment contact cooling water.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged refractory metals heat treated	
Copper	740	350
Nickel	320	210
Columbium	400	170
Fluoride	34,000	15,000
Molybdenum	400	170
Tantalum	400	170
Tungsten	400	170
Vanadium	400	170
Oil and grease	5,800	5,800
TSS	8,700	6,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Extrusion and forging equipment cleaning wastewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals extruded or forged	
Copper	53	25
Nickel	23	15
Columbium	29	13
Fluoride	2,500	1,100
Molybdenum	29	13
Tantalum	29	13
Tungsten	29	13
Vanadium	29	13
Oil and grease	420	420
TSS	630	500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Metal powder production wastewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals powder produced	
Copper	2,100	1,000
Nickel	900	610
Columbium	1,100	490
Fluoride	98,000	43,000
Molybdenum	1,100	490
Tantalum	1,100	490
Tungsten	1,100	490
Variadium	1,100	490
Oil and grease	16,000	16,000
TSS	25,000	20,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Metal powder production wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(k) Metal powder pressing spent lubricants.

There shall be no discharge or process wastewater pollutants.

(l) Casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(m) Post-casting billet washwater.

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of cast refractory metals billet washed	
Copper	38.0	18.0
Nickel	16.0	11.0
Columbium	21.0	8.9
Fluoride	1,800.0	790.0
Molybdenum	21.0	8.9
Tantalum	21.8	78.9
Tungsten	21.0	8.9
Vanadium	21.0	8.9
Oil and grease	300.0	300.0
TSS	450.0	360.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Surface treatment spent baths.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	16.0	7.7
Nickel	7.0	4.7
Columbium	8.8	3.8
Fluoride	760.0	340.0
Molybdenum	8.8	3.8
Tantalum	8.8	3.8
Tungsten	8.8	3.8
Vanadium	8.8	3.8
Oil & Grease	130.0	130.0
TSS	190.0	150.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Surface treatment rinsewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	15,000	7,400
Nickel	6,700	4,500
Columbium	8,300	3,600
Fluoride	720,000	320,000
Molybdenum	8,300	3,600
Tantalum	8,300	3,600
Tungsten	8,300	3,600
Vanadium	8,300	3,600
Oil & Grease	120,000	120,000
TSS	180,000	150,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Surface treatment wet APC blowdown.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface treated	
Copper	15,000	7,200
Nickel	6,500	4,400
Columbium	8,100	3,500
Fluoride	700,000	310,000
Molybdenum	8,100	3,500
Tantalum	8,100	3,500
Tungsten	8,100	3,500
Vanadium	8,100	3,500
Oil & Grease	120,000	120,000
TSS	180,000	140,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) Surface coating wet APC blowdown.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals surface coated	
Copper	1,400	660
Nickel	590	400
Columbium	750	320
Fluoride	64,000	29,000
Molybdenum	750	320
Tantalum	750	320
Tungsten	750	320
Vanadium	750	320
Oil & Grease	11,000	11,000
TSS	16,000	13,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) Alkaline cleaning spent baths.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals alkaline cleaned	
Copper	39.0	19.0
Nickel	17.0	11.0
Columbium	21.0	9.2
Fluoride	1,800.0	810.0
Molybdenum	21.0	9.2
Tantalum	21.0	9.2
Tungsten	21.0	9.2
Vanadium	21.0	9.2
Oil & Grease	310.0	310.0
TSS	460.0	370.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) Alkaline cleaning rinsewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals alkaline cleaned	
Copper	1,800	850
Nickel	770	520
Columbium	970	420

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	83,000	37,000
Molybdenum	970	420
Tantalum	970	420
Tungsten	970	420
Vanadium	970	420
Oil & Grease	14,000	14,000
TSS	21,000	17,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) Molten salt cleaning rinsewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals cleaned with molten salt	
Copper	120,000	55,000
Nickle	50,000	33,000
Columbian	62,000	27,000
Fluoride	5,400,000	2,400,000
Molybdenum	62,000	27,000
Tantalum	62,000	27,000
Tungston	62,000	27,000
Vanadium	62,000	27,000
Oil and grease	9,000	900,000
TSS	1,400,000	1,100,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) Tumbling/burnishing wastewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals tumbled or burnished	
Copper	2,800	1,300
Nickle	1,200	820
Columbian	1,500	660
Fluoride	130,000	58,000
Molybdenum	1,500	600
Tantalum	1,500	660
Tungston	1,500	660
Vanadium	1,500	660
Oil and grease	22,000	22,000
TSS	33,000	27,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) Sawing/grinding spent neat oils.

There shall be no discharge of process wastewater pollutants.

(w) Sawing/grinding spent emulsions.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground with emulsions	
Copper	280	130
Nickle	120	80
Columbian	150	65

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	13,000	5,700
Molybdenum	150	65
Tantalum	150	65
Tungston	150	65
Vanadium	150	65
Oil and grease	2,200	2,200
TSS	3,300	2,600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) Sawing/grinding contact lubricant-coolant water.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground with contact lubricant/coolant water	
Copper	1,000	500
Nickle	450	300
Columbian	560	240
Fluoride	48,000	21,000
Molybdenum	560	240
Tantalum	560	240
Tungston	560	240
Vanadium	560	240
Oil and grease	8,100	8,100
TSS	12,000	9,700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) Sawing/grinding wet APC blowdown.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of refractory metals sawed or ground	
Copper	140	66
Nickle	59	40
Columbian	75	32
Fluoride	6,400	2,900
Molybdenum	75	32
Tantalum	75	32
Tungston	75	32
Vanadium	75	32
Oil and grease	1,100	1,100
TSS	1,600	1,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) Post sawing/grinding rinsewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged refractory metals heat treated	
Copper	66	31
Nickel	28	19

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Columbium	35	15
Fluoride	3,100	1,400
Molybdenum	35	15
Tantalum	35	15
Tungsten	35	15
Vanadium	35	15
Oil and Grease	510	510
TSS	770	620
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) Product testing wastewater.

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged refractory metals heat treated	
Copper	10.0	4.7
Nickel	4.3	2.9
Columbium	5.4	2.3
Fluoride	460.0	200.0
Molybdenum	5.4	2.3
Tantalum	5.4	2.3
Tungsten	5.4	2.3
Vanadium	5.4	2.3
Oil and Grease	78.0	78.0
TSS	120.0	93.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.64 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for copper, nickel, columbium, fluoride, molybdenum, tantalum, tungsten, and vanadium are the same as specified in § 471.62.

§ 471.65 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for copper, nickel, columbium, fluoride, molybdenum, tantalum, tungsten, and vanadium are the same as specified in § 471.62.

§ 471.66 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations for TSS, oil and grease, and pH are the same as specified in § 471.61.

Subpart G—Titanium Forming Subcategory

§ 471.70 Applicability; description of the titanium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the titanium forming subcategory.

§ 471.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Cold rolling spent lubricants.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium cold rolled	
Cyanide	970	400
Lead	1,400	670
Zinc	4,900	2,000
Ammonia	450,000	200,000
Fluoride	200,000	88,000
Titanium	6,800	3,000
Oil and grease	67,000	40,000
TSS	140,000	65,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Hot rolling contact lubricant-coolant water.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium hot rolled with contact lubricant-coolant water	
Cyanide	1,200	520
Lead	1,800	860
Zinc	6,300	2,600
Ammonia	570,000	250,000
Fluoride	260,000	110,000
Titanium	8,800	3,900
Oil and grease	86,000	52,000
TSS	180,000	84,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Extrusion spent lubricants.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium extruded	
Cyanide	79	33
Lead	120	55
Zinc	400	170
Ammonia	37,000	16,000
Fluoride	16,000	7,200
Titanium	560	250
Oil and grease	5,500	3,300
TSS	11,000	5,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Forging die contact cooling water.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium forged	
Cyanide	870	360
Lead	1,300	600
Zinc	4,400	1,800
Ammonia	400,000	180,000
Fluoride	180,000	79,000
Titanium	6,200	2,700
Oil and grease	60,000	36,000
TSS	120,000	59,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Forging wet APC blowdown.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium forged	
Cyanide	590	240
Lead	850	400
Zinc	2,900	1,200
Ammonia	270,000	120,000
Fluoride	120,000	53,000
Titanium	4,100	1,800

SUBPART G—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	40,000	24,000
TSS	83,000	39,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Heat treatment contact cooling water.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium heat treated	
Cyanide	1,300	540
Lead	1,900	900
Zinc	6,600	2,800
Ammonia	600,000	260,000
Fluoride	270,000	120,000
Titanium	9,200	4,100
Oil and grease	90,000	54,000
TSS	180,000	88,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment spent baths.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Cyanide	46	19
Lead	67	32
Zinc	230	98
Ammonia	21,000	9,400
Fluoride	9,500	4,200
Titanium	330	150
Oil and grease	3,200	1,900
TSS	6,600	3,100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Surface treatment rinsewater.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Cyanide	6,100	2,500
Lead	8,900	4,200
Zinc	31,000	13,000
Ammonia	2,800,000	1,200,000
Fluoride	1,300,000	560,000
Titanium	43,000	19,000
Oil & grease	420,000	250,000
TSS	870,000	410,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Surface treatment wet APC blowdown.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Cyanide	49	20
Lead	71	34
Zinc	250	100
Ammonia	23,000	10,000
Fluoride	10,000	4,500
Titanium	350	150
Oil and grease	3,400	2,000
TSS	7,000	3,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Alkaline cleaning spent baths.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium alkaline cleaned	
Cyanide	740	310
Lead	1,100	510
Zinc	3,700	1,600
Ammonia	340,000	150,000
Fluoride	150,000	67,000
Titanium	5,200	2,300
Oil and grease	51,000	31,000
TSS	100,000	50,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Alkaline cleaning rinsewater.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium alkaline cleaned	
Cyanide	800	330
Lead	1,200	550
Zinc	4,000	1,700
Ammonia	370,000	160,000
Fluoride	160,000	73,000
Titanium	5,700	2,500
Oil and grease	55,000	33,000
TSS	110,000	54,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Tumbling wastewater.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium tumbled	
Cyanide	230	95
Lead	330	160
Zinc	1,200	480
Ammonia	110,000	46,000
Fluoride	47,000	21,000
Titanium	1,600	720
Oil and grease	16,000	9,500
TSS	32,000	15,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Sawing/grinding spent lubricants.

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium sawed or ground	
Cyanide	14.0	6.0
Lead	21.0	9.9
Zinc	73.0	30.0
Ammonia	6,600.0	2,900.0
Fluoride	3,000.0	1,300.0
Titanium	100.0	45.0
Oil and grease	990.0	600.0
TSS	2,000.0	970.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Cold rolling spent lubricants.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium cold rolled	
Cyanide	67	27
Lead	940	430
Zinc	340	140
Ammonia	45,000	20,000
Fluoride	20,000	8,800
Titanium	230	100

(b) Hot rolling contact lubricant-cooling water.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium hot rolled with contact lubricant-coolant water	
Cyanide	86	34
Lead	1,200	560
Zinc	440	180
Ammonia	57,000	25,000
Fluoride	26,000	11,000
Titanium	300	130

(c) Extrusion spent lubricants.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium extruded	
Cyanide	55	22
Lead	77	36
Zinc	280	120
Ammonia	37,000	16,000
Fluoride	16,000	7,200
Titanium	190	82

(d) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Forging die contact cooling water.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium forged	
Cyanide	60	24
Lead	840	390
Zinc	310	130
Ammonia	40,000	18,000
Fluoride	18,000	7,900
Titanium	210	90

(f) Forging wet APC blowdown.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium forged	
Cyanide	40	16
Lead	570	260
Zinc	210	85
Ammonia	27,000	12,000
Fluoride	12,000	5,300
Titanium	140	61

(g) Heat treatment contact cooling water.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium heat treated	
Cyanide	90	36
Lead	1,300	590
Zinc	460	190
Ammonia	60,000	26,000
Fluoride	27,000	12,000
Titanium	310	140

(h) Surface treatment spent baths.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Cyanide	32	13
Lead	45	21
Zinc	160	67
Ammonia	21,000	9,400
Fluoride	9,500	4,200
Titanium	110	48

(i) Surface treatment rinsewater.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Cyanide	420	170
Lead	5,900	2,700
Zinc	2,200	890
Ammonia	280,000	120,000
Fluoride	130,000	56,000
Titanium	1,500	630

(j) Surface treatment wet APC blowdown.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Cyanide	3.4	1.4
Lead	48.0	22.0
Zinc	17.0	7.1
Ammonia	2,300.0	1,000.0
Fluoride	1,000.0	450.0
Titanium	12.0	5.1

(k) Alkaline cleaning spent baths.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium alkaline cleaned	
Cyanide	130	51
Lead	710	330
Zinc	650	270
Ammonia	85,000	37,000
Fluoride	38,000	17,000
Titanium	440	190

(l) Alkaline cleaning rinsewater.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium alkaline cleaned	
Cyanide	55	22
Lead	770	360
Zinc	280	120
Ammonia	37,000	16,000
Fluoride	16,000	7,300
Titanium	190	83

(m) Tumbling wastewater.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium tumbled	
Cyanide	16.0	6.3
Lead	220.0	100.0
Zinc	81.0	33.0
Ammonia	11,000.0	4,600.0
Fluoride	4,700.0	2,100.0
Titanium	55.0	24.0

(n) Sawing/grinding spent lubricants.

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium sawed or ground	
Cyanide	10.0	4.0
Lead	14.0	6.5
Zinc	51.0	21.0
Ammonia	6,600.0	2,900.0
Fluoride	3,000.0	1,300.0
Titanium	34.0	15.0

(o) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.73 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations for cyanide, lead, zinc, ammonia, fluoride, and titanium are the same as specified in § 471.72. The limitations for TSS, oil and grease, and pH are the same as specified in § 471.76.

§ 471.74 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for cyanide, lead, zinc, ammonia, fluoride, and titanium are the same as specified in § 471.72.

§ 471.75 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for cyanide, lead, zinc, ammonia, fluoride, and titanium are the same as specified in § 471.72.

§ 471.76 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Cold rolling spent lubricants.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound per billion pounds of titanium cold rolled	
Oil and Grease	3,300	3,300
TSS	5,000	4,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Hot rolling contact lubricant-cooling water.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound per billion pounds of titanium hot rolled with contact lubricant-coolant water	
Oil and Grease	4,300	4,300
TSS	6,500	5,200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Extrusion spent lubricants.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound per billion pounds of titanium extruded	
Oil and Grease	2,700	2,700
TSS	4,100	3,300

SUBPART G—BCT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Forging die contact cooling water.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound per billion pounds of titanium forged	
Oil and Grease	3,00	3,000
TSS	4,500	3,600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Forging wet APC blowdown.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound per billion pounds of titanium forged	
Oil and Grease	2,000	2,000
TSS	3,000	2,400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Heat treatment contact cooling water.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg pound per billion pounds of titanium heat treated	
Oil and Grease	4,500	4,500
TSS	6,800	5,400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment spent baths.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Oil and Grease	1,600	1,600
TSS	2,400	1,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Surface treatment rinsewater.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Oil and Grease	21,000	21,000
TSS	32,000	25,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Surface treatment wet APC blowdown.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium surface treated	
Oil and Grease	170	170
TSS	260	200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Alkaline cleaning spent baths.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium alkaline cleaned	
Oil and Grease	6,400	6,400
TSS	9,600	7,700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Alkaline cleaning rinsewater.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium alkaline cleaned	
Oil and Grease	2,800	2,800
TSS	4,100	3,300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Tumbling wastewater.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium tumbled	
Oil and Grease	790	790
TSS	1,200	950
ph	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Sawing/grinding spent lubricants.

SUBPART G—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of titanium sawed or ground	
Oil and Grease	500	500
TSS	750	600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

Subpart H—Uranium Forming Subcategory

§ 471.80 Applicability; description of the uranium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the uranium forming subcategory.

§ 471.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Extrusion spent lubricants.

There shall be no discharge process wastewater pollutants.

(b) Extrusion tool contact cooling water.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium extruded	
Cadmium	180	78
Copper	980	520
Nickel	990	660
Ammonia	69,000	30,000
Fluoride	31,000	14,000
Radium [1]	5	5
Uranium	1,000	470
Oil and grease	10,000	6,200
TSS	21,000	10,000
pH	(2)	(2)

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(c) Extrusion press and solution heat treatment contact cooling water.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded uranium heat treated	
Cadmium	920	410
Copper	5,200	2,700
Nickel	5,200	3,500
Ammonia	360,000	160,000
Fluoride	160,000	72,000
Radium [1]	5	5
Uranium	5,600	2,500
Oil and grease	54,000	33,000
TSS	110,000	53,000
pH	(2)	(2)

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(d) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Forging solution heat treatment contact cooling water.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged uranium heat treated	
Cadmium	970	430
Copper	5,400	2,800
Nickel	5,500	3,600
Ammonia	380,000	170,000
Fluoride	170,000	75,000
Radium [1]	5	5
Uranium	5,800	2,600
Oil and grease	57,000	34,000
TSS	120,000	55,000
pH	(2)	(2)

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(f) Surface treatment spend baths.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Cadmium	12.0	5.3
Copper	12.0	36.0
Nickle	68.0	45.0
Ammonia	4,700.0	2,100.0
Fluoride	2,100.0	940.0
Radium [1]	5	5
Uranium	73.0	32.0
Oil and grease	710.0	430.0
TSS	1,500.0	690.0
pH	[2]	[2]

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(g) Surface treatment rinsewater.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Cadmium	910	400
Copper	5,100	2,700
Nickle	5,200	3,400
Ammonia	360,000	160,000
Fluoride	160,000	71,000
Radium [1]	5	5
Uranium	5,500	2,400
Oil and grease	54,000	32,000
TSS	110,000	52,000
pH	[2]	[2]

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment wet APC blowdown

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Cadmium	25	11
Copper	140	74
Nickle	140	94
Ammonia	9,000	4,300
Fluoride	4,400	2,000
Radium [1]	5	5
Uranium	150	68
Oil and grease	1,500	890
TSS	3,000	1,400
pH	[2]	[2]

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(i) Sawing/grinding spent emulsions.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium sawed or ground	
Cadmium	1.10	.50
Copper	5.90	3.10
Nickle	6.00	3.90
Ammonia	410.00	180.00
Fluoride	180.00	82.00
Radium [1]	5	5
Uranium	6.40	2.80
Oil and grease	62.00	37.00
TSS	130.00	60.00
pH	[2]	[2]

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(j) Post-sawing/grinding rinsewater.

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of sawed or ground uranium rinsed	
Cadmium	13.0	5.7
Copper	72.0	38.0
Nickle	73.0	48.0

SUBPART H—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	5,100.0	2,200.0
Fluoride	2,300.0	1,000.0
Radium [1]	5	5
Uranium	78.0	35.0
Oil and grease	760.0	460.0
TSS	1,600.0	740.0
pH	[2]	[2]

[1] Values in picocuries per liter.
[2] Within the range of 7.5 to 10.0 at all times.

(k) Degreasing spend solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Extrusion spent lubricants.

There shall be no discharge of process wastewater pollutants.

(b) Extrusion tool contact cooling water.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium extruded	
Cadmium	10.0	4.1
Copper	66.0	32.0
Nickel	28.0	19.0
Ammonia	6,900.0	3,000.0
Fluoride	3,100.0	1,400.0
Radium [1]	5	5
Uranium	36.0	16.0

[1] Values in picocuries per liter.

(c) Extrusion press and solution heat treatment contact cooling water.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded uranium heat treated	
Cadmium	54	22
Copper	350	170
Nickel	150	100
Ammonia	36,000	16,000
Fluoride	16,000	7,200
Radium [1]	5	5
Uranium	190	82

[1] Values in picocuries per liter.

(d) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Forging solution heat treatment contact cooling water.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium extruded	
Cadmium	57	23
Copper	360	170
Nickel	160	110
Ammonia	38,000	17,000
Fluoride	17,000	7,500
Radium [1]	5	5
Uranium	200	85

[1] Values in picocuries per liter.

(f) Surface treatment spent baths water.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium extruded	
Cadmium	7.1	2.8
Copper	46.0	22.0
Nickel	20.0	13.0
Ammonia	4,700.0	2,100.0
Fluoride	2,100.0	940.0
Radium [1]	5	5
Uranium	25.0	11.0

[1] Values in picocuries per liter.

(g) Surface treatment rinsewater.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Cadmium	54	22
Copper	340	160
Nickel	150	100
Ammonia	36,000	16,000
Fluoride	16,000	7,100
Radium [1]	5	5
Uranium	190	81

[1] Values in picocuries per liter.

(h) Surface treatment wet APC blowdown.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Cadmium	15.0	5.9
Copper	95.0	45.0
Nickel	41.0	27.0
Ammonia	9,900.0	4,300.0
Fluoride	4,400.0	2,000.0
Radium [1]	5	5

SUBPART H—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Uranium	51.0	22.0

[1] Values in picocuries per liter.

(i) Sawing/grinding spent emulsions.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium sawed or ground	
Cadmium	.60	.20
Copper	4.00	1.90
Nickel	1.70	1.10
Ammonia	410.00	180.00
Fluoride	180.00	92.00
Radium [1]	5	5
Uranium	2.10	.90

[1] Values in picocuries per liter.

(j) Post-sawing/grinding rinsewater.

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of sawed or ground uranium rinsed	
Cadmium	7.6	3.0
Copper	49.0	23.0
Nickel	21.0	14.0
Ammonia	5,100.0	2,200.0
Fluoride	2,300.0	1,000.0
Radium [1]	5	5
Uranium	26.0	11.0

[1] Values in picocuries per liter.

(k) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.83 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations for cadmium, copper, nickel, ammonia, fluoride, uranium, and radium are the same as specified in § 471.82. The limitations for TSS, oil and grease and pH are the same as specified in § 471.86.

§ 471.84 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for cadmium, copper, nickel, ammonia, fluoride, uranium, and radium are the same as specified in § 471.82.

§ 471.85 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for cadmium, copper, nickel, ammonia, fluoride, uranium, and radium are the same as specified in § 471.82.

§ 471.86 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Extrusion spent lubricants.

There shall be no discharge of process wastewater pollutants.

(b) Extrusion tool contact cooling water.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium extruded	
Oil and grease	520	520
TSS	780	620
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(c) Extrusion press and solution heat treatment contact cooling water.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded uranium heat treated	
Oil and grease	2,700	2,700
TSS	4,100	3,300
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(d) Forging spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Forging solution heat treatment contact cooling water.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged uranium heat treated	
Oil and grease	2,800	2,800
TSS	4,300	3,400
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(f) Surface treatment spent baths water.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Oil and grease	360	360
TSS	530	430
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(g) Surface treatment rinsewater.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Oil and grease	2,700	2,700
TSS	4,000	3,200
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment wet APC blowdown.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium surface treated	
Oil and grease	740	740
TSS	1,100	890
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(i) Sawing/grinding spent emulsions.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of uranium sawed or ground	
Oil and grease	31	31
TSS	47	37
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(j) Post-sawing/grinding rinsewater.

SUBPART H—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of sawed or ground uranium rinsed	
Oil and grease	380	380
TSS	570	460
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(k) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

Subpart I—Zinc Forming Subcategory

§ 471.90 Applicability; description of the zinc forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the zinc forming subcategory.

§ 471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc rolled with emulsions	
Chromium	.60	.30
Cyanide	.40	.20
Zinc	2.00	.80
Oil and grease	26.00	17.00
TSS	57.00	27.00
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(c) Rolling contact lubricant-coolant water.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc rolled with contact lubricant-collant water	
Chromium	150	62
Cyanide	100	42
Zinc	510	210
Oil and grease	6,900	4,200
TSS	14,000	6,800
pH	(1)	(1)

[1] With the range of 7.5 to 10.0 at all times.

(d) Drawing spent emulsions.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc drawn with emulsions	
Chromium	3.5	1.4
Cyanide	2.3	1.0
Zinc	12.0	4.9
Oil and greese	160.0	96.0
TSS	330.0	160.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Direct chill casting contact cooling water.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc cast by the direct chill method	
Chromium	220	91
Cyanide	150	60
Zinc	730	310
Oil and greese	10,000	6,000
TSS	21,000	9,800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Stationary casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(g) Heat treatment contact cooling water.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc heat treated	
Chromium	330	140
Cyanide	220	91
Zinc	1,100	460
Oil and greese	15,000	9,100
TSS	31,000	15,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment spent baths.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc surface treated	
Chromium	4.2	1.7
Cyanide	2.8	1.1
Zinc	14.0	5.8
Oil and greese	190.0	110.0
TSS	30.0	190.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Surface treatment rinsewater.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc surface treated	
Chromium	2,100	870
Cyanide	1,400	580
Zinc	7,100	3,000
Oil and greese	97,000	58,000
TSS	200,000	95,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Alkaline cleaning spent baths.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc alkaline cleaned	
Chromium	.30	.10
Cyanide	.20	.10
Zinc	1.00	.40
Oil and greese	14.00	6.60
TSS	29.00	14.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Alkaline cleaning rinsewater.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc alkaline cleaned	
Chromium	2,500	1,000
Cyanide	1,700	690
Zinc	8,400	3,500
Oil and grease	110,000	69,000
TSS	230,000	110,000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(l) Sawing/grinding spent lubricants.

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc sawed or ground	
Chromium	24.0	10.0
Cyanide	16.0	6.6
Zinc	80.0	33.0
Oil and grease	1,100.0	660.0
TSS	2,300.0	1,100.0
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc rolled with emulsions	
Chromium	.50	.20
Cyanide	.30	.10
Zinc	1.40	.60

(c) Rolling contact lubricant-coolant water.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc rolled with contact lubricant-coolant water	
Chromium	13.0	5.2
Cyanide	6.9	2.8
Zinc	35.0	15.0

(d) Drawing spent emulsions.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc drawn with emulsions	
Chromium	3.00	1.20
Cyanide	1.60	.60
Zinc	8.20	3.40

(e) Direct chill casting contact cooling water.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc cast by the direct chill method	
Chromium	19.0	7.5
Cyanide	10.0	4.0
Zinc	51.0	21.0

(f) Statutory casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(g) Heat treatment contact cooling water.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc heat treated	
Chromium	28.0	11.0
Cyanide	15.0	6.1
Zinc	78.0	32.0

(h) Surface treatment spent baths.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc surface treated	
Chromium	3.50	1.40
Cyanide	1.90	.80
Zinc	10.00	4.00

(i) Surface treatment rinsewater.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc surface treated	
Chromium	180	73
Cyanide	97	39

SUBPART I—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	500	200

(j) Alkaline cleaning spent baths.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc alkaline cleaned	
Chromium	.30	.10
Cyanide	.10	.10
Zinc	.70	.30

(k) Alkaline cleaning rinsewater.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc alkaline cleaned	
Chromium	2,100	860
Cyanide	1,100	460
Zinc	5,800	2,400

(l) Sawing/grinding spent lubricants.

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pounds per billion pounds) of zinc sawed or groundd	
Chromium	20.0	8.2
Cyanide	11.0	4.4
Zinc	56.0	23.0

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.93 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Rolling spent neat oils.

There shall be no discharge of process wastewater pollutants.

(b) Rolling spent emulsions.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc rolled with emulsions	
Chromium	.50	.20

SUBPART I—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	.30	.10
Zinc	1.40	.60
Oil and grease	14.00	14.00
TSS	21.00	17.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Rolling contact lubricant-coolant water.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc rolled with contact lubricant-coolant water	
Chromium	13.0	5.2
Cyanide	6.9	2.8
Zinc	35.0	15.0
Oil and grease	350.0	350.0
TSS	520.0	420.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Drawing spent emulsions.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc drawn with emulsions	
Chromium	3.00	1.20
Cyanide	1.60	.60
Zinc	8.20	3.40
Oil and grease	80.00	80.00
TSS	120.00	96.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Direct chill casting contact cooling water.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc cast by the direct chill method	
Chromium	19.0	7.5
Cyanide	10.0	4.0
Zinc	51.0	21.0
Oil and grease	500.0	500.0
TSS	750.0	600.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Stationary casting contact cooling water.

There shall be no discharge of process wastewater pollutants.

(g) Heat treatment contact cooling water.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc heat treated	
Chromium	28.0	11.0
Cyanide	15.0	6.1
Zinc	78.0	32.0
Oil and grease	760.0	760.0
TSS	1,100.0	910.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment spent baths.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc surface treated	
Chromium	3.50	1.40
Cyanide	1.90	.80
Zinc	10.00	4.00
Oil and grease	95.00	95.00
TSS	140.00	110.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Surface treatment rinsewater.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc surface treated	
Chromium	180	73
Cyanide	97	39
Zinc	500	200
Oil and grease	4,900	4,900
TSS	7,300	5,800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Alkaline cleaning spent baths.

There shall be no discharge of process wastewater pollutants.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc alkaline cleaned	
Chromium	.30	.10
Cyanide	.10	.10
Zinc	.70	.30
Oil and grease	7.20	7.20
TSS	11.00	8.60
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Alkaline cleaning rinsewater.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc alkaline cleaned	
Chromium	2,100	860
Cyanide	1,100	460
Zinc	5,800	2,400
Oil and grease	57,000	57,000
TSS	86,000	69,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Sawing/grinding spent lubricants.

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zinc sawed or ground	
Chromium	20.0	8.2
Cyanide	11.0	4.4
Zinc	56.0	23.0
Oil and grease	550.0	550.0
TSS	820.0	660.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.94 Pretreatment standards for existing sources. [Reserved]

§ 471.95 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for chromium, cyanide, and zinc are the same as specified in § 471.92.

§471.96 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations for TSS, oil and grease, and pH are the same as specified in § 471.91.

Subpart J—Zirconium/Hafnium Forming Subcategory

§ 471.100 Applicability; description of the zirconium/hafnium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the zirconium/hafnium forming subcategory.

§ 471.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(b) Extrusion spent emulsions.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium extruded with emulsions	
Chromium	33.0	13.0
Cyanide	21.0	8.9
Nickel	140.0	94.0
Ammonia	9,900.0	4,300.0
Fluoride	4,400.0	2,000.0
Hafnium	150.0	67.0
Zirconium	150.0	67.0
Oil and grease	1,500.0	890.0
TSS	3,000.0	1,400.0
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) Extrusion press hydraulic fluid leakage.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium extruded	
Chromium	160	67
Cyanide	110	44
Nickel	710	470
Ammonia	49,000	22,000
Fluoride	22,000	9,800
Hafnium	760	340
Zirconium	760	340
Oil and grease	7,400	4,400
TSS	15,000	7,200
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded zirconium/hafnium heat treated	
Chromium	130	51
Cyanide	83	34
Nickel	550	360
Ammonia	36,000	17,000
Fluoride	17,000	7,500
Hafnium	580	260
Zirconium	580	260
Oil and grease	5,700	3,400
TSS	12,000	5,600
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) Tube reducing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(f) Forging solution heat treatment contact cooling water.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged zirconium/hafnium heat treated	
Chromium	15.0	6.3
Cyanide	10.0	4.2
Nickel	67.0	44.0
Ammonia	4,700.0	2,000.0
Fluoride	2,100.0	920.0
Hafnium	72.0	32.0
Zirconium	72.0	32.0
Oil and grease	700.0	420.0
TSS	1,400.0	680.0
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) Surface treatment spent baths.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium surface treated	
Chromium	180	72
Cyanide	120	48
Nickel	770	510
Ammonia	53,000	23,000
Fluoride	24,000	11,000
Hafnium	820	360
Zirconium	820	360
Oil and grease	8,000	4,800
TSS	16,000	7,800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment rinsewater.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium surface treated	
Chromium	6,700	2,800
Cyanide	4,400	1,800
Nickel	29,000	19,000
Ammonia	2,000,000	900,000
Fluoride	910,000	400,000
Hafnium	31,000	14,000
Zirconium	31,000	14,000
Oil and grease	310,000	180,000
TSS	630,000	300,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) Alkaline cleaning spent baths.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium alkaline cleaned	
Chromium	940	380
Cyanide	620	260
Nickel	4,100	2,700
Ammonia	280,000	120,000
Fluoride	130,000	56,000
Hafnium	4,400	1,900
Zirconium	4,400	1,900
Oil and grease	43,000	26,000
TSS	87,000	42,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) Alkaline cleaning rinsewater.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium alkaline	
Chromium	24,000	10,000
Cyanide	16,000	6,600
Nickel	110,000	70,000
Ammonia	7,400,000	3,200,000
Fluoride	3,300,000	1,500,000
Hafnium	110,000	50,000
Zirconium	110,000	50,000
Oil and grease	1,100,000	660,000
TSS	2,300,000	1,100,000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) Sawing/grinding spent lubricants.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium sawed or ground	
Chromium	4.0	1.c
Cyanide	2.6	1.1
Nickel	17.0	11.0
Ammonia	1,200.0	530.0
Fluoride	540.0	240.0
Hafnium	18.0	8.2

SUBPART J—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zirconium	18.0	8.2
Oil and grease	180.0	110.0
TSS	370.0	180.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Sawing/grinding wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(n) Degreasing rinsewater.

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnuim degreased	
Chromium	890	370
Cyanide	590	240
Nickel	3,900	2,600
Ammonia	270,000	120,000
Fluoride	120,000	54,000
Hafnium	4,200	1,800
Zirconium	4,200	1,800
Oil and grease	41,000	24,000
TSS	83,000	40,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(b) Extrusion spent emulsions.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium extruded with emulsions	
Chromium	27.0	11.0
Cyanide	15.0	5.9
Nickel	41.0	27.0
Ammonia	9,900.0	4,300.0
Fluoride	4,400.0	2,000.0
Hafnium	51.0	22.0
Zirconium	51.0	22.0

(c) Extrusion press hydraulic fluid leakage.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium extruded	
Chromium	140	56
Cyanide	74	30
Nickel	200	140
Ammonia	49,000	22,000
Fluoride	22,000	9,800
Hafnium	260	110
Zirconium	260	110

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded zirconium/hafnium heat treated	
Chromium	11.0	4.3
Cyanide	5.7	2.3
Nickel	16.0	11.0
Ammonia	3,800.0	1,700.0
Fluoride	1,700.0	750.0
Hafnium	20.0	8.5
Zirconium	20.0	8.6

(e) Tube reducing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(f) Forging solution heat treatment contact cooling water.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged zirconium/hafnium heat treated	
Chromium	13.0	5.2
Cyanide	7.0	2.8
Nickel	19.0	13.0
Ammonia	4,700.0	2,000.0
Fluoride	2,100.0	920.0
Hafnium	24.0	10.0
Zirconium	24.0	10.0

(g) Surface treatment spent baths.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium surface treated	
Chromium	150	60
Cyanide	80	32
Nickel	220	150
Ammonia	53,000	23,000
Fluoride	24,000	11,000

SUBPART J—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Hafnium	280	120
Zirconium	280	120

(h) Surface treatment rinsewater.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium surface treated	
Chromium	570	230
Cyanide	310	120
Nickel	840	570
Ammonia	200,000	90,000
Fluoride	91,000	40,000
Hafnium	1,100	460
Zirconium	1,100	460

(i) Alkaline cleaning spent baths.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium alkaline cleaned	
Chromium	790	320
Cyanide	430	170
Nickel	1,200	790
Ammonia	280,000	120,000
Fluoride	130,000	56,000
Hafnium	1,500	640
Zirconium	1,500	640

(j) Alkaline cleaning rinsewater.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium alkaline cleaned	
Chromium	2,000	830
Cyanide	1,100	440
Nickel	3,000	2,000
Ammonia	740,000	320,000
Fluoride	330,000	150,000
Hafnium	3,800	1,700
Zirconium	3,800	1,700

(k) Sawing/grinding spent lubricants.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium sawed or ground	
Chromium	3.30	1.40
Cyanide	1.80	.70
Nickel	5.00	3.30
Ammonia	1,200.00	530.00
Fluoride	540.00	240.00

SUBPART J—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Hafnium	6.20	2.70
Zirconium	6.20	2.70

(l) Sawing/grinding wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(n) Degreasing rinsewater.

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium degreased	
Chromium	75	30
Cyanide	41	16
Nickel	110	75
Ammonia	27,000	12,000
Fluoride	12,000	5,400
Hafnium	140	61
Zirconium	140	61

§ 471.103 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(b) Extrusion spent emulsions.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium extruded with emulsions	
Chromium	27.0	11.0
Cyanide	15.0	5.9
Nickel	41.0	27.0
Ammonia	9,900.0	4,300.0
Fluoride	4,400.0	2,000.0
Hafnium	51.0	22.0
Zirconium	51.0	22.0
Oil and grease	740.0	740.0
TSS	1,100.0	890.0
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(c) Extrusion press hydraulic fluid leakage.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium extruded	
Chromium	140	56
Cyanide	74	30
Nickel	200	140
Ammonia	49,000	22,000
Fluoride	22,000	9,800
Hafnium	260	110
Zirconium	260	110
Oil and grease	3,700	3,700
TSS	5,600	4,400
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded zirconium/hafnium heat treated	
Chromium	11.0	4.3
Cyanide	5.7	2.3
Nickel	16.0	11.0
Ammonia	3,800.0	1,700.0
Fluoride	1,700.0	750.0
Hafnium	20.0	8.6
Zirconium	20.0	8.6
Oil and grease	290.0	290.0
TSS	430.0	340.0
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(e) Tube reducing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(f) Forging solution heat treatment contact cooling water.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged zirconium/hafnium heat treated	
Chromium	13.0	5.2
Cyanide	7.0	2.8
Nickel	19.0	13.0
Ammonia	4,700.0	2,000.0
Fluoride	2,100.0	920.0
Hafnium	24.0	10.0
Zirconium	24.0	10.0
Oil and grease	350.0	350.0
TSS	520.0	420.0
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(g) Surface treatment spent baths.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium surface treated	
Chromium	150	60
Cyanide	80	32
Nickel	220	150
Ammonia	53,000	23,000
Fluoride	24,000	11,000
Hafnium	280	120
Zirconium	280	120
Oil and grease	4,000	4,000
TSS	6,000	4,800
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment rinsewater.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium surface treated	
Chromium	570	230
Cyanide	310	120
Nickel	840	570
Ammonia	200,000	90,000
Fluoride	91,000	40,000
Hafnium	1,100	460
Zirconium	1,100	460
Oil and grease	15,000	15,000
TSS	23,000	18,000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(i) Alkaline cleaning spent baths.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium alkaline cleaned	
Chromium	790	320
Cyanide	430	170
Nickel	1,200	790
Ammonia	280,000	120,000
Fluoride	130,000	56,000
Hafnium	1,500	640
Zirconium	1,500	640
Oil and grease	21,000	21,000
TSS	32,000	26,000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(j) Alkaline cleaning rinsewater.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium alkaline cleaned	
Chromium	2,000	830
Cyanide	1,100	440

SUBPART J—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	3,000	2,000
Ammonia	740,000	320,000
Fluoride	330,000	150,000
Hafnium	3,800	1,700
Zirconium	3,800	1,700
Oil and grease	55,000	55,000
TSS	83,000	66,000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(k) Sawing/grinding spent lubricants.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium sawed or ground	
Chromium	3.30	1.40
Cyanide	1.80	.70
Nickel	5.00	3.30
Ammonia	1,200.00	530.00
Fluoride	540.00	240.00
Hafnium	6.20	2.70
Zirconium	6.20	2.70
Oil and grease	90.00	90.00
TSS	140.00	110.00
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(l) Sawing/grinding wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(n) Degreasing rinsewater.

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium degreased	
Chromium	75	30
Cyanide	41	16
Nickel	110	75
Ammonia	27,000	12,000
Fluoride	12,000	5,400
Hafnium	140	61
Zirconium	140	61
Oil and grease	2,000	2,000
TSS	3,000	2,400
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

§ 471.104 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for chromium, cyanide, nickel, ammonia, fluoride, hafnium, and zirconium are the same as specified in § 471.102.

§ 471.105 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for chromium, cyanide, nickel, ammonia, fluoride, hafnium, and zirconium are the same as specified in § 471.102.

§ 471.106 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125–32 any existing source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Drawing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(b) Extrusion spent emulsions.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium extruded with emulsions	
Oil and grease	1,500	890
TSS	3,000	1,400
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(c) Extrusion press hydraulic fluid leakage.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium extruded	
Oil and grease	7,400	4,400
TSS	15,000	7,200
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(d) Extrusion press and solution heat treatment contact cooling water.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of extruded zirconium/hafnium heat treated	
Oil and grease	570	340
TSS	1,200	560
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(e) Tube reducing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(f) Forging solution heat treatment contact cooling water.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of forged zirconium/hafnium heat treated	
Oil and grease	700	420
TSS	1,400	680
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(g) Surface treatment spent baths.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium surface treated	
Oil and grease	8,000	4,800
TSS	16,000	7,800
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(h) Surface treatment rinsewater.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/hafnium surface treated	
Oil and grease	31,000	18,000
TSS	63,000	30,000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times.

(i) Alkaline cleaning spent baths.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium alkaline cleaned	
Oil and grease	43,000	26,000
TSS	87,000	42,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Alkaline cleaning rinsewater.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium alkaline cleaned	
Oil and grease	110,000	66,000
TSS	230,000	110,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Sawing/grinding spent lubricants.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of zirconium/ hafnium sawed or ground	
Oil and grease	180	110
TSS	370	180
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Sawing/grinding wet APC blowdown.

There shall be no discharge of process wastewater pollutants.

(m) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

(n) Degreasing rinsewater.

SUBPART J—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of zirconium/ hafnium degreased	
Oil and grease	4,100	2,400
TSS	8,300	4,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

Subpart K—Iron and Steel/Copper/ Aluminum Metal Powder Production and Powder Metallurgy Subcategory

§ 471.110 Applicability; description of the iron and steel/copper/aluminum metal powder production and powder metallurgy subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the iron and steel/copper/aluminum metal powder production and powder metallurgy subcategory.

§ 471.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Metal powder production atomization wastewater.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of iron, copper, and aluminum powder wet atomized.	
Copper	9,600	5,000
Cyanide	1,500	600
Lead	2,100	1,000
Aluminum	32,000	16,000
Iron	6,000	3,100
Oil and Grease	100,000	60,000
TSS	210,000	98,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Metal powder production milling wastewater.

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pounds) of iron, copper, and aluminum powder wet milled	
Copper	3,200	1,700
Cyanide	480	200
Lead	700	330
Aluminum	11,000	5,300
Iron	2,000	1,000
Oil and Grease	33,000	20,000
TSS	68,000	33,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10. at all times.

(c) Metal powder production wet APC blowdown.

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound/billion pound) of iron, copper, and aluminum powder produced	
Copper	5,000	2,600
Cyanide	770	320
Lead	1,100	530
Aluminum	17,000	8,400
Iron	3,200	1,600
Oil and Grease	53,000	32,000
TSS	110,000	51,000
pH	(12)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Sizing/repressing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Oil-Resin impregnation. wastewater.

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billions pounds) of iron, copper, and aluminum powder metallurgy parts impregnated with oil-resin	
Copper	140.0	75.0
Cyanide	22.0	8.9
Lead	31.0	15.0
Aluminum	480.0	240.0
Iron	89.0	45.0
Oil and grease	1,500.0	890.0
TSS	3,100.0	1,500.0
ph	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Steam treatment wet APC blowdown.

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts steam treated	
Copper	5,400	2,800
Cyanide	820	340
Lead	1,200	570
Aluminum	18,000	9,100
Iron	3,400	1,700
Oil and grease	57,000	34,000
TSS	120,000	55,000
ph	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Tumbling, burnishing and cleaning wastewater.

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billions pounds) of iron, copper, and aluminum powder metallurgy parts tumbled, burnished, or cleaned	
Copper	14,000	7,200
Cyanide	2,100	860
Lead	3,000	1,400
Aluminum	46,000	23,000
Iron	8,600	4,400
Oil and grease	140,000	86,000
TSS	290,000	140,000
ph	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Sawing/grinding spent lubricants

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billions) pounds of iron, copper, and aluminum powder metallurgy parts sawed or ground	
Copper	1,900	1,000
Cyanide	290	120
Lead	420	200
Aluminum	6,400	3,200
Iron	1,200	610
Oil and grease	20,000	12,000
TSS	41,000	20,000
ph	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Metal powder production atomization wastewater.

SUBPART K—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder wet atomized	
Copper	9,600	5,000
Cyanide	1,500	600
Lead	1,400	660
Aluminum	32,000	16,000
Iron	6,000	3,100

(b) metal powder production milling wastewater.

SUBPART K—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder wet milled	
Copper	3,200	1,700
Cyanide	480	200
Lead	470	220
Aluminum	11,000	5,300
Iron	2,000	1,000

(c) Metal powder production wet APC blowdown.

SUBPART K—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder produced	
Copper	5,000	2,600
Cyanide	770	320
Lead	740	340
Aluminum	17,000	8,400
Iron	3,200	1,600

(d) Sizing/repressing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Oil-Resin impregnation wastewater.

SUBPART K—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts impregnated with oil-resin	
Copper	140.0	75.0
Cyanide	22.0	8.9
Lead	21.0	9.7
Aluminum	490.0	240.0
Iron	89.0	45.0

(f) Steam treatment wet APC blowdown.

SUBPART K—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts steam treated	
Copper	540	280
Cyanide	82	34
Lead	800	370
Aluminum	1,800	910

SUBPART K—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Iron	340	170

(g) Tumbling, burnishing and cleaning wastewater.

SUBPART K—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts tumbled, burnished, or cleaned	
Copper	1,400	720
Cyanide	210	86
Lead	200	93
Aluminum	4,600	2,300
Iron	860	440

(h) Sawing/grinding spent lubricants.

SUBPART K—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts sawed or ground	
Copper	1,900	1,000
Cyanide	290	120
Lead	280	130
Aluminum	6,400	3,200
Iron	1,200	610

(i) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

§ 471.113 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

The limitations for copper, cyanide, lead, aluminum, and iron are the same as specified in § 471.112. The limitations for TSS, oil and grease, and pH are the same as specified in § 471.116.

§ 471.114 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by [36 months after promulgation] achieve the following pretreatment standards for existing sources (PSES): The limitations for copper, cyanide, lead, aluminum, and

iron are the same as specified in § 471.112.

§ 471.115 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations for copper, cyanide, lead, aluminum, and iron are the same as specified in § 471.112.

§ 471.116 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Metal powder production atomization wastewater.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder wet atomized	
Oil and grease	100,000	60,000
TSS	210,000	98,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Metal powder production milling wastewater.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder wet milled	
Oil and grease	33,000	20,000
TSS	68,000	33,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Metal powder production wet APC blowdown.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder produced	
Oil and grease	53,000	32,000
TSS	110,000	51,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Sizing/repressing spent lubricants.

There shall be no discharge of process wastewater pollutants.

(e) Oil-resin impregnation wastewater.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts impregnated with oil-resin	
Oil and grease	1,500	890
TSS	3,100	1,500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Steam treatment wet APC blowdown.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts steam treated	
Oil and grease	5,700	3,400
TSS	12,000	5,500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Tumbling, burnishing and cleaning wastewater.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts tumbled, burnished, or cleaned	
Oil and grease	14,000	8,600
TSS	29,000	14,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Sawing/grinding spent lubricants.

SUBPART K—BCT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kkg (pound per billion pounds) of iron, copper, and aluminum powder metallurgy parts sawed or ground	
Oil and grease	20,000	12,000
TSS	41,000	20,000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Degreasing spent solvents.

There shall be no discharge of process wastewater pollutants.

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Part III

Department of Education

34 CFR Parts 624 and 628

Institutional Aid Programs and Endowment Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 624 and 628

Institutional Aid Programs; Endowment Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes technical amendments to the Institutional Aid Programs—General Provisions regulations. The Secretary also proposes regulations for the Endowment Grant Program authorized by section 333 of Title III of the Higher Education Act of 1965 (HEA) as amended by the Challenge Grant amendments of 1983, Public Law 98-95. The regulations are necessary to implement the Endowment Grant Program.

DATES: Comments must be received on or before April 14, 1984.

ADDRESS: Comments should be addressed to Mr. Thomas Keyes, Policy and Planning Section, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Keyes, Telephone: (202) 245-2384.

SUPPLEMENTARY INFORMATION:

Background

The Endowment Grant Program is one of four programs authorized by Title III of the HEA and known collectively as the Institutional Aid Programs. The programs provided financial assistance to help eligible institutions of higher education to solve problems that threaten their ability to survive and to stabilize their management and fiscal operations so that they may achieve self-sufficiency. The other three programs are the Strengthening, Special Needs, and Challenge Grant Programs.

Under the Edowment Grant Program, the Secretary is authorized to make grants to eligible institutions of higher education for the purpose of establishing endowment funds at those institutions. The Federal grant funds must be matched on a dollar-for-dollar basis by the grantee. The Federal grant and the institutional match of that amount is called the "endowment fund corpus". The institution may not expend any of the endowment fund corpus for the length of the grant period, which may extend to 20 years. At the end of the grant period, the grantee may use the endowment fund corpus for any educational purpose.

In general, a grantee may spend up to 50 percent of endowment fund income earned prior to the date of each proposed expenditure. (Endowment fund income is the value of the endowment fund minus the endowment fund corpus.) The institution may use that income to defray expenditures necessary to the operation of the institution, including general operating and maintenance expenses.

Highlights of Proposed Regulations

The following is a discussion of some of the major provisions of the proposed regulations.

Eligibility. (§ 628.2) In general, institutions eligible to receive grants under the Challenge Grant Program are eligible to receive a grant under the Endowment Grant Program.

Selection criteria and Funding priorities. (§ 628.31 and § 628.32) The selection criteria and funding priorities set forth in the statute authorizing the Endowment Grant Program, the Challenge Grant Amendments of 1983, set forth in detail the selection criteria and the funding priorities that the Secretary will use to choose grantees. The regulations reflect those statutory provisions.

The selection criteria and funding priorities, other than the criterion dealing with being an existing grantee of a Strengthening or Special Needs Program grant, are relative criteria. That is, highest priority is given to institutions with the lowest endowment funds per full-time equivalent student and the most number of points under the selection criteria are given to institutions which have made the greatest effort to increase their endowment funds or which will match the endowment grant with the highest percentage of nongovernmental funds.

To ensure fairness in the selection process, the Secretary has proposed to rank applicants under these criteria and priorities against comparable institutions. Thus, two-year public institutions will be compared to other two-year public institutions, two-year private institutions with other two-year private institutions, four-year public institutions with other four-year public institutions, and four-year private institutions with other four-year private institutions.

For the purpose of implementing the selection criterion in § 628.31(a) and the priority in § 628.32(b), an institution's existing endowment fund includes an endowment fund operated by a foundation if the foundation was established for the purpose of raising money for the institution. It also includes a quasi-endowment fund, if any. A quasi-endowment fund is a fund established by the governing board of the institution to function like an endowment fund. However, the entire quasi-endowment fund may be expended at any time at the discretion of the governing board.

Tie-Breaking Mechanism. (§ 628.30(d)) In selecting institutions for endowment grants, the Secretary has proposed to use only the criteria and priorities specifically set forth in the statute authorizing the Endowment Grant Program. Further the Secretary has proposed to evaluate these criteria on an abjective basis using, in effect, a mathematical formula for each criterion and priority. As a consequence of this procedure, the Secretary believes that many institutions may receive identical total scores because they have zero endowment funds and that a tie-breaking mechanism will be necessary to select grantees.

The Secretary has proposed one tie-breaking system in the proposed regulation as § 628.30(d). He is also proposing two additional systems in this preamble. The Secretary specifically invites comments on these three tie-breaking procedures and invites commenters to suggest other tie-breaking procedures.

The first proposed procedure is set forth in § 628.30(d) of the proposed regulations. Under this tie-breaking system, institutions will be selected on their ability to raise the matching funds required by their application as early as possible. Thus, the most points would be given to those applicants that raised the greatest percentages of their required matching funds before grantees are selected. Thus, an institution that requested a $100,000 grant and raised $10,000 (10% of $100,000) during this period would receive a grant over another institution that requested a $150,000 grant and raised $12,000 (9% of $150,000).

The second proposed tie-breaking system involves adding one dollar to the reported amount of endowment funds. Under this proposal, ties would be avoided because full-time equivalent undergraduate enrollment would not be divided into zero dollars. Under this proposal, institutions would be compared to similar type institutions.

A third alternative system would involve the use of education and general expenditures per full-time equivalent undergraduate student enrolled at the institution as the basis for breaking ties among applicants. Under this proposal, institutions with the lowest education and general expenditures per full-time equivalent undergraduate students

would be selected for funding. Under this proposal, institutions would be compared to similar type institutions.

Matching funds and the fund-raising period. (§ 628.41) An applicant must match the endowment grant on a dollar-for-dollar basis. The institution may match the endowment grant only with cash or low-risk negotiable securities that a regulated insurance company may buy under the law of the State in which the institution is located.

An institution may *not* use as its matching funds, Federal funds, funds it receives from an existing endowment fund, or borrowed funds.

For the purpose of this rule, an institution's existing endowment fund includes an endowment fund operated by a foundation if the foundation was established for the purpose of raising money for the institution.

The Secretary recognizes that it may be difficult for institutions selected for endowment grants to raise their required matching funds during the grant application and selection period. Therefore, the Secretary has sought Congressional approval to permit funds appropriated for the Endowment Grant Program to remain available for obligation until expended. If Congress does not agree with the Department's request, the Secretary proposes to reduce the duration of the fund-raising period accordingly. On the assumption that Congress will agree, the Secretary has proposed in § 628.41(a)(3) that institutions selected to receive an endowment grant will be permitted to raise their matching funds during a period lasting not more than 18 months after the date they are notified of their selection as a grantee.

The Secretary further recognizes that even with the proposed extended fund-raising period, there may be situations in which the grantee fails to reach its required match. In such instances, the Secretary would reduce the grant accordingly and award these funds to other applicants. However, the Secretary believes that efforts to raise these funds should proceed as quickly as possible. The Secretary particularly invites comments on whether a provision should be added to the final regulations which would establish interim fund-raising goals to avoid situations where the entire fund-raising period must expire before unmatched funds could be awarded to other institutions. For example, such a provision could provide that if one-half of the funds were not raised by the mid-point of the fund-raising period, the grant would be reduced at that time by an appropriate percentage (e.g., twenty-five percent). These funds would then be awarded in rank order to other applicants that were not initially selected as grantees. This procedure would afford these new grantees a more reasonable amount of time in which to raise the required matching funds.

Costs associated with investing endowment fund corpus and income. (§ 628.43 and § 628.44) An institution may encounter certain mandatory costs when investing endowment fund corpus and income such as stock broker commissions and fees to "load" mutual funds. Such costs may be paid with endowment fund corpus and will be considered a permissible investment expense. Similarly such costs incurred when managing the endowment fund after the initial investment will also be considered a permissible investment expense. Such costs will, however, lower the value of the endowment fund. For example, if an institution has an endowment fund corpus of $200,000, invests that money in low-risk securities and incurs a brokerage fee of $2,000, the value of the endowment fund will only be $198,000. Thus, before an institution could withdraw any endowment fund income, the fund would have to exceed $200,000.

If, however, these costs are associated with the sale of securities in order to withdraw and expend a portion of the endowment fund income, they will be considered an administrative cost. Administrative costs are a legitimate expense for endowment fund income and such expenses are considered part of the withdrawn and expended endowment fund income. For example, institution A has earned income of $100,000 and has not previously withdrawn and expended any endowment fund income. Institution A can thus withdraw and expend $50,000. Institution A's endowment fund is all in low-risk stock. It sells $50,000 of stock in its endowment fund incurring $1,000 in brokerage fees. Thus, the institution nets $49,000 on the sale. The brokerage fee counts as part of the endowment fund income that is withdrawn and expended. The institution cannot sell $51,000 of stock in order to receive $50,000 in cash.

Administrative costs associated with the management of the endowment fund are legitimate expenses for withdrawn endowment fund income as are administrative costs incurred satisfying audit and reporting requirements. Similarly, the fees of financial advisors or endowment fund managers are also legitimate expenditures for endowment fund income.

Calculating the amount of endowment fund income that may be expended. (§ 628.44(a)(3)) Unless an exception is provided by the Secretary, a grantee may withdraw and expend up to 50 percent of the total aggregate endowment fund income earned prior to the date of expenditure. The maximum amount of endowment fund income that may be withdrawn and expended at a particular time is calculated as follows:

1. Determine the current market value of the endowment fund for the projected date of withdrawal.
2. Determine the amount of endowment fund income for the date of withdrawal by subtracting from the current market value of the endowment fund, the endowment corpus.
3. Determine the amount of endowment fund income previously withdrawn and expended.
4. Compare the above two amounts and determine if the amount of endowment fund income in the endowment fund at the date of withdrawal exceeds the amount of such income previously withdrawn.
5. If the amount of endowment fund income in the endowment fund exceeds the amount of endowment fund income previously withdrawn, one half of the excess may be withdrawn and expended.

Examples

Institution A has an endwoment fund equal to $300,000 on the date of the planned withdrawal. Its endowment fund corpus was $225,000. It has never previously withdrawn or expended any endowment fund income.

Institution A has endowment fund income of $75,000 ($300,000 −$225,000). It may withdraw up to 50 percent or half of that amount, $37,500, because it never previously withdrew any endowment fund income.

2. Institution B has an endowment fund with a current market value of $500,000 on the date of the planned withdrawal. Its endowment fund corpus was −300,000. It previously expended $10,000, $50,000 and $25,000.

Institution B, thus, has endowment fund income of $200,000 ($500,00 − $300,000). It previously withdrew and expended $85,000 of endowment fund income ($10,000+$50,000+$25,000). the current value of the endowment fund income exceeds the amount previously expended by $115,000 ($200,00 −$85,000). Thus, institution B may withdraw and expend up to $57,500 ($115,000 divided by 2).

Institution B withdraws the $57,500. It may not withdraw or expend additional endowment fund income until the endowment fund income in the fund on the date of planned withdrawal exceeds $142,500 ($85,00+$57,500) and if it does,

it may only withdraw and expend up to 50 percent of that excess.

3. Institution C has an endowment fund consisting of money market funds and low-risk stock. The value of the fund on the planned date of withdrawal was $600,000. The endowment fund corpus is $400,000. It has previously withdrawn $190,000.

Institution C has endowment fund income of $200,000 ($600,00 −$400,000). The current value of its endowment fund income exceeds its previously expended endowment fund income by $10,000 ($200,00 −$190,000). It, thus, may withdraw and expend up to $5,000 ($10,000 divided by 2).

Institution C sells $5,000 of the stock incurring a brokerage fee of $200. The institution may use the other $4,800 for other legitimate expenses. As a result of a decrease in the value of its stock, the next time institution C wishes to withdraw and expend endowment fund income, the value of its fund is $580,000. Thus, its endowment fund income is $180,000. The amount of endowment fund income it previously withdrew and expended equals $195,00 ($190,000+$5,000). Thus, institution C's endowment fund income does not exceed the amount of income it previously withdrew and expended ($180,000 vs $195,000) and it may not withdraw any endowment fund income. Further, it may not withdraw such income until, on the planned date of withdrawal, that income exceeds $195,000 or, put another way, the value of its endowment fund exceeds $595,000.

As can be seen from these examples, the key to determining whether endowment fund income can be withdrawn and expended and the maximum amount that can be withdrawn and expended is to keep a running total of the aggregate amount of endowment income withdrawn and expended.

Miscellaneous

The Secretary proposes technical amendments to the Institutional Aid Programs—General Provisions regulations, 34 CFR Part 624, in order to incorporate the Endowment Grant Program regulations, 34 CFR Part 628.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291 and are classified as nonmajor regulations because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of higher education. From past experience in the other Institutional Aid Programs, it is clear that small colleges will easily be able to follow these regulations without adverse economic impact.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 45th day after publication of this document will be considered before the Secretary issues final regulations.

The Secretary specifically invites comments regarding the tie breaking system for awarding grants and the interim fund-raising proposal for matching funds.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, ROB–3, 7th and D Streets SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act

The information collection requirements in these proposed regulations will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980.

To assist the Department in complying with the special requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Comments concerning information collection requirements only should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education. All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary also requests comments on whether these regulations would require institutions of higher education to transmit information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

List of Subjects in 34 CFR Parts 628 and 624

Colleges and universities, Education, Grant programs—Education.

(Catalog of Federal Domestic Assistance Number 84.031, Institutional Aid Programs)

Dated: February 27, 1984.

T. H. Bell,

Secretary of Education.

The Secretary proposes to amend Part 624 and to add a new Part 628 to Title 34 of the Code of Federal Regulations as follows:

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

Authority: 20 U.S.C. 1051, 1057, 1060 and 1066.

1. In § 624.1, paragraph (b)(4) is added to read as follows:

§ 624.1 Institutional Aid Programs.

* * * * *

(b) * * *

(4) The Endowment Grant Program (34 CFR Part 628).

* * * * *

2. In § 624.5, paragraph (c) is revised to read as follows:

§ 624.5 Regulations that apply to the Institutional Aid Programs.

* * * * *

(c) The regulations in 34 CFR Parts 625, 626, 627, or 628, as applicable.

* * * * *

3. Section 624.10 is revised to read as follows:

§ 624.10 Types of grants.

The Secretary awards three principal types of grants under the Institutional Aid Programs:

(a) Planning grants, as described in § 624.11.

(b) Development grants, as described in § 624.12.

(c) Endowment grants, as described in § 628.10.

PART 628—ENDOWMENT GRANT PROGRAM

4. A new Part 628 is added as follows:

Subpart A—General

Sec.

628.1 What is the Endowment Grant Program?
628.2 Who is eligible to apply for an endowment grant under the Endowment Grant Program?
628.3 Under what conditions may an eligible institution designate a foundation as the recipient of an endowment grant?
628.4 How often is an institution eligible to receive an endowment grant under the Endowment Grant Program?
628.5 What regulations apply to the Endowment Grant Program?
628.6 What definitions apply to the Endowment Grant Program?

Subpart B—What Type of Grant Does the Secretary Award Under the Endowment Grant Program?

628.10 What type of grant does the Secretary award under the Endowment Grant Program?

Subpart C—How Does One Apply for a Grant Under the Endowment Grant Program?

628.20 What must an Endowment Grant Program application include?

Subpart D—How Does the Secretary Award a Grant Under the Endowment Grant Program?

628.30 How does the Secretary evaluate an application under the Endowment Grant Program?
628.31 What selection criteria does the Secretary use in awarding grants under the Endowment Grant Program?
628.32 What funding priorities does the Secretary use in awarding grants under the Endowment Grant Program?
628.33 What amount of available funds under the Endowment Grant Program does the Secretary award to certain types of institutions?

Subpart E—What Conditions Must Be Met by a Grantee Under the Endowment Grant Program?

628.40 What are the procedures for establishing the endowment fund, matching the endowment grant, and investing the endowment fund corpus?
628.41 What are eligible matching funds?
628.42 What investment standards must an institution follow?
628.43 How may the endowment fund corpus be used?
628.44 How much endowment fund income may be used and for what purposes?
628.45 What are the recordkeeping and reporting requirements of the grantee?
628.46 What may happen if a grantee fails to administer the endowment grant in accordance with the provisions of this part?

Authority: Secs. 333 and 341–347 of the Title III of the Higher Education Act of 1965.

(20 U.S.C. 1065a, 1066–1069c)

Subpart A—General

§ 628.1 What is the Endowment Grant Program?

The Endowment Grant program provides endowment grants to eligible institutions of higher education, which must be matched on a dollar-for-dollar basis by those institutions, to:

(a) Establish or increase endowment funds;

(b) Provide additional incentives to promote fund-raising activities; and

(c) Foster increased independence and self-sufficiency at those institutions.

(20 U.S.C. 1065a)

§ 628.2 Who is eligible to apply for an endowment grant under the Endowment Grant Program?

An institution of higher education, including a branch campus, is eligible to apply for a grant under the Endowment Grant Program if it qualifies as an eligible institution as defined in § 627.1 (a)(1), (b) or (d) of the Challenge Grant Program regulations, 34 CFR 627.2 (a)(1), (b) or (d).

(20 U.S.C. 1065a)

§ 628.3 Under what conditions may an eligible institution designate a foundation as the recipient of an endowment grant?

An eligible institution may designate a foundation, which was established for the purpose of raising money for it, as the recipient of an endowment grant under this part if—

(a) The institution assures the Secretary in its application that the foundation is legally authorized to receive the endowment fund corpus and is legally authorized to administer the endowment fund in accordance with the provisions of this part;

(b) The foundation agrees to administer the endowment fund in accordance with the provisions of this part; and

(c) The institution agrees to be liable for any violation by the foundation of any applicable regulation, including any monetary liability that may arise as a result of a violation.

(20 U.S.C. 1065a(a)(6))

§ 628.4 How often is an institution eligible to receive an endowment grant under the Endowment Grant Program?

(a) Subject to the limitation in paragraph (b) of this section, an eligible institution may receive an endowment grant under this part even if it has previously received such a grant in another fiscal year.

(b) An institution may not receive an endowment grant under this part in more than two fiscal years in any five consecutive fiscal years.

(20 U.S.C. 1065a(a)(4)(B))

§ 628.5 What regulations apply to the Endowment Grant Program?

(a) The following regulations apply to the Endowment Grant Program:

(1) The regulations in 34 CFR 624.1 through 624.3, 624.6, 624.10, 624.20, 624.22, and 624.40;

(2) The regulations in this Part 628; and

(3) The regulations in 34 CFR 625.2, 626.2, and 627.2.

(b) Except as specifically indicated in this part, the Education Department's General Administrative Regulations (EDGAR) in 34 CFR Part 74 through Part 79 do not apply.

(20 U.S.C. 1065a)

§ 628.6 What definitions apply to the Endowment Grant Program?

In addition to the definitions applicable to this part in 34 CFR 624.6, the following definitions apply specifically to the Endowment Grant Program:

"Endowment fund" means a fund established by State law, by an institution of higher education, or by a foundation, which is exempt from taxation and is maintained for the purpose of generating income for the support of an institution of higher education, but which shall not include real estate.

"Endowment fund corpus" means an amount equal to the endowment grant or grants awarded under this part plus matching funds provided by the institution equal to the amount of such grant or grants.

"Endowment fund income" means an amount equal to the total value of the endowment fund established under the grant minus the endowment fund corpus.

(20 U.S.C. 1065a)

Subpart B—What Type of Grant Does the Secretary Award Under the Endowment Grant Program?

§ 628.10 What type of grant does the Secretary award under the Endowment Grant Program?

(a) The Secretary awards matching grants to eligible institutions of higher education for the purpose of establishing endowment funds at those institutions.

(b) An endowment grant awarded under this part may range from $50,000 to $250,000 in fiscal year 1984, and from $50,000 to $500,000 in subsequent fiscal years.

(c) The endowment grant awarded under this part may cover a grant period of up to twenty years.

(20 U.S.C. 1065a)

Subpart C—How Does One Apply for a Grant Under the Endowment Grant Program?

§ 628.20 What must an Endowment Grant Program application include?

(a) An applicant shall include sufficient information in its application for an endowment grant to enable the Secretary to determine whether it—

(1) Should be selected for a grant under this part in accordance with the selection criteria set forth in § 628.31 and the priorities set forth in § 628.32; and

(2) Will administer the endowment grant in accordance with the provisions of this part.

(b) An applicant shall include with its application its long-range plan containing all the elements required of such plans in 34 CFR 624.22 if, in the year of application, it is not a recipient of a development grant, or an applicant for a development grant, under the Strengthening, Special Needs or Challenge Grant Programs.

(20 U.S.C. 1065a)

Subpart D—How Does the Secretary Award a Grant Under the Endowment Grant Program?

§ 628.30 How does the Secretary evaluate an application under the Endowment Grant Program?

(a)(1) If an applicant in the year of application is not a recipient of a development grant under the Strengthening, Special Needs or Challenge Grant Programs, the Secretary reviews the applicant's long-range plan to determine whether—

(i) The plan contains all the elements required of such plans in 34 CFR 624.22;

(ii) Implementation of the plan will provide for self-sufficiency;

(iii) The applicant has identified the major problems or deficiencies that prevent it from becoming self-sufficient; and

(iv) The applicant has proposed effective strategies to overcome each problem or deficiency.

(2) The Secretary does not evaluate an application for an endowment grant from an institution identified in paragraph (a)(1) of this section unless the applicant's plan satisfies all the criteria set forth in that paragraph.

(b) The Secretary evaluates an application for an endowment grant on the basis of the selection criteria set forth in § 628.31, and up to 70 points for the priorities in § 628.32.

(2) In applying the criteria in § 628.31 and the priority in § 628.32(b), the Secretary judges applications from comparable institutions by placing each application in one of the following four categories:

(i) Four-year public institutions;

(ii) Four-year non-profit private institutions;

(iii) Public junior or community colleges; or

(iv) Non-profit private junior or community colleges.

(3) The maximum possible score for each criterion is indicated in parentheses following the title of that criterion.

(4) In selecting applications for grants, the Secretary follows the procedures set forth in § 75.217 of the Education Department General Administrative Regulations, 34 CFR 75.217.

(d) If applicant institutions receive the same total number of points under the criteria in § 628.31 and the priorities in § 628.32, and if it is necessary for the Secretary to select grantees from among these institutions, the Secretary shall select as grantees those institutions that raise the greatest percentage of their institutional matching funds by the thirtieth day after the closing date for endowment grant applications.

(20 U.S.C. 1065a)

§ 628.31 What selection criteria does the Secretary use in awarding grants under the Endowment Grant Program?

The Secretary uses the following criteria to evaluate an application under this part:

(a) *The applicant's effort to build or maintain its existing endowment.* (Total: 15 points—8 points for dollar increase; 7 points for percentage increase)

(1) The Secretary reviews each application for information that shows the effort made by the applicant to build or maintain its existing endowment fund.

(2) For the purpose of implementing this criterion, the Secretary excludes real estate from being considered as part of the applicant's existing endowment.

(3) The Secretary measures the applicant's effort by the dollar and percentage increase, from gifts but not from endowment fund income, in its existing endowment fund for the five-year period preceding the year of application.

(4) The Secretary assigns the most points (i.e. 8 points) to applicants with the greatest dollar increase and the most points (i.e. 7 points) to applicants with the greatest percentage increase, as compared to comparable applicant institutions.

(b) *Private matching funds.* (Total: 15 points)

(1) The Secretary reviews each application for information that shows the degree to which an applicant proposes to match the grant with nongovernmental, private funds giving the most points to applicants proposing to raise the largest percentage of matching funds from private sources as compared to comparable applicant institutions and to applicants whose plan is most likely to enable them to raise that percentage.

(2) The Secretary looks for information that shows—

(i) The specificity and quality of the plan for obtaining private matching funds; and

(ii) The percentage of private matching funds in hand at the time of application.

(20 U.S.C. 1065a)

§ 628.32 What funding priorities does the Secretary use in awarding grants under the Endowment Grant Program?

In awarding endowment grants, the Secretary uses the following two priorities—

(a) *Recipient of Strengthening or Special Needs Program grant.* (Total: 20 points) The Secretary gives 20 points to each applicant that, at the closing date for receipt of application under this part, is a recipient of a grant under the Strengthening or Special Needs Program in the fiscal year in which the applicant is applying for an endowment grant under this part.

(b) *Need for endowment grant.* (Total: 50 points)

(1) The Secretary gives up to 50 points to an applicant with the greatest need for an endowment grant under this part. The Secretary assigns points under this priority based on the current market value, as of December 31 of the calendar year preceding the calendar year of application, of the applicant's existing endowment fund in relation to the number of full-time equivalent students, as enrolled in the institution on that date.

(2) For the purpose of implementing this priority, the Secretary excludes real estate from being considered as part of the applicant's existing endowment.

(3) The Secretary assigns the most points to applicants with the smallest current market value of an existing endowment fund per full-time equivalent students as compared to comparable applicant institutions.

(20 U.S.C. 1065a)

§ 628.33 What amount of available funds under the Endowment Grant Program does the Secretary award to certain types of institutions?

With regard to the funds which the Secretary transfers from the Special

Needs Program, the Secretary awards funds under this part so that the amounts required to be awarded under § 626.31 (a) and (b) of the Special Needs Program regulations to junior or community colleges and to institutions with special needs that have historically served substantial numbers of black students with funds appropriated for that program are so awarded.

(20 U.S.C. 1065a, 1069c)

Subpart E—What Conditions Must Be Met by a Grantee Under the Endowment Grant Program?

§ 628.40 What are the procedures for establishing the endowment fund, matching the endowment grant, and investing the endowment fund corpus?

(a) If an institution has been selected to receive an endowment grant, it must, as a precondition to receiving that grant:

(1) Establish an endowment fund independent of any other endowment fund established by or for that institution;

(2) Deposit its matching funds in the endowment fund established under this part in an amount at least equal to the amount of the endowment grant; and

(3) Enter into an agreement with the Secretary to administer the endowment grant.

(b) Upon receipt of the endowment grant, the institution shall immediately deposit the grant proceeds into the endowment fund established under this part.

(c) Within fifteen working days of the receipt of the endowment grant, the institution shall invest the endowment fund corpus.

20 U.S.C. 1065a)

§ 628.41 What are eligible matching funds?

(a)(1) Before the Secretary disburses the grant funds, an institution shall—

(i) Match endowment grant funds received under this part on a dollar-for-dollar basis; and

(ii) Certify to the Secretary the amount of the eligible matching funds which have been deposited in the endowment fund.

(2) The institution may match the endowment grant in cash or in low-risk negotiable securities.

(b) The matching funds must be raised not later than eighteen months after an institution is notified that it has been selected to receive a grant under this part.

(c) For the purpose of paragraph (a) of this section, cash includes cash on hand, certificates of deposit and money market funds.

(d) For the purpose of paragraph (a) of this section, a negotiable security, to be considered as part of the institution's match—

(1) Must be eligible for purchase under § 628.42; and

(2) Shall be assessed at its current market value as of the end of the trading day on the date the institution deposits the security into the endowment fund established under this part.

(e)(1) An institution may not use as a source of its matching funds—

(i) Any Federal funds;

(ii) Any borrowed funds; or

(iii) Any endowment funds, including corpus or income, it receives from an existing endowment fund of the institution.

(2) For the purpose of paragraph (e)(1) of this section, an existing endowment fund of an institution includes any endowment fund of a foundation if the foundation was established for the purpose of raising money for the institution.

(20 U.S.C. 1065a)

§ 628.42 What investment standards must an institution follow?

(a)(1) An institution shall invest the endowment fund corpus and subsequent endowment fund income in savings accounts, or in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located.

(2) An institution may not invest its endowment fund corpus or subsequent endowment fund income in real estate.

(b) When investing the endowment fund corpus and income, the institution shall exercise the judgment and care, under the circumstances then prevailing, that a person of prudence, discretion and intelligence would exercise in the management of his or her own financial affairs.

(c) An institution may invest its endowment fund in savings accounts which include, but are not limited to:

(a) A federally insured bank savings account;

(2) A comparable interest bearing account offered by a bank; or

(3) A money market fund.

(d) An institution may invest its endowment fund in low-risk securities, assuming such investments are permitted under paragraph (a) of this section, which include, but are not limited to:

(1) Certificates of deposit;

(2) Mutual funds;

(3) Stocks; or

(4) Bonds.

(20 U.S.C. 1065a)

§ 628.43 How may the endowment fund corpus be used?

(a)(1) An institution shall invest the endowment fund corpus in accordance with § 628.42.

(2) An institution may pay costs incurred in purchasing eligible securities, such as stock broker commissions and fees to "load" mutual funds with endowment fund corpus.

(b)(1) The institution may not withdraw or expend any part of the endowment fund corpus for the duration of the endowment grant period.

(2) At the end of the endowment grant period, the institution may use the endowment fund corpus for any educational purpose.

(c) If, during the grant period, the institution improperly withdraws all or part of the endowment fund corpus, it shall repay to the Secretary, an amount equal to 50 percent of the withdrawn amount plus the income earned thereon.

(20 U.S.C. 1065a)

§ 628.44 How much endowment fund income may be used and for what purposes?

(a)(1) For the duration of the endowment grant period, an institution—

(i) Shall invest endowment fund income in accordance with § 628.42; and

(ii) May withdraw and expend 50 percent of the total aggregate endowment fund income earned prior to the date of expenditure.

(2) The costs incurred in buying and selling securities, such as stock broker commission and fees to "load" mutual funds—

(i) Shall not be considered funds withdrawn and expended for the purpose of the limitation contained in paragraph (a)(1)(ii) of this section if incurred in investing endowment fund income and corpus; and

(ii) Shall be considered funds withdrawn and expended for the purpose of the limitation contained in paragraph (a)(1)(ii) of this section if incurred in selling securities for the purpose of withdrawing endowment fund income from the fund.

(3) An institution shall calculate the amount of endowment fund income that it may expend at a particular time as follows:

(i) On each date that a withdrawal of income occurs, the institution shall—

(A) Determine the value of endowment fund income by subtracting the endowment fund corpus from the current market value of the endowment fund on that date; and

(B) Calculate the amount of endowment fund income previously withdrawn from the endowment fund.

(ii) If the value of endowment fund income in the endowment fund exceeds the aggregate amount of previously withdrawn endowment fund income, the institution may withdraw and expend 50 percent of that excess fund income.

(b) Notwithstanding paragraph (a)(1)(ii) of this section, upon request, the Secretary may permit an institution to expend more than 50 percent of the total aggregate endowment fund income earned prior to the date of expenditure if the institution demonstrates that such an expenditure is necessary because of—

(1) A financial emergency such as a pending insolvency or temporary liquidity problem;

(2) A life threatening situation for the institution resulting from a natural disaster or arson; or

(3) Another unusual occurrence or exigent circumstance.

(c) During the grant period, the institution may use the endowment fund income to defray any expenses necessary to the operation of the institution, including general operating and maintenance expenses and administrative expenses necessary to the operation and management of the endowment fund, except that it may not use such funds for—

(1) A school or department of divinity or any religious worship or sectarian activity;

(2) An activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution; or

(3) An activity that is inconsistent with a State plan of higher education applicable to such institution.

(d) At the end of the endowment grant period, the institution may use all of the endowment fund income for any educational purpose.

(e) If, during the grant period, an institution expends more endowment fund income than it is permitted under paragraphs (a) and (b) of this section, or in violation of paragraph (c) of this section, it shall repay to the Secretary an amount equal to 50 percent of the amount improperly expended.

(20 U.S.C. 1065a and 1969b)

§ 628.45 What are the recordkeeping and reporting requirements of the grantee?

(a) A grantee shall keep records and report as frequently as the Secretary requests regarding—

(1) The source, kind, date of donation and amount of matching funds;

(2) The type and amount of investments of the endowment fund corpus and income; and

(3) Expenditures of endowment fund income.

(b) A grantee shall allow the Secretary access to information as may be necessary to audit or examine the records required in paragraph (a) of this section.

(c) A grantee shall carry out the audit required in 34 CFR 74.61(h) and shall provide to the Secretary a copy of the external or internal audit to be performed at least every two years under 34 CFR 74.61(h).

(20 U.S.C. 1065a)

§ 628.46 What may happen if a grantee fails to administer the endowment grant in accordance with the provisions of this part?

(a) In addition to the reimbursement provisions of § 628.43 and § 628.44, after notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this part if the grantee institution—

(1) Expends portions of the endowment fund corpus or expends more than the permissible amount of the endowment fund income as prescribed in § 628.43 or § 628.44;

(2) Expends portions of the endowment fund income in violation of § 628.44(c);

(3) Fails to invest the endowment fund in accordance with the investment standards set forth in § 628.42;

(4) Fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds as required in § 628.40.

(b) If the Secretary terminates a grant under paragraph (a) of this section, the grantee shall return to the Secretary an amount equal to the sum of the original grant or grants under this part plus the income earned thereon.

(20 U.S.C. 1065a)

[FR Doc. 84-5741 Filed 3-2-84; 8:45 am]
BILLING CODE 4000-01-M

federal register

Monday
March 5, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1077]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: February 28, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft. rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1077
ISSUED FEBRUARY 28,1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-SUN EXPLORATION & PRODUCTION CO		RECEIVED: 02/09/84 JA: MI							
8419959		2111336048		103		NORWICH UNIT #4-126	NORWICH	6.0	DOW CHEMICAL CO
8419960		2111336051		103		NORWICH UNIT #4-129	NORWICH	4.0	DOW CHEMICAL CO
8419961		2111336061		103		NORWICH UNIT #4-130	NORWICH	9.0	DOW CHEMICAL CO
8419957		2111336062		103		NORWICH UNIT #4-131	NORWICH	21.0	DOW CHEMICAL CO
8419958		2111336052		103		NORWICH UNIT #4-132	NORWICH	21.0	DOW CHEMICAL CO
8419944		2111336053		103		NORWICH UNIT #4-133	NORWICH	21.0	DOW CHEMICAL CO
8419955		2111336097		103		NORWICH UNIT #4-134	NORWICH	24.0	DOW CHEMICAL CO
8419953		2111336098		103		NORWICH UNIT #4-135	NORWICH	11.0	DOW CHEMICAL CO
8419954		2111336063		103		NORWICH UNIT #4-136	NORWICH	47.0	DOW CHEMICAL CO
8419946		2111336064		103		NORWICH UNIT #4-137	NORWICH	21.0	DOW CHEMICAL CO
8419948		2111336065		103		NORWICH UNIT #4-138	NORWICH	16.0	DOW CHEMICAL CO
8419945		2111336080		103		NORWICH UNIT #4-139	NORWICH	31.0	DOW CHEMICAL CO
8419947		2111336100		103		NORWICH UNIT #4-140	NORWICH	43.0	DOW CHEMICAL CO
8419950		2111336102		103		NORWICH UNIT #4-141	NORWICH	15.0	DOW CHEMICAL CO
8419952		2111336057		103		NORWICH UNIT #4-142	NORWICH	12.0	DOW CHEMICAL CO
8419956		2111336104		103		NORWICH UNIT #5-34	NORWICH	4.0	DOW CHEMICAL CO
8419949		2111336060		103		NORWICH UNIT #5-35	NORWICH	5.0	DOW CHEMICAL CO
8419951		2111336103		103		NORWICH UNIT #5-36	NORWICH	24.0	DOW CHEMICAL CO
8419943		2111336050		103		NORWICH UNIT TR 4 #128	NORWICH	5.0	DOW CHEMICAL CO
8419963		2111336343		103		NORWICH UNIT TRACT 4 #143	NORWICH	1.0	DOW CHEMICAL CO
8419962		2111336345		103		NORWICH UNIT TRACT 4 #145	NORWICH	17.0	DOW CHEMICAL CO
NEBRASKA OIL & GAS CONSERVATION COMMISSION									
-BEREN CORPORATION		RECEIVED: 02/09/84 JA: NB							
8419968		2603321912		102-4		STATE OF NEBRASKA "D" #1	EAST HENDRICKS	9.0	K N ENERGY INC
8419964		2603321972		102-4		STATE OF NEBRASKA "D" #2	EAST HENDRIKS	4.0	K N ENERGY INC
8419965		2603321956		102-4		STATE OF NEBRASKA "E" #1	EAST HENDRICKS	2.6	K N ENERGY INC
-STRIKER PETROLEUM CORP		RECEIVED: 02/09/84 JA: NB							
8419967		2610522108		103		GUNDERSON #1	FARRELL	1.0	CITIES SERVICE CO
-TXO PRODUCTION CORP		RECEIVED: 02/09/84 JA: NB							
8419966		2603322171		103		BEYER #1	WEST SIDNEY	118.0	MARATHON OIL CC
OKLAHOMA CORPORATION COMMISSION									
-ANADARKO LAND & EXPLORATION CO		RECEIVED: 02/08/84 JA: OK							
8419774	25940	3503920954		103		MILLER #1-4	S E THOMAS	547.0	TRANSOK PIPE LINE
-ANADARKO PRODUCTION COMPANY		RECEIVED: 02/08/84 JA: OK							
8419799	26337	3513921783		103		NORTHEAST HARDESTY UNIT #12-4	NORTHEAST HARDESTY	16.0	PHILLIPS PETROLEU
-BOGERT OIL CO		RECEIVED: 02/08/84 JA: OK							
8419801	26341	3509322785		103		FLAMING UNIT #2-26	SOONER TREND	245.0	PHILLIPS PETROLEU
-C & S EXPLORATION INC		RECEIVED: 02/08/84 JA: OK							
8419761	23350	3512121006		103		KIRBY #1-16	NORTH SCIPIO	180.0	ARKANSAS LOUISIAN
8419790	24454	3512121050		103		KIRBY #2-16	NORTH SCIPIO	200.0	ARKANSAS LOUISIAN
-CONOCO INC		RECEIVED: 02/08/84 JA: OK							

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8419775	24313	3503920869		102-2		CROSSWHITE #1	E CLINTON	839.5	SOUTHERN NATURAL
-COTTON PETROLEUM CORPORATION				RECEIVED:	02/08/84	JA: OK			
8419804	27134	3501521141		107-DP		RIDLE #1	E GRACEMONT	0.0	UNITED GAS PIPELI
8419787	25862	3500722342		103		TAYLOR "A" #1	NORTH BALKO	0.0	PHILLIPS PETROLEU
-ENERGY RESERVES GROUP INC				RECEIVED:	02/08/84	JA: OK			
8419788	25758	3507300000		108		HILL UNIT #1	SW LACY	11.4	ARKANSAS LOUISIAN
8419789	25757	3507300000		108		POPE UNIT "B" #1	SW LACY	6.0	ARKANSAS LOUISIAN
-ENSERCH EXPLORATION INC				RECEIVED:	02/08/84	JA: OK			
8419791	25356	3514920390		103		R J EVANS #1	BURNS FLAT	0.0	NATURAL GAS PIPEL
-ENTEX PETROLEUM INC				RECEIVED:	02/08/84	JA: OK			
8419786	26154	3508320843		103		DALE #2	WEST LAWRIE	13.0	EASON OIL CO
-FLINT J A				RECEIVED:	02/08/84	JA: OK			
8419769	26288	3506321868		103		BERTHA #3	YEAGER	136.0	MEGA NATURAL GAS
8419771	26286	3506321619		103		HAROLD #1	YEAGER	37.0	MEGA NATURAL GAS
8419770	26287	3506321809		103		HAYES #1	YEAGER	46.0	MEGA NATURAL GAS
8419768	26289	3506321886		103		LOFTIS #1	YEAGER	0.0	MEGA NATURAL GAS
-G & W OIL & GAS INC				RECEIVED:	02/08/84	JA: OK			
8419777	24208	3511124337		102-2		QUAIL CREEK THREE #1 111-24337	MOUNDS DISTRICT	44.5	PHILLIPS PETROLEU
-GOOD D MICHAEL				RECEIVED:	02/08/84	JA: OK			
8419773	26150	3504521182		103		DRAKE "A" #1	E HARMON	0.0	DELHI GAS PIPELIN
8419772	26152	3509322764		103		MCKEE "D" #1	CHEYENNE VALLEY	0.0	DELHI GAS PIPELIN
-GRAHAM-MICHAELIS CORP				RECEIVED:	02/08/84	JA: OK			
8419764		3513900000		108-ER		STATE OF OKLAHOMA #1	GUYMON-HUGOTON	20.5	PHILLIPS PETROLEU
-HAMILTON BROTHERS OIL CO				RECEIVED:	02/08/84	JA: OK			
8419760	24225	3512120988		102-2		INDIAN NATIONS NO 1-29	WILDCAT	964.3	ARKANSAS LOUISIAN
-HARPER OIL COMPANY				RECEIVED:	02/08/84	JA: OK			
8419758	24316	3503920575		102-2		CUSTER #1	WEST CLINTON	185.0	NATURAL GAS PIPEL
-JOHN A KIENZLE				RECEIVED:	02/08/84	JA: OK			
8419793	26285	3511123021		108		C B NICHOLSON #2	HOFFMAN	11.0	PHILLIPS PETROLEU
8419781	26283	3511123422		108		TEDLOCK NO 1	HOFFMAN	15.0	PHILLIPS PETROLEU
-KELLOIL INC				RECEIVED:	02/08/84	JA: OK			
8419766	26299	3515321402		103		DOUBLE "D" #1		167.0	PHILLIPS PETROLEU
-M K W INC				RECEIVED:	02/08/84	JA: OK			
8419802	26361	3510322069		103		HENTGES #2		72.0	ARCO OIL & GAS CO
-MACK OIL CO				RECEIVED:	02/08/84	JA: OK			
8419767	26294	3504922162		103		LILY #1	GOLDEN TREND	300.0	WARREN PETROLEUM
-MAPCO PRODUCTION COMPANY				RECEIVED:	02/08/84	JA: OK			
8419792	24349	3503920533		102-2		V VINEYARD #1-12		144.0	MAPCO FRACTIONATO
-ONYX ENERGY CORP				RECEIVED:	02/08/84	JA: OK			
8419798	26334	3510322049		103		IDA MAE #4-20		36.5	AMINOIL USA INC
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	02/08/84	JA: OK			
8419794	26291	3513920731		108		HERMIT #2	TEXHOMA N MORROW U	0.0	MICHIGAN WISCONSI
-RAMBLER OIL CO				RECEIVED:	02/08/84	JA: OK			
8419778	24205	3504922161		102-4		ROBERTS #1-21	WEST PAULS VALLEY	0.0	WARREN PETROLEUM
-READING & BATES PETROLEUM CO				RECEIVED:	02/08/84	JA: OK			
8419782	26281	3504700000		108		JOHN #1	JOHN	21.0	GRACE PETROLEUM C
-SAMSON RESOURCES COMPANY				RECEIVED:	02/08/84	JA: OK			
8419763	22292	3504320033		108-ER		CLARK UNIT #1		0.0	PANHANDLE EASTERN
8419762	22293	3504320088		108-ER		CLARK UNIT #2		0.0	PANHANDLE EASTERN
-SANTA FE-ANDOVER OIL CO				RECEIVED:	02/08/84	JA: OK			
8419800	26340	3505121408		103		ESTES #28-1		9.0	PHILLIPS PETROLEU
8419765	26307	3501121836		103		JANTZEN #31-1		200.0	OKLAHOMA GAS PIPE
-SENECA OIL CO				RECEIVED:	02/08/84	JA: OK			
8419780	20140	3501768973		102-4	103	DAVE #1-20		101.8	PHILLIPS PETROLEU
-STANTON ENERGY INC				RECEIVED:	02/08/84	JA: OK			
8419759	24226	3514322441		102-4	103	LUVENA #5	KEYSTONE	14.0	COLORADO GAS COMP
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	02/08/84	JA: OK			
8419785	26277	3504700000		108		HELBERG UNIT #1	N E ENID	15.0	CHAMPLIN PETROLEU
8419795	26311	3504700000		108		LOUGHMAN #1	N E ENID	6.0	UNION TEXAS PETRO
8419784	26278	3515100000		108		M S OLSON #1	WAYNOKA TREND	6.0	NORTHWEST CENTRAL
8419796	26312	3504700000		108		MARIE MEYER #1	S E FLYNN	13.0	CHAMPLIN PETROLEU
8419783	26279	3515300000		108		OKLAHOMA STATE "S" #2	N W QUINLAN	12.0	MICHIGAN WISCONSI
8419805	24252	3512920863		102-2		W F MERRICK #1	WILDCAT (REDFORK)	662.0	
-TENNECO OIL COMPANY				RECEIVED:	02/08/84	JA: OK			
8419797	26333	3510321119		103		ALICE #1-22	SOUTH LONE ELM	1.0	AMINOIL U S A INC
-TOWNER PETROLEUM CO				RECEIVED:	02/08/84	JA: OK			
8419776	24213	3501521519		102-4		IDA EDGE #11-1		0.0	PIONEER GAS PRODU
-TXO PRODUCTION CORP				RECEIVED:	02/08/84	JA: OK			
8419779	24141	3507920483		102-4	103	VIRGINIA ALLEN #1	KINTA	57.0	
-VIERSEN & COCHRAN				RECEIVED:	02/08/84	JA: OK			
8419803	26364	3504321788		103		GOLDIE POLLOCK #1-34	WATONGA TREND	20.0	PHILLIPS PETROLEU

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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-FAIRMAN DRILLING CO				RECEIVED:	02/09/84	JA: PA			
8419857	21987	3703321613		102-2		CONN UNIT #1 F-3782	CUSH CUSHION	20.0	EASTERN SHORE NAT
8419858	21988	3703321657		102-2		CONSOLIDATED RAIL CORP #4 F-3788	CUSH CUSHION	30.0	EASTERN SHORE NAT
-FOX OIL & GAS INC				RECEIVED:	02/09/84	JA: PA			
8419853	21971	3702120171		102-3		M SOWALLA #1 270	SUSQUEHANNA	25.5	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION				RECEIVED:	02/09/84	JA: PA			
8419842	21877	3703922033		107-TF		J SPECK UNIT #1 CRA-22033	MOSIERTOWN (MEDINA/WH	20.5	COLUMBIA GAS TRAN
8419843	21878	3703922033		103		J SPECK UNIT #1 CRA-22033	MOSIERTOWN (MEDINA/WH	20.5	COLUMBIA GAS TRAN
-NEA CROSS CO				RECEIVED:	02/09/84	JA: PA			
8419832	21777	3704922876		107-TF		ERNEST BLUM/ROBERT TURNER #1	MILL VILLAGE BORO	10.0	NATIONAL FUEL GAS
8419833	21778	3704922876		102-2		ERNEST BLUM/ROBERT TURNER #1	MILL VILLAGE BORO	10.0	NATIONAL FUEL GAS
8419836	21781	3704922872		102-2		IRWIN NATHAN #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8419837	21782	3704922872		107-TF		IRWIN NATHAN #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8419834	21779	3704922684		107-TF		JOSEPH MAJERIK #2	WATERFORD	10.0	NATIONAL FUEL GAS
8419835	21780	3704922684		102-2		JOSEPH MAJERIK #2	WATERFORD	10.0	NATIONAL FUEL GAS
8419830	21775	3704922685		102-2		THOMAS ARNEMAN #1	WATERFORD	10.0	NATIONAL FUEL GAS
8419831	21776	3704922685		107-TF		THOMAS ARNEMAN #1	WATERFORD	10.0	NATIONAL FUEL GAS
-NORTHWEST NATURAL GAS CO				RECEIVED:	02/09/84	JA: PA			
8419838	21821	3704922665		103		CHAMBERLAIN #2	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8419840	21827	3704922665		107-TF		CHAMBERLAIN #2	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8419839	21823	3704922289		103		SNODGRASS #1	BEAVER CENTER	0.0	NATIONAL FUEL GAS
8419841	21829	3704922289		107-TF		SNODGRASS #1	BEAVER CENTER	0.0	NATIONAL FUEL GAS
-PACO INC				RECEIVED:	02/09/84	JA: PA			
8419849	21948	3704923246		103		BOSS OILFIELD #1	ALBION WEST	15.0	NATIONAL FUEL GAS
8419850	21949	3704923246		107-TF		BOSS OILFIELD #1	ALBION WEST	15.0	NATIONAL FUEL GAS
8419826	21735	3704923249	D	107-TF		HOLY TRINITY LUTHERAN CHURCH-ALBION	ALBION WEST	16.0	NATIONAL FUEL GAS
8419829	21751	3704923249		103		HOLY TRINITY LUTHERAN CHURCH-ALBION	ALBION WEST	16.0	NATIONAL FUEL GAS
8419827	21736	3704923247		103		J GRAVES SR #1	ALBION WEST	28.0	NATIONAL FUEL GAS
8419828	21737	3704923247		107-TF		J GRAVES SR #1	ALBION WEST	28.0	NATIONAL FUEL GAS
8419851	21950	3704923245		103		JAMIE #1	ALBION WEST	25.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8419852	21951	3704923245		107-TF		JAMIE #1	ALBION WEST	25.0	NATIONAL FUEL GA
8419847	21946	3704923250		103		M FEUERWERKER #2	ALBION WEST	15.0	NATIONAL FUEL G
8419848	21947	3704923250		107-TF		M FEUERWERKER #2	ALBION WEST	15.0	NATIONAL FUEL GAS
8419844	21882	3704923248		103		RODNEY SMOCK #1	ALBION WEST	29.0	NATIONAL FUEL GAS
8419845	21883	3704923248		107-TF		RODNEY SMOCK #1	ALBION WEST	29.0	NATIONAL FUEL GAS
-PETRO EVALUATION SERVICES INC				RECEIVED:	02/09/84	JA: PA			
8419825	21196	3704922536		103		RAMEY #2	EDINBORO	32.0	
8419824	21195	3704922525		107-TF		TYDINGS #3	EDINBORO	31.0	
-PHILLIPS PRODUCTION CO				RECEIVED:	02/09/84	JA: PA			
8419819	20656	3706326819		108		BRDCIOUS COAL AUGERING INC #1	RAYNE	7.0	COLUMBIA GAS TRAN
8419821	20662	3706325671		108		JOHN PEELOR #1	GRANT	4.0	COLUMBIA GAS TRAN
8419823	20664	3706325495		108		RALPH RICHARD BROWN #1	CENTER	7.0	COLUMBIA GAS TRAN
8419820	20659	3706326887		108		VAUGHN L MCGAUGHEY #1	CENTER	7.0	COLUMBIA GAS TRAN
8419822	20663	3706326390		108		WALTER J BORK #1	BLACKLICK	7.0	COLUMBIA GAS TRAN
-PIONEER WESTERN ENERGY CORP				RECEIVED:	02/09/84	JA: PA			
8419846	21901	3712922277		103		LOUIS A BOMPIANI #1	SOUTH HUNTINGDON	25.0	
-QUAKER STATE OIL REFINING CORP				RECEIVED:	02/09/84	JA: PA			
8419879	22084	3712301236		108		BRIGHT-WOLFE-#1	GLADE	0.5	NATIONAL FUEL GAS
8419882	22087	3712330849		108		BRIGHT-WOLFE-03	GLADE	0.5	NATIONAL FUEL GAS
8419883	22088	3712327711		108		BRIGHT-WOLFE-037	GLADE	0.5	NATIONAL FUEL GAS
8419881	22086	3712330830		108		BRIGHT-WOLFE-04	GLADE	0.5	NATIONAL FUEL GAS
8419878	22083	3712328081		108		BRIGHT-WOLFE-068	GLADE	0.5	NATIONAL FUEL GAS
8419877	22082	3712328082		108		BRIGHT-WOLFE-069	GLADE	0.5	NATIONAL FUEL GAS
8419876	22081	3712328086		108		BRIGHT-WOLFE-073	GLADE	0.5	NATIONAL FUEL GAS
8419875	22080	3712328087		108		BRIGHT-WOLFE-074	GLADE	0.5	NATIONAL FUEL GAS
8419874	22079	3712328068		108		BRIGHT-WOLFE-075	GLADE	0.5	NATIONAL FUEL GAS
8419873	22078	3712328092		108		BRIGHT-WOLFE-079	GLADE	0.5	NATIONAL FUEL GAS
8419880	22085	3712327710		108		BRIGHT-WOLFE-08	GLADE	0.5	NATIONAL FUEL GAS
8419872	22077	3712328093		108		BRIGHT-WOLFE-080	GLADE	0.5	NATIONAL FUEL GAS
8419871	22076	3712328044		108		BRIGHT-WOLFE-081	GLADE	0.5	NATIONAL FUEL GAS
8419870	22075	3712328098		108		BRIGHT-WOLFE-085	GLADE	0.5	NATIONAL FUEL GAS
8419869	22074	3712328099		108		BRIGHT-WOLFE-086	GLADE	0.5	NATIONAL FUEL GAS
8419868	22073	3712328100		108		BRIGHT-WOLFE-087	GLADE	0.5	NATIONAL FUEL GAS
8419867	22072	3712328104		108		BRIGHT-WOLFE-091	GLADE	0.5	NATIONAL FUEL GAS
8419866	22071	3712328105		108		BRIGHT-WOLFE-092	GLADE	0.5	NATIONAL FUEL GAS
8419865	22070	3712330854		108		BRIGHT-WOLFE-094	GLADE	0.5	NATIONAL FUEL GAS
8419859	22064	3712327400		108		JENKS 020	GLADE	0.5	NATIONAL FUEL GAS
8419860	22065	3712321554		108		JENKS-LOT 448-062	GLADE	0.5	NATIONAL FUEL GAS
8419861	22066	3712328037		108		JENKS-LOT 448-063	GLADE	0.5	NATIONAL FUEL GAS
8419862	22067	3712628138		108		JENKS-LOT 448-064	GLADE	0.5	NATIONAL FUEL GAS
8419863	22068	3712327714		108		JENKS-LOT 448-065	GLADE	0.5	NATIONAL FUEL GAS
8419864	22069	3712328039		108		JENKS-LOT 448-066	GLADE	0.5	NATIONAL FUEL GAS
8419884	22089	3712300000		108		JENKS-LOT 448-072	GLADE	0.5	NATIONAL FUEL GAS
8419854	21984	3712330851		108		PIERCE OZ	GLADE	0.5	NATIONAL FUEL GAS
8419855	21985	3712327107		108		PIERCE- 015	GLADE	0.5	NATIONAL FUEL GAS
8419856	21986	3712331852		108		PIERCE-03	GLADE	0.5	NATIONAL FUEL GAS
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UTAH DIVISION OF OIL,GAS, & MINING									
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-LOMAX EXPLORATION COMPANY				RECEIVED:	02/08/84	JA: UT			
8419806	K-152-2	4301330691		102-2		STATE #1A-32	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419809	K-152-2	4301330623		102-2		STATE #13-36	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419808	K-152-2	4301330608		102-2		STATE #3-2	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419811	K-152-2	4301330714		102-2		STATE #5-32	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419807	K-152-2	4301330713		102-2		STATE #9-32	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
-WAINOCO OIL & GAS CO				RECEIVED:	02/08/84	JA: UT			
8419810	K-137-2	4301330590		103		WAINOCO LINMAR LEBEAU #1-34A1	BLUEBELL	94.0	GARY ENERGY CORP
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WEST VIRGINIA DEPARTMENT OF MINES									
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-ASHLAND EXPLORATION INC				RECEIVED:	02/09/84	JA:-WV			
8419885		4703903769		108		EASTERN GAS & FUEL #62-R - 092202	PAINT CREEK	18.0	COLUMBIA GAS TRAN
8419886		4710900852		108		W M RITTER #221 - 091671	LOGAN-WYOMING	18.0	CONSOLIDATED GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:	02/09/84	JA: WV			
8419900		4700121958		103		E BENNETT #2	GLADE	21.0	BROOKLYN UNION GA
8419901		4700121958		107-DV		E BENNETT #2	GLADE	21.0	BROOKLYN UNION GA
8419899		4700121960		103		E NELSON #1	VALLEY DISTRICT	33.0	BROOKLYN UNION GA
8419898		4700121963		103		J FERGUSON #2	VALLEY DISTRICT	53.0	BROOKLYN UNION GA
8419909		4700121963		107-DV		J FERGUSON #2	VALLEY DISTRICT	53.0	BROOKLYN UNION GA
-NATIONAL OPERATING INC				RECEIVED:	02/09/84	JA: WV			
8419887		4708506442		103		ARNETT #1	GRANT	10.0	CONSUMERS GAS UTI
8419902		4708506442		107-DV		ARNETT #1	GRANT	10.0	CONSUMER GAS UTIL
-OHIO-WEST VIRGINIA HYDRO CARBON CO				RECEIVED:	02/09/84	JA: WV			
8419891		4708505756		103		ECHARD (WELCH-CRAIG) 1A	MELLIN RIDGE	18.0	CONSOLIDATED GAS
8419907		4708505756		107-DV		ECHARD (WELCH-CRAIG) 1A	MELLIN RIDGE	18.0	CONSOLIDATED GAS
8419890		4708506044		103		HENDRICKSON #1	MELLIN RIDGE	36.0	CONSOLIDATED GAS
8419908		4708506044		107-DV		HENDRICKSON #1	MELLIN RIDGE	36.0	CONSOLIDATED GAS
-OVER-JOHN INC				RECEIVED:	02/09/84	JA: WV			
8419889		4708506311		103		PALMER HILL (HALLMARK) #1	GRANT	36.0	CONSUMERS GAS UTI
8419903		4708506311		107-DV		PALMER HILL (HALLMARK) #1	GRANT	36.0	CONSUMERS GAS UTI
-PEAKE OPERATING CO				RECEIVED:	02/09/84	JA: WV			
8419897		4708100605		103		CRAB ORCHARD #6-AC	(TOWN DISTRICT)	5.0	
8419895		4708100630		103		JONES & GIBSON #7-AJ	(TRAP HILL DISTRICT)	5.0	COLUMBIA GAS TRAN
8419896		4708100630		103		JONES & GIBSON #7-AJ	(TRAP HILL DISTRICT)	5.0	COLUMBIA GAS TRAN
8419892		4708100631		103		JONES & GIBSON #9-AJ	N/A (TRAP HILL DISTRI	5.0	COLUMBIA GAS TRAN
8419893		4708100631		103		JONES & GIBSON #9-AJ	(TRAP HILL DISTRICT)	5.0	COLUMBIA GAS TRAN
8419894		4710900898		103		WELCHLANDS #22-AW	(SLAB FORK DISTRICT)	5.0	CONSOLIDATED GAS
-PENNZOIL COMPANY				RECEIVED:	02/09/84	JA: WV			
8419942		4704301801		108		A D SPURLOCK #5	GRIFFITHSVILLE NE	1.1	CONSOLIDATED GAS
8419910		4704301802		108		A D SPURLOCK #6	GRIFFITHSVILLE NE	1.1	CONSOLIDATED GAS
8419914		4704302304		108		A E SMITH #5	GRIFFITHSVILLE NE	2.2	CONSOLIDATED GAS
8419920		4703302943		108		A STONESTREET #9	WOLF SUMMIT	1.6	CONSOLIDATED GAS
8419912		4704302116		108		CALLIE T ESCUE #3	GRIFFITHSVILLE NE	2.0	CONSOLIDATED GAS
8419933		4704301537		108		E T SPURLOCK #13	GRIFFITHSVILLE NE	0.6	CONSOLIDATED GAS
8419937		4704301624		108		E T SPURLOCK #15	GRIFFITHSVILLE NE	0.6	CONSOLIDATED GAS
8419913		4704302117		108		E T SPURLOCK #16	GRIFFITHSVILLE NE	2.2	CONSOLIDATED GAS
8419922		4704301471		108		E T SPURLOCK #4	GRIFFITHSVILLE NE	0.9	CONSOLIDATED GAS
8419918		4701703260		108		FREEMAN & FOLEY #1	CENTERPOINT - FLINT R	0.3	CONSOLIDATED GAS
8419931		4708504285		108		H M (HOPE) HAMMETT #21	HAMMETT	1.2	CONSOLIDATED GAS
8419932		4708504667		108		HAMMETT - CLARK #13	HAMMETT	0.6	CONSOLIDATED GAS
8419941		4704301737		108		HANNAH A PAUL #2	GRIFFITHSVILLE NE	1.8	CONSOLIDATED GAS
8419928		4704302322		108		HANNAH A PAUL #3	GRIFFITHSVILLE NE	1.8	CONSOLIDATED GAS
8419936		4704301600		108		J A PAULEY #1	GRIFFITHSVILLE NE	1.7	CONSOLIDATED GAS
8419911		4704301838		108		J E KEELING #2	GRIFFITHSVILLE NE	3.9	CONSOLIDATED GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8419939		4704301691		108		J V ALFORD HEIRS #1	GRIFFITHSVILLE NE	1.5	CONSOLIDATED GAS
8419940		4704301695		108		J V ALFORD HEIRS #3	GRIFFITHSVILLE NE	1.5	CONSOLIDATED GAS
8419926		4704302320		108		J V ALFORD HEIRS #5	GRIFFITHSVILLE NE	1.4	CONSOLIDATED GAS
8419916		4700501102		108		J W PHIPPS #3	YANKEY-FREEMAN	0.9	CONSOLIDATED GAS
8419917		4701702224		108		LOUNDS & HART #3	CENTERPOINT - FLINT R	0.3	CONSOLIDATED GAS
8419921		4704301470		108		M A MITCHELL HEIRS #2	GRIFFITHSVILLE NE	1.3	CONSOLIDATED GAS
8419919		4703302942		108		M MATHENY #3	WOLF SUMMIT	1.7	CONSOLIDATED GAS
8419938		4704301676		108		O E ESCUE #5	GRIFFITHSVILLE NE	1.9	CONSOLIDATED GAS
8419930		4704302328		108		R A ESCUE #4	GRIFFITHSVILLE NE	1.2	CONSOLIDATED GAS
8419927		4708504637		108		S C HAMMETT #9	HAMMETT	0.5	CONSOLIDATED GAS
8419935		4704301574		108		SAMUEL BOWMAN #1	GRIFFITHSVILLE NE	1.2	CONSOLIDATED GAS
8419915		4704302317		108		SAMUEL BOWMAN #5	GRIFFITHSVILLE NE	1.2	CONSOLIDATED GAS
8419924		4704301485		108		STOWERS HEIRS #4	GRIFFITHSVILLE NE	0.9	CONSOLIDATED GAS
8419929		4704302326		108		STOWERS HEIRS #6	GRIFFITHSVILLE NE	0.9	CONSOLIDATED GAS
8419923		4704301474		108		W T HARRIS #3	GRIFFITHSVILLE NE	1.6	CONSOLIDATED GAS
8419934		4704301547		108		W T HARRIS #4	GRIFFITHSVILLE NE	0.7	CONSOLIDATED GAS
8419925		4704301508		108		ZONA HUGHES #1	GRIFFITHSVILLE NE	0.6	CONSOLIDATED GAS
-S & S LTD PARTNERSHIP #2				RECEIVED:	02/09/84	JA: WV			
8419888		4703302887		103		SWIGER S & S #2	SALEM-WALLACE FIELD	20.0	CARNEGIE NATURAL
-ST MARYS EASTERN ENERGY INC				RECEIVED:	02/09/84	JA: WV			
8419906		4707301580		107-DV		CUNNINGHAM E E #111	MCKIM	16.0	
8419904		4707301557		107-DV		SPINDLETOP-WETZ E E #103	MCKIM	8.0	
8419905		4707301558		107-DV		SPINDLETOP-WETZ E E #104	MCKIM	11.0	
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** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE,NM									
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-AMAX PETROLEUM CORPORATION				RECEIVED:	02/09/84	JA: NM 4			
8420050	NM-2264-83PB	3004505914		108-PB		HANSON FEDERAL #1	BASIN DAKOTA	18.0	NORTHWEST PIPELIN
-AMERICAN PETROFINA COMPANY OF TEXAS				RECEIVED:	02/09/84	JA: NM 4			
8420056	NM-2246-83PB	3003906155		108-PB		BOLACK FEDERAL #2	BALLARD	0.0	EL PASO NATURAL G
8420055	NM-2247-83PB	3003906115		108-PB		FOSTER FEDERAL A#1	BALLARD	0.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:	02/09/84	JA: NM 4			
8420058	NM-2249-83PB	3004511588		108-PB		GALLEGOS CANYON UNIT #209	BASIN	0.0	EL PASO NATURAL G
8420059	NM-2248-83PB	3004507832		108-PB		GALLEGOS CANYON UNIT COM D #160	BASIN	0.0	EL PASO NATURAL G
8420057	NM-2250-83PB	3004521052		108-PB		HEATH GAS COM O #1	BLANCO	0.0	EL PASO NATURAL G
8420061	NM-2265-83PB	3004521715		108-PB		VANHOOK FEDERAL #1	BLANCO	0.0	EL PASO NATURAL G
8420060	NM-2251-83PB	3004520970		108-PB		W D HEATH B #5	BLANCO	0.0	EL PASO NATURAL G
-ARCO OIL AND GAS COMPANY				RECEIVED:	02/09/84	JA: NM 4			
8420046	NM-2254-83PB	3004511592		108-PB		HAMMOND FED WN #5	SOUTH BLANCO PICTURED	16.0	EL PASO NATURAL G
8420047	NM-2253-83PB	3004520443		108-PB		MARRON WN FED COM #7	SOUTH BLANCO PICTURED	16.0	EL PASO NATURAL G
-BLACKWOOD & NICHOLS CO LTD				RECEIVED:	02/09/84	JA: NM 4			
8420054	NM-1074-83PB	3004521477		108-PB		NORTHEAST BLANCO UNIT #05R	BLANCO MESAVERDE	12.0	EL PASO NATURAL G
-COTTON PETROLEUM CORPORATION				RECEIVED:	02/09/84	JA: NM 4			
8420062	NM-2242-83PB	3003921764		108-PB		APACHE #12	SOUTH BLANCO	0.0	NORTHWEST PIPELIN
-EL PASO EXPLORATION CO				RECEIVED:	02/09/84	JA: NM 4			
8420053	NM-2142-83PB	3004506443		108-PB		SAN JUAN 27-8 B #4	SOUTH BLANCO	0.0	EL PASO EXPLORATI
-EL PASO NATURAL GAS COMPANY				RECEIVED:	02/09/84	JA: NM 4			
8419986	NM-2140-83PB	3004520760		108-PB		ATLANTIC A #11	BLANCO	0.0	EL PASO NATURAL G
8419983	NM-2134-83PB	3004512093		108-PB		ATLANTIC C #8	BLANCO	0.0	EL PASO NATURAL G
8419999	NM-2209-83PB	3004520758		108-PB		ATLANTIC C #9	BLANCO	0.0	EL PASO NATURAL G
8420020	NM-2190-83PB	3004520446		108-PB		BOLACK B #7	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419978	NM-2212-83PB	3004520492		108-PB		DAY #5	BLANCO	0.0	EL PASO NATURAL G
8420028	NM-2230-83PB	3004512192		108-PB		DAY A #8	BLANCO	0.0	EL PASO NATURAL G
8420027	NM-2229-83PB	3004508608		108-PB		FANNIN #1	AZTEC	0.0	EL PASO NATURAL G
8420033	NM-2218-83PB	3004506543		108-PB		FLORENCE D #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420024	NM-2151-83PB	3004506332		108-PB		GORDON #5	FULCHER KUTZ	0.0	EL PASO NATURAL G
8419992	NM-2125-83PB	3004520671		108-PB		GRAMBLING C #7	BLANCO	0.0	EL PASO NATURAL G
8419995	NM-2204-83PB	3004507496		108-PB		HARDIE E #1	BLANCO	0.0	EL PASO NATURAL G
8420038	NM-2144-83PB	3003906851		108-PB		HARRINGTON #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420043	NM-2238-83PB	3004520316		108-PB		HEATON #23	AZTEC	0.0	EL PASO NATURAL G
8420011	NM-2164-83PB	3004508920		108-PB		HOWELL #5	BLANCO	0.0	EL PASO NATURAL G
8420012	NM-2163-83PB	3004508920		108-PB		HOWELL #5	BLANCO	0.0	EL PASO NATURAL G
8419987	NM-2141-83PB	3004506069		108-PB		HUERFANITO UNIT #12	BALLARD	0.0	EL PASO NATURAL G
8420016	NM-2187-83PB	3004505743		108-PB		HUERFANO UNIT NP #23	HUERFANO	0.0	EL PASO NATURAL G
8420022	NM-2197-83PB	3004511680		108-PB		HUGHES #22	BLANCO	0.0	EL PASO NATURAL G
8420005	NM-2120-83PB	3003921157		108-PB		JICARILLA C #11	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420039	NM-2232-83PB	3003921158		108-PB		JICARILLA C #13	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419997	NM-2200-83PB	3003906448		108-PB		JICARILLA F #10	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420003	NM-2122-83PB	3003906504		108-PB		JICARILLA F #13	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420013	NM-2161-83PB	3002906359		108-PB		JICARILLA G #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419982	NM-2148-83PB	3003906453		108-PB		JICARILLA G #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420035	NM-2157-83PB	3003906528		108-PB		JICARILLA J #16	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419989	NM-2130-83PB	3003922120		108-PB		JICARILLA 67 #19	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420040	NM-2233-83PB	3004521442		108-PB		KELLY #3	BLANCO	0.0	EL PASO NATURAL G
8420031	NM-2215-83PB	3004509752		108-PB		KELLY B #1	BLANCO	0.0	EL PASO NATURAL G
8420001	NM-2206-83PB	3004520793		108-PB		KELLY B #2	BLANCO	0.0	EL PASO NATURAL G
8420019	NM-2191-83PB	3004513064		108-PB		LACKEY B #18	AZTEC	0.0	EL PASO NATURAL G
8420021	NM-2199-83PB	3003922381		108-PB		LINDRITH UNIT #100	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419980	NM-2146-83PB	3003905519		108-PB		LINDRITH UNIT #48	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420018	NM-2193-83PB	3003920093		108-PB		LINDRITH UNIT #72	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419985	NM-2138-83PB	3003920638		108-PB		LINDRITH UNIT #76	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419996	NM-2203-83PB	3004560060		108-PB		MOORE #3	BLANCO	0.0	EL PASO NATURAL G
8420017	NM-2194-83PB	3004520283		108-PB		MUDGE #29	BLANCO	0.0	EL PASO NATURAL G
8419984	NM-2137-83PB	3004509054		108-PB		MURPHY E #3	AZTEC	0.0	EL PASO NATURAL G
8420006	NM-2119-83PB	3004520675		108-PB		NYE #4	AZTEC	0.0	EL PASO NATURAL G
8420000	NM-2208-83PB	3004520463		108-PB		PIERCE #5	BLANCO	0.0	EL PASO NATURAL G
8419991	NM-2124-83PB	3004520469		108-PB		PIERCE #6	BLANCO	0.0	EL PASO NATURAL G
8419981	NM-2147-83PB	3003907009		108-PB		RINCON UNIT #116	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419977	NM-2211-83PB	3003906909		108-PB		RINCON UNIT #39	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419979	NM-2145-83PB	3003906864		108-PB		RINCON UNIT #62	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419998	NM-2201-83PB	3003906822		108-PB		RINCON UNIT #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420026	NM-2228-83PB	3004512100		108-PB		ROELOFS A #5	BLANCO	0.0	EL PASO NATURAL G
8420041	NM-2236-83PB	3004520501		108-PB		RUSSELL #8	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420042	NM-2237-83PB	3004508230		108-PB		SAN JACINTO #1	AZTEC	0.0	EL PASO NATURAL G
8420023	NM-2153-83PB	3004508130		108-PB		SAN JACINTO #6	BASIN	0.0	EL PASO NATURAL G
8420008	NM-2126-83PB	3003906937		108-PB		SAN JUAN 27-4 UNIT #21	TAPACITO & BLANCO	0.0	EL PASO NATURAL G
8420014	NM-2189-83PB	3003907109		108-PB		SAN JUAN 27-4 UNIT #28	BLANCO	0.0	EL PASO NATURAL G
8419970	NM-2222-83PB	3003907141		108-PB		SAN JUAN 27-5 UNIT #2	BLANCO	0.0	EL PASO NATURAL G
8419975	NM-2225-83PB	3003907191		108-PB		SAN JUAN 27-5 UNIT #61	BLANCO	0.0	EL PASO NATURAL G
8419969	NM-2223-83PB	3003906847		108-PB		SAN JUAN 27-5 UNIT #68	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8419971	NM-2220-83PB	3003920174		108-PB		SAN JUAN 28-4 UNIT #32	BASIN	0.0	EL PASO NATURAL G
8419993	NM-2196-83PB	3003920106		108-PB		SAN JUAN 28-5 UNIT #77	BASIN	0.0	EL PASO NATURAL G
8420004	NM-2121-83PB	3003920878		108-PB		SAN JUAN 28-5 UNIT #95	TAPACITO	0.0	EL PASO NATURAL G
8419994	NM-2195-83PB	3003982366		108-PB		SAN JUAN 28-6 UNIT #108	SOUTH BLANCO	0.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8420032	NM-2217-83PB	3003920038		108-PB		SAN JUAN 28-6 UNIT #136	BASIN	0.0	EL PASO NATURAL G
8420010	NM-2185-83PB	3003907452		108-PB		SAN JUAN 28-6 UNIT #15	BLANCO	0.0	EL PASO NATURAL G
8420009	NM-2186-83PB	3003907125		108-PB		SAN JUAN 28-6 UNIT #24	BLANCO	0.0	EL PASO NATURAL G
8420034	NM-2155-83PB	3003907167		108-PB		SAN JUAN 28-6 UNIT #26	BLANCO	0.0	EL PASO NATURAL G
8419988	NM-2128-83PB	3003906999		108-PB		SAN JUAN 28-7 UNIT #119	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420036	NM-2158-83PB	3003907163		108-PB		SAN JUAN 28-7 UNIT #67	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420025	NM-2149-83PB	3003907124		108-PB		SAN JUAN 28-7 UNIT #86 PC & MV	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8420037	NM-2160-83PB	3003906982		108-PB		SAN JUAN 28-7 UNIT #92	BLANCO	0.0	EL PASO NATURAL G
8419976	NM-2224-83PB	3003907497		108-PB		SAN JUAN 29-7 UNIT #95	BLANCO	0.0	EL PASO NATURAL G
8419990	NM-2131-83PB	3003907813		108-PB		SAN JUAN 30-4 UNIT #21	EAST BLANCO	0.0	EL PASO NATURAL G
8420030	NM-2213-83PB	3003907866		108-PB		SAN JUAN 30-6 UNIT #34	BLANCO	0.0	EL PASO NATURAL G
8419974	NM-2226-83PB	3003907895		108-PB		SAN JUAN 30-6 UNIT #37	BLANCO	0.0	EL PASO NATURAL G
8420007	NM-2127-83PB	3003907858		108-PB		SAN JUAN 30-6 UNIT #39	BLANCO	0.0	EL PASO NATURAL G
8419972	NM-2219-83PB	3004506406		108-PB		SCHWERDTFEGER A #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420029	NM-2231-83PB	3004511705		108-PB		SCHWERDTFEGER A #23	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420015	NM-2188-83PB	3004506766		108-PB		SCHWERDTFEGER A #4	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419973	NM-2227-83PB	3004512079		108-PB		STOREY #5	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420002	NM-2123-83PB	3004507339		108-PB		WHITE KUTZ #2	FULCHER KUTZ	0.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED:	02/09/84	JA: NM 4			
8420049	NM-2256-83PB	3004505240		108-PB		BRANNON FEDERAL #2	BASIN DAKOTA	10.7	EL PASO NATURAL G
8420048	NM-2255-83PB	3004522234		108-PB		GALLEGOS CANYON UNIT P C #274	WILDCAT	7.5	EL PASO NATURAL G
-JACK A COLE				RECEIVED:	02/09/84	JA: NM 4			
8420044	NM-2244-83PB	3004320228		108-PB		APACHE FLATS #8	BALLARD PICTURED CLIF	12.0	EL PASO NATURAL G
8420045	NM-2243-83PB	3003921908		108-PB		APACHE HILLS #4	BALLARD PICTURED CLIF	13.0	EL PASO NATURAL G
-JEROME P MCHUGH				RECEIVED:	02/09/84	JA: NM 4			
8420063	NM-2241-83PB	3004512080		108-PB		HARDIE #1	BASIN	0.0	EL PASO NATURAL G
8420064	NM-2240-83PB	3004520683		108-PB		NASSAU #1	BASIN	0.0	EL PASO NATURAL G
8420065	NM-2239-83PB	3004520631		108-PB		OXNARD #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
-MARATHON OIL COMPANY				RECEIVED:	02/09/84	JA: NM 4			
8420051	NM-2263-83PB	3003906309		108-PB		JICARILLA APACHE #4	JICARILLA	13.0	EL PASO NATURAL G
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	02/09/84	JA: NM 4			
8420066	NM-2260-83PB	3003907057		108-PB		JICARILLA E #2	BLANCO	0.0	NORTHWEST PIPELIN
8420068	NM-2259-83PB	3003907044		108-PB		JICARILLA E #3	BLANCO	0.0	NORTHWEST PIPELIN
8420067	NM-2261-83PB	3004509323		108-PB		STEPHENS UNIT #1	BASIN	0.0	NORTHWEST PIPELIN
-NORTHERN NATURAL GAS PRODUCING CO				RECEIVED:	02/09/84	JA: NM 4			
8420069	NM-2262-83PB	3004500000		108-PB		NYE FEDERAL TRACT 1 & 2	BASIN	0.0	NORTHERN NATURAL
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	02/09/84	JA: NM 4			
8420052	NM-2132-83PB	3004511231		108-PB		SAN JUAN 32-8 #31	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
-R & G DRILLING CO				RECEIVED:	02/09/84	JA: NM 4			
8420070	NM-2257-83PB	3004506765		108-PB		GRAHAM #35	SOUTH BLANCO	0.0	EL PASO NATURAL G
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** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CASPER,WY									
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-BELCO PETROLEUM CORPORATION				RECEIVED:	02/08/84	JA: WY 5			
8419812	W109-3	4903520630		102-2		FIGURE FOUR FEDERAL 1-I	FIGURE FOUR CANYON	0.0	NORTHWEST PIPELIN
-CONOCO INC.				RECEIVED:	02/09/84	JA: WY 5			
8419813	W724-2-E	4902906068		108-ER		CLOVERLY - MORRISON WELL #7	SOUTH ELK BASIN UNIT	0.0	MONTANA-DAKOTA UT
8419815	W39-3	4902906018		108		SOUTH ELK BASIN UNIT #26	SOUTH ELK BASIN UNIT	18.3	MONTANA-DAKOTA UT
-CORONADO OIL CO				RECEIVED:	02/09/84	JA: WY 5			
8419816	W1-145-3	4901720143		102-4		BROWN-GOVT #1	ENOS CREEK	60.0	MONTANA-DAKOTA UT
-MARATHON OIL COMPANY				RECEIVED:	02/09/84	JA: WY 5			
8419817	W1-146-3	4902921133		103		ATHERLY #10 (EMBAR & TENSLEEP)	OREGON BASIN	30.1	CODY GAS CO
8419818	W1-147-3	4902921163		103		NIELSON #10 (EMBAR AND TENSLEEP)	OREGON BASIN	14.0	CODY GAS CO
-MOBIL OIL CORP				RECEIVED:	02/09/84	JA: WY 5			
8419814	W800-2	4900320571		103		FEDERAL MANDERSON #F24-13G	MANDERSON	0.0	MONTANA-DAKOTA UT

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federal register

Monday
March 5, 1984

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Saltonstall-Kennedy funds notice of availability/instruction to the public.

SUMMARY: For fiscal year 1984, Saltonstall-Kennedy funds are available to assist persons in carrying out research and development projects which address any aspect of a United States fishery (as herein defined) involving the United States fishing industry (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infrastructures. Projects may be funded through either grants, cooperative agreements or contracts. Any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands, any fishery development foundation or other private non-profit corporation located in Alaska, or any corporation, partnership, association or other entity, non-profit or otherwise, if a citizen of the United States (as defined by Section 2 of the Shipping Act of 1916 (46 U.S.C. 802)), is eligible to apply for funding under this solicitation. The National Marine Fisheries Service (NMFS), NMFS employees, and their immediate relatives are not eligible to apply.

This notice describes the conditions under which applications will be accepted and how NMFS will determine which applications it will fund. State and local Government applicants must comply with Executive Order 12372 regarding Intergovernmental Review of Federal Programs. The Catalogue of Federal Domestic Assistance number and title for this program are 11–427, "Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements." This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*. Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB No. 0648–0135.

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" within the context of the Order or its implementing guidelines because the solicitation does not significantly affect the economy, costs or prices, competition, employment, investment, or productivity. Because the solicitation is issued without prior opportunity for public comment, is is not subject to the provisions of the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Hutchinson, Industry Development Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone No: 202–634–7451.

I. Introduction

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–2–713c–3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use at least 60 percent of these funds each year to make grants to assist persons in carrying out research and development projects which address any aspect of United States fisheries, including, but not limited to, harvesting, processing, and marketing. There is no guarantee that sufficient funds will be available to make awards for all approved projects. United States fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. For fiscal year 1984, about $10 million of Saltonstall-Kennedy monies are available to fund fisheries research and development projects. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

II. Saltonstall-Kennedy Activities

The Saltonstall-Kennedy grant program constitutes an important part of the NMFS fisheries development and utilization program. Under this program, NMFS will consider funding projects which relate to the development of fisheries within any NMFS Region and national projects which relate to the development of fisheries in two or more Regions.

The NMFS has two objectives for funding projects: (1) To maintain stability in and strengthen traditional fisheries; and (2) to provide for the growth of the fishing industry through increased use of nontraditional resources.

Traditional fisheries are those for which the existing fishing industry has the capability to fully harvest, process and market the available fishery resources as it has done historically. Stability in traditional fisheries can be influenced by resource fluctuations, changing economic conditions, and public perceptions about quality and safety. In order to maintain stability in traditional fisheries, the NMFS will support projects that increase the stability of the fishing industry to ensure that the industry remains competitive in world and domestic markets.

In order to support growth of the fishing industry, the NMFS will target its activities on non-traditional or unused fisheries such as Alaska groundfish, coastal pelagics in the South Atlantic and Gulf of Mexico, squid and mackerel in the North Atlantic, and others where impediments exist to industry use of these resources. The NMFS will support research which will lessen the risks associated with expansion by the present industry or entry by new participants into these fisheries.

NMFS consults with members of the fishing industry in funding fisheries research and development projects which address regional and national concerns involving stability in traditional fisheries and growth in nontraditional fisheries. The areas considered are as follows:

A. *Harvesting activities:* to demonstrate the technical feasibility of commercial or recreational harvesting of fisheries resources; to provide fishermen with information that documents the potential profitability of commercial or recreational harvesting activities; and to identify abundance, location, and seasonal characteristics of stocks of fish;

B. *Quality enhancement and control:* to develop, evaluate or demonstrate handling, sorting, grading, storage, processing, or distribution methods that will enable fishermen, processors, and those in the distribution chain to maintain or improve the quality of fish and fish products marketed commercially or caught by recreational fishermen; and to identify and correct any public health problems which may be impeding domestic and foreign market expansion;

C. *Domestic market development:* to increase domestic consumption of fish by increasing the use of nontraditional fisheries products in traditional markets or expanding the use of all fish in

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

nontraditional markets; in recreational fisheries, to increase use of non-traditional species, to increase awareness of sport-fishing opportunities, and to expand the opportunities for and economic value of marine recreational fishing;

D. *Foreign market development:* to increase U.S. exports of fish and fish products with particular emphasis on the underutilized species and to publicize domestic recreational fishing opportunities for foreign visitors;

E. *Improvement in efficiency and productivity:* to lower the costs of supplying domestic fish and fish products to consumers; to increase the output or value of existing or new methods or techniques for harvesting, processing, distributing or marketing domestic fisheries products; and

F. *Economic and investment studies:* to document the cost and profitability of any activity that would enable the fishing industry to increase use of fisheries resources or to increase the value of fisheries products or to improve upon methodologies for ascertaining the economic value of recreational fisheries.

III. Regional and National Priorities

Fisheries research, development, and utilization applications should relate to one or more of the priority areas. The NMFS will consider other projects; however, funding will be available for exceptionally good projects outside the priority areas only if sufficient projects adequately addressing the specific priorities are not received.

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will *not* be provided for projects primarily involving the following activities: (1) infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to artificial reefs or fish aggregating devices; and (6) extension activities such as newsletters or technology transfer unless identified as a necessary part of a specific project.

The NMFS encourages a regional approach to developing and strengthening U.S. fisheries. "Region" refers to a geographic area encompassed by a NMFS Region, i.e., Northeast, Southeast, Southwest, Northwest and Alaska. Projects addressing Regional fisheries development needs must be consistent with existing fisheries development plans. Projects addressing national concerns are those which require the coordinated participation of members of the fishing industry from more than one Region or involve activities such as generic domestic and export marketing activities or seafood quality and safety research in which results directly affect the fishing industry or consumers on a national scale. The NMFS has identified priorities in conjunction with fishing industry groups, other organizations and local governmental units having an interest in the development and use of fisheries in the region.

The fisheries and the major needs related to their development or full utilization which the NMFS will give priority for funding are:

A. *Northeast Region.* Priority will be given to species-oriented projects which support growth in the squid, mackerel, and hake fisheries or projects that include the following activities:

1. Develop new methods or techniques to process and use fish wastes, particularly dogfish and shellfish wastes. Projects must determine the technical and economic feasibility of the methods or techniques in actual use through in-plant demonstrations.

2. Conduct on-board demonstrations of methods to: (a) Increase the effectiveness of fisheries gear; (b) improve product quality through improved on-board handling and holding procedures; and (c) reduce operating costs of commercial fishing vessels. Projects must determine the technical and economic feasibility of these methods through demonstrations on vessles.

3. Conduct in-plant demonstrations of new or innovative processing equipment to allow processors to evaluate opportunities to make greater use of nontraditional species of fish. Projects must assess the technical and economic feasibility of using the equipment.

4. Conduct training activities for industry personnel in procedures to maintain the quality of fish as it moves through processing and distribution channels.

5. Conduct Regional export and domestic marketing programs which coordinate state, media and industry activities that will increase use of nontraditional species or develop new markets for traditional species. Such projects will be coordinated with other funded Regional or national marketing projects.

6. Develop and implement a plan to revive the shellfish industry in the county of Suffolk, New York with emphasis on clam seeding in sanitary waters, relocating spawner clams, and conducting a public education program to ensure product quality and safety.

7. Conduct activities to promote the stabilization and growth of the marine recreational fishing industry.

B. *Southeast Region.* 1. *Commercial.* Projects should concentrate on shifting current harvesting, processing, and marketing activity from traditional fisheries, such as shrimp, to alternate fisheries, particularly the coastal herrings, large coastal pelagics, and squid. Priority will be given to projects which:

a. Assess the commercial significance of stocks through contracted fishing vessels and spotter aircraft in the Southeast Region;

b. Develop, evaluate, and demonstrate new technology for the harvest of midwater schooling species in deeper offshore waters;

c. Develop, evaluate, and demonstrate new technology for on-board or shoreside handling, grading, and storage systems;

d. Develop new products or processes for underutilized species which provide evidence of consumer/market acceptance and a determination of economic feasibility;

e. Develop export or demestic markets for underutilized species. Proposals in this area will be closely coordinated at the national level. Approved projects will be consistent with national market development projects;

f. Define and resolve technical constraints limiting the effective marketing of wholesome consumer products from molluscan shellfish resources;

g. Demonstrate solutions to remaining problems hindering the use of Southeastern fishery species in the production and marketing of analog fishery products made from surimi; and

h. Provide alternate designs and/or field testing of improved shrimp fishing trawl designs to eliminate the catch of undesirable finfish, jelly fish, turtles, and debris.

2. *Recreational.* Projects are solicited which will either address problems affecting the stability of traditional recreational fisheries or will redirect sport fishing effort to presently underutilized species. Priority funding consideration will be given to projects which:

a. Develop a profile of marine recreational fishing in the Southeast to assist public and private sector organizations (e.g., Chambers of Commerce; recreation, park and tourism planning/administration agencies; financial institutions; and marine recreational fishing-related businesses) in stimulating economic development based on marine recreational fishing.

This profile should synthesize and summarize relevant existing information (e.g., fishing patterns; target species; overview of the recreational fishing industry; social, economic and demographic characteristics of anglers; trip expenditure information; and other pertinent data);

b. Assess access and infrastructure requirements needed to support further development of marine recreational fisheries in the U.S. Virgin Islands and Puerto Rico;

c. Determine and demonstrate the biological, engineering, and economic feasibility of utilizing artificial reefs and fish aggreegating devices to further develop recreational and commercial fisheries in the U.S. Virgin Islands and Puerto Rico; and

d. Develop a guide(s), suitable for use by domestic and foreign travelers, which identifies recreational fishing opportunities in the Southeast and describes how visitors can best take advantage of these opportunities. The guide should describe major target species; angling techniques; location of access facilities (piers, ramps, beach fishing areas, charter/headboat locations, etc.); techniques for handling and preparing catches, applicable fishing laws and regulations; key contacts/sources of additional information; and other pertinent information.

C. *Southwest Region.* The Southwest Region is comprised of two distinct geographic areas—the central and western Pacific Islands and the California coast. The island fisheries differ significantly in many respects from the mainland fisheries.

1. *Central and Western Pacific.* In the central and western Pacific, priority consideration will be given to projects that (a) address problems of tuna harvesting, and (b) contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Marianas Islands and the Trust Territories of the Pacific Islands. All proposals should be consistent with cultural and social attitudes of island people.

Proposals which address problems in the following areas will be given priority for funding.

a. *Industry Development.* Projects to develop Shoreside Fishery Facilities and Seafood Marketing Outlets by providing business management expertise, quality control systems, and marketing assistance will be considered. Projects designed to develop new markets and promote Pacific Island seafood products will also be considered. Such projects should have the ultimate goal of creating self-sustaining business enterprises or creating new marketing opportunities.

b. *Tuna.* Projects which investigate handlining for sashimi grade tuna and pole-and-line bait fishing will be considered. In view of the recent growth in the Western Pacific tuna purse seine fishery, consideration of tuna purse seine charters will be limited.

c. *Other Pelagic Species.* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus upon developing local and overseas market outlets. Particular attention should be focused on maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing and storage methods.

d. *Trochus and Giant Clams.* Proposals will be considered for continued research on trochus and giant clams as well as projects that could transfer trochus and giant clam reseeding technology to other island areas.

e. *Deepwater Shrimp.* Proposals should focus on trap design for small boat fishermen, area surveys, and the development of shrimp marketing outlets.

f. *Bottomfish.* Snappers and groupers exist in considerable abundance in many Pacific Island areas. Projects should expand harvesting opportunities and develop marketing channels (local and export) for these species. Projects for bottomfish development in areas where the resource may be distressed and unable to withstand added fishing pressure will not be funded.

g. *Seamount Groundfish.* Alfonsin and armorhead resources are presently a target of a directed Japanese fishery and are not harvested by U.S. fishermen. Projects to demonstrate the technical and economic feasibility of harvesting and marketing seamount resources will be considered.

h. *Vessel Support Facilities.* Proposals for the design, engineering and construction of vessel support facilities (e.g., boat launch ramps, docks, etc.) will be considered provided that proposals requesting construction funds contribute matching funds equal to the level of requested Federal S–K funding. Proposals for such facilities should be targeted for those areas where these is a demonstrable need by local fishermen.

The National Marine Fisheries Service does not plan to support the use of S–K funds for projects related to baitfish culture or fish aggregation devices with the following exceptions:

a. *Baitfish Culture.* Projects demonstrating use of cultured baitfish in sea trials in order to determine technical and economic feasibility.

b. *Fish Aggregation Devices.* The major problem affecting fish aggregation devices (FAD) throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a recent mooring design study sponsored by the South Pacific Commission, NMFS has recently approved funding for a FAD project in Yap and is reviewing a similar project in American Samoa. Therefore, the NMFS will not fund FAD related research in the Pacific during this year's funding cycle.

2. *California.* Pacific whiting, short-belly rockfish, and jack mackerel are recognized as being the highest priority species for commercial development off California. Projects that demonstrate fishing techniques, on-board handling, processing, and quality technology as applied to these species, and projects that investigate alternative product forms and markets for Pacific albacore will be considered.

Additionally, projects that include the following activities for commercial and recreational fisheries will be considered for funding.

a. *Waste Utilization.* Projects that develop and demonstrate practical solutions to waste disposal or waste utilization problems in all fisheries and determine technical and economic feasibility.

b. *Quality Improvement.* Test the feasibility of developing a seafood quality program for fresh/frozen West Coast fish covering all phases of product handling from on-board the vessel to shoreside processing and distribution.

c. *Consumer Education.* Fixed-term projects with the objective of educating young Americans on the desirability of seafood will be considered for 1-year funding.

d. *Economic Analysis.* Projects that develop economic profiles of business opportunities within the West Coast fishing industry.

e. *Recreational Fisheries.*

(1) Market Research Studies—Emphasis on market research of the marine recreational fishing industry focusing on angler attitudes.

(2) Recreational Fishing Industry Promotion—Projects that coordinate regional tourist industry promotion programs for marine recreational activities.

D. *Northwest Region.* Priority will be given to projects which:

1. Develop new and/or improved harvesting, processing, distribution and marketing techniques or methods to increase use of such nontraditional

species as Pacific whiting, blue shark, saury, squid, short-belly rockfish, dogfish, and other species known to have potential for development. Projects should include on-board or in-plant demonstrations and assess the technical and economic feasibility of the techniques or methods.

2. Demonstrate and instruct in procedures to maintain or improve the quality or fish or fish products as they move from vessels through processing and distribution channels.

3. Develop information or materials to promote greater consumption of fresh and frozen domestic seafood, and conduct consumer and trade education programs using the materials to increase use of nontraditional species or develop new markets for traditional species. Such programs will be coordinated with other Regional and/or national marketing activities. Such activities may include emphasis on the health and nutritional qualities, availability and variety of seafood, and methods of preparation. Activities should be designed to increase consumer awareness.

4. Develop new target markets for seafood harvested in the U.S. fishery conservation zone by the West Coast fishing industry through market research, product testing, and product introduction into specific markets.

5. Conduct surveys to identify and evaluate consumers' preferences and biases for target species, angling methods, and supporting facilities in marine recreational fisheries; and develop a program to coordinate industry efforts with the travel and tourism industry to increase awareness of opportunities and participation in marine recreational fisheries, especially for non-salmonid species.

E. *Alaska Region.* The growing importance of groundfish to the economic health of the west coast fishing industry continues to require that the Alaska development program focus on the Alaska groundfish resource. Industry needs in this fledgling fishery are diverse and substantial. Priority needs have been identified in the areas of maximizing product mix alternatives, increased utilization of existing vessels and processing facilities, and stimulation of domestic and export market opportunities for diverse groundfish products. Pollock, because of the resource size and current utilization by foreign nations, has been identified as the highest priority species for development.

Projects to be given priority for funding should resolve problems associated with the full utilization of groundfish related to the following areas:

1. Improve the quality of fish delivered to processing facilities.

2. Conduct commercial scale processing tests of groundfish products to assess technical and economic feasibility and market acceptability.

3. Investigate alternatives for utilizing groundfish processing by-products.

Development proposals which address problems in the traditional segments of the Alaska fishing industry will be considered. Proposed projects in these areas should incorporate solutions that will work in remote geographic areas and should be complementary to state and private sector development activities.

F. *National Priorities.*

1. *Domestic Market Development.* NMFS intends to fund projects which are generic in approach and which will contribute to the increased use of seafood in the U.S. marketplace. Priority will be given to projects which address any of the following:

a. Development and dissemination of consumer education materials using mass media and point of sale presentations. Projects addressing youth education activities are encouraged.

b. Conduct activities to educate the food service industry on fish and shellfish products with an emphasis on providing information related to buying, handling, sanitation, and preparation.

c. Development of a marketing strategy to increase food industry use of domestically produced squid products.

2. *Export Market Development.* The NMFS intends to fund projects which provide direct access for U.S. exporters to buyers in other countries and will give priority to funding:

a. *International Food Shows:*

(1) Management of U.S. Seafood Sales Exhibitions at four key international food shows, including (a) IFE'85 in London, England, (b) ANUGA'85 in Cologne, West Germany, (c) Alimentaria'86 in Barcelona, Spain, and (d) SIAL'86 in Paris, France. If selected, the applicant will be required to work with U.S. Embassy officials and Export Development Office officials overseas to develop cost-effective programs to support each show. The applicant must use existing U.S. Seafood Exhibition structures constructed under previous grants. Funding will be providing for: (a) securing 250 to 500 square meters of floor space at each event, (b) transporting and refurbishing the portable exhibit system, and (c) direct operating costs.

(2) Management of small-scale food shows in various parts of the world during 1985 and 1986. The use of cost effective methods of product presentation must be demonstrated in the application. Funding will be provided for floor space rental, booth construction, the shipment and display of generic products, and direct operating costs. The exhibitor will promote fish and shellfish on a generic basis and prepare and distribute a report on resulting trade leads.

b. *Export Marketing Initiatives:* Perform export market consumer and trade education activities in export markets for which there is sales potential for U.S. products and U.S. industry interest. Focus will be placed on underutilized species and traditional species in new markets.

3. *Improving Quality, Safety, and Use of Fish and Fish Products.* The NMFS is soliciting projects which support its goal of providing consumers with a wide variety of wholesome, nutritious fish and fish products of a good quality. The research priorities for 1984 areas are as follows:

a. *Rapid Methods:* Develop specific cost-effective rapid methods to:

(1) Detect and remove parasites in fish and shellfish.

(2) Objectively determine the quantity of contents of glazed block frozen seafood (shrimp, scallops, crabmeat, fillets) based upon the temperature at which the thermal center of the product passes through decrystallization.

(3) Detect ciguatera in species of Caribbean and Pacific origin including isolation and/or purification of ciguatoxin.

b. *Irradiation Preservation:* Determine the technical and economic feasibility of applying radiation preservation technology to fish and shellfish within the framework of FDA's advance notice of proposed rulemaking published in the March 27, 1981, issue of the **Federal Register**, pp. 18992–18994, and in view of seafood and other food products irradiation research conducted to date.

c. *Seafood Quality/Decomposition:*

(1) Plan, arrange for, conduct, and publish proceedings of an International Symposium to identify and objectively measure quality/decomposition indicators in seafood.

(2) Develop an alternative to the use of bisulfite for the treatment of black spot on shrimp.

(3) Conduct bacterial comparisons over time and various holding temperatures for vacuum tray packed vs. atmosphere packed trayed seafood.

d. *Authentic Pack Studies:* Conduct authentic pack studies according to the FDA standard protocol for authentic pack studies permitting objective and subjective measurements of changes in

inherent textural and sensory characteristics at various intervals of storage in Atlantic and Pacific squid, Alaskan pollock, dogfish, and red hake.

e. *Minced Fish Utilization:* Research in this area should be an extension of research currently in process or recently completed which has focused on the technical and economic feasibility of commercial scale production of surimi and minced fish. Priorities identified below relate to areas of work which have not been addressed in previous research but are necessary to ensure product safety and quality as well as consumer acceptability.

(1) Develop experimental fabricated food products having a potential for using large quantities of minced fish meat from mixed species and test market the products for edibility acceptance.

(2) Conduct refrigerated and/or frozen storage studies on surimi and surimi-based products under typical domestic market conditions to determine quality and spoilage indicators and changes in such indicators which occur during storage.

(3) Conduct chemistry and food engineering research to improve textural and other sensory properties of surimi and surimi-based products to suit U.S. taste preferences and then document consumer reaction to the improvements.

(4) Plan, arrange for, conduct, and publish proceedings of an International Symposium on engineered and structured seafoods, their technology, and market potential.

f. *Training and Education:* Develop training materials and conduct seminars for industry inspection personnel to:

(1) Provide instruction in good manufacturing practices for U.S. fishery products; and

(2) Provide instruction in the evaluation of the quality and manufacture of commercially significant fishery products for sale in domestic and export markets.

g. *Imported Product Survey:* Conduct surveys of imported canned tuna, surimi-based products, and fish blocks containing minced fish meat to evaluate elements of public health (e.g., can integrity, bones) and commercial significance (e.g., net weight, species substitution) relative to recognized standards and/or comparable U.S.-produced products.

4. *Developing the Marine Recreational Fishing Industry.* The NMFS is soliciting projects which will remove impediments to development of the Marine Recreational Fishing (MRF) industry. The major impediments, and potential methods for removing these impediments, are identified and discussed in a report recently completed by the Sport Fishing Institute and NMFS titled, "Final Report, Phase II, The Marine Recreational Fishing Industry and Opportunities for Development." This report is available from: Director, Office of Industry Services, National Marine Fisheries Service, Washington, D.C. 20235.

The major impediments to be addressed by the NMFS S–K program are: (a) Lack of sufficient and coordinated marketing of MRF services through the U.S. and international travel and tourism industries; (b) angler biases as to which species are preferable targets; (c) complexity and length of the permitting process for artificial reefs; (d) lack of the export markets for U.S. produced fishing tackle. Projects will be selected only to the extent that solutions to these impediments are national vs. regional in nature.

IV. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any fishery development foundation or other private non-profit corporation located in Alaska;

4. Any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private non-profit corporation not located in Alaska), non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2] No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be funded. The NMFS encourages women and minority individuals and groups to submit applications. NMFS employees (or their immediate families, including full, part-time, and intermittent personnel) and NMFS offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For fiscal year 1984, the NMFS will have an estimated $10 million available to fund the fishery research and development projects solicited herein. Grants or cooperative agreements will generally be awarded for a period of 1 year. Applications will be considered for projects which extend for up to 3 years. Multi-year projects must be resubmitted each year. Continued funding will be contingent on the availability of funds, the extent to which project objectives are met during the prior year, and the continued priority of the project in subsequent years. Publication of this announcement shall not obligate the NMFS to award any specific grant or to obligate the entire amount of funds available or any part thereof.

C. Cost-Sharing Requirements

The amount of a grant must be at least 50 percent of the total cost of the project. The non-Federal share may include funds received from private sources or from State or local Governments or the value of in-kind contributions. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (1) the title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the cost of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit, public interest organizations which demonstrate no financial ability to meet cost-sharing requirements and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the U.S. Virgin Islands under the provisions of 48 U.S.C. 1469a. The total project costs and the percentage of cost sharing required will be determined as described below.

1. *Determining Total Project Cost*

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a formal grant, cooperative agreement, or contract between the applicant and an authorized representative of the United States and ends when the applicant submits a final performance report that is accepted by an authorized representative. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations up to the point of formal award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations." In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated.

2. *Determining the Level of Cost Sharing Required*

The percentage of the total project costs that must be provided from non-Federal sources is as follows:

a. *20 percent.* For projects that benefit the fishing industry and/or the consuming public, but offer no unique advantage to specific industry sectors, the non-Federal cost share shall be no less than 20 percent of the total project cost. These projects would ordinarily be conducted by or for State or local government entities or by non-profit organizations.

b. *30 percent.* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share shall be no less than 30 percent of the total project cost.

c. *40 percent.* For projects which involve significant fishing industry participation, entail a limited risk, and in the prospects for immediate future gain for project are significant, the non-Federal cost share shall be no less than 40 percent of the total project cost.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to developing and strengthening the U.S. fishing industry and cost estimates as they relate to specific aspects of the project. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applicants should contact the appropriate regional office for guidance in preparing project descriptions. Such consultations with NMFS staff will not result in more favorable consideration of any project. Applications shall be submitted in the following format:

1. *Cover Sheet*

An applicant shall use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices or NMFS Washington Office listed in Section IV.E.

2. *Project Summary*

Each project within the application shall contain a summary of not more than one page which provides the following information:

a. Project title.

b. Name of applicant.

c. Primary objective of project.

d. Summary of work to be performed.

e. Principal geographic impact of project (local, statewide, regional, national).

f. Total Federal funds requested; total amount and percentage of total project costs.

g. Project costs to be provided from non-Federal Government sources; total amount and percentage of total project costs.

h. Total project costs.

3. *Project Description*

Each project within the application shall be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, the NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project shall be described as follows:

a. *Identification of Problem(s).* Describe how existing conditions prevent the U.S. fishing industry from developing a fishery or using existing fisheries. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishing resources.

b. *Project Goals and Objectives.* Describe what the project will accomplish and how this will eliminate or reduce the problem(s) described above. In addition, describe the impact of the proposed work in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factor.

c. *Appropriateness and Need for Government Financial Assistance.* Explain why members of the fishing industry are unable to fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe (1) the level of participation by the NMFS, Sea Grant, or other Government and non-Government entities, particularly

members of the fishing industry, required to ensure the success of the project(s); and (2) the nature of such participation. In addition, list names and addresses of the principal persons or groups consulted during the preparation of the project description.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the application for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons or groups who will be involved in the project, their qualifications, and their level of involvement in the project. Provide copies of any agreements between the applicant and participants who are not directly employed by the applicant which describe the specific tasks they will perform.

h. *Monitoring of Project Performance.* Describe how the progress of the project will be monitored and who will participate in the monitoring. Specify what actions will be taken in the event specific project tasks become unattainable. This is particularly important in demonstration projects that can be affected by factors beyond the control of the applicant.

i. *Project Benefits.* Identify the sectors of the fishing industry that will benefit from the proposed work and how they will benefit. Describe benefits in terms that can be measured. All projects must clearly describe how information gained from the projects will be made known or transferred to the fishing industry.

j. *Evaluation of Project Benefits.* The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Provide a detailed budget of project costs, identifying in particular: salaries, fringe benefits, travel costs, equipment rental, supplies, contracts (including project evaluation and final report preparation costs if contracted), overhead, and other administrative and technical costs of the project. Costs must be identified for specific phases of a project. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs by primary recipients of S–K funds.

l. *Cost Sharing for the Project.* Identify project costs which will be funded from non-Federal sources, including in-kind contributions. Project costs provided by the applicant cannot exceed 50 percent of total project costs.

4. *Project Consolidation*

Applicants may submit two or more projects under one proposal but must identify project costs separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. *Supporting Documentation*

This section shall include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily review material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline*

The NMFS will accept application for funding under this program between March 5, 1984 and May 7, 1984. An application will be considered to be timely filed if (a) the application is in any of the offices listed below on or before May 7, 1984, or (b) the application is postmarked (First Class Mail) no later than May 1, 1984.

2. *Submission of Applications to the NMFS*

Applicants shall submit one signed original and two (2) copies of the complete application. Applications are not to be bound in any manner.

a. Application relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota):
Regional Director, National Marine Fisheries Service, 7 Pleasant Street, Gloucester, MA 01930, Telephone No.: (617) 281–3600.
If delivered by other than the U.S. Postal Service, use the following address: Post Office Bldg., Room 201, 15 Dale Ave., Gloucester, MA 01930.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands):
Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893–3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands):
Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone No.: (213) 548–2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota):
Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115, Telephone No.: (206) 527–6150.

Alaska Region (Alaska):
Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, Telephone No.: (907) 586–7221.

b. Applications that do not directly address the development of a particular fishery or region of the country but do address broad national concerns, such

as impediments to increased use of fish and fish products both domestically and abroad, impediments to recreational fishing which are national in scope, industry productivity or efficiency, product quality and safety, or consumer welfare identified in Section III, Regional and National Priorities, should be sent to: Director, Office of Industry Services, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

The NMFS shall review all applications to determine the appropriate reviewing office. NMFS determination of this matter shall be final.

V. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which Office should evaluate the proposed work. This will normally be the office where the application is filed. The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and consumer groups. The regional and Washington offices of the NMFS will make project descriptions available for review as follows:

1. *Public review and comment.* Regional projects may be inspected at the office to which they are submitted. All projects will be available for inspection at the NMFS Office of Industry Services, 3300 Whitehaven Street NW., Room 357, Washington, D.C. from May 16, 1984 to May 30, 1984. Written comments will be accepted at the regional or Washington offices until May 30, 1984.

2. *Consultation with members of the fishing industry.* The NMFS shall, in its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government agencies.* Projects will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following criteria:

a. Adequacy of research/development/demonstration for resolving an impediment and possibilities of securing productive results (20 points).

b. Soundness of design/technical approach for resolving an impediment (20 points).

c. Organization and management of the project, including qualifications and previous related experience of the management team and the personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (20 points).

e. Appropriateness of the budget in terms of the work to be performed (20 points).

After the technical evaluation, each reviewing Office will convene a panel of NMFS, fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. The panel will consider the significance of the problem addressed in the project along with the technical evaluation and will rank each project in terms of importance or need for funding. The panel will make recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated by the reviewing offices, the Regional Directors for regional projects and the Director, Office of Industry Services for national projects will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries for review. The Assistant Administrator for Fisheries will determine the number of projects to be funded based on the recommendations provided to him/her, consistency of projects with national fisheries policy, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in preaward discussions between the applicant and NOAA/NMFS Program and administrative representatives. The Department of Commerce will review all recommended projects and appropriate funding prior to final authority to proceed. The funding instrument will be determined by NOAA Grants Officers.

VI. Administrative Requirements

A. Obligations of the Applicant

An Applicant shall:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is funded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the NMFS.

4. If a project is funded, keep records sufficient to disclose the use made of grant funds, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. NMFS will provide a proportionate share of funds to pay for an audit.

5. If a project is funded, submit quarterly project status reports to the NMFS within thirty days after the end of each calendar quarter within the time frame agreement and to the individual specified as the technical monitor in the funding agreement on the use of funds and progress of the project. The content of these reports shall be determined by the MNFS official assigned to monitor the project activities and shall include, at a minimum:

a. the degree to which goals or objectives were achieved as originally projected;

b. where necessary, the reasons why goals or objectives are not being met; and

c. any change in plans or redirection of resources or activities and the reason therefore.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. This report shall describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable the NMFS to assess the success of the completed project. Results shall be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make

productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget Circulars A–102 (for use by states and local governments) and A–110 (for use by universities, hospitals, other non-profit, and profit organizations) which contain terms and conditions of Federal financial assistance awards.

Audits shall be conducted in accordance with either Attachment P of OMB Circular A–102 or Attachment F of OMB Circular A–110 which provides that a single organization wide financial and compliance audit shall be performed on an annual or biannual basis. Such audits shall cover all Federal funds, including Department of Commerce funds, received by the organization during the 1 or 2-year fiscal period. Cost principles for audits are identified in OMB Circular A–87 (State and local governments), OMB Circular A–21 (universities), OMB Circular A–122 (non-profit organizations), and CFR–43 (commercial organizations).

8. Submit 25 copies of any publications printed with grant funds and such additional reports as may be required by the NMFS.

B. Obligations of the National Marine Fisheries Service

The NMFS shall:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals;

3. Monitor all projects to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

C. Legal Requirements

The applicant shall be required to satisfy the requirements of applicable local, State and Federal Laws.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Signed at Washington, D.C. this 29th day of February 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

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federal register

Monday
March 5, 1984

Part VI

Commodity Futures Trading Commission

17 CFR Parts 3, 4, and 10

Temporary Licenses; Statutory Disqualification From Registration; Statutory Disqualification and Other Regulatory Requirements; Final Rule

Temporary Licensing of Associated Persons; Notice

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 4, and 10

Temporary Licenses; Statutory Disqualification From Registration; Statutory Disqualification and Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted regulations to implement the registration provisions of the Commodity Exchange Act ("Act") as amended by the Futures Trading Act of 1982 ("1982 Act") to provide the Commission with greater flexibility in the administration of its registration program. The Act, as amended, authorizes the Commission to grant temporary licenses to qualified applicants for a period not to exceed six months and, in addition, establishes a new system of statutory disqualifications, which enumerate the most important bases for finding applicants or registrants unfit for registration. These statutory disqualification standards are particularly important in connection with the temporary licensing program being adopted in that they will permit the Commission staff to determine, generally on the face of an application, whether the applicant qualifies for a temporary license.

In accordance with Congressional expectations, the final rules with respect to the statutory disqualification provisions of the Act promote fairness and uniformity of treatment by providing applicants and registrants with advance notice of the most significant standards for disqualification used by the Commission and the likely regulatory response to the existence of certain disqualifying factors. Moreover, as also intended by Congress, the Commission's staff in most cases will no longer bear the burden of establishing what conditions warrant a Commission finding of unfitness. Therefore, the amount of time and resources which the staff, as well as applicants and registrants, currently devote to registration cases should be correspondingly reduced.

The Commission has also adopted certain technical and conforming amendments to its existing registration rules contained in Part 3, and Part 4 and Part 10 of the Commission's regulations.

Finally, the Commission is publishing as a new Appendix A to Part 3 an interpretative statement with respect to section 8a(2) (C) and (E) and section 8a(3)(M) of the Act in order to provide further guidance to applicants and registrants regarding the Commission's interpretation of those sections of the Act.

EFFECTIVE DATE: Except as specified herein, the rules will become effective on April 4, 1984. Sections 3.40–3.43 and the amendments to §§ 3.12(c)(2) and 3.16(c)(2) will become effective 15 days after further notice of the effective date is published in the **Federal Register.** Such further notice will be published in the **Federal Register** no earlier than 45 days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, or Bruce A. Beatus, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2294 (1983), amended the Commodity Exchange Act[1] in several important respects to provide the Commission with greater flexibility in the administration of its registration program. Specifically, the Act was amended to authorize the Commission to grant temporary licenses under certain circumstances[2] and to establish a system of statutory disqualifications from registration.[3] In enacting these amendments, Congress intended to "streamline and simplify the current registration procedures to enable the Commission to register fit persons more expeditiously and to remove unfit persons from the industry more promptly."[4]

On November 2, 1983, the Commission proposed rules and rule amendments to implement these new provisions of the Act. 48 FR 50554. Essentially, the proposed regulations (1) established a procedure for issuing temporary licenses to applicants for registration as associated persons, (2) create procedures for implementing the two-tiered system of statutory disqualifications set forth in the Act and (3) establish procedures to require a registrant to notify the Commission whenever the registrant knows or should know that an associated person whom it has sponsored is subject to a statutory disqualification under section 8a(2) of the Act.

The Commission received twelve comment letters on its proposal. The commentors included the National Futures Association ("NFA"), a registered futures association, the Futures Industry Association, an industry trade association, contract markets, futures commission merchants ("FCMs") and certain members of the Subcommittee on Judicial and Administrative Procedures of the Committee on Futures Regulation, Section of Corporation, Banking and Business Law of the American Bar Association.[5] The Commission has carefully reviewed each of those comments and, based upon that review and its careful reconsideration of its proposal, is now adopting rules and providing further clarification thereto which it believes are not only responsive to the concerns of the commentors but are fully consistent with Congressional intent and the Commission's regulatory objectives in this rulemaking proceeding.

The following is a summary of the administrative procedures which the Commission has adopted to make use of its authority to provide for the granting of temporary licenses to apparently qualified applicants for registration as associated persons and to implement the new system of statutory disqualification from registration established in the 1982 Act. The Commission believes that these procedures fulfill the House Agriculture Committee's expectation that the statutory authority granted in sections 8a(1)–8a(4) of the Act—

> Will permit the Commission to develop an expedited procedure for registration, provide notice of the most important fitness standards which the Commission will apply, and promote uniformity of treatment of applicants and registrants.[6]

II. Temporary Licenses

Section 8a(1) of the Act has been amended by the 1982 Act to authorize the Commission to grant a temporary license to an applicant for registration for a period not to exceed six months, subject to such rules as the Commission may adopt. Pursuant to the provisions of this section of the Act, the Commission

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[1] 7. U.S.C. 1 *et seq.*

[2] Section 8a(1) of the Act, *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, section 223, 96 Stat. 2310 (1983).

[3] Section 8a(2)–8a(4) of the Act, *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, section 224(1)–(4), 96 Stat. 2310–15 (1983).

[4] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 50 (1982).

[5] The Commission notes that comments set forth in the ABA Subcommittee letter do not represent the official position of the American Bar Association, the Section of Corporation, Banking and Business Law or the Committee on Futures Regulation. Nor do they necessarily represent the views of all members of the Subcommittee.

[6] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

proposed procedures to permit an apparently qualified applicant for registration as an associated person ("AP") to begin work prior to completion of a full fitness check. The Commission's proposal, however, would not have extended the applicability of those procedures to an applicant for registration in other capacities (*i.e.*, futures commission merchants ("FCMs"), introducing brokers, commodity pool operators, commodity trading advisors, floor brokers and leverage transaction merchants).

Under the Commission's proposal, a temporary license would be granted only to AP applicants who contemporaneously file with the Commission: (1) A properly completed Form 8–R which contains no information indicating that applicant may be subject to a statutory disqualification; (2) a legible set of fingerprints on a fingerprint card provided by the Commission (or a copy, in certain cases); and (3) the appropriate sponsor's certification. Proposed § 3.40. The grant of such a temporary license, however, would not constitute registration, or create any inference in favor of registration, nor would denial of a temporary license necessarily mean that ultimately registration would be refused. Proposed § 3.41.

As noted above, section 8a(1) of the Act provides that the term of a temporary license may not exceed six months. As proposed by the Commission, if the applicant were found fit for registration prior to the expiration of the six month period, he would be registered; if he were found to be subject to a statutory disqualification, the applicant would be sent a notice of intent to deny under proposed §§ 3.52 or 3.60 and the temporary license would be terminated immediately. (A temporary license also would terminate whenever the association of the applicant with the registrant which filed the sponsorship certification ceased.) In the event the Commission failed either to register the applicant or to serve notice of its intent to deny registration before the six-month period has expired, the proposed rules would provide that registration be granted automatically.

The Commission is adopting §§ 3.40–3.43 essentially as proposed. The rules, however, will not be made effective until the systems are in place to issue temporary licenses to APs. As the Commission noted in the preamble accompanying the proposed rules, a decision to implement a temporary licensing program was contingent upon the completion of a feasibility study. Although the Commission has determined that such a program is feasible, necessary modifications must be made to the Commission's computer and other systems before the program may be implemented. The Commission has made significant progress in this direction and is moving as expeditiously as possible to complete this task. The Commission intends to publish a notice in the **Federal Register** fifteen (15) days before the effective date of §§ 3.40–3.43 and will also send a letter to all registered FCMs, CPOs and CTAs to notify them of the effective date of the temporary licensing program.

A majority of the commentors addressed the proposed temporary licensing procedures, and most of those commentors generally supported the Commission's proposals for the temporary licensing of AP applicants. In this regard, the Commission notes that four commentors, including the two associations which represent the futures industry generally, agreed with the Commission's proposal to limit the temporary licensing program to APs. One commentor, however, asserted that the Commission's statement that it would not propose regulations to authorize temporary licenses for applicants other than APs is contrary to the intent of Congress. Specifically, the commentor argued that Congress, in enacting section 8a(1), expressly intended that temporary licenses be granted to all classes of registrant without delay.

The Commission is not convinced by this commentor's argument and has determined to limit the granting of temporary licenses to AP applicants. Although section 8a(1) of the Act authorizes the Commission to grant a temporary license to any applicant for registration, this section does not *require* the exercise of such authority. Contrary to the commentor's remarks, the legislative history of section 8a(1) does not contain any statement by Congress that it intended to foreclose the Commission from exercising its discretion in the implementation of this section of the Act.

Moreover, the Commission believes that the reasons for limiting temporary licenses to AP applicants as set forth in the Commission's proposal are still valid. As the Commission has previously stated, the granting of a temporary license is particularly appropriate for an applicant for registration as an AP because such an applicant must be sponsored by another registrant which must conduct a preliminary fitness check of the applicant and must directly supervise the applicant's conduct (48 FR 50555–56).[7] In contrast, other registrants are not subject to such scrutiny or direct supervision. In addition, the Commission is concered that if a temporary license were granted to applicants other than APs, the applicant would be able to commence business, hire employees and, in the case of an FCM, accept customer funds, subject to a subsequent determination by either the Commission or the NFA to deny registration. The Commission, therefore, concludes that the potential disruptions to both customers and employees which might result from interrupting an ongoing business outweigh the benefits which might be achieved by extending the applicability of the temporary licensing provisions to such applicants.

A number of commentors, in addressing the temporary licensing provisions, raised specific issues which the Commission believes warrant clarification at this time. For example, two of the commentors noted that the concept of "derogatory information" as set forth in § 3.40(a) should be more precisely defined to track the specific statutory disqualifications set forth in sections 8a(2)–8a(4) of the Act. The Commission notes that, as proposed, § 3.40(a) required as a condition of obtaining a temporary license that an AP applicant submit a properly completed Form 8–R which contains no derogatory information indicating that the applicant may be subject to a statutory disqualificaton under sections 8a(2)–8a(4) of the Act. In the Commission's discussion of proposed § 3.40 in the preamble to the **Federal Register** release, the Commission expressly pointed out that it is presently revising the Form 8–R so that applicants and Commission staff may more readily identify past conduct which may subject the applicant to a statutory disqualification from registration.[8] The purpose of this statement was to make clear that both applicants and sponsors would be able to ascertain from the Form 8–R itself whether an AP applicant was eligible for a temporary license.

The Commission, however, has modified § 3.40(a) in response to these comments in order to eliminate any potential confusion. Thus, as adopted, § 3.40(a) provides that an AP applicant seeking a temporary license must submit a Form 8–R, "the Disciplinary History portion of which contains no 'Yes' answers indicating that the applicant may be subject to a statutory

[7] *See, e.g.*, section 4k(5) of the Act, 7 U.S.C. 6k(5) (1982) and Commission rule 166.3, 17 CFR 166.3 (1983).

[8] 48 FR at 50556, n.11.

disqualification under sections 8a(2)–8a(4) of the Act." As noted above, the Form 8–R, as revised, will reflect more accurately the provisions of sections 8a(2)–8a(4) and, therefore, will enable the applicant and sponsor to identify readily whether the applicant may be subject to a statutory disqualification and, thus, ineligible for a temporary license.

Several of the commentors also addressed the Commission's procedures with respect to the processing of applications for temporary licenses. For example, one commentor stated that, since only those applications with no disqualification problems presumably will be submitted by the sponsoring FCM, the "turn-around" period should not encompass an extensive review by the Commission. Therefore, the commentor encouraged the Commission to expedite the temporary licensing procedure by granting a license immediately upon receipt of an eligible application, subject to the Commission's subsequent review. Another commentor suggested that the Commission review such applications within ten days of receipt, while another simply urged the Commission to indicate the time frame contemplated for the issuance of the temporary license.

In this connection, the Commission is mindful of the commentors' general concern that the temporary license be issued promptly upon receipt by the Commission of a satisfactorily completed application. Indeed, the primary purpose of these provisions is to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check. Nevertheless, prior to granting a temporary license, the Commission will have to collect the registration fee, enter the appropriate data into its computers and, as noted in the preamble to the proposed rules, check its own computer system to determine whether the Commission has any information indicating the applicant may be subject to a statutory disqualification.

In addition, as noted above, the Commission will have to modify significantly its current administrative systems and procedures in order to successfully implement the temporary licensing program.[9] The Commission, therefore, does not believe it would be prudent to establish a specific time frame for the processing of an application for a temporary license. The Commission, however, will endeavor to review such applications as expeditiously as possible and anticipates that, in the absence of exceptional volume, eligible AP applicants should receive notice of the issuance of a temporary license within three weeks from the date of receipt by the Commission of the registration application.

The Commission notes that one commentor expressed the view that persons who receive a temporary license should be subject to the Commission's reparations and enforcement jurisdiction for all acts and omissions engaged in during the period for which the license was operative. Further, should the license be terminated, AP licensees should continue to be subject to the Commission's reparations jurisdiction, notwithstanding the proscription of section 14(a) of the Act which limits such jurisdiction to persons "registered under this Act." In this connection, the Commission wishes to point out that § 3.41(a) of the regulations, both as proposed and adopted, specifically provides that applicants who receive a temporary license are subject to all of the obligations imposed on associated persons registered under the Act "in particular, section 14 thereof."

Another commentor stated that AP applicants who receive a temporary license should be able to transfer among firms as easily as AP registrants. The Commission does not disagree. However, the scope of any temporary licensing program must be defined by the ability of the Commission's registration systems to process applications and amendments thereto. Simply stated, these systems cannot be adapted at this time to accommodate AP applicants who wish to transfer from one firm to another before registration is granted. Therefore, § 3.41(b), which provides that an applicant for registration as an AP who receives a temporary license may be sponsored only by the registrant which initially filed the sponsor's certification on behalf of such applicant, has been adopted as proposed.

In connection with the proposed rules relating to temporary licenses, the Commission proposed to amend §§3.12(c)(2) and 3.16(c)(2) to require that applicants who are seeking a temporary license file the sponsor's certification contemporaneously with the Form 8–R and fingerprint card. In response to its proposal, the Commission received several comments in opposition to these amendments based upon the commentors' concern that this provision would unnecessarily delay the registration process for applicants not qualifying for temporary licenses. The Commission has considered these comments carefully and has determined to adopt the amendments as proposed.

In general, the Commission believes that requiring applicants for AP registration to submit fully completed registration applications will enhance the Commission's ability to process such applications in a timely fashion and avoid unnecessary delays. These amendments also are critical to the Commission's administrative ability to implement temporary licensing provisions. In this connection, the Commission notes that these amendments are also consistent with the Commission's recent adoption of § 3.18(c)(2) which requires a sponsoring leverage transaction merchant to submit the certification required with respect to an applicant for registration as an associated person at the same time as the Form 8–R and fingerprint card are filed. Moreover, as the Commission has previously indicated, this requirement reflects the intent of Congress in enacting section 4k(5) of the Act that registrants make a reasonable inquiry into the background of an individual before permitting that individual to become associated with it as an associated person.[10] The Commission, nonetheless, has determined to defer the effective date of the amendments to §§ 3.12(c)(2) and 3.16(c)(2) until such time as the Commission determines to implement the provisions for temporary licenses (§§ 3.40–3.43).

III. Statutory Disqualifications

The 1982 Act created a two-tiered system of statutory disqualifications. The most egregious bases for disqualification from registration are set forth in section 8a(2) of the Act. Pursuant to such rules, regulations or orders as the Commission may adopt, the registration of an applicant or registrant subject to a section 8a(2) disqualification may be denied, conditioned, restricted or suspended "upon notice, but without a hearing" and may be revoked "with such hearing as may be appropriate."

The disqualification standards set forth in section 8a(3) of the Act, however, are of the type for which additional evidence may be useful. Therefore, if an applicant is subject to a

[9] In this regard, the Commission notes that it has entered into an agreement with the First National Bank of Chicago and the Department of Treasury to authorize the bank to process the collection of registration fees and, contemporaneous with the adoption of these rules, is adopting an order authorizing the National Futures Association to process all applications for a temporary license (although such temporary licenses, with the exception of licenses for APs of introducing brokers, will be granted by the Commission).

[10] 48 FR 50554, 50560 (November 2, 1983).

section 8a(3) disqualification, the Commission may refuse to register such person or, pursuant to section 8a(4) of the Act, may suspend, revoke, condition or place restrictions upon the registration of a disqualified person, but only after the opportunity for a hearing. To implement the provisions of sections 8a(2) through 8a(4) of the Act, the Commission proposed regulations which, *inter alia*, established a strict timetable for the conduct of proceedings under these provisions and which described the type of evidence which the Commission will consider. For the reasons discussed more fully below, the Commission has determined to adopt these regulations essentially in the form proposed.[11]

A. Withdrawal of Application for Registration

Since late 1978, the Director of the Division of Trading and Markets, pursuant to authority delegated by the Commission, has been authorized to send an applicant for registration a so-called "withdrawal" letter under Commission rule 3.20 (formerly rule 1.10e), 17 CFR 3.20 (1983), if it appeared that the applicant would be found unfit for registration after further investigation. Generally, such withdrawal letters are sent in circumstances where the applicant has disclosed disqualifying information on the application or such information has been obtained as a result of the fitness checks conducted by the Federal Bureau of Investigation or the Securities and Exchange Commission. The withdrawal procedure permits applicants who receive such letters to withdraw their applications, in which case the procedures for denial of registration will not be instituted. If the recipient of a "withdrawal" letter wishes to pursue registration rather than to withdraw, the applicant must so notify the Commission within 30 days.

The Commission proposed to adapt this existing withdrawal procedure to the proposed regulations implementing sections 8a(2)–8a(4) of the Act. Proposed § 3.51. The Commission received no comments on this portion of its proposal and has determined to adopt this section as proposed. Thus, as adopted, § 3.51 provides that, whenever the Commission has information which indicates that an applicant may be subject to a statutory disqualification under sections 8a(2) or 8a(3), the applicant may be notified and given the opportunity to withdraw the application. This function is delegated to the Director of the Division of Trading and Markets. If the applicant elects to pursue registration, a denial proceeding under section 8a(2) or section 8a(3), as appropriate, may be instituted.

B. Denial of Registration Pursuant to Section 8a(2)

Under the amendments contained in the 1982 Act, an applicant subject to a statutory disqualification under section 8a(2) of the Act may be denied registration upon notice, but without a hearing. The House and Senate Committee Reports on the 1982 Act make clear that Congress expected the Commission to use the flexibility provided by section 8a(2) to develop procedures which would expedite the processing of registration applications for persons subject to section 8a(2) disqualifications while at the same time satisfying due process requirements.[12]

The Commission proposed procedures that would have provided for written notice to an applicant that the Commission is in possession of information which indicates that such an applicant is subject to a section 8a(2) disqualification, that the applicant may submit evidence in writing challenging the accuracy of the allegations set forth in the notice within a specified period of time and that, if the applicant is subject to the disqualification indicated, the registration will be denied. Proposed § 3.52. A copy of the record establishing the disqualification, *e.g.*, the court order of conviction or injuction upon which the notice is based, would be enclosed therewith.

Under the Commission's proposal, the applicant had twenty days after notice is served to file a written response. If the applicant filed a written submission challenging the accuracy of the allegations against him, the Division of Trading and Markets and the Division of Enforcement would have ten days in which to file a reply. Thereafter, a hearing officer, based upon the written record, would determine whether the applicant is subject to a statutory disqualification. If the hearing officer found that the applicant is subject to a statutory disqualification, the hearing officer would issue an order denying registration which would become effective as a final order of the Commission ten days after it is served on the applicant, unless an appeal were filed with the Commission.[13] Proposed § 3.53.

Consistent with Congressional intent, the type of written submission contemplated under the Commission's proposal did not include the submission of arguments concerning matters other than those directly bearing on the existence of the disqualification. Therefore, evidence establishing, for example, the existence of a clerical error or expungement, conditional discharge, a successful appeal or other post-conviction modification would be permitted.[14] Evidence with respect to mitigation or rehabilitation, however, would not be accepted.

The Commission also notes that Congress granted the Commission greater flexibility in the administration of its registration program by authorizing the Commission to condition as well as deny an application for registration and explicitly recognized the Commission's "wide discretion in the exercise of this authority." [15] At the same time, however, Congress expressed its intent that the procedures adopted by the Commission ensure the uniform treatment of all applicants.[16] In order to ensure such uniformity, and given the nature of the violations set forth in section 8a(2), the Commission proposed not to exercise its authority to grant conditional registrations to persons subject to 8a(2) disqualifications at this time. 48 FR 50557.

Those commentors which addressed the Commission's proposed procedures for the denial of registration under

[11] The Commission notes that, pursuant to section 14(f) of the Act, the registration of any person unable to demonstrate within the time prescribed therein that the full amount of a reparations order has been paid shall be suspended automatically until payment has been made. Because these provisions of section 14(f) are essentially self-executing, these regulations are not applicable to suspensions under that section of the Act.

[12] For example, the House Report provides:

It is contemplated that the Commission will develop procedures pursuant to section 8a(2) that will provide adequate notice to an applicant or registrant that the Commission has information which indicates that he is subject to a statutory disqualification, and which also will afford him an opportunity to reply or explain in writing (e.g., advise the Commission of a clerical error or a case of mistaken identity).

H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96–97 (1982). Similarly, the Senate Report indicates that under section 8a(2) "[t]he Commission could take [action other than revocation] after notice but without giving the affected party a hearing", but also expresses the expectation that "the Commission will develop procedures pursuant to section 8a(2) which will satisfy the constitutional requirements of due process of law." S. Rep. No. 384, 97th Cong., 2d Sess. 36, 92 (1982). *Accord*, 128 Cong. Rec. S13074–75 (daily ed. October 1, 1982) (remarks of Sen. Helms).

[13] If the applicant failed to file a written submission, proposed § 3.54 provided that the applicant would be deemed to be in default and registration would be denied.

[14] *See, e.g.*, H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

[15] Sen. Rep. No. 384, 97th Cong., 2d Sess. 37 (1982).

[16] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess 96 (1982).

section 8a(2) focused primarily on the Commission's determination not to exercise its authority to grant conditional registrations to persons subject to section 8a(2) disqualifications. The Commission has reviewed those comments carefully and, for the reasons explained more fully below, has determined generally to adopt those rules as proposed.[17]

In support of the position that the Commission implement its authority to register conditionally applicants subject to a section 8a(2) disqualification, one commentor cited language in the Senate Report wherein it was stated that the amendment would provide "the Commission greater flexibility in dealing with factual situations in which neither a denial nor full registration is appropriate." S. Rep. No. 384, 97th Cong., 2d Sess. 37 (1982). The commentor therefore concluded that the Commission's proposal provided no such flexibility.

The Commission notes that this commentor essentially contends that the *grant* of authority in section 8a(2) of the Act to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of persons subject to the disqualifications set forth in that section, *requires* the Commission to exercise such authority. Upon closer examination, however, the legislative history cited by the commentor, as well as the language of section 8a(2), make clear that the authority granted the Commission in section 8a(2) is discretionary and not mandatory. Nevertheless, the commentor goes on to argue that the Commission's tentative decision that persons subject to section 8a(2) disqualifications are *per se* unfit for even conditional or restrictive registration reflects neither Congressional intent nor wise public policy [*citing* former Chairman Johnson in Hearings on S. 2109, 97th Cong., 2d Sess. 310 (1982)].

In this connection, the Commission wishes to point out that the statements of former Chairman Johnson cited by the commentor do not, in fact, support the conclusion that Congress intended the Commission to grant conditional registration to persons subject to section 8a(2) disqualifications. On the contrary, such statements (which refer to the authority to condition registrations under *both* sections 8a(2) and 8a(3) of the Act) merely suggest that there might be some circumstances under which conditional registrations may be granted. Indeed, former Chairman Johnson made clear that the exercise of such authority by the Commission would be discretionary. *See* Hearings on S. 2109, 97th Cong., 2d Sess. 310 (1982).

The commentor provides support for its contention that the Commission's proposal does not reflect wise public policy by noting, *inter alia*, that an applicant that is subject to a section 8a(2) disqualification would be deprived the opportunity to enter the profession of his or her choice. The Commission, however, rejects this argument. "[T]he absence of a statutory disqualification is a precondition to doing business unless the Commission determines otherwise in its discretion." [18] A person has no right, constitutional or otherwise, to be registered if such person is subject to a statutory disqualification.

Finally, this commentor noted that an applicant subject to a section 8a(2) disqualification may submit evidence that is limited to certain information relating to the accuracy of the basis for the disqualification. By contrast, a registrant subject to the same section 8a(2) statutory disqualification may present, in addition to the accuracy information noted above, other evidence such as mitigating or extenuating circumstances, as well as a sponsor's written statement that it is willing to supervise the AP. The commentor stated that, in its opinion, constitutional due process mandates that both an applicant and a current registrant be treated the same.

The Commission disagrees. The two-tiered system of statutory disqualification established in sections 8a(2) through 8a(4) reflects the judgment of Congress that certain disqualifications, *i.e.*, those set forth in section 8a(2), are of such a serious nature that the Commission may deny, condition or restrict the registration of any person subject to a section 8a(2) disqualification "without a hearing".

At the same time, however, Congress recognized that a registrant has a constitutionally protected property interest in his registration which an applicant does not have. Therefore, Congress provided that the Commission could revoke the registration of any person subject to a section 8a(2) disqualification only after "such hearing as appropriate".[19] The distinction between the treatment afforded an applicant subject to a section 8a(2) disqualification and the treatment afforded a registrant subject to the same disqualification, therefore, simply reflects the existence of the registrant's property interest in his registration.

Moreover, the Commission wishes to emphasize that, although a registrant is provided an opportunity to show cause why his registration should not be revoked, the registrant must make a "clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration of the registrant would be in the public interest." *See* § 3.55(f). Thus, the registrant bears an extremely heavy burden in establishing that his registration should not be revoked. Since revocation prohibits a person from ever being registered with the Commission, while an applicant whose registration is denied may reapply for registration in five years,[20] the limited showing provided registrants under these rules is appropriate. The Commission, therefore, believes that the procedures adopted herein to implement the provisions of section 8a(2) with respect to applicants fully comport with the constitutional requirements of due process and are consistent with Congressional intent.

Based upon the foregoing, and for the reasons set forth in the Commission's proposal (48 FR 50557), the Commission has determined not be exercise its authority and adopt specific provisions to provide for the granting or conditional registrations for persons subject to 8(a)(2) disqualifications. The Commission notes, however, that § 3.75(c) is also being adopted as proposed. Section 3.75(c) reserves to the Commission the decision in any case, *inter alia*, to proceed by order to condition the registration of any person. Thus, although the Commission has determined not to adopt specific provisions providing for conditional registrations under these regulations, the Commission may, in its discretion, offer to grant a conditional registration under the authority the Commission has reserved to itself in § 3.75(c).

The Commission wishes to emphasize, however, that such conditional registrations will be the exception and

[17] The Commission has adopted a technical amendment to change all references to a "hearing officer" to a "presiding officer." A presiding officer is defined at Commission rule 10.2(n) to include a hearing officer.

[18] H. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

[19] *See, e.g.*, S. Rep. No. 384, 97th Cong., 2d Sess. 36 (1982) ("The Commission * * * prior to revocation, must give the registrant the opportunity for a hearing and submit evidence forming a basis for the finding that the registrant is subject to a statutory disqualification."); *id.* at 37 ("The Committee expects that the Commission will exercise its discretion judiciously and not use its powers to suspend or restrict a registration, without a hearing, as *de facto* revocation of that registration.") The Commission included a discussion of the relevant constitutional considerations in its proposal. *See* 48 FR 50554, 50558 (November 2, 1982).

[20] *See* section 8a(2) (A) and (B) of the Act.

not the rule. Moreover, a decision to grant a conditional registration will be made only upon the facts set forth in the registration application, and the relevant documents attached thereto, and the Commission will not consider evidence with respect to mitigation or rehabilitation.

As the Commission has previously made clear, it expects that the registration of persons subject to a section 8a(2) disqualification generally should be denied or revoked. Nonetheless, the Commission also recognizes that there may be circumstances in which a conditional registration would be appropriate. For example, if an individual is subject to a disqualification under section 8a(2)(D), having been convicted within the past ten years of a felony involving transactions subject to regulation under the Act, and a period of nine and one half years has passed since the conviction, a conditional registration may be appropriate. Also, if a registrant has been the subject of an administrative proceeding in which revocation of registration was a sanction and, although findings constituting a section 8a(2) disqualification were made, the Administrative Law Judge determined not to revoke the person's registration, a conditional registration, rather than a denial, might be appropriate if the person subsequently applied for registration in a new capacity.

The Commission also reiterates that it intends to monitor closely the effects of its determination not to provide for conditional registration of applicants in these regulations and, as the Commission gains further experience with its implementation of the new system of statutory disqualifications, will assess whether any undue hardship results.

C. Suspension and Revocation Under Section 8a(2).

With respect to registrants subject to a section 8a(2) statutory disqualification, the proposed rules established a two-step procedure pursuant to which the registrant is entitled first to a paper hearing on the fact of the statutory disqualification. The type of evidence which a registrant may present at this first hearing is limited to the type of evidence which an applicant may submit under § 3.53, *i.e.*, evidence challenging the accuracy of the allegations which form the basis for the statutory disqualification. If the registrant is found subject to a statutory disqualification, the Administrative Law Judge would issue an interim order immediately suspending the registrant and requiring the registrant to show cause why registration should not be revoked. The suspension would remain in effect pending completion of the revocation proceeding. Proposed § 3.55 (a)–(d). Thus, this two-step procedure would enable the Commission to remove an unfit registrant from the business expeditiously but, at the same time, grant the registrant an appropriate hearing before registration is revoked.

The Commission also proposed that a registrant be afforded an opportunity for a limited form of hearing in which the registrant may submit in addition to evidence in writing challenging the accuracy of the allegations which form the basis for the statutory disqualification, memoranda, briefs and affidavits in support of the contention that, notwithstanding the existence of a statutory disqualification under section 8a(2) of the Act, the registration of the registrant should not be revoked. The Administrative Law Judge could permit oral hearings, but requests would be granted only under exceptional circumstances. Proposed § 3.55(f)–(h). Based upon the written submission filed by the registrant, any reply filed by the Division of Trading and Markets and the Division of Enforcement and the oral hearing, if granted, the Administrative Law Judge would issue an appropriate order. Proposed § 3.55(i).

The proposed rules provided that the registration of a registrant subject to a section 8a(2) disqualification would be revoked unless the registrant made a clear and compelling showing why continued registration would be in the public interest. If such showing were made, the Administrative Law Judge was authorized in such cases to suspend or, in the case of an associated person, restrict such registration. The registration of an associated person could not be restricted unless the sponsor agreed to supervise such person subject to any conditions the Administrative Law Judge might impose. The proposed rules further provided that a sponsor may not offer to supervise a disqualifed associated person if the sponsor is the subject of a pending administrative action before the Commission or, if the sponsor is an FCM, is subject to the financial reporting requirements of § 1.12(b) of the Commission's regulations. The proposed rules also set forth the circumstances when an associated person's registration could not be restricted and only revocation would be appropriate. Proposed § 3.55 (f) and (i).

The commentors generally supported the Commission's proposed procedures for the suspension and revocation of a registration pursuant to section 8a(2) of the Act. Accordingly, the Commission has determined to adopt § 3.55 as proposed subject to a few minor technical amendments.[21]

Several of the commentors, however, raised two concerns that the Commission believes merit attention. First, the commentors noted that a firm might be held subject to a statutory disqualification under section 8a(2)(E) of the Act,[22] based solely upon a finding that the firm is liable for the acts of its employee under section 2(a)(1)(A) of the Act.[23] For example, if an FCM, because of the acts of an AP, is found under section 2(a)(1)(A) to have violated the Act or any of the various federal and state securities laws and such violations involve fraud, the FCM would be subject to a statutory disqualification and its registration suspended without an opportunity to demonstrate why its registration should not be affected. Therefore, it was recommended that the Commission revise its proposed rules so that they apply only to natural persons and to firms having a principal subject to a statutory disqualification. It also was suggested that the Commission

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[21] For example, in order to conform with the provisions of section 6(b) of the Act, § 3.55 has been amended to provide that a period of suspension may not exceed six months. In addition, paragraph (i) has been amended to make more explicit the intent of the Commission that the registration of a registrant subject to a section 8a(2) disqualification should be revoked unless the registrant makes the clear and compelling showing described in paragraph (f)(2).

[22] Section 8a(2)(E) of the Act authorizes the Commission to affect the registration of any person—if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person.

[23] Section 2(a)(1)(A) provides, *inter alia*, that the "act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person." 7 U.S.C. 4 (1982).

should exclude from the operation of the rules all findings of the type specified in section 8a(2)(E) of the Act in proceedings in which the moving party is a private complainant.

Second, one commentor pointed out that under section 8a(2)(C) of the Act, the Commission is authorized to affect the registration of any person if such person is permanently or temporarily enjoined by an order entered pursuant to an agreement of settlement to which the Commission or any federal or state agency or other governmental body is a party from acting in a certain capacity or from engaging in certain transactions concerning futures contracts or securities.[24] It was contended that the exercise of such authority by the Commission would adversely affect the resolution of enforcement proceedings by settlement, since the entry of such an injunction would appear to result in an automatic disqualification from registration.

In response to these comments, the Commission has amended the proposed rules to add a new § 3.57 which essentially provides that, if findings of the type described in section 8a(2)(E) of the Act are entered against a registrant solely because such registrant is responsible for the conduct of its associated persons, the Commission will not exercise its authority under section 8a(2)(E) to affect the registration of such registrant. The Commission has also adopted an interpretative statement to address these and other matters. This interpretative statement is being published with this **Federal Register** notice as a new Appendix A to Part 3 of the Commission's regulations.[25]

As explained more fully in the interpretative statement, the Commission has determined that, with respect to proceedings in which the Commission is a party, it will not exercise its authority to affect the registration of a person subject to a statutory disqualification under section 8a(2) (C)(ii) and (E) if such person has entered into an agreement of settlement which clearly restricts the use of such agreement in subsequent or collateral proceedings. Thus, a provision in the agreement of settlement to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected will preclude a collateral proceeding under section 8a(2) (C)(ii) and (E) where the sole basis for such proceeding is the agreement of settlement.[26] In addition, the Commission has determined that it will not exercise its authority under section 8a(2)(E) if the findings described therein are made in a proceeding initiated by a private party either in a court of law or in a reparations proceeding under section 14 of the Act.[27]

D. Proceedings Under Sections 8a(3) and 8a(4)

Proposed §§ 3.60–3.63 established procedures pursuant to which the Commission could deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a (3) and (4) of the Act. The Commission received no significant comments with respect to this portion of its proposal and is basically adopting these rules as proposed, with the exception of one minor clarifying amendment. In this connection, one commentor stated that the hearing provided in proposed § 3.61 appeared to address only the question of whether the applicant or registrant is subject to a statutory disqualification under sections 8a (3) and (4), whereas proposed § 3.60(c) provides an opportunity to show cause why, notwithstanding the accuracy of the allegations, registration should nevertheless be granted. The Commission wishes to make clear that proposed § 3.61 was intended to refer to the hearing described in § 3.60 and, as such, there is no difference in the kind of evidence that may be presented under these rules. Nevertheless, the Commission has added language to conform § 3.61 and § 3.60, thereby eliminating any potential ambiguity.

IV. Notice Under Section 4k(5)

Ancillary to section 8a(2) is section 4k(5), *as enacted by* the 1982 Act, which provides that it is—

> Unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

Earlier this year, the Commission adopted interim procedures to implement section 4k(5).[28] The Commission subsequently proposed to require registrants to notify the Commission whenever the registrant knows or should have known that an associated person whom it has sponsored pursuant to §§ 3.12 or 3.16 of the regulations is subject to a statutory disqualification under section 8a(2) of the Act. Proposed § 3.70. Such notice would have to be received within ten business days of the date upon which the registrant knows or should have known that the associated person is subject to a statutory disqualification. Proposed § 3.70(a). Failure to notify the Commission could, under the facts and circumstances of a particular case, constitute a basis for suspending, restricting or revoking the registration of the registrant under section 8a(3)(L) of the Act.

In accordance with the provisions of section 4k(5) of the Act, the Commission further proposed that upon such notification to the Commission, or upon notification by the Commission to the registrant under these regulations that

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[24] Section 8a(2)(C) authorizes the Commission to affect the registration of any person—if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing and activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of this Act, or concerning securities.

[25] In accordance with the Commission's proposal and for the reasons set forth therein, the Commission has determined to delete former Appendix A to Part 3 of the Commission's regulations, which is an interpretative statement regarding the "good cause" standards for denial of registration. 48 FR 50560. As the Commission noted, the statutory disqualifications established in section 8a (2) and (3) of the Act generally are drawn from that statement. Therefore, Appendix A, as written, is no longer necessary. Those provisions of the Appendix which were not incorporated into the Act, however, are included in that portion of the new Appendix A which discusses the "other good cause" standard now set forth in section 8a(3)(M) of the Act.

[26] The Commission wishes to emphasize that its interpretation with respect to section 8a(2)(C) of the Act is limited to clause (ii) thereof, relating to injunctions from engaging in certain conduct. The Commission's authority under section 8a(2)(C)(i) of the Act to affect the registration of a person enjoined from acting in any capacity described therein, even if such injunction is entered pursuant to an agreement of settlement, is not governed by this interpretative statement.

[27] On February 14, 1984, the Commission adopted new regulations governing its reparations program. Section 12.106(b) of those regulations provides that an adverse decision under the voluntary decisional procedure will not serve as a basis for affecting the registration of any person under section 8a(2) or section 8a(3) and 8a(4) of this Act. This interpretative statement, therefore, governs only findings under the summary decisional procedure and the formal decisional procedure under the reparations program.

[28] 48 FR 22779 (May 20, 1983).

the associated person is subject to a statutory disqualification, the registrant may not permit the associated person to act in the capacity as such until the Commission determines that such associated person should nonetheless be registered. Proposed § 3.70(b).

The Commission received several comments on its proposed procedures to implement section 4k(5) of the Act. In general, the commentor's concerns related to matters of interpretation which the Commission wishes to clarify at this time. Therefore, with the exception of the few minor technical changes discussed below, the Commission has determined to adopt § 3.70 as proposed.

Most of the commentors which addressed this portion of the Commission's proposal expressed the view that the notification and suspension provisions should not apply to current AP registrants where the facts which could serve as the basis for the statutory disqualification have been reported to the Commission on the Form 8–R, or any amendment thereto, and the Commission has determined that such person should be registered nonetheless. These commentors stated that it would impose an unnecessary burden on firms if they were required to search their files to determine whether any presently registered AP is subject to a disqualification, especially if the fact of such disqualification has previously been disclosed to the Commission.

The Commission agrees and has determined that the notification requirements of § 3.70 are prospective in application from the effective date of section 4k(5), May 11, 1983. Therefore, pursuant to § 3.70, registrants would be required to notify the Commission only with respect to any events occurring on or after May 11, 1983 which would subject a currently employed AP to a statutory disqualification under section 8a(2). With respect to pending applications for AP registration, the Commission believes that the sponsoring registrant is under a continuing obligation to notify the Commission whenever the registrant knows or should have known that an applicant for registration as an AP whom it has sponsored to §§ 3.12, 3.16 or 3.18 of the regulations is subject to a satutory disqualification under 8a(2), regardless of when such application was submitted, if such facts were not disclosed in the Form 8–R or any amendment thereto.[29]

In this connection, another commentor noted that proposed § 3.70(a) would impose on an FCM registrant the obligation to inform the Commission of facts regarding an existing AP that are set forth as statutory disqualifications in section 8a(2) when the FCM knows or should have known of such statutory disqualification. This commentor asserted that there is no indication in the legislative history that Congress intended to impose this ongoing obligation on a sponsoring registrant. Instead, it was argued, section 4k(5) addresses the issue of the knowledge of the sponsoring registrant at the time the AP's initial registration application is submitted.

The Commission wishes to point out that the plain language of section 4k(5) of the Act makes it unlawful for any registrant to permit a person to become or *remain* an associated person of such registrant, if the registrant knows or should have known of facts regarding such associated person as set forth in section 8a(2) of the Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed. The Commission observes that inclusion of the word "remain" in section 4k(5) of the Act suggests that the notification duty is a continuous one and does not relate solely to the initial registration application. The Commission further notes that Congress stated that a sponsoring registrant is subject to a duty to make reasonable inquiry into the background of any person who becomes or *remains* associated with it as an associated person. H. Rep. No. 97–565, (Part 1), 97th Cong., 2d Sess. 89 (1982). Such inquiry, however, depends on the particular facts and circumstances. *Id.* Thus, the affirmative steps taken by a sponsoring registrant with respect to an applicant for AP registration may be more rigorous and involved than the steps taken with respect to currently employed APs.

In this connection, however, the Commission also notes that Commission rule 166.3 imposes upon all Commission registrants, except associated persons with no supervisory duties, the duty to supervise diligently the commodity-related activities of persons acting on its behalf. The Commission believes that a registrant properly fulfilling its supervisory responsibilities pursuant to § 166.3 generally should be aware of the fact that one of its currently employed APs has become subject to a statutory disqualification under section 8a(2) of the Act.

Finally, one commentor noted that proposed § 3.70(b) would have made it unlawful for a registrant, after providing notification to the Commission of any facts regarding an AP of the registrant which constitute a statutory disqualification under section 8a(2), to permit the person to work as an AP for that registrant "until the Commission determines that such person should nonetheless be registered." The commentor contended that while it may be clearly unlawful for a registrant to permit a person who is not registered to act as an AP, the proposal would effectively revoke the registration of a currently registered AP without the due process to which that AP would otherwise be entitled.

The Commission wishes to point out that this comment ignores the procedures that follow notification to the Commission under proposed § 3.70. Upon receipt of notification that an associated person may be subject to a section 8a(2) disqualification, the Commission would invoke formal suspension and revocation procedures under proposed § 3.55. Such procedures would provide the notice and hearing required by section 8a(2) of the Act prior to revoking the registration of an AP. Thus, the proposed regulations implement a procedure that precludes action taken under § 3.70 from constituting a *de facto* revocation of an AP's registration.

The Commission, however, has modified § 3.70 by adding a new paragraph (c) in response to those comments in order to eliminate any ambiguity. Thus, as adopted, § 3.70(c) provides that upon notification to the Commission by a registrant pursuant to § 3.70(a), the Commission will promptly issue notice under §§ 3.52 or 3.55, as appropriate, to deny or suspend and revoke the registration of the AP applicant or the AP of the registrant.

V. Reservation of Authority

Proposed § 3.75 would have (1) delegated the authority to perform the functions specified in these regulations to the persons authorized to perform them, (2) reserved to the Commission the authority to exercise the delegated authority if it so desires, (3) reserved to the Commission the authority to proceed by order or to institute a proceeding

[29] In this regard, § 3.31(b) currently requires each applicant or registrant as a floor broker or AP of an FCM, CTA, CPO, introducing broker or leverage transaction merchant to correct promptly any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8–R or supplemental statement. The interpretation of § 3.70 described above is not intended to relieve APs and AP applicants of their obligation under § 3.31. In this connection, the Commission reminds such persons that it is a criminal offense to file a false application with the Commission. *See* 7 U.S.C. 9(b) and 18 U.S.C. 1001.

itself in any case, (4) reserved to the Division of Enforcement the authority to take such other action as may be appropriate in a particular case and (5) reserved to the Commission the authority to delegate its registration functions to a registered futures association. The Commission received no comments on this section and has adopted § 3.75 as proposed.

In addition, pursuant to section 8a(10) of the Act, the Commission has delegated to NFA the authority to register introducing brokers and their APs.[30] This delegation, however, does not include the authority to condition or deny registration. As NFA assumes more of the Commission's registration functions, the Commission expects to delegate to NFA the authority to deny, condition, suspend, restrict or revoke registration, subject to review by the Commission. In performing these functions, NFA will be required to adopt procedures essentially similar to those adopted by the Commission.

VI. Amendments of Existing Regulations and Other Matters

The Commission is adopting as proposed certain amendments to additional rules contained in Part 3 of the Commission's regulations. In general, these amendment conform the existing regulations to the procedures adopted in this notice. The Commission is also adopting, with certain additional changes, the proposed amendments to § 3.32.

A. Changes Requiring a New Registration

The Commission proposed to amend § 3.32, which describes the circumstances under which a new registration is required, to delete the requirement that a new registration be obtained in the event of a change in the name of a registrant. Under the proposal, the registrant would still be required to notify the Commission of any change in the name of the registrant on the Form 3–R pursuant to Rule 3.31, 17 CFR 3.31 (1983) *as amended by* 48 FR at 35297.

The Commission also proposed to amend § 3.32 to require a new registration in the event of a change in the control of a registrant in the case of a corporation. For purposes of this section, proposed paragraph (d) of § 3.32 specified the circumstances which the Commission would deem to constitute a change in the control of a corporation. As the Commission has previously stated, one of the central objectives of registration is to ensure, to the extent reasonably possible, the fitness of all registrants,[31] and, in this connection, § 3.32 already requires a new registration in the event of change in the ownership of the business in the case of a sole proprietorship and in the event of a change in the personnel of a partnership resulting from the addition of a general partner. The proposed amendment, therefore, would merely fill a gap in the existing regulation.

To make certain that an appropriate background check and review of an applicant's or principal's fitness is undertaken whenever a new person intends to assume control of a registrant, the Commission also proposed to require the new principals of a firm to submit a Form 8–R and a fingerprint card in connection with the new registration.[32] It should be noted that the exemption from filing a fingerprint card under § 3.21 was the only exemption applicable under proposed § 3.32.

Those commentors which addressed proposed §3.32 generally supported the Commission's proposal. However, they also recommended that the Commission provide an exemption from registration in those cases where, prior to the admission of a natural person as a principal which would result in a change in control, such person has submitted a Form 8–R containing no self-declared derogatory information and the Commission has found no reason to believe that such person is statutorily disqualified. The Commission believes there is merit to this recommendation and has modified § 3.32 accordingly. Thus, as adopted, § 3.32(e)(1) essentially provides that, in the event a person becomes either a director or the chief executive officer of the registrant, a new registration will not be required if the registrant submits a written notice on the Form 3–R to the Commission at least 45 days prior to the date of the change in control. The registrant must include with the notice a properly completed Form 8–R which must be accompanied by the fingerprints of that individual unless the individual is already registered as an AP of the registrant of which the individual intends to become a principal. Section 3.32(e)(2) provides that such person may not become a principal of such registrant until the registrant receives a written confirmation from the Commission or the NFA that such affiliation has been approved. All documents submitted pursuant to § 3.32 shall be filed with the Commission at its Washington, D.C. headquarters. Section 3.32(f).

The Commission also has amemded § 3.32 to eliminate the requirement that, in the event a new registration is required, APs and AP applicants re-register with the new registrant. As noted in the preamble to the proposed rules, the duration of an AP's registration is coextensive with its association with a particular, sponsoring registrant. Therefore, an AP's registration would terminate automatically whenever a registrant obtains a new registration as a result of a change in control under §3.32. In order to eliminate the need for a registrant to seek an exemption from having to re-register its APs in such circumstances, the Commission has added a new paragraph (g) to § 3.32 which provides that in the event a new registration is required under § 3.32, any AP who is registered, or who has submitted an application for registration, as an AP of the registrant on or prior to the change in control which requires a new registration, shall be deemed to be registered, or to have submitted an application for registration, as an AP of such new registrant.

In connection with the adoption of regulations governing leverage transaction merchants, 49 FR 5498 (February 13, 1984), the Commission adopted a new §3.34 which essentially consolidated in one place the requirements of former §§ 3.10(c), 3.13(c), 3.14(c), and 3.15(c) with respect to the addition of new principals. The Commission has now determined that the provisions of § 3.34 are more appropriately contained in § 3.32. Therefore, § 3.34 has been deleted, and the provisions of that rule are now in § 3.32(h).

Finally, the Commission wishes to note that the provisions of proposed § 3.32(e), premitting persons adversely affected by the operation of this section to petition for an exemption, has been adopted as paragraph (i).

B. Technical Amendments

In view of the Commission's recent adopting of interim final rules to establish a comprehensive regulatory scheme designed to govern the offer and sale to the public of leverage contracts, the Commission has also adopted certain minor amendments to extend these rules to incorporate the new categories of registrant, leverage transaction merchants and associated persons of leverage transaction merchants. *See* §§ 3.32, 3.40, 3.50, 3.55 and 3.70. The Commission has

[30] 48 FR 35153 (August 3, 1983).

[31] *See* 45 FR 80485, 80489 (December 5, 1980).

[32] If the person assuming control of a registrant is not a natural person, the Commission has the authority under § 3.22(b) of the regulations to require the principals of that controlling person to file a Form 8–R and fingerprint card.

dertermined that no further amendments are necessary to extend the temporary licensing and statutory disqualification provisions to leverage transaction merchants and their APs.

The Commission also has adopted certain other technical and conforming amendments to Part 3 and Part 4 of the Commission's regulations. For example, as proposed, the Commission has amended § 3.2 to authorize the National Futures Association to grant temporary licenses to eligible APs of introducing brokers. The Commission also has amended § 3.21(a) to include reference to proposed §§ 3.32 and 3.40. This amendment will expand the exemption from the Commission's fingerprinting requirement in certain cases to incorporate the rules proposed herein which also require the submission of a fingerprint card.

Finally, the Commission has amended the definition of the term "principal" §§ 3.1(a) and 4.10 to conform those sections to the definition of the term "principal" in section 8a(2)(H) of the Act.[33] The only significant change resulting from this amendment is that the "more than ten percent" threshold figures used in those sections has been changed to "ten percent or more." Thus, certain persons who formerly held exactly ten percent of the outstanding shares of any class of stock, or contributed exactly ten percent of the capital, would now be required to be listed on the Form 7–R as a principal of the registrant.

In this connection, any such person who, by virtue of these amendments, becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R must comply with the notification, and filing requirements if applicable, set forth in § 3.31(b). The Commission believes that these amendments will affect only a relatively small number of persons. In order to minimize any unnecessary burdens on registrants affected by this change, the Commission has determined that commodity pool operators and commodity trading advisors need not amend their Disclosure Documents at this time to reflect the addition of such new principals. Rather, this information may be included in the Disclosure Document at such time as the Document is otherwise required to be amdended.[34]

[33] Section 8a(2)(H) provides, *inter alia*, that for the purposes of sections 8a(2) and 8a(3):

"principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission.

VII. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. As stated in the notice of proposed rulemaking, 48 FR 50560, the Commission previously determined that neither FCMs nor registered commodity pool operators should be considered small entities for purposes of the RFA.[35] More recently, the Commission also determined that leverage transaction merchants are not small entities for purposes of the RFA.[36] Accordingly, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, the Commission stated that it believed that the proposed rules would not impose any additional burdens upon such parties since all registrants are already subject to the registration requirements of the Act and Part 3 of the Commission's regulations. To the contrary, the proposed rules would streamline and simplify the current registration procedures. In certifying pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any firms or other persons who believe that the promulgation of these rules might have an impact upon their activities. No such comments were received.

B. Section 15 of the Act

Section 15 of the Act requires the Commission to—

> Take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive competitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation * * *.

The Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Act. To the extent the rules adopted herein raise competitive concerns, the Commission has determined that such rules are necessary and appropriate.

[34] Generally, a Disclosure Document may only be used for a six month period. *See* §§ 4.21(e)(2) and 4.31(e)(2), 17 CFR §§ 4.21(e)(2) and 4.31(e)(2) (1983).

[35] *See* 47 FR 18618 (April 30, 1982).

[36] 49 FR 5498, 5520 (February 13, 1984).

List of Subjects

17 CFR Part 3

Commodity futures, Reporting and recordkeeping requirements, Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants.

17 CFR Part 4

Commodity futures, Commodity pool operators, Commodity trading advisors, Reporting and recordkeeping requirements.

17 CFR Part 10

Administrative practice and procedure.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a) (1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 thereof, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

Subpart A—[Redesignated From §§ 3.1 Through 3.3]

1. Sections 3.1 through 3.3 are redesignated as *Subpart A—Registration.*

2. Section 3.1 is amended by revising paragraph (a) to read as follows:

§ 3.1 Definitions.

* * * * *

(a) Principal. Principal means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act or these regulations: (1) Any person including, but not limited to, a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission; (2) any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock;

or (3) any person who has contributed ten percent or more of the capital.

* * * * *

3. Section 3.2 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

(a) With respect to the registration of introducing brokers and the associated persons of introducing brokers, the registration functions of the Commission set forth in this section and in §§ 3.12, 3.15, 3.21, 3.31, 3.32, and 3.40 shall be performed by the National Futures Association.

* * * * *

(c) Upon receipt of an application for registration or renewal thereof, the Commission or the National Futures Association will, if registration is granted, notify the registrant, or the sponsor in the case of an application for registration as an associated person, that registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40 of this part, the Commission or the National Futures Association will notify the sponsor only that a temporary license has been granted.

* * * * *

4. Section 3.12 is amended by revising paragraphs (c)(2) and (d)(1)(iv) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8–R.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or § 3.20 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §§ 3.51 or 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

5. Section 3.16 is amended by revising paragraphs (c)(2) and (d)(1)(iv) to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

* * * * *

(c) * * *

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8–R.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or § 320 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §§ 3.51 or 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

6. Section 3.18 is amended by revising paragraph (d)(1)(iv) to read as follows:

§ 3.18 Registration of associated persons of leverage transaction merchants.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or 3.20 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §§ 3.51 or 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

7. Section 3.20 is amended by adding a new paragraph (j) to read as follows:

§ 3.20 Delegation of authority to deny registration.

* * * * *

(j) Notwithstanding the provisions of §§ 3.51, 3.55 and 3.60, pending proceedings brought under this section shall continue to completion.

8. Section 3.32 is revised to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor to leverage transaction merchant, a new registration is required in the event of a change:

(1) In the form of organization of the registrant;

(2) In the ownership of the business of the registrant in the case of a sole proprietorship;

(3) In the personnel of a partnership resulting from the addition of a general partner; and

(4) In the control of the registrant in the case of a corporation or other form of association.

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose.

(d) For purposes of this section, a change in the control of a corporation shall be deemed to occur whenever a person not listed on the corporate registrant's initial application for registration:

(1) Acquires the right to vote, or becomes the beneficial owner of, ten percent or more of that registrant's voting securities;

(2) Becomes entitled to receive ten percent or more of that registrant's net profits;

(3) Has contributed ten percent or more of that registrant's capital;

(4) Becomes a director of that registrant; or

(5) Becomes the chief executive officer of that registrant or occupies a position of similar status or performs a similar function.

(e)(1) In the event of a change in control as described in paragraphs (d)(4) and (5) of this section, a new registration will not be required if the

registrant submits a written notice on Form 3–R to the Commission, at least 45 days prior to the date of such change in control, and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who thus will become a principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided by the Commission, or the National Futures Association if the registrant is an introducing broker, for that purpose: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who is registered with the Commission as an associated person of the registrant of which the individual intends to become a principal.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become a principal of such registrant until that registrant receives a written confirmation from the Commission or the National Futures Association that such affiliation has been approved.

(f) All documents submitted pursuant to this section shall be filed with the Commission at its Washington, D.C. office (Attn: Assistant Director for Registration, Division of Trading and Markets, 2033 K Street NW., Washington, D.C. 20581).

(g) Notwithstanding the provisions of §§ 3.12 (a) and (b), 3.16 (a) and (b) and 3.18 (a) and (b), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10 (a) or (b), 3.13 (a) or (b), 3.14 (a) or (b), 3.15 (a) or (b), or 3.17 (a) or (b) of this chapter, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission, or the National Futures Association if the applicant or registrant is an introducing broker, for that purpose. This filing need not be made for any such principal who: (1) Has a current Form 8–R or Form 94 on file with the Commission; or (2) has otherwise submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of this part: *Provided, That* the applicant or registrant must notify the Commission, or the National Futures Association if the applicant or registrant is an introducing broker, within twenty days of the name of such added principal on Form 3–R.

(i)(1) Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that it should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the purposes of this section. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of this section. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's designee the authority to grant or deny petitions filed pursuant to paragraph (i) of this section.

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated to the Director pursuant to paragraph (i)(2)(i) of this section.

§ 3.34 [Removed]

9. Section 3.34 is removed.

10. Subparts B through E are added to 17 CFR Part 3 to read as follows:

* * * * *

Subpart B—Temporary Licenses

Sec.
3.40 Temporary licensing of applicants for associated person registration.
3.41 Restrictions upon activities.
3.42 Termination.
3.43 Relationship to registration.
3.44–3.49 [Reserved]

Subpart C—Denial, Suspension or Revocation of Registration

3.50 Service.
3.51 Withdrawal of application for registration.
3.52 Notice of intent to deny registration pursuant to section 8a(2) of the Act.
3.53 Determination by hearing officer.
3.54 Default.
3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.
3.56 Applicability of the Rules of Practice.
3.57 Proceedings under section 8a(2)(E) of the Act.
3.58–3.59 [Reserved]
3.60 Authority to deny, condition, suspend, revoke or place restrictions upon registration pursuant to section 8a(3) and (4) of the Act.
3.61 Request for hearing.
3.62 Waiver of hearing.
3.63 Service of order issued by a Presiding officer.
3.64–3.68 [Reserved]

Subpart D—Notice Under Section 4k(5) of the Act

3.70 Notification of certain information regarding associated persons.
3.71–3.74 [Reserved]

Subpart E—Delegation and Reservation of Authority

3.75 Delegation and reservation of authority.

* * * * *

Authority: 7 U.S.C. 244a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 16a, 13c, 16a, 23.

Subpart B—Temporary Licenses

§ 3.40 Temporary licensing of applicants for associated person registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the Commission may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the Commission of:

(a) A Form 8–R, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(b) The fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose; and

(c) The sponsor's certification required by §§ 3.12(c), 3.16(c), or 3.18(c) as appropriate.

§ 3.41 Restrictions upon activities.

(a) Subject to the provisions of § 3.42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person.

(b) Until registration has been granted, an applicant for registration as

an associated person who has received a temporary license may not be sponsored by any registrant other than the registrant which has filed the certification described in § 3.40(c).

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission pursuant to §§ 3.52 or 3.60 that the applicant for registration may be found subject to a statutory disqualification from registration; or

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in §3.40(c).

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person.

§ 3.43 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated pursuant to § 3.42, a temporary license shall become a registration with the Commission upon the earlier of:

(1) A determination by the Commission that the applicant is qualified for registration as an associated person; or

(2) The expiration of six months from the date of its issuance.

§§ 3.44–3.49 [Reserved]

Subpart C—Denial, Suspension or Revocation of Registration

§ 3.50 Service.

(a) For purposes of this subpart, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

(b) A copy of any notice served in accordance with paragraph (a) of this section shall also be served upon:

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of §§ 3.12, 3.16, or 3.18 if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(2) Any futures commission merchant which has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter, if the applicant or registrant is registered as or applying for registration as an introducing broker.

(c) Documents served upon the Division of Trading and Markets or upon the Division of Enforcement or filed with the Commission under this subpart shall be considered served or filed only upon actual receipt at the Commission's Washington, D.C. office, 2033 K Street NW., Washington, D.C. 20581.

(d) Except for the documents which may be served under § 3.51, any documents served upon an applicant or registrant or upon the Division of Trading and Markets or the Division of Enforcement or filed with the Commission under this subpart shall be concurrently filed with the Hearing Clerk, together with proof of service, in accordance with the provisions of § 10.12 (d) and (e) of this chapter.

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Director of the Division of Trading and Markets or the Director's designee may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

(1) The information, if true, is a basis upon which the applicant's registration may be denied;

(2) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in this subpart; and

(3) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application of the applicant will be deemed to have been withdrawn.

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Director of the Division of Trading and Markets or the Director's designee on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§ 3.52 Notice of intent to deny registration pursuant to section 8a(2) of the Act.

On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time serve a notice upon any applicant for registration in any capacity under the Act that:

(a) The Commission alleges and is prepared to prove that the applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(b) The allegations set forth in the notice, if true, constitute a basis upon which registration can be denied;

(c) The applicant is entitled to have a presiding officer make a determination, based upon written evidence submitted in accordance with the procedure set forth in § 3.53, as to whether the applicant is subject to such statutory disqualification; and

(d) If the applicant does not timely submit such evidence in accordance with the procedure set forth in § 3.53, registration will be denied as provided in § 3.54.

§ 3.53 Determination by presiding officer.

(a) If the applicant wishes to have a presiding officer make a determination as to whether the applicant is subject to a statutory disqualification under section 8a(2) of the Act, the applicant may submit evidence in writing limited to challenging the accuracy of the allegations set forth in the notice, including evidence as to (1) the applicant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. Such written submission must be served upon the Division of Trading and Markets and the Division of Enforcement and filed with the Hearing Clerk within twenty days after the date of service upon the applicant of the notice under § 3.52.

(b) Within ten days after receipt of any written submission filed by the applicant, the Division of Trading and Markets and the Division of Enforcement may serve upon the applicant and file with the Hearing Clerk a reply. Thereafter, a presiding officer will determine whether the applicant is subject to a statutory disqualification under section 8a(2) of the Act. Such determination must be based upon the application, the evidence of the statutory disqualification, the notice with proof of service, the written submission filed by the applicant in response thereto, any written reply submitted by the Division of Trading and Markets or the Division of Enforcement and such other papers as the presiding officer may require or permit.

(c) Within thirty days after receipt of the applicant's written submission, and any reply thereto, the presiding officer must issue an order, pursuant to section 8a(2) of the Act, granting or denying registration, which shall be deemed a final order of the Commission fifteen days after the date it is served upon the applicant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (d) of this section is filed. A copy of such order shall be served upon the Division of Trading and Markets and the Division of Enforcement.

(d) *Appeal to the Commission.* (1) Within fifteen days of service of the presiding officer's order under paragraph (c) of this section, the applicant or the Division of Enforcement may file with the Commission an application for review thereof, together with supporting argument and proof of service on the other party.

(2) Within ten days after service of the application, the other party may file a response opposing the application.

(3) Based upon the application and any response thereto, the Commission may in its discretion grant review of the presiding officer's order. Should the Commission grant review, the Commission shall thereafter issue an order establishing a schedule for the filing of any additional briefs.

(4) Should the Commission refuse to grant review, the presiding officer's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in accordance with the provisions of § 3.50(a).

§ 3.54 Default.

(a) *Failure to timely file a submission.* If the applicant fails to file a timely written submission in accordance with § 3.53:

(1) The applicant will be deemed to have waived the right to submit evidence in writing on all issues and the facts stated in the notice shall be deemed to be true for the purpose of finding that the applicant is subject to a statutory disqualification under section 8a(2) of the Act; and

(2) Twenty days after the date the notice of intent to deny provided under § 3.52(a) is served upon the applicant, such notice shall be effective as a final order of the Commission denying registration. The Director of the Division of Trading and Markets or the Director's designee shall serve written confirmation upon the applicant in accordance with the provisions of § 3.50(a) that such registration has been denied.

(b) *Vacating of order.* Notwithstanding the foregoing, an applicant for registration against whom an order referred to in paragraph (a)(2) of this section is effective may file a petition and supporting affidavit with the Director of the Division of Trading and Markets if the notice under § 3.52 was not timely received by the applicant. Upon receipt of such a petition, such order shall be vacated, and the Director of the Division of Trading and Markets shall serve upon the applicant the written notice required under § 3.52. The procedures set forth in this paragraph shall be available only once to an applicant.

§ 3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time serve notice upon a registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(2) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the registrant is subject to such statutory disqualification; and

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant shall be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written Submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in section 3.53(a). Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(d) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the registrant is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order is served upon the registrant in accordance with § 3.50(a), until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the registrant is subject to a statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however, That* in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect which shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (k) of this section is received. A copy of such order shall be served upon the Division of Trading and Markets and the Division of Enforcement.

(f) *Response.* Within twenty days of the date of the order to show cause, the registrant shall file a written response which may include briefs, affidavits and supporting memoranda, but in any event shall be limited in content to:

(1) Evidence, not previously set forth in any written submission filed under paragraph (b) of this section, challenging the accuracy of the allegations establishing the statutory disqualification;

(2) The existence of any facts which constitute a clear and compelling

showing that, notwithstanding the existence of the statutory disqualification, the continued registration of the registrant would be in the public interest; or

(3) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Administrative Law Judge shall impose: *Provided, That,* with respect to such sponsor, (i) an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of section 6(b), 6(c), 6d or 8a of the Act is not pending, and (ii) in the case of a sponsor which is a futures commission merchant or leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively.

(g) *Reply.* Within ten days after receipt of the response of the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(h) *Oral hearings.* Oral hearing shall not be granted except under extraordinary circumstances and upon written request, which shall include the issues to be addressed, the evidence to be adduced and a showing of compelling need. If the Administrative Law Judge determines to grant a request for oral hearing, such hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR Part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(i) *Order.* (1) Upon receipt of a response, and any reply thereto, the Administrative Law Judge shall within thirty days, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why his registration should not be revoked and shall issue an order accordingly, which shall be deemed to be a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (k) of this section is filed. If the Administrative Law Judge, on the basis of the showing described in paragraph (f)(2) of this section, finds that, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked, the Administrative Law Judge may issue an order further suspending, for a period not to exceed six months, or, in the case of an associated person, restricting the registration of the registrant. Any such order shall be served upon the registrant, the Division of Enforcement and the Division of Trading and Markets in accordance with the provisions of § 3.50(a).

(2) Notwithstanding the sponsor's written confirmation under paragraph (f)(3) of this section, the Administrative Law Judge may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under section 8a(2) of the Act as a result of his conviction of a felony or misdemeanor under section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or

(v) The associated person willfully made any material false or misleading statement or willfully omitted to state any material fact in any written submission filed under this section as to any facts which would constitute statutory disqualifications under section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made any false or misleading statement of a material fact in the confirmation referred to in paragraph (d)(3) of this section or willfully failed to state any material fact that was required to be stated therein.

(j) *Default.* (1) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default, and the Administrative Law Judge shall within fifteen days thereafter, upon a finding that service was effected pursuant to § 3.50(a), enter an order revoking the registrant's registration based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the notice provided in accordance with paragraph (a) of this section and any written reply submittted by the Division of Trading and Markets or the Division of Enforcement. Any such order shall be served upon the registrant in accordance with the provisions of § 3.50(a) and shall be deemed a final order of the Commission five days after the date it is served upon the registrant.

(2) Notwithstanding the foregoing, if the Administrative Law Judge issues an order under paragraph (j)(1) of this section revoking the registration of the registrant, the registrant may file a petition and supporting affidavit with the Administrative Law Judge setting forth the reasons the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the response. Upon receipt of such a petition, the Administrative Law Judge may, for good cause shown, vacate such order.

(k) *Appeal to the Commission.* (1) Within fifteen days of service of the Administrative Law Judge's order under paragraph (e)(2), paragraph (i) or paragraph (j)(2) of this section, the registrant or the Division of Enforcement may file with the Commission an application for review thereof, together with supporting argument and proof of service on the other party.

(2) Within ten days after service of the application, the other party may file a response opposing the application.

(3) Based upon the application and any response thereto, the Commission may in its discretion grant review of the Administrative Law Judge's order. Should the Commission grant review, the Commission shall thereafter issue an order establishing a schedule for the filing of any additional briefs.

(4) Should the Commission refuse to grant review, the Administrative Law Judge's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in accordance with the provisions of § 3.50(a).

§ 3.56 Applicability of the Rules of Practice.

With the exception of §§ 10.2, 10.4–10.11, and 10.12(a)(2)–10.12(g), or unless otherwise provided in §§ 3.52–3.55 herein, the provisions of the Commission's Rules of Practice, 17 CFR Part 10, shall not apply in any proceeding to deny, suspend, revoke or restrict registration pursuant to section 8a(2) of the Commodity Exchange Act.

§ 3.57 Proceedings under section 8a(2)(E) of the Act.

The Commission will not initiate a proceeding under section 8a(2)(E) of the Act, if *respondeat superior* is the sole basis upon which the registrant may be

found subject to a statutory disqualification.

§§ 3.58–3.59 [Reserved]

§ 3.60 Authority to deny, condition, suspend, revoke or place restrictions upon registration pursuant to section 8a (3) and (4) of the Act.

On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time give written notice to any applicant for registration or any registrant in any capacity under the Commodity Exchange Act that:

(a) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act;

(b) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, conditioned, suspended, revoked or restricted. If the notice proposes conditioning or placing of restrictions upon registration, the notice shall specify these conditions or restrictions;

(c) The applicant or registrant is entitled to a hearing at which the applicant or registrant may challenge the accuracy of the allegations set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted or should not be conditioned, suspended, revoked or restricted;

(d) A hearing for these purposes may be obtained by filing a written request with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, within twenty days after the date the notice is served on the applicant or registrant, which shall state whether the applicant or registrant admits or denies or does not have and is unable to obtain sufficient information to admit or deny each allegation set forth in the notice; and

(e) If the applicant or registrant does not timely request a hearing:

(1) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under section 8a (3) or (4) of the Act; and

(2) A presiding officer may thereafter decide whether to deny, condition, suspend, revoke, or place restrictions upon registration based upon the facts set forth in the notice.

§ 3.61 Request for hearing.

(a) If an applicant or registrant should request a hearing, an adjudicatory proceeding on the question of whether the applicant or registrant is subject to a statutory disqualification under section 8a (3) or (4) of the Commodity Exchange Act, or whether, notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, revoked or restricted, shall thereafter be conducted and concluded in accordance with the Commission's Rules of Practice, 17 CFR Part 10.

(b) For purposes of that proceeding:

(1) The notice given in accordance with § 3.60 shall be treated as a duly authorized complaint by the Division of Enforcement seeking the relief specified therein; and

(2) The request for hearing shall be treated as an answer.

§ 3.62 Waiver of hearing.

If no request for a hearing is received by the Hearing Clerk within twenty days after a notice has been given in accordance with § 3.60, the Hearing Clerk shall transmit the record to a presiding officer who shall determine whether the applicant or registrant is subject to a statutory disqualification and thereafter issue an order under section 8a(3) or 8a(4) of the Act denying, suspending, revoking, conditioning or placing restrictions upon registration based upon the notice with proof of service, an appropriate showing that a hearing has not been requested, and the evidence of the statutory disqualification.

§ 3.63 Service of order issued by a presiding officer.

(a) A copy of any order issued pursuant to § 3.62 shall be served promptly upon the applicant or registrant, the Division of Trading and Markets and the Division of Enforcement in accordance with the provisions of § 3.50(a) and shall be deemed a final order of the Commission fifteen days after the date of such service, unless a timely application for review under paragraph (b) of this section is filed.

(b) Within fifteen days after such service, the applicant, the registrant or the Division of Enforcement may file with the Commission a petition for review setting forth the grounds in support thereof. The petition for review of an applicant or registrant shall not be based upon any matter other than those as to which the applicant or registrant had notice and opportunity for hearing under § 3.60. Should the Commission refuse to grant review, the presiding officer's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in a manner in accordance with the provisions of § 3.50(a).

§§ 3.64–3.69 [Reserved]

Subpart D—Notice Under Section 4k(5) of the Act

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of §§ 3.12, 3.16 or 3.18 or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, D.C. office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581).

(b) *Unlawful to act as an associated person.* Upon the earlier of notification to the Commission by the registrant pursuant to paragraph (a) of this section, or actual receipt of notice to the registrant pursuant to § 3.50(b)(1) of this part, that an associated person of the registrant or an applicant for registration as an associated person may be subject to a statutory disqualification as set forth in section 8a(2) of the Act, it shall be unlawful for the registrant to permit such person to act in the capacity of an associated person of the registrant until the Commission determines that such person should nonetheless be registered.

(c) *Proceedings under subpart C.* Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission will promptly issue notice under §§ 3.52 or 3.55, as appropriate, to deny or suspend and revoke the registration of the applicant for registration or the associated person of the registrant.

§§ 3.71–3.74 [Reserved]

Subpart E—Delegation and Reservation of Authority

§ 3.75 Delegation and reservation of authority.

(a) The Commission hereby delegates, until such time as it orders otherwise, the authority to perform all functions specified in subparts B through D to the persons authorized to perform them thereunder.

(b) Nothing in this subpart shall prevent the Commission from exercising the authority delegated therein.

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice but without a hearing, to deny, suspend, condition or restrict the registration of any person pursuant to section 8a(2) of the Act.

(d) Nothing in this part shall affect the authority of the Commission to institute a proceeding pursuant to section 6(b) of the Act.

(e) The Commission may, by order of delegation, authorize a futures association registered pursuant to section 17 of the Act to perform all or any portion of the registration functions under subparts B through D in accordance with rules or procedures adopted by such futures association and submitted to the Commission pursuant to section 17(j) of the Act and subject to the applicable provisions of the Act.

11. Part 3 is amended by revising Appendix A to read as follows:

Appendix A—Interpretative Statement With Respect to Section 8a(2) (C) and (E) and Section 8a(3) (J) and (M) of the Commodity Exchange Act

Section 8a(2) (C) and (E)

The provisions of sections 8a(2)–8a(4) of the Commodity Exchange Act ("Act") establish a system of statutory disqualifications pursuant to which the Commission may find an applicant or registrant unfit for registration and vest the Commission with wide discretion to deny, condition, suspend, restrict or revoke the registration of any person subject to one or more of the disqualifications set forth therein. The Commission recognizes that the full exercise of its authority under these provisions of the Act may have unintended results. In particular, the exercise of such authority may, in certain cases, impede the efficient enforcement of the Act and the various federal and state securities acts.

At this time, the Commission cannot anticipate all of the circumstances under which it may elect not to exercise its authority under sections 8a(2)–8a(4). Until the Commission has gained experience with these provisions of the Act, such determinations generally must be made on a case-by-case basis. Nonetheless, the Commission has identified two paragraphs of section 8a(2) of the Act which it has determined to interpret more narrowly than required.

Section 8a(2)(C). Section 8a(2) of the Act authorizes the Commission to deny, condition, suspend or restrict the registration of any person "upon notice, but without a hearing" and to revoke the registration of any person "with such hearing as may be appropriate," if such person is subject to one or more of the disqualifications described in paragraphs (A)–(H). Section 8a(2)(C) authorizes the Commission to affect the registration of any person—

"if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . ., including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of the Act, or concerning securities;"

The Commission believes that a person enjoined from acting in a certain capacity as described in section 8a(2)(C)(i), even if the order of injunction is entered into pursuant to an agreement of settlement, similarly should be prohibited from acting in any other capacity which requires registration with the Commission. Therefore, the Commission does not intend to limit its authority under section 8a(2)(C)(i) of the Act.

However, the Commission is also aware that it has often initiated proceedings in which the sole relief sought was an injunction from engaging in certain conduct. In such circumstances, the Commission has accepted offers of settlement which provide that the findings set forth in the settlement will not form the sole basis for the denial, suspension or revocation of such person's registration with the Commission. The Commission does not wish to impede the resolution by negotiated settlement of such proceedings. Therefore, the Commission has determined that it will not exercise its authority under section 8a(2)(C)(ii) of the Act with respect to any person temporarily or permanently enjoined by agreement of settlement from engaging in any conduct described in that paragraph, if the agreement of settlement clearly restricts the use of such order of injunction or any findings set forth therein in subsequent or collateral proceedings.

Thus, a provision in the agreement of settlement to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected will preclude a collateral proceeding under section 8a(2)(C)(ii) where the sole basis for such proceeding is the agreement of settlement. Unless otherwise precluded in the agreement of settlement, however, the person will be collaterally estopped from denying the findings set forth therein, whether or not admitted, in any other subsequent or collateral proceeding and such findings may, in conjunction with the findings in such subsequent or collateral proceeding, form a basis for affecting the registration of that person or imposing such other sanctions as may be deemed appropriate.

Section 8a(2)(E). Section 8a(2)(E) of the Act authorizes the Commission to affect the registration of any person—

"if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, [the securities acts], or any similar statute of a state or foreign jurisdiction, or any rule, regulation, or order under such statutes . . . where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, burglary, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;"

As in section 8a(2)(C)(ii), the Commission will not exercise its authority under section 8a(2)(E) of the Act with respect to any person subject to a statutory disqualification thereunder, if the findings are part of an agreement of settlement which clearly restricts the use of such findings by inclusion of a provision to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected.

Section 2(a)(1)(A) of the Act, *inter alia*, codifies the legal concept of *respondant superior* by providing that a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant may be held liable for the conduct of an associated person sponsored by such registrant.* Thus, findings of the type described in paragraph (E) may be entered against a registrant solely because such registrant is responsible, under section 2(a)(1)(A) of the Act, for the conduct of its associated persons. As prescribed in § 3.57 of the Commission's regulations, however, the Commission will not exercise its authority under section 8a(2)(E) to affect the

* Specifically, section 2(a)(1)(A) of the Act provides in part, that the "act, omission or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person." 7 U.S.C. 4 (1982).

registration of such registrant, if *respondant superior* is the sole basis for finding that the registrant is subject to a statutory disqualification.

The Commission notes that section 8a(3)(C) and 8a(4) authorize the Commission to affect the registration of a person if it is found, after notice and opportunity for a hearing, that such person "failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act or [the securities acts], or of any of the rules, regulation or orders thereunder, and the person subject to supervision committed such a violation * * *" In this connection, the Commission believes that any proceeding to affect the registration of a registrant against which findings have been made solely pursuant to section 2(a)(1)(A) of the Act is more appropriately initiated under the provisions of section 8a(3)(C) and 8a(4).

Section 8a(2)(E) may also be interpreted to authorize the Commission to affect the registration of any person if the findings described therein are made in a proceeding initiated by a private party either in a court of law or in a reparations proceeding under section 14 of the Act. At the present time, however, the Commission does not intend to exercise its authority under section 8a(2)(E) on the basis of such findings. The Commission believes that such proceedings are intended primarily to provide restitution to the customer and are not intended to be punitive in nature. Therefore, it may not be appropriate to use findings in such proceedings to affect the registration of any person under section 8a(2)(E).

At the same time, however, such findings may form the basis of a proceeding against a person under the provisions of section 8a(3)(M) and 8a(4), which authorize the Commission, after notice and opportunity for a hearing, to deny, condition, suspend, restrict or revoke the registration of any person if "there is other good cause." Similarly, such findings may form the basis for a proceeding against a registrant under sections 8a(3)(C) and 8a(4) for the failure of such registrant "reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act * * * or of any of the rules, regulations or orders thereunder * * *" Moreover, because the Commission views actions by private parties as an important adjunct to the Commission's own enforcement proceedings, the Commission intends to monitor carefully decisions in such proceedings and may amend this interpretation if deemed appropriate.

Section 8a(3) (J) and (M)

Section 8a(3) authorizes the Commission to refuse to register an applicant for registration if, after notice and opportunity for a hearing, the applicant is found subject to one or more of the disqualifications described in paragraphs (A)–(M). Section 8a(4) authorizes the Commission, after notice and opportunity for a hearing, to condition, suspend, restrict, or revoke the registration of any person subject to a disqualification under section 8a(3).

Section 8a(3)(J). Section 8a(3)(J) authorizes the Commission to affect the registration of any person if—

"such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, or any other self-regulatory organization, or barring or suspending such person from being associated with any member or members of such contract market, association, or self-regulatory organization."

The Commission interprets the term "self-regulatory organization" to include, in addition to a contract market and a registered futures association, any self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934. Thus, a self-regulatory organization includes any national securities exchange, any registered securities association, any registered clearing agency and the Municipal Securities Rulemaking Board.

Section 8a(3)(M). Section 8a(3)(M) authorizes the Commission to affect the registration of any person if "there is other good cause". Specifically, the Commission interprets paragraph (M) to authorize the Commission to refuse to register such person in any new capacity, if such person, or any principal of such person, is the subject of an administrative proceeding brought by the Commission to revoke the existing registration of such person in any other capacity, pending a final decision in such administrative proceeding. The Commission believes it would be inconsistent to register a person in a new capacity, thereby determining that such person is qualified to be registered, while simultaneously seeking to revoke such person's registration in a different capacity because such person's conduct disqualifies him from registration.

Good cause to affect a person's registration also exists: (1) If the operations of such person disrupt or would tend to disrupt orderly market conditions, or cause or would tend to cause sudden or unreasonable fluctuations or unwarranted changes in the price of commodities or contracts for future delivery of commodities or commodity options; (2) if such person has used or is using in its name a term such as "board of trade", "clearing corporation" or "exchange" in a misleading context, or uses any terms in its representations to the public which may indicate that the person is a contract market or a member of a contract market when such is not the case, or has used or is using a misleading name which would tend to suggest to the public that the person is affiliated with another person when that is not the case or that the person is engaged in a commodity-related business when the person is not in fact substantially so engaged, or has failed to disclose to the public an agency relationship with another person when such failure could mislead the public; (3) if such person is subject to an outstanding order denying, suspending or revoking the license of such person by a licensing authority, such as a state real estate or insurance commission; and (4) if such person has failed to answer the inquiries or requests for further information concerning an application for registration filed with the Commission.

This listing, of course, is not exclusive. In general, the Commission interprets paragraph (M) to authorize the Commission to affect the registration of any person if, as a result of any act or pattern of conduct attributable to such person, although never the subject of formal action or proceeding before either a court or governmental agency, such person's potential disregard of or inability to comply with the requirements of the Act or the rules, regulations or order thereunder, or such person's moral turpitude, or lack of honesty or financial responsibility is demonstrated to the Commission.

Any inability to deal fairly with the public and consistent with just and equitable principles of trade may render an applicant or registrant unfit for registration, given the high ethical standards which must prevail in the industry.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

12. Section 4.10 is amended by revising paragraphs (e) (2) and (3) to read as follows:

§ 4.10 Definitions.

* * * * *

(e) * * *

(2) Any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; and

(3) Any person who has contributed ten percent or more of the capital of the entity.

* * * * *

PART 10—RULES OF PRACTICE

13. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning or restricting of registration as a futures commission merchant, introducing broker, or associated person, floor broker, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(b), 8a(3) and 8a(4) of the Act, 7 U.S.C. 9, 12a(3), 12a(4), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6 and 6(a) of the Act, 7 U.S.C. 8;

* * * * *

Issued in Washington, D.C., on February 27, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-5722 Filed 3-2-84; 8:45 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Temporary Licensing of Associated Persons; Authorization of the National Futures Association To Perform Certain Commission Registration Functions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order Authorizing the National Futures Association to perform certain portions of the Commission's registration functions applicable to associated persons.

SUMMARY: In order to facilitate the implementation of newly adopted Commission rules concerning the temporary licensing of applicants in the various "associated person" registration categories, the Commission is authorizing the National Futures Association to perform clerical functions related to the temporary licensing of applications for registration as associated persons in all categories (other than associated persons of introducing brokers) whose registration applications are submitted to the Commission in accordance with rules adopted by the Commission. The Commission has concurrently authorized the National Futures Association to process and issue temporary licenses to applicants to become associated persons of introducing brokers. The National Futures Association already has been authorized to process and grant registration applications of associated persons of introducing brokers.

EFFECTIVE DATE: Contemporaneously with the effective date of the appropriate temporary licensing regulations of the Commission, the adoption of which was separately announced today.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, Division of Trading Markets, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On February 27, 1984, the Commission issued the following order authorizing NFA to perform certain registration functions on behalf of the Commission:

United States of America Before the Commodity Futures Trading Commission

Order Authorizing the National Futures Association To Perform Certain Functions Related to Temporary Licensing of Associated Person Applicants

The Commission today announced the adoption of rules and procedures to govern the temporary licensing of applicants in the various registration categories of associated persons (*i.e.*, associated persons of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, and leverage transaction merchants) under the Commodity Exchange Act ("Act"). Amendments to Part 3 Title 17 of CFR, published elsewhere in this issue. With regard to applicants for registration as associated persons of introducing brokers ("AP/IB"), the Commission amended regulation 3.2 to authorize the National Futures Association ("NFA") to process and grant temporary licenses to such applicants. This processing and granting of such temporary licenses will be done in accordance with NFA's rules, which incorporate the Commission's regulation by reference. If in processing any such registration application NFA finds that the applicant is not eligible under the Part 3 criteria for temporary licensing, NFA will not grant a temporary license to that applicant while the reason for the ineligibility exists. Temporary licenses issued by NFA to an AP/IB shall terminate upon occurrence of any event listed in Commission regulation 3.42.

The Commission previously authorized NFA pursuant to section 8a(10) of the Act to process and grant registrations of persons applying as APs/IB.[1] At that time, the Commission approved rules of NFA that allow for the granting of temporary licenses as well as registrations. In addition, NFA's undertakings that relate to maintaining the confidentiality of registration records (enumerated in the Commission's Order authorizing NFA to grant registrations) apply without further amendment.

With regard to all other categories of associated persons, the Commission is authorizing NFA soley to assist the Commission by performing certain clerical functions involved in the processing of temporary licenses. NFA personnel, working on Commission premises, will perform certain steps in the input processing such as reviewing submissions for obvious deficiencies under the criteria in Commission regulation 3.40, querying the Commission's computer regarding identification of applicants, coding for data entry into the computer, and removing fingerprint cards from the applicants for forwarding to the FBI. The NFA personnel will then enter data into the Commmission's computer and perform specific steps in the output processing such as reviewing certain runs for accuracy and coding corrections. NFA personnel are also expected to assist the Commission's staff in reviewing periodic "pending" and "deficiency" reports for accuracy and updating. Records will be maintained by the Commission, not by NFA, however. Moreover, NFA is not authorized to grant any such temporary license; rather, the Commmission is retaining that power along with the authority to deny or terminate temporary licenses for these categories of APs.

In conclusion, the Commission has determined, in accordance with its authority under section 8a(10) of the Act, to authorize NFA to perform clerical functions regarding the regisration applications of all categories of APs (other than APs of introducing brokers) for purposes of temporary licensing under Commission regulation 3.40, and to process and grant temporary licenses of APs of introducing brokers. This grant of authority will be effective contemporaneously with the effective date of the appropriate temporary licensing regulations adopted by the Commission on Feburay 22, 1984.

Issued by the Commission on February 27, 1984, in Washington, D.C.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84–5721 Filed 3–2–84; 8:45 am]

BILLING CODE 6351–01–M

[1] 48 FR 35158 (August 3, 1983).

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H.R. 4956 / Pub. L. 98-222

To extend the authorities under the Export Administration Act of 1979. (Feb. 29, 1984; 98 Stat. 36) Price: $1.50

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1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	6.00	July 1, 1983
400–End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
200–End	12.00	July 1, 1983
37	6.00	July 1, 1983
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	7.50	July 1, 1983
40 Parts:		
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52	14.00	July 1, 1983
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400–End	7.00	Oct. 1, 1983
47 Parts:		
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48	1.50	[3] Sept. 19, 1983
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[1] No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).